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Ethical Debates Surrounding the Return of Egyptian Antiquities

Economists have estimated that today's illegal antiquities trade has become a multi-billion dollar business, more profitable and with lesser consequences than the narcotics industry. Since the 1960s there has been an exponential boom in this trade, with considerable profit margins made on each piece. The top art museums, galleries, and dealers from around the world have objects that do not belong to their host country's heritage. No matter the means by which these objects have been attained, their countries of origin have been recently requesting their return. Multiple legal and ethical questions have arisen mainly focused on how the objects have been attained, what that means for their return, and ultimately who is the just owner of these artifacts. While there has been some political and legal precedent set for objects that do have proper documentation, countries debate those that do not. Ethics scholars, such as John Rawls and Robert Nozick, have assessed monetary allocation under their distributive justice theories. While these cultural and anthropological artifacts go beyond a sole monetary value, complicating cooperation between parties and resolutions, it is nonetheless valuable to look into distributive justice theories for their insight into complex issues such as rights and redress.

Trying to draft legal means to prevent this trade is not a new phenomenon. Politicians have understood this boom in demand and the weaknesses within their legal systems for prohibiting the export of artifacts from their land of origin. Mehmed Ali, a dynastic ruler of Egypt and Sudan, put forth an Ordinance in 1835 which placed severe restrictions on, among

other things, the export of antiquities originating within his domain¹. In 1897, Egypt issued a decree in order to regulate the search for objects of archaeological interest and to safeguard the existing antiquities². In fact, the history of the nineteenth century is one of expanding juridical enlightenment, a growing discourse, and a set of institutions designed to protect ancient Egyptian patrimony³. At the same time, there is also a recurring criticism that legislation was too late, too ambiguous, and too little enforced to achieve its goals⁴. After Ali put his ordinance into effect, although, one look at the number of Egyptian antiquities exported in this period confirms these observations. The Egyptian government once again in 1983 made strict laws against the possession, trade, smuggling, and removal of antiquities⁵. In a quest for clearer laws, under the description of possession, it states that possession of antiquities acquired after 1983 is prohibited, but that antiquities acquired previously are excluded. This wording calls into question what is considered properly established ownership and possession. Furthermore, the wording is problematic because it oversteps its national jurisdiction, making it clear that there are limitations to the national ability for recovery and that the international community must get involved to solve such debates.

¹ Elliott Colla, "Preservation and Repression: Egyptian Antiquities Law as Doctrine and Practice" (paper presented at The Third German-American Frontiers of Humanities Symposium, October 13, 2006), http://www.humboldt-stiftung.org/pls/web/docs/F8284/4_colla.pdf.

² H.G. Lyons, "The Law Relating to Antiquities in Egypt," *The Journal of Egyptian Archeology* 1 (Jan., 1914): 45, accessed May 9, 2014, <http://www.jstor.org/stable/3853673>.

³ Elliott Colla, "Preservation and Repression: Egyptian Antiquities Law as Doctrine and Practice" (paper presented at The Third German-American Frontiers of Humanities Symposium, October 13, 2006), http://www.humboldt-stiftung.org/pls/web/docs/F8284/4_colla.pdf.

⁴ Ibid.

⁵ "Egyptian Law on the Protection of Antiquities (1983)."

According to a former director of the Metropolitan Museum of Art in 1993, “almost every antiquity that has arrived in America in the past ten to twenty years has broken the laws of the country from which it came”⁶. Measured in dollars, the illegal art trade is larger than any other area of international crime except arms and narcotics trafficking⁷. Responding to such national limitations, UNESCO founded UNIDROIT in 1995, a sub-organization meant to grapple with the international billion dollar antiquities trade of today through legal means. In Europe and North America, private collectors and official institutions, were buying objects of unidentified origin from both natives and non-natives of these countries⁸. While certain countries were struggling to retain control of their artifacts and archeological sites, the international demand for antiquities pulled the artifacts and those who could attain such artifacts into the art market. One economist, David McKean, has combined copyright crime, theft, and fraud together with the illegal importation of antiquities and art theft and fraud, concluding that the war on drugs becomes immediately minimal⁹. In 1993, the industry was valued at around three to six billion dollars¹⁰. Sellers in European or North American countries make huge profits, while those extracting the materials are often disillusioned as to their actual value.

