The meaning of 1970 for the acquisition of archaeological objects

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Many museum and professional associations, particularly in the United States, have adopted a 1970 standard for the acquisition of archaeological materials–that is, in recognition of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, archaeological objects should be documented has outside of their country of origin before 1970 or have been exported legally after 1970. This article explores the extent to which this standard has been adopted, its influence on restitutions and claims for restitution of archaeological objects, and the policies that this standard attempts to promote.

Introduction

The year 1970 is when the United Nations Educational, Scientific and Cultural Organization (UNESCO) finalized the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* ("the *1970 Convention*"). This is the second international convention to focus exclusively on cultural heritage and the first to focus on the international movement of cultural objects. It was created in response to the escalating looting of archaeological sites and the dismemberment of historical structures to provide objects for sale on the international art market (Coggins 1969). The *1970 Convention* builds on UNESCO's *1956 Recommendation on International Principles Applicable to Archaeological Excavations* and *1964 Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property*.

In recognition of the *1970 Convention*, many professional associations and institutions have adopted some form of what might be termed "the 1970 standard." Archaeological and other cultural objects that meet this standard are documented as having been removed from their country of origin before 1970 or legally exported after 1970. Here I address the evolution and adoption of different forms of the 1970 standard by professional organizations, educational institutions, and museums in the United States, the purposes of the standard, the methods by which it is implemented, and its current status.

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The *1970 Convention* and its Implementation

The *1970 Convention* creates a framework for the regulation of the trade in cultural objects by calling on nations to establish a licensing system for the export of cultural objects; to protect cultural objects from looting, theft, and illegal export; and to assist each other in recovering illegally exported cultural objects. However, the date of 1970 by itself bears no legal significance. Rather, each nation determines whether and when to ratify an international convention. Once a nation ratifies or otherwise accedes to a convention, it must determine whether the ratification is self-executing or executory in nature. If the nation views the convention as self-executing, then it takes no further steps and the convention is legally binding. If, however, the nation views the convention as executory in nature, then the convention does not take legal effect within that nation until domestic implementing legislation is enacted. The domestic implementing legislation, rather than the terms of the convention itself, determines the internal legal relevance of the convention and the extent to which a nation can be held accountable under it. As a result, a convention such as the *1970 Convention*, which has been implemented in different ways, has different substantive provisions among various nations (Gerstenblith 2012).

For example, the United States was the first major market nation to ratify the *1970 Convention*. In 1972, the Senate voted unanimously to ratify, but with the understanding that domestic implementing legislation was required. Ten years later Congress enacted the Convention on Cultural Property Implementation Act (CPIA) (19 U.S.C. §§ 2601–13), which went into effect in 1983. The CPIA establishes those provisions of the *1970 Convention* that are relevant to U.S.

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law—primarily Article 7b and Article 9, which is effective only after another State Party has re-quested and entered into a supplementary bilateral agreement with the United States. Fourteen of these agreements are in effect at this time (a request from Bulgaria is pending) and the United States has imposed import restrictions on cultural materials illegally removed from Iraq, pursuant to special legislation passed by Congress rather than a bilateral agreement. The effective dates of the different agreements vary and the categories of archaeological and/or ethnological materials that are placed on the designated list for each nation and are therefore subject to import restriction also vary.

A significant number of market nations did not ratify the *1970 Convention* until the late 1990s and 2000s, when France, followed by the United Kingdom, Japan, Germany, and Switzerland, ratified and, in some cases, enacted domestic implementing legislation (Gerstenblith 2012). For each nation, the effective date of enforcement depends on when these actions were taken. Similar to the United States, Switzerland requires other State Parties to enter into supplementary bilateral agreements before the *1970 Convention* is given effect between Switzerland and another State Party. Today there are 123 State Parties to the *1970 Convention*.

While the date of 1970 has no legal significance, it is sometimes viewed as a proxy for legality. That is, if an archaeological object is documented as being outside of its country of origin before that date, it is less likely that any illegality is attached to the object. Even if the object is classified as stolen property or illegally exported or imported, the illegality occurred so long ago that any action to recover it will be barred by the statute of limitations. An object undocumented before 1970 may or may not be legal, particularly since the national ownership laws of many nations, which vest ownership of buried archaeological objects in the nation (Gerstenblith 2009a), postdate 1970, and some nations do not have national ownership laws at all. On the other hand, many national ownership laws predate 1970. An object may therefore be characterized as stolen property even if it was removed before 1970 (but after the enactment date of a national ownership law) and, if the whereabouts of the object have been unknown (e.g., it was located in a private collection and not publicly displayed), a foreign nation or the U.S. government may still be able to bring an action to recover it. On the other hand, an object that was removed after 1970 could be considered legal, even though its documented history cannot be traced to 1970.

