ANTI-THESIS

This article explores the two opposing standpoints in regard to the publication of objects/artifacts of unknown provenance and the ultimate impact this has on the preservation of heritage. The debate is set against the roles and objectives of scholars, museums, heritage officials and auction houses, with an overall greater

Provenience,
Provenance and
the UNESCO
1970 Convention: Two Schools
of Thought on
the Publication
of Indeterminate
Artifacts

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consideration as to how these arguments are impacted by the UNESCO 1970 Convention, and vice versa.

Keywords: UNESCO 1970 Convention; Provenance; Heritage Looting in the Middle East; Sale of Looted Antiquities

The terms provenience and provenance are often used differently and interchangeably depending on the context and/or the training of the user. Both are derived from the same Latin word, and to one school of academics they mean identically the "location" an item was found. But to another school of thought, they have different meanings adhering to where an artifact came from and who has owned it since. As such, for the purposes of this article, provenience refers to the precise location where an artifact or archaeological sample was recovered archaeologically, and provenance the detailed history of where an artifact has been since its creation. A complete provenance will encompass a record of production, ownership, publication, exhibition and restoration.

Both provenience and provenance are important to ascertain when studying an artifact. While the provenience of an item can be traced if it is initially lacking (via carbon dating, reference checks of similar items, archaeological imagery, etc.) the provenance of an antique most often indicates the legitimacy (or lack thereof) with which it was acquired. Artifacts without provenance have often been perceived as "difficult objects" in the museum world due to the lack of discernibility as to whether they were procured in a legally





and ethically sound manner (Tubb). Nevertheless, this has not deterred many museums and publication institutes. It was estimated by the Archaeological Institute of America in 2013 that 85 to 90 percent of classical artifacts in collections and the art market have an unknown and/or poorly documented provenance (Antique Tribal Art Dealers Association 25).

On November 14th, 1970, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was finally voted into force. This UNESCO convention and its complementary 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objectsoften seen as governing the protection of private owners and the "good faith" acguirer-are the core frameworks that guide institutions and law practitioners around the world in addressing the occurrences of illegal art and antiquities. The year 1970 is now pivotal, in that any items found to have been acquired after this year in the provenance records cease to be legitimate, unless accompanied by an official export license.

However, not all nations subscribe to the 1970 convention, and those that do may not necessarily enforce all of its provisions. The impact of the 1970 convention remains bound by the national laws that govern each country, which highlights how a lack of unified law can mean an uncertainty in the final result of a trafficking case.

Despite these hurdles, the 1970 Convention is becoming increasingly effective across most Western countries, particularly in light of the recent, high-coverage media cases over the last two years concerning looting and repatriation. Indeed, as a result we could surmise that the adoption of the 1970 UNESCO Convention is fast becoming a *de facto* rule of thumb for many Western states and institutions. To the joy of many and detriment of some, artifacts that fall into the post-1970 acquisition category are becoming increasingly hard to legitimately sell.

Thus, as a first consideration, why might it be good to publish unprovenanced works?¹ Perhaps the clearest positive result is the availability for scholarly review and access to otherwise "lost" artifacts.

The Egyptologist Dr. Monica Hanna—most notable of late for her heroic actions to single-handedly protect Egyptian artifacts from armed looters—expressed her belief during the June 2, 2014 council review of

the Egyptian Memorandum of Understanding (MoU) requesting the assistance of the US government to protect their looted heritage, that a portion of looted items from Egypt are being purchased by US scholars. This is the antithesis of the vehement opposition that is publically voiced toward such actions by the majority of academics via various media channels. If her accusation is correct, we could surmise that these scholars are acting through covert means in order to protect the items from otherwise under-educated owners, who would not know how to care for them, and-at the core perhaps-to study the artifacts for themselves.

In 2000, archaeologists Christopher Chippindale and David Gill directed an investigation into the provenance of seven noteworthy museum acquisitions that demonstrated considerable uncertainty as to their legitimacy. Their research was published in the *American Journal of Archaeology* and was continued in 2001 with an examination by the authors and a team of archaeologists that aimed to focus the degree of the issue of unprovenanced materials in museum collections with a quantitative study.

Yet the issue unprovenanced works does not deter some historians and archaeolo-



gists. John Boardman, a former Oxford University Lincoln Professor and renowned archaeologist, has frequently expressed his view that all archaeological artifacts are inherently valuable with or without a definite provenance, and that to believe otherwise is "pure nonsense" (41):

Objects cannot be "tainted" or "illicit," but only be so described by scholars who do not understand them, or by legislators. Objects are testaments of antiquity, whether handled by a thief or scholar; their integrity must be respected and their safety assured. To suggest that they should even be destroyed rather than kept in a museum betrays an appalling vacuum of scholarly integrity and responsibility, even philistinism. (117-18)

It may be argued that the publication of works without provenance is a way to rectify what was lost: that being the archaeological record. The publication of unprovenanced artifacts opens the floor for scholars and enthusiasts alike to trace origin (and thereby an indication of provenience), cultural associations and to engage in textual transliteration, where possible. Surely, access to this vital information that benefits and builds upon the knowledge of lost civilizations is vastly important? This question is clear in its moral

quest, but will these actions contribute to the protection of cultural heritage over time and on a global scale?

