

Post-Colonial Politics and Cultural Heritage

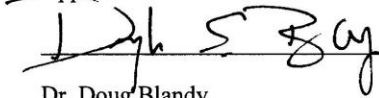
Egyptian Repatriation Requests and European Museums

Valerie R. Egan

**Master's Research Capstone
University of Oregon
June 2010**

Presented to the Arts Administration program at the University of Oregon in partial fulfillment of the requirements for the Master's of Arts in Arts Management.

Approved:



Date: 5/14/10

Dr. Doug Blandy
University of Oregon
Arts Administration

Abstract

The contested stewardship of cultural antiquities acquired during colonial rule raises significant legal and ethical issues for contemporary museums. Anticipating that the ownership of antiquities can be convincingly claimed for both nations and cultural institutions, a review of the dominant discourses which characterize international repatriation debates will provide a brief introduction to key principles. Through an extensive literature review, this capstone will examine the germane legal instruments which frame cultural heritage repatriation, and suggest models for mutually beneficial resolution.

Key Words: repatriation, international legislation, Egypt, museum ethics, resolution.

Acknowledgements

I would like to thank Dr. Doug Blandy, Professor Dom Vetri, and Tina Rinaldi for their guidance throughout my experience in the Arts Administration program. Further props to Britney Whiting-Looze, Leigh Mallonee, and Arturo Zavala for their invaluable assistance in editing this capstone. Thanks especially to Megan Blankenship, Co-Executive Director of the Domestic Institute of Museum Studies (DIMS).

Thank you also to all my parents, siblings, extended family and indispensably wonderful friends, whose unconditional love and support is like sweet, sweet wind beneath my wings.

Valerie Egan

sovaloo@hotmail.com | <http://www.uoregon.edu/~vegan>

Arts and Culture Sector

Jordan Schnitzer Museum of Art, Development Intern, September 2009 – January 2010

- Researched student membership programs, small grants; special event assistance.

National Portrait Gallery/Smithsonian Institution, Education Department, June – Sept. 2009.

- Managed daily operations and intern staff of 30; liaised with all levels of NPG staff, planned professional development events, migrated applications to online system.

UNESCO Conference, “Ethics, Religion and the Environment;” February - May 2009.

- Volunteer Coordinator: recruit, train and supervise event volunteers, manage database; work with multiple conference coordinators to ensure continuity.

Museum of Natural and Cultural History, Eugene, Oregon; September 2008 – December 2008.

- Event Planning: committee member for annual Winter festival, brochure design.
- Interpretation: trained to interpret Oregon native and natural history.

Portland Art Museum, Portland, Oregon, 2006-2008

- Education Center volunteer: resource guide for multi-age ArtInsight Center.
- Gallery Volunteer: provided visitor services for permanent and temporary exhibits.

Coffee Plant, Portland, Oregon; Spring 2008

- Display and sale of encaustic collage paintings in downtown Portland.

University of Oregon Conference Delegate

- Oregon Arts Commission, Oregon Arts Education Congress, November 2008-2009
- Center for Community Arts and Cultural Policy, Symposium on Cascadia-region Cultural Planning and Development, November 7, 2008

Education

Doctor of Philosophy, University of Oregon, beginning Summer 2010

- Comparative Literature Program

Master of Arts, University of Oregon, 2010

Arts Management / Museum Studies; Certificate in Non Profit Management

- Coursework includes Marketing, Art Law, Multimedia Design, Resource Development. Emphasis in Nonprofit Management and Museum Studies.

Master of Arts in Teaching, Oregon State University, 2003

French Education

Bachelor of Arts, University of Oregon, 2001

Romance Languages (French, Spanish) and Humanities (Medieval Studies); Minor: English

Professional Experience

Administration, Assistant Director of Extended Care Department

French American International School, 2006-08

- Hired, trained and managed team of 15 Extended Care employees and 7 substitute teachers from Europe, Africa, South America and USA.
- Director of Arts and Cultural Enrichment Camps: planned, modified, implemented and evaluated biannual camp program; oversaw \$15,000 budget, staff schedules, community show, creation of marketing materials and hiring of teaching-artists.
- Wrote and designed multilingual promotional materials, department policy and newsletter/annual report articles; created program evaluation tools and reports.

Teacher

University of Oregon, 2008 – 10: Humanities Department

- Lead undergraduate discussion class ancient, medieval and modern literature and art.

French American International School, 2004-2006: Extended Care Program

- Developed curriculum for afterschool arts program, for students ages PS – 8.
- Chaperone for middle school culture immersion trip in Oviedo, Spain.

Riverdale High School, 2003-04: French

- Oregon state licensed teacher of advanced French and beginning Spanish.

French Ministry of Education, 2001-02: English Language Assistant

- Taught American language and culture in Bordeaux Academy, France.

Freelance Writer, Translator and Editor

Oregon Humanities Magazine; Spring 2010; publication of creative essay “Look”

Oregon State Poetry Association, Spring Conference Scholarship grantee, 2010

The Early Saddlemakers of Portland, 2008

Intellichem, Inc., 2004

- Translated and edited technical and medical manuals from English to French.

Portland International Film Festival, 2004

- Researched and wrote contextual articles to accompany festival films.

Public Relations, Student Orientation Staff

Office of Student Affairs, University of Oregon, 2000

- Orientation resource for over 3,000 new students and families; planned various special events showcasing academic and social University life.

Multimedia Skills

Adobe InDesign, Illustrator, Photoshop. Microsoft Office: Word, Excel, Power Point. Dreamweaver.

Languages

French (fluent), Spanish (conversational), basic German and Latin.

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I. Introduction

The collections of the British Museum and the Neues Museum of Berlin comprise antiquities acquired during the course of, or indirectly due to, colonial expansion in the 18th and 19th centuries. Today, requests for the repatriation of such objects reflects a growing movement among formerly colonized states, such as Egypt, to reclaim ownership and control of iconic cultural heritage objects. However, such requests are enmeshed within moral and ethical discourses; few legal precedents exist to guide the mediation between governments and state museums. While an array of treaties, policies, and ethical standards have been developed by international, national and professional organizations seeking to address critical issues articulated by significant United Nations Educational, Scientific and Cultural Organization (UNESCO) Conventions, such tools do not adequately address items acquired as a result of colonial expansion. Meanwhile, public awareness of high-profile cultural property disputes has increased, challenging contemporary museums to account for historic cases of acquisition. Stewardship of the high-profile cultural objects in question often appears waylaid within the fog of ideological discourses.