The *1970 Convention* as an Ethical Guideline

The date of 1970 has taken on an entirely different, non-legal significance through the adoption of voluntary codes. It is important to understand that the *1970 Convention* is not binding on organizations, institutions, or associations, nor can they become a party to the *Convention*. Only nations may do so. Nonetheless, it has become accepted as a moral or ethical (albeit not legal) line in the sand demarcating what behavior is considered to be ethical or unethical among professional organizations, primarily in the United States.

Professional associations

One of the earliest efforts at utilizing the *1970 Convention* as an ethical guide occurred when the largest American archaeological organization, the Archaeological Institute of America (AIA), began to urge the United States to ratify the *Convention* after the AIA Council endorsed ratification at its December 1970 annual meeting. In December 1973, the AIA Council adopted a resolution stating that its Annual Meeting "should not serve for the announcement or initial scholarly presentation of objects in conflict with the Resolution on antiquities" (Norman 2005: 135). In 1978, the editors of the *American Journal of Archaeology* (*AJA*), Brunilde S. Ridgway and Tamara Stech Wheeler, extended this to the editorial policy of the *AJA*. As Norman explained, "[t]he clear intent of the policy was not to enhance the market value or importance of these objects by giving them the imprimatur of the AIA by publishing them for the first time in the *AJA*" (Norman 2005: 135). Therefore, the policy dictates that the *AJA* will not be the place of first publication of an antiquity acquired after December 1973 that cannot be shown to have left its country of origin legally.

While this policy has been expanded and modified over the past four decades, it has remained largely intact. Other professional organizations, such as the Society for American Archaeology (SAA) and the American Schools of Oriental Research (ASOR)—the latter of which adopted a resolution in support of the *1970 Convention* in 1987—have adopted codes of ethics or professional practice that require members to avoid enhancing the commercial value of undocumented archaeological objects, but they do not specifically reference the date of 1970 (Seger 1995; SAA 1996).

Individual museum policies

Likely the first museum policy on the acquisition of looted antiquities was formulated by the Southwest Museum in Los Angeles in 1937 (Daniels 2013: 148). This policy allowed for the acquisition of archaeological specimens only under the following circumstances: objects discovered accidentally through construction projects or revealed through natural forces, such as erosion; objects that were scientifically collected; and objects "known not to have been gathered contrary to law" (Hodge 1937). The policy

recognized that "[t]he only way to stop the pothunter is to deprive him of his market. That market consists principally in museums and in other institutions of learning and research" (Hodge 1937).

Three museums took the lead in adopting policies that applied some formulation of the 1970 standard in the early 1970s. The University of Pennsylvania declaration, issued in April 1970, before UNESCO had adopted the *1970 Convention*, was the first museum statement on acquisitions to formulate a 1970 standard (Penn Museum 1980). This declaration stated that the Museum would purchase no object unless it was "accompanied by a pedigree—that is, information about the different owners of the objects, place of origin, legality of export, and other data useful in each individual case. The information will be made public" **(**Penn Museum 1980**).**

In 1978, the Penn Museum adopted a more stringent policy that reaffirmed that it would "not knowingly acquire, by gift, bequest, exchange or purchase, any materials known or suspected to be illegally exported from their countries of origin; nor will they knowingly support this illegal trade by authenticating or expressing opinions concerning such material and will actively discourage the collection of such material, exhibiting such material in The University Museum, or loaning University Museum objects to exhibitions of illegally acquired objects in other museums" (Penn Museum 1980). Furthermore, the Museum reserved the right to refuse to loan objects to museums or departments suspected of having knowingly violated the *1970 Convention*. This policy statement cited the 1970 resolution of the AIA, the 1971 resolution of the SAA, the 1972 resolution of the American Anthropological Association, the 1973 Joint Professional Policy on Museum Acquisitions of the American Association of Museums (AAM), and the joint 1973 resolution of the International Council of Museums (ICOM) Committee on Ethnography and the International Union of Anthropological and Ethnological Sciences.