The most damaging effects of this trade are a result of the extraction process. This occurs because taking an artifact outside of its cultural context has further implications for the

⁶ Lisa J. Borodkin, “The Economics of Antiquities Looting and a Proposed Legal Alternative,” *Columbia Law Review* 95 (Mar., 1995): 377, accessed May 8, 2014, <http://www.jstor.org/stable/1123233>.

⁷ Ibid.

⁸ “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property - 1970.”

⁹ Lisa J. Borodkin, “The Economics of Antiquities Looting and a Proposed Legal Alternative,” *Columbia Law Review* 95 (Mar., 1995): 377, accessed May 8, 2014, <http://www.jstor.org/stable/1123233>.

¹⁰ Ibid.

archeological site and scientific inquiry¹¹. Undoubtedly, the artifacts are damaged in transportation, whether on purpose to hide the object's value or on accident due to improper transportation protection. The artifacts are also often pillaged from sites that are unknown to archeologists, leaving these sites damaged, filled in, and hidden¹². Looters destroy entire archaeological sites, leaving them without record neither for the site's nor the object's existence. The professional looter comes equipped with portable generators, prefabricated huts, power tools, metal detectors, and pre-established financial backing¹³. Aside from the obvious destruction of these sites, there are further consequences to the fields of archeology and science that the demand for an artifact causes. The inherent value of one object to various fields of inquiry and cultures broadens the question of ownership of these artifacts. Ancient Egyptian artifacts contribute to civilizations further widespread than simply the location from which they originate. This ancient civilization contributes to a collective history of human development and especially of cultural connections to other Mediterranean, African, and Middle Eastern regions¹⁴. When objects represent a shared history, it becomes much more difficult to establish which groups of people should have possession of such objects. This aspect problematizes possession because possession, therefore, cannot be divided or ever placed in unanimously agreed upon hands.

¹¹ For an example see, Constance Holden, "Curbing the Antiquities Trade," *Science* 217 (Sep. 24, 1982): 1230 - 1231, accessed May 7, 2014, <http://www.jstor.org/stable/1733479>.

¹² Jonathan S. Moore, "Enforcing Foreign Ownership Claims in The Antiquities Market," *The Yale Law Journal* 97 (Feb., 1988): 466, accessed May 8, 2014, <http://www.jstor.org/stable/796414>.

¹³ Ibid.

¹⁴ "Origin and Influence Cultural Contacts: Egypt, the Ancient near East, and the Classical World," *The Metropolitan Museum of Art Bulletin* 29 (Mar., 1971): 318-326, accessed May 9, 2014, <http://www.jstor.org/stable/3258649>.

Instead of debating ownership, the argument over legitimate possession should also include the safest location for the artifacts. If the object is safely conserved and safely on display, then it is viewable to all cultures for many generations to come. The notion of utilitarianism contends that an action is morally good to the extent that it produces a greater balance of pleasure over pain for the largest number of people involved¹⁵. Most of the original, southern host countries do not yet have proper educational or conservational programs to house such priceless objects¹⁶. By returning them before these have been established, the object could be damaged, destroyed, or even stolen again. Instantly prohibiting further generations from appreciating such objects due to our own generations' failures.

The concept of utilitarianism does not fully explain why the denial of some peoples' rights to view the objects would be beneficial. It assumes that the denial of rights to a few is allowed if it benefits the majority. John Rawls' ethical theories on distributive justice clarifies this tendency and even fully refutes utilitarianism in his text "A Theory of Justice," a work of political philosophy and ethics¹⁷. The Harvard professor emeritus argues that, "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others"¹⁸. He thus restructures utilitarianism in order to claim that inequalities are just if they benefit all people by being unjust, "social and economic inequalities

¹⁵ Thomas I. White, comp., *Business Ethics: A Philosophical Reader* (Upper Saddle River, NJ: Prentice Hall, 1993), 5.

¹⁶ Jonathan S. Moore, "Enforcing Foreign Ownership Claims in The Antiquities Market," *The Yale Law Journal* 97 (Feb., 1988): 469, accessed May 8, 2014, <http://www.jstor.org/stable/796414>.

¹⁷ John Rawls, "A Theory of Justice," in *Business Ethics: A Philosophical Reader*, ed. Thomas I. White (Upper Saddle River, NJ: Prentice Hall, 1993), 89.

¹⁸ *Ibid.*

are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all"¹⁹. In this case, the argument that the antiquities are global heritage artifacts still stands as a justification to regard protection as the highest priority. It is certainly unequal to house the artifact in one location or another, but this inequality benefits everyone because it is currently able to remain safe and conserved by remaining in North American or European countries.