The Republic of Egypt, as represented by its secretary-general of the Supreme Council of Antiquities Dr. Zahi Hawass, has catalyzed the repatriation movement since 2007. Raising global awareness with an aggressive media campaign, Hawass has repeatedly requested the return of iconic antiquities from the British Museum and the Neues Museum. Such claims must be contextualized within a complex web of legal, moral, and economic principles, which are often obscured by distant history and/or contemporary post-colonial politics. To identify potential common ground requires a critical assessment of what ideological principles bolster the common arguments of both institutions and nations. What terms may encompass mutually beneficial resolutions for all parties?

I will begin with an overview of major legal and ethical arguments for and against antiquity repatriation. An analysis of germane international legal instruments will consider trends of the 20th century in terms of cultural heritage ownership, preservation, and repatriation. In seeking to assign “ownership of the past” to contemporary stewards, it is critical to weigh the individual circumstances of colonial acquisition in both legal and ethical terms. I argue that the complexity of repatriation requires a case-by-case assessment, and that museum professionals are ethically bound to reflect on what negotiable terms are appropriate to achieve mutually desirable goals of preservation and conservation, physical and scholarly access, and moral integrity.

II. Cultural Heritage: Conflicting Principles

Repatriation discourses frequently refer to market and source nations. Generally, nations which are rich in cultural heritage objects (source nations) stand in contrast to those who are rich in the economic resources which enable them to purchase antiquities (market nations) (Gerstenblith, 2004). The power dynamics inherent in such a transactional relationship often produce opposing perspectives concerning the rights and responsibilities entailed by repatriation, or “the return of an object of cultural patrimony from a museum collection, to a party found to be the true owner or traditional guardian, or their heirs and descendants” (Museum Security Network, 2010, section Glossary). British, French and German museums, acting in these scenarios as agents of the (market nation) state, occupy a unique space as mediators of universal cultural education and preservation.

Source Nations and Nationalist Principles

The late 20th century witnessed an emerging nationalist movement among post-colonial nations to assert independence and cultural identity. Nationalism is a term which generally describes the attitudes and actions of nation members “when seeking to achieve (or sustain) self-determination;” it is important to note that nations differ from states in that “a nation often consists of an ethnic or cultural community” whereas “a state is a political entity with a high degree of sovereignty” (Miscevic, 2008, para. 2). World-wide requests for the return of iconic antiquities, identified as tangible symbols of national history, have accelerated since the 1970s. While numerous requests *are* granted for lesser antiquities, the high-profile nature of iconic antiquities tends to produce discourses fraught with emotion, ideology, and politics. Regrettably, highly politicized arguments often obscure, rather than confirm, the potential validity of requests.

Kwame Opoku (2010) describes the repatriation movement as “the ever increasing desire and determination of former colonies and States dominated by the Western powers to seek more and more freedom to organize their own affairs” (para. 6). Explicitly linking contemporary foreign affairs to repatriation suggests that the return of objects is a universal responsibility, as well as an act of empowerment for long-oppressed, post-colonial nations. However, repatriation alone does not achieve political equity in a global, capitalist economy. Within the global marketplace, the “freedom to organize affairs” is more effectively achieved by the development of domestic cultural policy; for instance, by bolstering the potentially lucrative cultural tourism trade via investments in museum infrastructures, rather than expending time, energy and fiscal resources into the legal pursuit of museum collections (Cummins, 2006). However, pragmatic domestic policy proposals are rarely the focus of international repatriation debates. Instead, the language of international legislation encourages only generic recognition of “the right of every

state to protect its national cultural heritage and to enforce this right” (Siehr, 2006, p. 125). This suggests that the power of repatriation lies in its symbolic gesture to support “newly independent states in their effort to become self-conscious and stable members of the international community with equal rights and obligations” (p. 132). While the health of emerging nations is of valid global interest, it is justifiable to ask whether political gestures should outweigh stewardship duties. It is furthermore unclear how individual cases of repatriation sustainably diminish the inequitable effects of former colonial rule.

Source nations often argue that iconic cultural objects have a unique and irreplaceable power as symbols of identity, integral to national identity. This logic implies that to deprive the modern nation of its icons is to unjustly impair the collective national identity – a powerful emotional claim activated not by the object itself, but rather constructed by the socio-historical discourses of its interpreters (Lidchi, 1997). While this claim is often acceptable for contemporary indigenous or traditional communities, who can demonstrate a reasonable continuity of title (often physical or spiritual) to tangible cultural objects, the link between heterogeneous contemporary cultural identity to ancient, pre-national peoples is highly speculative. Appiah (2006) writes that:

the connection people feel to cultural objects that are symbolically theirs, because they were produced from within a world of meaning created by their ancestors – the connection to art through identity – is powerful. It should be acknowledged (p. 85).

However, he points out that objects currently claimed to be “cultural patrimony” were also produced before the existence of modern states; little can ever be known as to when they were made, who commissioned them and who their intended audiences were, or whether “the people who made them and the people who paid for them thought of them as belonging to the kingdom,

to a man, to a lineage, or to the gods” (p. 74). It is specious to assume that the people of antiquity – those who produced, used and assigned particular meanings to cultural objects thousands of years ago – can or should be directly, if at all, linked to specific contemporary cultures based on primarily geographic circumstance.

Origination is a second major argument made by source nations who adopt nationalist rhetoric. This narrowly concludes that “the nation that today includes that geographic area, or whose people are descendants of that culture, rightfully should possess the objects” excavated or found within its borders (Merryman, Elsen & Urice, 2007, p. 343). Origination discourse is a means to reclaim historically suppressed legal control over cultural object circulation, a potent goal for post-colonial nations. Since 1970, domestic cultural heritage legislation in countries such as Egypt, Italy, and Greece has increased in order to attain this national right; however, colonial eras – which precede nearly all cultural heritage protection laws – are generally immune from contemporary claims. Hence, the legal rights of former colonial powers linger and trump contemporary movements to symbolically consolidate national identity.