The Field Museum of Natural History adopted its policy in December 1971, offering the justification that "[d]angerously large quantities of primitive and ancient artifacts are now being stolen or looted—at times in a quasi-legal fashion—smuggled, and sold at high prices. If this market continues to operate at its present scale and in its present rapacious manner, it will quite soon succeed in obliterating large segments of the cultural heritage of mankind" (Field Museum of Natural History 1971: 232). The policy states that the museum "will not acquire any archeological or ethnographic object that cannot be shown to the satisfaction of the museum official…responsible for its acquisition to have been exported legally from its country of origin." Further, in no case will the museum acquire objects unless they "can be determined to have left their country of origin before" the date of the policy. Similar to the earlier policy adopted by the Southwest Museum, which was concerned primarily with objects illegally excavated within the United States, this part of the Field Museum's policy also applies to objects "reasonably believed to have been illegally or unscientifically excavated within the United States" (Field Museum of Natural History 1971: 234).

Harvard University adopted a policy in 1971 "forbidding the acquisition or exhibition of any object looted or illegally exported from its country of origin and specifying that museum staff must seek reasonable assurance that an object is not so tainted before it is acquired or borrowed" (Harvard University 1998). Questions were raised as to whether the Arthur M. Sackler Museum, one of the Harvard University Art Museums, was following this policy when in the late 1990s it acquired several artifacts from the dealers Robert Hecht and Robert Guy and exhibited several bronze figures, including one owned by the collectors Leon Levy and Shelby White (Robinson 1998).

Much later, in 2006, the Getty Trust adopted a strict policy following several claims for restitution of looted archaeological artifacts in the Getty's collection brought by Italy and the indictment of the Getty's curator, Marion True, in Italy. This policy does not allow acquisition of any ancient work of art or archaeological material unless there is "[d]ocumentation or substantial evidence that the item was in the United States by November 17, 1970 (the date of the *1970 Convention*) and that there is no reason to suspect it was illegally exported from its country of origin" or that it was exported from its country of origin legally after that date (Getty Trust 2006).

Museum association guidelines

ICOM is the international museum association affiliated with UNESCO. It has over 30,000 individual and museum members representing the global museum community. In 1970, it adopted a broad fundamental principle concerning "Ethics of Acquisition" stating that "there must be a full, clear and satisfactory documentation in relation to the origin of any object to be acquired" whether the object is classified as a work of art or an object of archaeology, ethnology, or of national and natural history (ICOM 1970). ICOM's Code of Ethics, beginning in 1986 and continued in its 2001 and 2004 Codes, adopts the 1970 standard, stating that "museums must conform fully to international, regional, national, or local legislation and treaty obligations." This includes respecting the legislation of other states as they affect their operation and acknowledging international legal instruments including the *1970 Convention* (ICOM 2004: Principle 7). While the

ICOM Code is very influential in museums throughout the world, it has relatively little influence on the two major U.S. museum organizations and individual museums.

The two largest museum organizations in the United States, the American Alliance of Museums (AAM), formerly the American Association of Museums, and the Association of Art Museum Directors (AAMD), did not have policies that specifically related to the acquisition of archaeological material from foreign countries for many years. The AAM had a policy, going back as far as 1925, that called on museums to "carefully scrutinize the titles to objects offered for sale and refuse to acquire those obtained through vandalism" (AAM 1926: 3). While addressing the problem of archaeological site looting through the reference to vandalism, the AAM policy did not refer specifically to international trade in looted archaeological materials.

In 2004, the AAMD adopted a policy exclusively for the acquisition of ancient art and archaeological materials, perhaps in response to three significant events concerning the looting of archaeological sites and the trade in undocumented archaeological objects. The first was the indictment of the former Curator of the Getty Villa, Marion True, by Italy for allegedly conspiring to deal in antiquities stolen from Italy. In the previous year (2003), the conviction of Frederick Schultz, the prominent New York dealer and former president of the National Association of Dealers in Ancient, Oriental and Primitive Art, for conspiring to deal in stolen antiquities that were removed from Egypt in violation of its national ownership law, was upheld by the Second Circuit Court of Appeals, United States v. Schultz, 333 F.3d 393 (2d Cir. 2003). Also in 2003, the Iraq Museum in Baghdad was looted, followed by the large-scale looting of archaeological sites throughout southern Iraq, during the U.S. invasion of Iraq. All of these events brought the issue of acquisition of unprovenanced and likely recently looted antiquities to the attention of the media and the U.S. public in such a way that the AAMD seemed forced to develop a policy in response.

The AAMD's policy, however, proved insufficient to quiet the critics, particularly from the archaeological community. In essence, the policy allowed museums to acquire archaeological materials that had been out of their country of origin for at least 10 years (AAMD 2004). In making an acquisition, the museum was to consider "whether the work of art has been outside its probable country or countries of origin for a sufficiently long time that its acquisition would not provide a direct, material incentive to looting or illegal excavation." The recommended period of time was 10 years (AAMD 2004: Paragraph E). Known as the "rolling ten-year rule," it meant that a middleman in a market or transit country could acquire antiquities, hold them for 10 years and then sell them to a museum, which would be acting in compliance with this policy. Criticism centered on the fact that the policy would do little to deter the looting of archaeological sites and would allow antiquities to enter the market place and be acquired by U.S. museums after a relatively brief period of time in which their background would be considered legitimate.