Previous generations have failed to protect and document a majority of antiquities imported or exported from their country, respectively. This has perpetuated many gray areas that continue to plague today's lawmakers. Egypt sought the return of an ancient funerary mask from the St. Louis Art Museum in 2006²⁰ on the grounds that it was obtained through illegal means. The mask, dating to the 19th dynasty (1307-1196 BCE), belonged to a mummy and depicted a young lady, known as the mask of Ka Nefer Nefer. Especially concerning documentation, there is a deliberate attempt to obscure information either through the physical documents or by passing through many non-public collections. Most cases have murky documentation, but when North American or European museums do have proper documentation of transactions, they can sustain an argument for possession. Current legal precedents, which determine whether an object should or should not be returned, typically hinge on the validity of documentation. The Egyptian Supreme Council claimed that the piece was discovered in 1952 in the unfinished step pyramid at Saqqara and stored at the site until 1959, when it was taken to the Egyptian Museum²¹.

¹⁹ John Rawls, "A Theory of Justice," in *Business Ethics: A Philosophical Reader*, ed. Thomas I. White (Upper Saddle River, NJ: Prentice Hall, 1993), 95.

²⁰ "Egypt Seeks Return of Ancient Mask."

²¹ "Egypt Seeks Return of Ancient Mask."

Although, due to poor storage and documentation, the mask disappeared and it was believed to have been smuggled out of the country²². Close to a half century later, the St. Louis Art Museum purchased the piece. The St. Louis Art Museum rebutted with their own research and documentation, some of which is placed on their website under the mask's description²³. The mask, according to the Art Museum's website remains in their possession. Legally, due to their ability to provide a coherent timeline of rightful ownership and purchases, they were able to justify their ownership.

Legitimate ownership cannot simply derive from providing a timeline. The case of Ka Nefer Nefer shows that the timeline must also provide a history of rightful ownership and purchases in order to justify the museum's current ownership. Robert Nozick, a twentieth century American philosopher, proposes ethical theories that would reinforce the legal proceedings in the aforementioned case and provide regulations for those without a proper history. In his Entitlement Theory, he puts forth three guidelines that qualify a just possession: (1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding, (2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding, and (3) No one is entitled to a holding except by (repeated) applications of 1 and 2²⁴. He highlights on what grounds we should qualify "proper ownership". The context of his argument is not on within the antiquities trade, rather he is thinking about how to minimize the state government in order to

²² "Egypt Seeks Return of Ancient Mask."

²³ "Mummy Mask of the Lady Ka-nefer-nefer."

²⁴ Robert Nozick, "Distributive Justice," in *Business Ethics: A Philosophical Reader*, ed. Thomas I. White (Upper Saddle River, NJ: Prentice Hall, 1993), 101.

increase individuals' rights. He aims to clarify how to justly distribute holdings, whether monetary or otherwise. Nevertheless, since artifacts qualify as a holding, one may also apply his theory to disputed ownership his theories do apply to explaining on what grounds artifacts should or should not be returned since they qualify as a holding. Therefore, if a possessor can thoroughly provide a just history of transactions, then they are the just possessors.

Backing up Nozick's claims is a case between the United States and Egypt. In March of 2014, United States authorities agreed to return to Egypt eight Pharaonic items said to have been smuggled into the United States back in 2011²⁵. According to the Minister of Interior of Egypt, Mohamed Ibrahim, he states that the items "represent ancient Egyptian civilization" and include models of wooden boats dating back nearly four millennia, the lid of a sarcophagus painted over with the portrait of its deceased occupant and a mummy encased in colorfully decorated plaster²⁶. The statement noted that American Homeland Security officials had seized the artworks upon arrival at customs in New York City and had probably been excavated illegally. Therefore, contemporary laws do demonstrate Nozick's ethical claim on how to redistribute holdings. Returning these objects has been the legal precedent for justifying the smuggling injustice. While it is unreported what happened to the smuggler, to the objects after their return, and the further implications of the antiquities' removal, it is noteworthy that the report stops here. News reporters pay little to no attention to the cultural and archeological damage that this removal has had on its original environment. Nozick's theory do provide insight on when to return an object,

²⁵ "Smuggled Egyptian Antiquities To Be Returned From U.S: Minister."

²⁶ Ibid.

but do not address how to then take the necessary steps to rectify the injustice. This afterwork is fundamental to the antiquities trade issue and should be at the heart of future legal declarations.