The passage of time renders it nearly impossible and at best hypothetical to legally determine direct title to antiquities. Logically, the absence of the Rosetta Stone since 1801 has not inhibited the development of the Egyptian nation. But today its symbolic value is a powerful rallying point for advocates of nationalism, a development Geary (2002) describes as a “politically conscious” re-interpretation of history (p. 11). The result is a readily exploitable disparity between fact and rhetoric, obfuscating the meaning of cultural ownership. Declaring a violation of ownership based on moral grounds is highly subjective, and prone to give way to what Merryman, Elsen and Urice (2007) describe as “romantic excess, fevered argument, self-righteous demands and demagoguery” (p. 342). Geary (2002) equates uncritical nationalism

with a potentially dangerous “pseudo-history” which assumes that cultures “are distinct, stable and objectively identifiable social and cultural units... distinguished by language, religion, custom, and national character, which are unambiguous and immutable.” Such an unchallenged view narrowly privileges ethnic identity and isolationism despite the undeniable plurality and transnational economic globalization of contemporary society (p. 11-12).

The economic empowerment of post-colonial source nations is a positive phenomenon, and the reclamation of cultural identity is commendable. However, few practicable tools exist to enforce equity or the accountability presumed necessary to counter the cultural exploitation of market nations. Regrettably, perceptions of museological reticence to engage with repatriation requests do little to contradict lingering accusations of colonial elitism, or to meaningfully advance the moral responsibilities of an international community.

Market Nations and Internationalist Principles

At the core of internationalism is a belief that the products of antique cultures have assumed transhistorical and universal value; that their ability to enrich humanity as a whole is not and should not be geographically limited. To this end, market nations contend that retention of disputed antiquities is necessary in order to ensure preservation, public access and scholarship.

The international, or “protectionist” perspective, privileges the object’s stewardship in the name of all cultures, rather than granting special rights to a single nation. Market nations frequently adopt such object-centered arguments, despite criticism that calls them little more than a rhetorical means to confirm the privileges of the nations and institutions that would not otherwise be compelled to return such objects (Gerstenblith, 2004). However, this rarely alters

the pragmatic fact that market nations who can afford to purchase antiquities are likely to have established advanced infrastructural means to protect and conserve the object in question.

As befits market nations, capitalist principles “such as free trade and private property” affirm the common benefits of sale, exchange, and circulation (Warring, 2005, p. 13). This is often framed as a means to ensure the international movement of cultural goods, thereby disseminating knowledge about them. As Merryman (2006) notes, “Today Greek achievements in art, drama, literature, philosophy and science permeate Western culture. If all of Classical Greek art had remained in Greece, our world today would be a significantly different one” (p. 107). It is evident that cultural heritage objects have educational, historic and aesthetic values which are beneficial for multiple cultures. What repatriation requests fundamentally challenge is the lingering imperial assumption that market nations can “best” disseminate this value.

Museums: Discourse and Policy

The mission of many major world museums is to preserve, interpret and promote artifacts of human origins, world history, and artistic achievements. Should a European museum be viewed with more or less sympathy given that their contemporary collections contain objects historically obtained via “military domination, economic exploitation, cultural imperialism and religious intolerance” (Simpson, 2002, p. 203)?

Museums often respond that retention is a fundamental museological duty. Moral or ethical principles, however compelling, are rarely grounds to relinquish an acquired antiquity because they do little to address the logistical and legal stewardship of the object in question. Since the 1970s, professional organizations and individual museums have reacted to repatriation efforts by developing ethical policies and declarations which acknowledge the claims of source

nations, yet prioritize a protectionist principle of stewardship in regards to significant objects representative of individual cultures. However, ethical codes are not legally binding documents. It is left to the institution's discretion as to whether repatriation is appropriate, and to determine corresponding rights and responsibilities towards the ancient cultures represented in their collections.

Adherence to professional ethical codes is critical within the self-regulating museum sector. Besterman (2006) notes that because museums are the unique “custodians of an intergenerational equity” they are accountable to global stakeholders of the past, present and future. Competing claims are hence unavoidable as international and national priorities shift in response to technology, economics, politics, and so on (p. 435). Ethical responses to repatriation cannot be static; they should rather embrace “creative interaction, in which traditional values and orthodoxies can and should be challenged” without fear of public controversy (p. 436). Besterman chides European museums for having “allowed the separation of geography... to override the connections of history in defining the legal and moral parameters of the museum,” thereby reacting slowly or ineffectively to repatriation requests from source nations (p. 436).

The International Council of Museums' (ICOM) 2006 *Code of Ethics*, Article 6.2, explicitly encourages dialogue and partnership between museums and source nations:

Museums should be prepared to initiate dialogues for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level.

It is notable that ICOM recommends that the museum itself “initiate[s] dialogues,” and exhorts institutions to remain “impartial” and objectively principled. The undesirable alternative of possible litigation is made explicit, thereby underscoring the importance of diplomatic cooperation in order to avoid further escalation within already controversial terrain.

The professional museological organizations of several nations have also developed ethical codes in response to the 1970 UNESCO Convention. Article 7.7 of *The Code of Ethics for Museums*, published by Britain’s Museums Association (2008) requires museums to:

Deal sensitively and promptly with requests for repatriation both within the UK and from abroad of items in the museum’s collection, taking into account: the law; current thinking on the subject; the interests of actual and cultural descendants; the strength of claimants’ relationship to the items; their scientific, educational, cultural and historical importance; their future treatment.

Although similar to the ICOM clause, the British “future treatment” clause is a critical difference. The UK Code goes on to explicitly link Article 7.7 to its Article 6, which further articulates the principles behind long-term collection stewardship: “Museums meet their responsibility to future generations by ensuring that collections are well managed and sustainable. There is a strong presumption in favour of the retention of items within the public domain.” The British code’s case for retention is uniquely tied to its public mission, both present and future.