The criticisms reached a crescendo in 2006. James Cuno, at that time director of the Art Institute of Chicago, and Philippe de Montebello, former director of the Metropolitan Museum of Art (the Met) in New York, organized a symposium sponsored by the AAMD and held at the New York Public Library (Cuno 2009: ix–xii). Many of the speakers offered vigorous defenses of the free trade in antiquities and harsh criticisms of the institutions and professional associations that had adopted some form of the 1970 standard. Despite these objections, the critics of the AAMD's 2004 policy succeeded in pointing out the inadequacy of the "rolling 10-year rule" approach for failing to respond to the problem of contemporary looting of sites.

At about the same time, and as the prosecution of Marion True continued at a slow pace, Italy threatened to bring claims against numerous U.S. institutions as well as some private individuals for restitution of illegally removed and presumably stolen antiquities (Gerstenblith 2008: 104–105, 2009b: 80–81). As in the civil forfeiture case of a Greek *phiale* taken from Sicily and acquired by the New York collector Michael Steinhardt (United States v. An Antique Platter of Gold, known as a Gold Phiale Mesomphalos, c. 400 B.C., 991 F. Supp. [S.D.N.Y. 1997], affirmed on other grounds, 184 F.3d 131 [2d Cir. 1999]), these claims were brought against the backdrop of Italy's 1939 national ownership law, which was revised in 2004, but maintained the same national ownership provisions. The Met was the first institution to conclude an agreement with Italy in late 2006 for the return of antiquities and the loan of objects of equal significance (Gerstenblith 2007: 85). The Boston Museum of Fine Arts (MFA), the Cleveland Museum of Art, the Princeton Museum of Art, and the Getty itself, among others, quickly followed the example.

Despite the position taken by museum directors at the 2006 AAMD conference and the subsequent publication of the papers presented (from which any critics of the AAMD policy were excluded), the AAMD and the AAM each set about developing a new policy that would include a version of the 1970 standard. While the two organizations had hoped to agree to the same policy, they ultimately adopted policies with some differences in 2008.

The 2008 AAM policy states the following: ''AAM recommends that museums require documentation that the object was in the United States or out of its probable country of modern origin by November 17, 1970… For objects exported or imported after November 17, 1970, AAM recommends that museums require documentation that the object has been or will be legally exported from its country of origin, and legally imported into the United States'' (AAM 2008). The AAM policy does not explicitly state any exceptions, but the use of the word ''recommends'' indicates that the policy does not have to be followed stringently. Additional exceptions are implied where the policy states that when full documentation is not available, the museum ''should be transparent about why this is an appropriate decision in alignment with the institution's code of ethics and those of the field'' (AAM 2008). Perhaps the most interesting aspect of the AAM policy is that it calls on museums to examine objects already in their collections and to continue research on those objects for which the provenance is incomplete or uncertain. While a few museums, such as the Dallas Museum of Art and the Met, appear to be conducting this research, it has not been undertaken on a broad scale. Nor is there any means by which the AAM can enforce its policy against individual museums.

The AAMD's 2008 guidelines adopt a different approach: ''Member museums normally should not acquire a work unless provenance research substantiates that the work was outside its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970'' (AAMD 2008). However, in cases where the museum's research does not establish that an object satisfies the 1970 standard, the museum may still acquire the object. In such cases, ''the museum must carefully balance the possible financial and reputational harm of taking such a step against the benefit of collecting, presenting, and preserving the work in trust for the educational benefit of present and future generations'' (AAMD 2008). It is worth noting that the two considerations the museum should balance in deciding whether to acquire a work both relate to the museum's own situation and the policy does not call on museums to examine the harm to the archaeological record or to the rights of the country of origin that the acquisition may cause. As with the AAM policy, the AAMD's 2008 policy contains no mechanism for enforcement.

The unusual aspect of the AAMD guidelines is that at the same time the AAMD established an object registry where acquisitions that do not meet the 1970 standard are to be posted with available provenance information and an explanation of how the acquisition comports with the AAMD guidelines. While few objects were initially placed on the registry, the number has grown considerably with almost 580 objects now listed.