Much more work needs to go into constructing proper laws concerning these particularly unique situations. Antiquities do not solely represent a monetary value, but a history that belongs to multiple geographic locations, human civilizations, and academic disciplines. This history is ongoing and needs to be protected, regardless of the legal precedent or ethical justifications. This paper has already shown that the national and international laws put in place have not adequately countered the destructive reality. There are many practical issues that one must also take into account when thinking about constructing these much-needed laws. Firstly, constructing an effective enforcement of these laws is essential. Secondly, maybe these antiquities should be returned, ethically and legally speaking. Although, to what circumstances are we returning them? In 2010, Vincent Van Gogh's 1887 work entitled "Vase and Flowers" was stolen from the Mahmoud Khalil Museum in Cairo for the second time²⁷. What if the Ka Nefer Nefer funerary mask had been returned in 2006? The Egyptian Revolution of 2011 caused much damage to Egyptian museums and heritage sites. For example, during the Revolution, fifty-four artifacts were stolen from the Egyptian Museum²⁸. The security issues continue for the Egypt into 2014, antiquities theft has flourished in Egypt since the 2011 uprising, robbing the culture of an indeterminate amount of heritage stolen from museums, mosques, storage facilities, and archeological sites²⁹. In fact, there was a bomb blast in January 2014 at the Museum of Islamic

²⁷ "Van Gogh Stolen from Egyptian Museum for the Second Time."

²⁸ "10 Artefacts Stolen from the Egyptian Museum Recovered."

²⁹ "Serendipity Aids Egypt in Struggle to Recover Stolen Heritage."

Art that shattered windows and sent metal and glass flying through the halls³⁰. Are the Egyptian museums and government able to afford the responsibility of housing these objects? Their responsibility is not solely to current Egyptian people, rather a more international heritage and several future generations to come.

There remains a contrast in this analysis, between decades old scholarship and recent events. The scholarship often suggests the struggling archeological and conservation programs among many South American, African, Middle Eastern, and Asian countries. In order to understand a fuller picture of the current situation, I interviewed Dr. Gregory Warden, a scholar and researcher for the past thirty-five years in the field of Classical and Near Eastern archeology. He was able to comment on the contemporary atmosphere in Mediterranean countries, while providing his own opinions on this topic. Primarily he made the distinction that countries with qualified archeology programs rely on a strong governmental Department of Antiquities and on cultural attitudes. Turkey, Jordan, and Egypt do represent countries that have the most passion for preserving their heritage, while the Libyan government still struggles to value its past. In the argument of returning the objects, he adds more to the discussion, “I do not believe that the Elgin Marbles should go back to Greece, they are as much a part of the British Museum as they are of Athens. Anyway, in Athens, they wouldn’t be going back onto the Parthenon, they would into a museum. There is no easy answer. What goes back? Should the horses of San Marco in Venice go back to Istanbul? They were robbed during the Fourth Crusade by the Venetians. They don’t have export papers. It can’t all be returned. For sure, something like the Great Altar at Pergamon,

³⁰ “Triage for Treasures After a Bomb Blast: Sorting Through the Rubble of Museum of Islamic Art in Cairo.”

which is now in Berlin. If those pieces had stayed there, they wouldn't be around”³¹. He confirms that conservationists themselves still debate many of the issues alive decades ago, while giving specific examples and cases.

The more tangible debate focuses on the proper documentation, while a plethora of theoretical opinions converge on topics of cultural significance. It is rather certain to state that if there is proper documentation for the acquisition history of the object, then the current owner is the just owner. Proper documentation can be defined, in reference to Nozick and Rawls, as documentation that demonstrates a clear history of monetarily substantial and legal transactions. If there is not proper documentation, then this provides the original country to form an argument for possession. However, as Gregory Warden pointed out in his interview, it is the burden of the host country to provide counter documentation. In these cases, the unjust possessors usually return the antiquities. Outside of this debate, others exist. Among various fields within academia, the debate is also concerned with the artifacts themselves and returning them to unsafe political or conservationist situations. There is a better chance in European and North American museums, with their heavily funded museum programs and positive cultural attitudes, to respect the safety needs of these antiquities. These safety needs should also be taken into consideration when deciding the rightful possessors because, while many collectors and dealers try to place a monetary value to antiquities, they also hold a priceless value for many previous and future generations of human civilization.

³¹ Gregory Warden, interview by author, Lugano, Switzerland, May 12, 2014.

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