In December 2002, the directors of eighteen museums, including the Louvre, Berlin State Museums, and several major American art institutions, signed the *Declaration on the Importance and Value of Universal Museums*. This document, initiated and printed by the British Museum, espouses a retentionist view sympathetic to the museums housing looted antiquities and argues

for their continued stewardship on several different grounds, particularly because “objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era” (2004). The *Declaration* argues that to remove objects, legally acquired by the museum “whether by purchase, gift, or partage” may deplete the collection and therefore reduces the museum’s universal mission of public education. An unrealistic fear of a “domino effect” is here presented as a legitimate concern for museum Trustees, who complain that museum “halls and walls... would be emptied” under cultural policies favorable to nationalism (Siegle, 2004, p. 1). That many major museums signed on to the *Declaration* signals a degree of professional unification before increasingly virulent and emotional nationalist media campaigns.

Its fundamental claims, however, are vulnerable. Opuku (2010) points out that this “universal” document contains no African, Asian or Latin American countries among its signatories. Neither is the document endorsed by the International Council of Museums. He critiques the past/present dichotomy favored by museums as a legal distinction which sidesteps the symbolic aims of repatriation, claiming that requestors do “not [look] into the past but at the present situation which constitutes a continuing and persistent violation of the rights of others”(para. 21). Yet this argument demands that modern politics rectify unalterable historic events. By requesting European state museums to negotiate with national requests, museums are essentially expected to act as pseudo-diplomats, charged not only to negotiate the ownership of objects, but to navigate contemporary foreign relations. Such a role is not completely incongruous, for museums are intrinsically political spaces whose collections are not static physical representations of the past. They are rather the purveyors of an institutional discourse which “construct[s] a specific object/topic of analysis in a particular way, and... limit[s] the

other ways in which that object/topic may be constituted” (Lidchi, 1997, p. 167). Museums cognizant of this power must therefore acknowledge that the meaning of collections shifts over time, demanding continual analysis of not only the object but also its larger symbolic meaning to the communities it is presumed to represent (Lidchi, 1997, p. 191). Equipped with the problematic *Declaration* and broad international ethical codes, individual museums are ill-equipped to defend their practices unless they have invested in proactive policies and measures to guide their mediatory role between objects of the past and communities of the present.

Clearly, it will never be possible or practical for museums to honor every repatriation request. Yet the public and legislative trends which sympathize with nationalist discourses indicate that museums must proactively, and diplomatically, make transparent their retentionist policies and procedures. While repatriation clearly cannot account for colonial atrocities, the treatment of requests can impact present and future relations – and museums, as self-proclaimed centers for universal human education and goodwill, may appropriately act as sites for reconciliation. Throughout history, the arts have acted as cultural ambassadors, promoting knowledge of diverse cultures (Urice, 2006). To that end, policies to ensure dialogue and partnership are intrinsic, if logistically challenging, aspects of the truly universal museum.

III. International Repatriation Legislation

Not surprisingly, 20th century legislative responses to cultural heritage preservation, protection and repatriation have encountered criticism and controversy. Prott (2009) describes UNESCO as “the only international organization with a mandate for lawmaking at the universal level for cultural heritage” (p. 261). Although the organization has facilitated the negotiation and adoption of six conventions, two protocols, and 13 recommendations detailing best practices

within cultural heritage preservation, Prott (2009) criticizes their circular definitions of culture, “lack of serious legal commitment,” and “tortuous” response to colonialism (p. 280). Lacking the power to pursue or enforce legislation, UNESCO places the responsibility of negotiation, resolution and enforcement on the nations and institutions in question, generically endorsing “bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions” (p. 261-280). UNESCO conventions and customary international law have gradually defined the legal norms governing repatriation disputes.

UNESCO’s Preamble to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (HCPCP) is a foundational instrument for cultural heritage legislation. Primarily defined by Western nations following WWII, the value assigned to cultural heritage objects is clearly international, rather than nation or ethnicity-based:

damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world (United Nations, 1954).

Although it exclusively addresses objects seized during war, the Preamble also emphasizes the well-being of tangible objects in question by stressing preservation and protection:

the preservation of the cultural heritage is of great importance for all peoples of the world... this heritage should receive international protection (United Nations, 1954).

Warring (1999) notes that HCPCP is also notably internationalist for having “introduced a notion of collective and individual responsibility,” requiring signatories to ensure measures for the safeguarding and respect for any nation’s cultural property (p. 6). However, it is important to

note that this and other conventions are only applicable to signatories. Whereas Egypt was one of its first adherents, many market nations, including the United Kingdom, did not sign on.

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property addresses the protection of cultural heritage objects during peacetime, and as such is a significant document for both nations and museums. Warring (1999) writes that the 1970 Convention requires State Members to “take definitive actions” conceived to diminish the international black market of antiquities, such as “drafting laws and regulations [and]... promulgating rules of ethics for dealers, curators and collections” (p. 6).

Furthermore, the 1970 Convention highlighted museum ethics. Its Preamble declares that “as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles” (UNESCO, 1970). Museum professionals subsequently adopted the year 1970 as the “bright line” of provenance research. Hence, today’s international and national museological ethical codes require that acquisitions made after 1970 demonstrate legitimate and legal provenance (Lyons, 2009).

Neither HCPCP nor the 1970 Convention specifically address items taken – or stolen, depending on one’s perspective - during colonial occupation. However, the 1970 Convention does codify a definition of theft in what Merryman (2009) calls “a precise and restrictive way” (p. 183). Under Article 7 (b)(i), parties to the 1970 Convention agree to prohibit the import of, and to recover and return to the source nation “cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to their Convention... provided that such property is documented as pertaining to the inventory of that institution” (UNESCO, 1970). The documentation and inventory clause defines clear lines of

ownership, and hence distinguishes between maliciously stolen antiquities and those simply discovered. Even so, UNESCO conventions cannot be applied retroactively, meaning their articles cannot be considered violated for any dates preceding the convention, or more specifically, preceding a State Member's ratification of a particular convention.