At this point, over half of the objects on the registry (approximately 350) come from one museum, the Walters Art Museum in Baltimore, and many of these were donated from the private collection of John Bourne. The amount of provenance information listed varies considerably, with the examples, at the low end of information, a Mexican pectoral (TL.2009.20.301), for which there is no provenance information other than the name of the donor, to a Maya mask with provenance listed as 1973–1974, the names of the two dealers, and then the acquisition from John Bourne in 2009 (TL.2009.20.298). In another example, the MFA acquired several ancient coins, probably from Italy, that seem to have a provenance history back to only 2004. At the other end of the spectrum are several objects acquired by the Metropolitan Museum in New York. One example is a Roman sculptural head of Antinoos (accession number 2010.453). The provenance information lists the name of a gallery that acquired the work in 1984, the purchaser in 1988, a public auction at Sotheby's in 1989, the name of a dealer, and a private collector who acquired it in 1995. The head was exhibited in 1989 and was on continuous display at the Metropolitan since 2007; and it was published in 1989 and 1991. This erratic use of the registry raises the question of whether the registry represents a substantial compliance or ''near miss'' standard (that is, the objects museums acquire and place on the registry have a provenance back to ''almost'' 1970) or whether use of the registry permits museums to openly flout the 1970 standard but still be in compliance with the AAMD guidelines so long as the museum lists the object on the registry.

In early 2013, the AAMD revised its policy again. These changes fall into two categories. On the one hand, the revised policy adds as considerations whether the museum had acquired a fractional ownership interest in a work prior to 2008 and whether a gift or bequest had been promised in writing before 2008, the work was on long-term loan to the museum prior to 2008 or the museum had an expectation prior to 2008 of receiving the work by gift or bequest and this expectation is in writing, and communications with a donor were memorialized by the museum prior to accepting the gift or bequest, or the museum has other documentation of the expectation (AAMD 2013: 6–7). While any such works could have been acquired by a museum before the 2013 revision, it seems that these explicit justifications for an exception to the 1970 standard were added to mollify donors who were concerned that works they wished to donate to a museum would not be

accepted, despite some form of expectation before adoption of the 2008 policy that such a gift would be given or that the gift had already been granted as a fractional interest. This change also makes it easier for a museum to justify an acquisition that does not meet the 1970 standard. For example, many of the Walters Art Museum acquisitions from the Bourne collection simply state as the justification only that there was an understanding between the museum and the donor before 2008 concerning the donor's intent. On the other hand, the 2013 revision adds to the Code of Ethics a requirement that the museum director post on the Object Registry the acquisition of any ancient art or archaeological materials that do not meet the 1970 standard (AAMD 2013: 9). This should mean that a museum director who fails to do so has breached the Code of Ethics and the AAMD would have means available to enforce this obligation.

Aftermath: An Uneasy Détente or End of the 1970 Standard?

Following 2006, Italy and, to a lesser extent, Greece and Turkey, received voluntary restitutions from multiple U.S. institutions. The Dallas Museum of Art returned a looted Roman mosaic to Turkey and, in exchange, is working out a cultural agreement with Turkey, apparently following the model of the agreements with Italy (Kennedy 2012b). In May 2013, the Met announced that it would return two kneeling attendant figures that it acquired in 1975 to Cambodia (Mashberg and Blumenthal 2013). Few of these objects that U.S. museums returned—and perhaps only one—were removed from the country of origin before 1970. The one exception is a marble relief that was excavated on Thasos in 1911 and stolen from an excavation storeroom soon after. J. Paul Getty purchased it in 1955; the Getty Trust returned it in 2006 (Eakin 2006).

Each of these museums has received on loan from Italy, in some cases for as long as four years, significant objects that are known to be authentic with a known history and findspot. Some of the more outstanding examples include the loan to the Met of the Moregine Treasure, a Roman dining set of twenty silver objects excavated at Pompeii (Metropolitan Museum of Art 2010); the loan from Italy to the Getty Villa of the bronze sculpture of the Chimera of Arezzo (Getty Trust 2009), and the loan to the MFA of the statue of the goddess Eirene (Kennedy 2006). The fact that these are all established as authentic objects with a known excavation spot and documented archaeological context makes them far more significant from an educational, historical, and cultural perspective than the looted objects that were returned to Italy.

By this time, it seemed that stasis had been achieved. U.S. museums would not acquire works that had left their country of origin after 1970 unless they had an export license and would seriously consider returning, and often did return, objects acquired that did not have a pre-1970 provenance history. In exchange, the countries of origin would not request or bring pressure for restitution of objects acquired before 1970. In fact, in 2013 the AAMD stated that, "The AAMD was encouraged in 2008 to see that the date of adoption of the UNESCO Convention was recognized not only by museums as a threshold for more rigorous analysis of acquisitions, but also by some countries as a voluntary limitation for enforcement of their cultural patrimony laws that predate the UNESCO Convention. The AAMD hopes that other countries will follow this precedent of voluntary restraint as the AAMD continues to encourage its members to pursue voluntary standards for acquisitions that are stricter than the requirements of applicable law" (AAMD 2013: 1–2). While dealers, auction houses, and private collectors are not bound by the museum policies, it seemed likely that the adoption of such policies, to the extent that they apply to donations as well as acquisitions, would have an indirect effect on the higher-end collector and therefore also on the market itself. Such a collector would want to know, before acquiring an object, that it could ultimately be donated to a museum and would therefore place pressure on dealers and auctions houses to also comply with the 1970 standard. Further, I do not mean to suggest that there was any overt agreement to this effect, but there seemed to be a tacit agreement to maintain this equilibrium.

Despite the apparent calm, there were many signs that it would not last long. On the museum side, the AAMD and AAM guidelines are merely guidelines. Neither organization explicitly requires its members to adopt the guidelines as clear acquisition policies and neither organization enforces them in any way, although perhaps the AAMD's 2013 revisions will add some degree of enforceability. AAMD member museums seem to have realized quickly that the exceptions permitted by the policy were flexible and open to interpretation, and there is no reliable method of determining how many museums post their non-compliant acquisitions. Finally, the museums realized that as long as any objects that did not meet the 1970 standard were placed on the AAMD Object Registry, the museum would still be in compliance with the AAMD guidelines. Thus, the question posed at the time the registry was created seemed to be answered by the increasing number of acquisitions that do not come close to satisfying the 1970 date.

Some countries with rich archaeological resources and that had been subject to exploration as well as exploitation for centuries began to demand the return of objects that had been removed long before, often in the 19th or early 20th centuries, even if they had been removed legally. Perhaps the most extreme example was the demand by Zahi Hawass, at that time head of the Egyptian Supreme Council of Antiquities, for restitution of the approximately 4500-year-old bust of the prince Ankhaf from the MFA (Edgers 2011). The MFA excavated the bust in 1925 as part of a permitted project and the Egyptian government presented it to the museum in 1927.

While Italy and Greece have not demanded return of pre-1970 objects, Turkey has recently threatened to withhold museum loans and excavation permits unless specified objects are returned. Turkey first demanded and received return of the Hittite sphinx from Bogazköy that had been in Berlin since 1917 (Bilefsky 2012). This case seemed reasonable in that the sphinx was sent to Berlin on loan for conservation purposes and the Germans never returned it. A similar demand from Peru resulted in the return of a collection of artifacts found at Machu Picchu and loaned to Yale almost a century ago (Yale University 2010). Turkey has reportedly made more aggressive demands of several U.S. museums to return objects in their collections. The details of these demands are unknown because museums tend to keep negotiations quiet until an agreement is reached (Kennedy 2012b). However, one such agreement was reached in the summer of 2012: the return to Turkey of the "Trojan gold," a collection of 24 artifacts, dated to approximately 2400 B.C. and acquired by the University of Pennsylvania Museum of Archaeology and Anthropology in 1966 (Penn Museum 2012). These objects were unequivocally outside of their country of origin before 1970. In fact, it was the acquisition of this collection that led to the University of Pennsylvania Declaration in 1970. The museum acquired the group of gold objects from a dealer and its true place of origin remains unknown. The style is consistent with objects from the Troad in northwestern Anatolia as well as some of the Aegean islands and with cultures as far away as Mesopotamia. A soil sample associated with the objects is consistent with the soil of the Trojan plain. The collection was published around the time of its acquisition and so was always well known (Pezzati 2010; Bass 1966, 1970).

While the exact details of the negotiations are unknown, the University of Pennsylvania Museum agreed to make an indefinite loan of the collection back to Turkey. In exchange, Turkey assured the continuation of the University of Pennsylvania's long-term excavations at Gordion, a loan to the museum of excavated objects from Gordion and other royal tombs in western Turkey, and increased cultural collaboration. It is reported that Turkey is in the process of similar negotiations with the Met (Kennedy 2012b), but no details are available.

Some museum observers have accused Turkey of engaging in blackmail, while others have criticized the University of Pennsylvania for giving into this alleged blackmail (Bilefsky 2012). Other museum directors, such as David Franklin of the Cleveland Museum of Art, continue to be outspoken in their belief that museums should acquire significant antiquities, regardless of whether they have a pre-1970 provenance history (Kennedy 2012a). Future developments in this arena are unclear, as other institutions wrestle with these claims.