The 1995 Convention on Stolen and Illegally Exported Cultural Objects (UNIDROIT) was commissioned to the International Institute for the Unification of Private Law in order to specifically address national legal controls of illicit antiquities traffic (O'Keefe, 2007, p. 13). Warring (1999) describes its language, along with that of the 1970 Convention, as representative of a global trend increasingly sympathetic to nationalism. She points to UNIDROIT's emphasis on cultural restitution, by making "recovery and restitution one of its primary goals" in its Preamble (p. 5): "This Convention is intended to facilitate the restitution and return of cultural objects, and... the provision of any remedies, such as compensation, needed to effect restitution and return in some States" (UNIDROIT, 1995). This seems to strongly privilege source market claims, presupposing an automatic, uncritical validation of repatriation requests. However, such statutes are only valid once both nations have ratified the treaty – the lack of retroactivity again avoids colonial actions.

Yet UNIDROIT simultaneously acknowledges and prioritizes object-oriented principles. Article 5(3) requires a source nation to "establish that the removal of the object from its territory has impaired" one of the following:

- a) the physical preservation of the object or its context;
- b) the integrity of a complex object;
- c) the preservation of information of, for example, a scientific or historical character;

... or establishes that the object is of significant cultural importance for the requesting State (UNIDROIT, 1995).

Prott (1997) notes that the final point is of great importance, yet incredibly vague; “it will be left to national legislatures and to judges to work out exactly what it means” (p. 60). Indeed, the definition of ‘significant cultural importance’ is a Sisyphean task, ever changing in regards to the meta- and micro-issues such as geography, history, ethnicity, society, individuality, and religion. It is such fluidity that validates Britain’s contention that the Rosetta Stone has impacted its cultural heritage and collective identity in the past 200 years; undermining Egypt’s assertion that it is significant or important uniquely to contemporary Egyptians.

Siehr (2006) declares that in the face of fuzzy “international treaties on the general problem of inter-temporal international law,” general principles must be applied (p.130). Reppas (1999) confirms that although the UNESCO treaties provide little actual assistance to source nations, they do “establish a peremptory norm” on both moral and ethical grounds, which he argues is recognized by customary international law (p. 4). He postulates that moral and ethical norms which have become common legal practice among nations, “irrespective of their original instrument,” dictate that:

Heritage should receive international protection. Criminal acts of theft and destruction made against the Cultural Property of a people are violative of this international principle. Countries which possess items of Cultural Property originating in another country must cooperate fully to resolve any dispute in ownership of such property (p. 4). The “full cooperation” of market nations once again appears as the necessary, and perhaps only feasible alternative to repatriation litigation. There are very few judicial cases dealing with museum-government repatriation requests, and O’Keefe (2007) writes that this is most likely due

to the exorbitant cost and prohibitive logistics of pursuing cases. Source nations would have to shoulder a tremendous burden of proof, contingent on information unlikely to be extant or objectively accurate given the lapse of time in antiquities claims (p. 151). Overall, source nations have few venues or laws which would readily support their immediate claims. Nonetheless, the ethical and moral grounds supported by trends in customary international law should encourage museums to assess repatriation rights beyond the legal facts.

In April 2010, the Supreme Council of Antiquities hosted a two-day conference devoted to antiquities repatriation. Representatives from Greece, Italy, China and other source nations are expected to request an amendment to the 1970 Convention, seeking to allow the legal pursuit of claims concerning colonially acquired objects (BBC, 2010). This indirectly challenges museums worldwide, which depend on the 1970 Convention and its lack of retroactivity to prevent a flood of time and resource-consuming requests. The implied necessity of such an amendment draws attention to Article 6.3 of ICOM's (2006) *Code*, which *appears* to encourage cooperative efforts regarding pre-1970 acquisitions:

When a country or people of origin seeks the restitution of an object... that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country's or people's cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to co-operate in its return.

This states that requestors, not museums, must accept the burden of gathering compelling evidence – which still may or may not merit repatriation due to the museum's legal obligations. For the often economically disadvantaged source nations, this process alone is a questionable use of limited resources. While it is reasonable to expect requestors to substantiate their claims, it is

likewise in the museum's interest to transparently articulate the historical circumstances of colonial acquisition. It is currently unknown whether the 2010 Summit's petition to UNESCO for pre-1970 antiquities legislation will succeed, but it may serve to illuminate disappointingly laissez-faire museological policies.

The language of 20th century international treaties has evolved to gradually echo source nation empowerment discourses. Although museum *professionals* are undoubtedly sympathetic to the moral and ethical quandaries of colonial acquisitions, it is critical that they counter media portrayals of museum *institutions* as elitist servants of imperialism. As the April 2010 Conference illustrates, growing public awareness of cultural property issues will lead to increased scrutiny, forcing museum professionals "to answer tough questions on provenance and acquisition policies" (Briggs, 2007, p. 649). The prevalence of mass media also means that repatriation requests can quickly devolve into a media circus, polarizing publics and thwarting, rather than supporting, intercultural dialogue.

IV. Egypt's Cultural and Colonial Heritage

Legally and ethically, the circumstances leading to the acquisition of iconic Egyptian cultural objects pervade repatriation disputes. Contemporary Egyptian repatriation claims are clearly grounded in a nationalistic discourse of cultural validation via the ownership of heritage icons. A brief review of Egypt's cultural history will introduce the dynamics of colonial acquisition, and situate a few of the lingering legal and political tensions which pervade modern debates.

Can modern Egypt's collective identity be seamlessly linked to the ancient civilization that once occupied its geographic terrain? Like many ancient civilizations, the origins of its

people's history is not homogenous. The ancient, Pharaonic kingdom which produced the Rosetta Stone and the Nefertiti Bust occupied two kingdoms united by the Nile River Valley, extending into modern-day Sudan. Ruled by a dynastic chain of pharaohs before succumbing to a string of foreign occupations in the 6th century BC, the culture produced a vast array of monumental sculpture and art which commemorated its rulers, polytheistic religious beliefs, and military successes. The spread of Coptic Christianity, as early as the 4th century AD, initiated a wave of vandalism in efforts to eliminate polytheistic imagery. Islam penetrated the culture around the 7th century, ushered in by a centuries-long tug-of-war between Abassid (modern-day Turkey/Iraq), Fatamid (modern Tunisia) and Mamaluk (Muslim Turks) cultures before an eventual annexation by the Ottoman Empire in 1516 (Sayyid-Marsot, 2007, p. 27-28).

By the late 18th century, Egypt's combination of weak political importance and strategic geographic location made it an attractive "candidate for annexation" (Fagan, 2004, p. 46). Hence, the military and resource-rich nations of France and Britain launched colonial expansion initiatives marked by physical occupation and administrative domination. The French invasion of Egypt eliminated Mamluk rule and ushered in a string of proxy viceroys such as Mehmet Ali.

Today, Mehmet Ali – the Albanian-born ruler of Egypt from 1805-49 – is alternately condemned and praised for his transactions with European governments. His encouragement of foreign merchants, diplomats and antiquities dealers is critiqued as colonial complacency; Fagan (2004) writes that he viewed the ancient Egyptian monuments as little more than "diplomatic lever[s] or a way of keeping powerful visitors with strange hobbies interested in Egypt" (p. 57). This notably took shape in his generous granting of *firman*s to foreign antiquities collectors and diplomats. Representing the official permission of the Ottoman authority, *firman*s were required for any potential excavation, in order to search for and remove antiquities from Egypt (p. 61).

However, Marsot (2007) notes that Ali allowed “Egyptians, for the first time since the pharaohs, to identify in some measure with the administration” of the country (p. 72-77). Native participation, rather than control, characterized the subsequent 200 years.

In terms of contemporary cultural property claims, it is critical to note that Ali’s actions, however detrimental to the preservation of ancient Egyptian cultural heritage, were nonetheless the legally valid actions of a 19th century diplomat. The power of international law to clarify questions of title, export controls, and statutes of limitations does not override circumstances of the past; the legality of colonial acquisition is therefore generally unquestioned. As previously noted, the UNESCO Conventions discourage source nations from pursuing retroactive claims to cultural heritage objects believed to be illegally acquired before 1970. Furthermore, Siehr (2006) notes that the principles of customary international law indicate that legal transactions should be “governed by the law at the time of the transaction” (p. 125). Despite the apparent legal dead-end of delayed repatriation requests, Egyptian repatriation advocates achieve success in that they emphasize “the conditions of colonialism [as] embedded in power relationships,” (Nicks, 2003, p. 19).

In 2007, the Egyptian Supreme Council of Antiquities (SAC), led by Dr. Zahi Hawass, launched public campaigns for the return of iconic objects to Egypt, including the Rosetta Stone (British Museum, England) and the Nefertiti Bust (Neues Museum, Germany). The governmental requests, initially met with “delaying tactics and unserious reaction,” accelerated into full-blown repatriation demands (Waxman, p. 15). The nations of both museums were subsequently threatened with an embargo preventing further archaeological partnerships with Egypt. Urice (2006) declares that such an act is little more than retribution; arguing that:

These threats are inimical to Egypt's best interests (collaborating with foreign archaeologists assists Egypt in developing its own corps of archaeologists, increases the scientifically recovered historical record, lowers the cost to Egypt of archaeological excavation in Egypt, and continues to expand the field of Egyptology internationally) (p. 155-156).

Requests which equate repatriation with the rectification of historic injustices apply contemporary moral or ethical standards to the actions of the past; and thus pursue not equity, but revenge. However tenuous contemporary Egypt's hereditary claims to antiquities may arguably be, the current impasse is clearly a lose-lose scenario for both the museums and the Republic of Egypt in terms of international relations and cultural educational opportunities.

V. Who Owns the Past?

Warren (2004) writes that the key arguments of both source and market nations are attempts to distill answers for a single philosophical question: "who owns the past?" The answer is cued by differences within socially constructed conceptual frameworks, or the unique "set of basic beliefs, values, attitudes, and assumptions that shapes, reflects, and explains our view (perception, description, appraisal) of ourselves and our world" (p. 311). Therefore, debates are riddled with assumptions, bias, and language that can be variously interpreted; the rigidity of win-lose approaches cannot productively address the range of humanitarian values, principles and rights which gird nationalist discourses.

A brief review of the acquisitional circumstances, legal defenses, cultural identity claims and European museum responses at play in contemporary Egyptian claims may further elucidate how museums and nations articulate their reactions to and demands for the ownership of iconic

cultural objects, believed by all parties to both material and symbolic links between the past and present.

Egypt and the British Museum

While seeking materials for the reconstruction of a coastal fort in 1799, a French soldier discovered a large stone in a rock pile inscribed with three languages: ancient Greek, Egyptian demotic, and Egyptian hieroglyphs. Quickly recognized for its educational value, it was claimed by the colonial French army. Upon surrender to British troops in 1801, the British immediately “claimed all antiquities discovered by the commission as part of the spoils of war” (Chamberlin, 1983, p. 50). In 1802 the Stone traveled to London, to be housed and studied in the recently opened British Museum. While it may be true that the Stone was inadvertently “saved” by colonial powers, this modern argument fails to acknowledge the bias of the era’s laws: leaving the stone to the stewardship of native Egyptians was never considered.

In international legal terms, the Rosetta Stone cannot be defined as be stolen nor illegally exported, and no Conventions address its 1801 removal from Egypt. Although Egypt’s Law No. 14 of 1912 declares that “every antiquity found on, or in the ground, shall belong to the Public Domain of the State Egypt,” this patrimony law was formalized far too late to address pre-1912 archaeology (Merryman, 2006, p. 112). Accordingly, the British Museum’s director, Neil MacGregor, currently maintains that the Rosetta stone was acquired legally “according to the laws and customs of the time” (as cited in Waxman, 2008, p. 268). Egypt’s claim, therefore, can only rest on moral and ethical grounds, contingent on the validity of cultural identity and origination arguments.