Continued acquisition by museums of cultural objects undocumented before 1970 and, in some cases, known only for a few years before their acquisition, coupled with demands for restitution of pre-1970 objects, has thrown the situation back into confusion. It is unclear what goals or policies should guide decisions concerning restitution. This breakdown in stasis may decrease the possibility of resolving claims through negotiation and could suggest a return to litigation. Unfortunately, litigation is unlikely to provide satisfactory resolutions for anyone.

It is worth noting that no private claim, based on the owner's right to recover stolen property, has been filed in the United States by a foreign nation acting as a private party rather than as a nation acting on a state-to-state basis (an option provided through international conventions) to recover an antiquity looted from the ground. The earlier private claims include Turkey's suit to recover the Lydian hoard in the late 1980s (Republic of Turkey v. Metropolitan Museum of Art, 762 F. Supp. 44 [S.D.N.Y. 1990]), which was ultimately settled through negotiation and the hoard was returned to Turkey. Another claim was filed to recover several objects looted from Sipan in Peru (Peru v. Johnson, 720 F. Supp. 810 [C.D. Cal. 1989], affirmed, 933 F.2d 1013 [9th Cir. 1991]), which the court rejected because Peru could not establish that the objects came from within Peru's modern boundaries or that the law in effect was a true ownership law. A third example was the claim to recover the "Sevso" treasure (Republic of Croatia v. The Trustee of the Marquess of Northampton 1987 Settlement, 610 N.Y.S.2d 263 [1st Dept. 1994]), which the court rejected because Hungary could not establish that the treasure was found in Hungary.

Actions taken by the U.S. government in the past few years have offset the lack of private claims. The U.S. government has become more aggressive in filing forfeiture claims, often acting on behalf of a foreign nation, against possessors in the United

States on the grounds of violation of a Customs law (e.g., the CPIA) or that the object constitutes stolen property. Such forfeiture actions include those against the St. Louis Art Museum to recover the Ka-Nefer-Nefer mummy mask (United States v. Mask of Ka-Nefer-Nefer, 2012 U.S. Dist. LEXIS 47012 [E.D. Mo. 2012]), and against Sotheby's to forfeit a 10th-century Cambodian sculpture (United States v. A 10th Century Cambodian Sandstone Sculpture, 12 Civ. 2600 [S.D.N.Y. Apr. 4, 2012]). This trend shifts the costs and burden of litigation from individual nations to the U.S. government and alters the elements that must be established to make a claim (Gerstenblith 2013).

Claims brought by a nation for historical restitution (that is, restitution of objects removed before 1970) are not likely to do well in U.S. courts, at least where the location of the object has been known for a long time. In many cases, the claim will be barred by the statute of limitations or through the equitable defense of laches. The statute of limitations provides a fairly short time period to make a claim to recover stolen property, while the equitable defense of laches may bar a claim if the owner has delayed unreasonably in bringing a recovery suit and that delay has caused legal prejudice to the current possessor. In such cases, the owner's attempt to recover stolen property may be barred because of the passage of time and the desire to ensure stability of title to property. An example of the barring of a claim might occur if Cambodia were to sue the Norton Simon Museum to recover a Khmer period sculpture that has been on display and that the Cambodian government has known about for many years (Blumenthal 2012). Other examples would be an attempt to recover the Benin bronzes or ivories removed during the British "Punitive Expedition" in 1897, a retaliatory invasion of British forces taken against the Kingdom of Benin in 1897 in which Benin City was captured and much of its art was either destroyed or looted, (Shyllon 2010: 161–163), or a claim by China to recover the objects looted from the Yuan Ming Yuan, the Summer Palace in Beijing, by French and British forces in 1860 (Waley-Cohen 1999: 162–165).

Another hurdle for historical restitution claims is the discriminatory legal system developed by European nations during the 19th century. Indigenous and colonized peoples were excluded from the protections from seizure of cultural objects established by international law for European and North American cultural objects (Vrdoljak 2008: 46–67). The removal of objects from Asia and Africa through colonization and conquest was permitted under the legal system at the time. As a result, the status of such objects as stolen property is unclear and, in turn, recovering them under the modern legal system is even more difficult. The fact that it might be impossible for a colonized or subjugated people to bring a claim for recovery of their cultural objects in the courts of the colonizing nation rarely factors into the legal calculation. In addition, the foreign nation is unable to take advantage of the protections granted by international conventions, such as the *1970 Convention*, because they are not retroactive. Questions about the passage of time and ownership status of such objects present significant legal disabilities, and it is therefore unlikely that the countries of origin will succeed in their attempts to make legal claims.

Civil forfeiture claims brought by the U.S. government are subject to a discovery rule; the relevant time period in which to bring a claim begins at the time the government became aware of the illegal action with respect to a cultural object. Even in such situations where the statute of limitations is more generous, it may be difficult to establish the necessary facts or that the country of origin had a national ownership law that meets the standards established in *U.S. v. Schultz* and that the country was actively enforcing it (Gerstenblith 2009a). For example, the U.S. government's attempt to forfeit, on the grounds that it was stolen property, an Egyptian funerary mask, now at the St. Louis Art Museum, was dismissed because the government was unable to establish the factual circumstances of the alleged theft, the identity of the thief, and the location of the mask before it was stolen (United States v. Mask of Ka-Nefer-Nefer, 2012 U.S. Dist. LEXIS 47012, at *8 [E.D. Mo. 2012]).

In addition to the legal challenges to historical restitution or restitution of objects removed before 1970, one must also consider the underlying policy goals that such restitutions are intended to promote. Once one moves beyond the 1970 rule, it may become difficult to identify the policy that is being promoted, although there are arguably several goals that might be achieved through restitution of cultural objects, particularly archaeological objects. One goal is to reduce the market incentive for continued looting of archaeological sites and the loss of information that prevents us from understanding our past. However, the link between acquisition and the financial incentive to loot becomes more attenuated once it is established, through legitimate and verifiable documentation, that an object was removed many years ago, now more than 40 years ago if the 1970 standard is satisfied, although some suggest that the high prices achieved on the market for objects with a pre-1970 provenance history may provide an incentive for contemporary looting. Another complicating factor is that in some

cases, such as that of the Ankhaf sculpture, the object was removed according to accepted archaeological practice of the time and therefore should not be considered to be a looted object.

We must then search for additional guiding principles. One would be the desire to achieve restitutionary justice by "undoing" looting that is often carried out during wartime, armed conflict, colonialism, genocide, or ethnic cleansing (Barkan 2002). Another principle would be the reunification of what was once a single object or structure (such as the Parthenon sculptures at the British Museum) or the restitution of objects that bear a particularly strong cultural, religious, or symbolic tie to a modern nation or people. Once again, the Parthenon sculptures provide a good example.

These principles, however, are not so straightforward and it may not be possible to apply them in a consistent manner. The significance of an object to a nation or people will be judged differently by different parties. For example, Cuno believes that archaeological materials taken from China, Turkey, or Iraq bear little relationship to the modern people of these nations (Cuno 2008), but clearly these nations would disagree. Things become particularly complicated when a nation such as Turkey demands repatriation of its artifacts, but refuses to return objects taken during the Ottoman Empire—e.g., the Hezekiah inscription from the Silwan tunnel, which carries great historical, cultural, and religious significance for the city of Jerusalem, yet it continues to reside in Istanbul. Additional factors include value of stability of titles, alienability of objects, and respect for the expectations that good faith purchasers have relied upon in acquiring objects that have verifiable pre-1970 provenance. While some may question whether these market-related issues are relevant, a market in cultural objects is likely to persist so there is certainly value in promoting and protecting that as a transparent and, one may hope, legitimate market.

Conclusions

There are no clear answers to these questions. Just as it seemed that the museum community, the archaeological and other professional associations, and the countries of origin had reached an agreement on the use of the 1970 standard, that agreement has begun to erode. As this stasis seems to crumble the parties have resumed varying degrees of acrimony toward each other. In contrast, some restitutions of post-1970 objects have provided for long-term loans to U.S. institutions and other forms of collaborative and mutually beneficial relationships. Although it involves pre-1970 objects, the agreement between the Penn Museum and Turkey follows this pattern. However, there is no model for restitution from private owners, as they do not stand to benefit from similar agreements, and there is little consensus on whether institutions should return pre-1970 objects, no matter how important they are to the nation of origin or the circumstances under which they were removed.

We know that litigation imposes significant financial and reputational harms for all parties and forces them into positions from which it is often difficult to compromise for either legal or political reasons. Perhaps the same energy could be focused on creative solutions that would benefit the parties instead. The challenge is to figure out when a country of origin should push for historical restitution and, if so, what inducement it can offer in exchange so that positive, mutually beneficial relationships can be established. At the same time, institutions and other participants in the antiquities market need to uphold the 1970 standard. Whether the disposition of archaeological materials, undocumented before 1970, will be resolved through courts of law, courts of public opinion, or other kinds of pressure that the countries of origin may bring to bear remains to be seen.

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