The Rosetta Stone is an iconic cultural heritage object, but for whose culture? It was recovered due to the actions of Napoleon's Scientific and Artistic Commission, which consisted of 167 scientists and artists whose goal was to "study all of Egypt" (Fagan, 2004, p. 49). Headquartered in the *Institut de l'Egypte*, the Commission spent 1798-1801 establishing the foundations of modern Egyptology; the French established and controlled Egypt's Antiquities Service and the Egyptian Museum in Cairo until 1952 (Waxman, 2007, p. 57). Twenty years later, wax copies of the Rosetta Stone were successfully translated – in Italy – by the Frenchman Jean-Francois Champollion (Waxman, 2008, p. 41-42). This, in combination with French publications such as Vivant Denon's *Déscription de l'Egypte*, subsequently catalyzed international and domestic interest in the history of ancient Egypt. As Cuno (2009) points out, the value of what we now call the Rosetta Stone is not intrinsic to its material, its site of discovery, or even the originality of its text: "there are even copies of the stone's text... No, the importance of the Rosetta Stone lies in its being deciphered" (p. 9). Although today it is considered an emblem of ancient Egypt, its preceding history demonstrates that its preservation and study have been significantly international – that for much of modern history, museum stewardship of the Stone has facilitated global knowledge of ancient Egyptian culture.

In 2007, Hawass requested that the Rosetta Stone be loaned to Egypt for three months, to coincide with the 2013 grand opening of the Grand Museum of Cairo. The British Museum responded in accordance with Section 4 of the British Museum act of 1963; museum Trustees are accorded the power to consider and make loans from the collection. Article 2.1 of the current Loans Policy requires that Trustees approve only loans:

- to foster knowledge, understanding, and scholarship relating to the works in its care;
- to make the collections more widely accessible within the United Kingdom and throughout the world;

- to increase national and international co-operation by the exchanges of material and exhibitions;
- to enhance the reputation of the British Museum and its good standing, nationally and internationally (British Museum, 2010).

Furthermore, Article 2.4 states that Trustees are legally obliged to ensure the object's well-being, as well as receiving "reasonable assurance that the object will be returned." According to the BBC (2009), the British Museum's inquiry as to how Hawass would guarantee the Stone's return was met with much-publicized indignation: "We are not pirates of the Caribbean. We are a civilised country." This popular sound bite unfairly insinuates that the British Museum's hesitancy stems from imperial condescension, and that the museum's legally binding policies and procedures are mere stall tactics.

In December 2009, the BBC reported that Hawass "would settle for the British Museum's acceptance of his request for a three-month loan." Yet his dissemination of a January 2010 inflammatory editorial describes colonial Egypt as "helpless" and the stone as "long neglected" by today's British Museum (Hawass, 2010). The escalation of nationalistic rhetoric and mass media campaigns has successfully embarrassed the museum, polarized public opinion, and attracted negative international attention.

New York Times journalist Kimmelman (2009) remarks that repatriation is becoming a potent political tool, for it neatly "couches identity politics in a legal context that tends to pit David against Goliath." Indeed, it is interesting that Hawass's repatriation claims launched within days after Egypt's cultural minister, Farouk Hosny, "lost a bid to become director general of... UNESCO" (Kimmelman, 2009). That his repatriation campaign can be so quickly perceived as politically motivated reiterates the necessity of critically examining nationalist rhetoric.

Besterman (2006) notes that as public institutions, it is critical to avoid “the taint undermining public trust” and that modern museum policies must be diligently transparent and media-sensitive (p. 439). The British Museum’s dilemma illustrates that even if the institution’s justifiably retentionist response is publically misconstrued, then public trust in the museum’s mission of preservation, study and access may be jeopardized.

Egypt and the Neues Museum

In 1912, the bust of Queen Nefertiti was excavated in Tell el-Amarna. The authorized dig was overseen by Ludwig Borchardt, founder of the German Archaeological Institute of Egypt, who presented the results of the dig to a (French) official of the Antiquities Service (Chamberlin, 1983, p. 63). Under Law No. 14 of 1912, the Egyptian Antiquities Service enacted *partage*, to divide all excavation finds into two shares of equal value; Egypt maintained a pre-emptive right to select any work it wished from the permit holder’s share, and any shares left to the permit holder could be legally exported from Egypt (Merryman, Elsen & Urice, 2007, p. 414).

In 1922, the Nefertiti Bust was displayed in the Berlin Museum. That such an exquisite artwork had ever been exported provoked the Egyptian government’s outrage. As early as 1925, Egypt denied Germany excavation permission unless they either returned the piece or agreed to arbitration; in the 1950s similar efforts “had no success” (Siehr, 2006, p. 116). Ongoing interest in the conflict has prompted much inquiry into the events surrounding Nefertiti’s exodus. In February 2009, *Spiegel International* reported on potentially damning testimony, implying that Borchardt actively misled the *partage* inspector. It is possible that he reported the piece as plaster, whereas it is actually a plaster-covered limestone. Under the terms of *partage*, relics

made of plaster could be claimed and exported by the Germans; all else was legally required to remain in Egypt (at the time, declared a protectorate of the British Empire). The surfacing evidence of Borchardt's probable deception implies that the legal procedures of *partage* were manipulated, lending weight to Egypt's grounds for ownership.

The 2004 conference *Imperialism, Art, and Restitution* addressed repatriation of the Nefertiti Bust. Siding with Egypt, Siehr argued that the piece "should leave Germany because Egypt was not aware that it had allowed its export in 1913" (Waxman, 2008, p. 60). Urice, on the other hand, argues that because Law 14 had been duly observed, "there was no wrong to be righted," and contests the assertion that the piece is central to Egyptian collective identity because "[t]he cultural connection between Nefertiti's Egypt and contemporary Egypt is attenuated at best... The former was pagan; the latter is predominantly Muslim; the former was a monarchy, the latter is a democratic state..." (Waxman, 2004, p. 61). By locating its validity in historic legislation and undermining the claim to cultural identity, the internationalist argument achieves retention for the museum, but neglects to address any relevant moral and ethical principles. The sentiment that "there was no wrong" is surely counterproductive to international goodwill, and antagonistic in the face of post-colonial grievances.

Who rightfully owns the Nefertiti bust? This situation differs from the case of the Rosetta Stone because its value lies in its individuality; as a moveable piece of art depicting a figure of enormous historical significance to ancient Egypt, it is difficult to imagine that informed Antiquities officials would have knowingly allowed its export. Hawass's belief that the Nefertiti statue "was intentionally misidentified and then sneaked out of the country" seems to rationalize his demand for full repatriation, as opposed to a long-term loan (Khan, 2007). Furthermore, Egypt has proposed that the bust's new home would be a new museum, dedicated

to her husband, Pharaoh Akkenaton (Khan, 2007). This proposal strategically supports a common archaeological principle; that certain contexts can arguably enhance visitor appreciation – that to preserve and study the piece in a museum devoted to the life of Nefertiti’s husband and era logically outranks the museological merits of Berlin, Germany.

However, the Prussian Cultural Heritage Foundation released a statement in 2009 reporting that “an assessment in 2007 of the condition of the bust ruled out any transport or renting” (Deutsche Welle, 2009). Unless it is proven that Borchardt illegally smuggled the piece out of the country, it would be difficult for Egypt to enforce its claim. Excavation suspensions and negative publicity campaigns remain its best bet, to the detriment of both German state museums and Egyptian archaeology.

VI. Cultural Heritage Dispute Resolution

The case-by-case nature of colonial acquisition indicates that the rigidity of existing legal structures bars it from effectively or efficiently providing remedies favorable to source nations. Although museum retention of iconic Egyptian antiquities may be secured from a legal perspective, as ethical institutions duty-bound to interpret the publics whom they represent, European museums should adopt resolution frameworks that encompass the moral and ethical significance of source nation arguments, in the pursuit of mutually beneficial goals.

Warren (2004) suggests that cultural property litigation is particularly fraught with patriarchal, Western bias. She claims that because its “value dualisms conceptually separate as opposite aspects of reality that are in fact inseparable” human rights and responsibilities are often artificially isolated and ranked according to a socially constructed hierarchy (p. 313). This serves the status quo, not the larger community. In contrast, the paradigm of “web-like” ethics

stress human connection, moral care and responsibility, and a “contextual conception of the self in community or in relationships” (p. 313). A web paradigm more holistically encompasses the moral and social concerns raised by repatriation requests, in stark contrast to the antagonistic connotations of formal litigation.

Therefore, it is important to identify where the internationalist perspectives of museums intersect with the nationalist stance of source nations, thereby suggesting common goals, and corresponding methods, for achieving resolution. Wichard and Wendland’s (2006) framework for understanding “non-legal interests” helps to neutrally distill Hawass’s recent campaigns as attempts to obtain formal stakeholder status, physical and scholarly access, and an implied desire to partake of the domestic/international economic benefits intrinsic to cultural tourism (p. 475-6). The authors note that for source nations, reliance “on a high degree of publicity” is often necessary “in order to increase the visibility of their interests and to build up their bargaining position” (p. 476). Museums, on the other hand, represent an industry whose primary non-legal interests include maintaining a positive reputation, gaining or retaining physical and scholarly access to cultural heritage objects, and acting within the boundaries of legal certainty (p. 476-477). Any satisfactory resolution model must be neutral, confidential, and recognize both the legal and value-based principles at stake in repatriation.

A variety of alternative dispute resolution approaches and strategies are proposed by several commentators, favoring cooperative efforts and an avoidance of litigation whenever possible (Warren, 2004; Wichard & Windland, 2006; Briggs, 2007,). Falkoff (2007) writes extensively of the 2006 mutually beneficial repatriation agreement (MBRA) agreed upon by the Metropolitan Museum of Art in New York and the Republic of Italy. Described as a “variation of voluntary repatriation,” this agreement provided both tangible and symbolic benefits to both

parties (p. 266). In accordance with the UNESCO 1970 Convention, antiquities determined to have been stolen in 1971, such as the Euphronios krater, were duly repatriated to Italy. Italy waived its right “to pursue any form of legal action against the museum for these works,” and promised “long-term loans of works of equal beauty and importance.” The avoidance of expensive and time-consuming litigation was beneficial for both parties; additionally, Falkoff notes that both parties established an enriched, long-term material/academic partnership and enjoyed positive international press coverage (p. 283-286). Both parties had resources to leverage, legal and ethical rights and responsibilities, and a willingness to cooperate; the 2006 MBRA establishes an encouraging precedent in the landscape of international repatriation resolution.

Economic and diplomatic principles can be identified and achieved to benefit both the museum and the state, most pragmatically through long-term scholarly partnerships and loan agreements. Egypt’s suspension of archaeological excavations with European countries has certainly proven to be a potent bargaining chip, yet is ultimately a loss for Egypt in terms of both domestic and international heritage preservation. Hawass’s comment that excavation “doesn’t help me. What helps me is to preserve what we have” points to a gap in terms of Egyptian cultural heritage management (as quoted in Waxman, 2008, p. 19). Collection conservation, preservation, research, security and inventory databases: though of less interest to the mass media, European expertise in such infrastructural skills is a significantly valuable ‘peace offering’ which could play into the terms of future negotiations. Museums must creatively consider what mutually beneficial, nonmonetary benefits they can bring to agreements, alongside standard proposals of title transfer, joint custody, long-term loans, comparable trades, and joint academic partnerships.

The power of art and cultural objects to act as ambassadors encourages what Urice (2006) describes as the promotion and “recognition of the world’s many, distinct cultural traditions” (p. 154). Ideally, museums are public-oriented institutions which strive not to “affirm but complicate and challenge the easy and dangerous reliance on simplistic or narrow views of history, art, and civilization” (Cuno, 2006, p. 19). Egypt’s reliance on aggressive tactics and media manipulation is publically expressed in deliberately inflammatory, emotional language, yet underlying the rhetoric is a mission of nationalist self-empowerment and a desire to modernize stewardship practices. To demonize the contemporary museums whose research and stewardship have for so long ensured the survival of these objects banks on colonial guilt and diverts attention from the more pragmatic, museological goals which mutually beneficial repatriation agreements may achieve. If repatriation signals a shift in public perceptions of ownership, power relations, and representation, than it is appropriate that museums, bound by both ethics and laws, act as sites in which to critically confront historic grievances and seek resolution on behalf of modern and future international communities. The abstract question of who owns the past is subject to interpretation; both sides approach such requests with valid interests and aims. However, an antagonistic and highly publicized battle of principles influenced by social, historical, political and emotional motives fails to advance goals of potentially mutual benefit. Where international law falls short of fully addressing the colonial acquisition of Egyptian antiquities, museums and the state must employ creative cooperative approaches which will benefit both institutions and nations.

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