Philippe de Montebello, the former director of the Metropolitan Museum of Art from 1977 to 2008, has gone further in the support of the publication of unprovenanced works and cited his distrust of those who would shy away from an artifact that was lacking such documentation:

Can one really trust the scholarship of those who allow politics and ideology to trump their intellectual curiosity like that? It seems to me that one keeps one's opprobrium for the looter or the circumstances of the event, but not for the looted object itself. To turn away from it in moral indignation is foolish, and in the end can lead to the suppression of knowledge. (67)

The channel of publication for such works without provenance and/or provenience must also be scrutinized for suitability. The intent and audience of an auction catalogue varies greatly from that of an academic journal. In the defense of the publication of works without provenance, the ultimate goal of publication should be addressed: a purely scholastic intention perhaps carries a more noble weight than the intent of sale and profit.

The case of the Dead Sea Scrolls, perhaps more than any other, highlights the problems of an unpublished and unprovenanced find. Publication of the scrolls has taken many decades, and delays have been a source of academic controversy. While it was more politics than a lack of provenance that delayed the publication, it exemplifies the impact on world knowledge such a delay in publication can have. This case also highlights an important consideration for the motivation of publishing unprovenanced work, that being the issue of "chance finds": locals who recover objects of importance but may have only very limited knowledge of the exact location an item was discovered. As Michael Bennett, the Cleveland Museum of Art's first curator of Greek and Roman Art, has further expressed:

It should not come as a shock that the modern world regularly disturbs ancient artifacts unintentionally, as urban and commercial development continues to spread across the globe. Large public works projects funded by tax revenues, as well as privately financed construction projects, routinely and inadvertently uncover buried antiquities. These are not looted artifacts. (36)

In the mid-1980s, John Boardman began an investigation for the British Academy



into excavations financed by public money over a period of five years, ending five years before the time of the investigation. His aim was to see what had become of the publication of their excavation reports. His research found that a site that had been legally excavated, but remained unpublished, was even more of a destroyed site than "the Bamiyan Buddhas" (109), since no public record whatsoever remains. He concluded that the results of his investigation were indeed depressing, and that in the last fifty years, far less than 25 percent of the material and subsequent results of professional archaeological excavations have been properly published, while the remaining had never gone beyond preliminary reports, if that.

In further support of this argument, the fact that archaeology, as a science, is ultimately destructive in its nature needs to be considered. The procedures and policies that have been built around this profession in the last few centuries do camouflage this fact, and certainly advancements in the preservation of cultural heritage during excavations are advancing in bounds on an annual basis. However, the fact remains that the preservation of the artifacts, the site and thereby the history would be far better off without any such archaeological intervention.

A final question to pose: what is provenance as a means of verification, anyway, and can this even be trusted? If the recent media cases that are surging in the international news at present are anything to go by, the answer is no.

In 2011 the New York-based art dealer Subhash Kapoor was arrested in Germany prior to being extradited to his native India in 2012, where he currently awaits trial for overseeing a vast, international antiquities smuggling syndicate. Under the guise of an otherwise reputable Manhattan gallery, Mr. Kapoor ultimately dealt in looted artifacts to the value of almost US\$100 million.

A key component to the success of this illegal trade was forged provenance. Mr. Kapoor and his associates knowingly faked a series of export licenses and prior ownership records for well over 200 objects that were then directly acquired by such world-renown museums as the National Gallery of Australia, the Los Angeles County Museum of Art, the Asian Civilizations Museum in Singapore and the Metropolitan Museum of Art, among many others. These museums—and indeed, the practices of museum acquisition policies worldwide—have since come under immense public scrutiny.²

In response, the National Gallery of Australia (NGA) has set up a webpage dedicated to the defense of their involvement in the Kapoor controversy, stating:

If the allegations regarding Mr Kapoor are proven to be true, then our Gallery, along with leading museums around the world, will have been the victim of a most audacious act of fraud. If proven, this fraud has involved the elaborate falsification of documents by a long-established New York art dealer who had been dealing with leading international museums for almost 40 years. ("Questions and Answers")

In an unprecedented move for a national gallery, the NGA has further stated that they will sue Mr. Kapoor if he is found to be guilty of the crimes for which he is soon to be on trial.

The impact of this case—and other successive cases of questionable provenance that have since come to light—has been staggering. For many museums, the process of collecting was regarded as the most vital activity to secure the continued survival of a museum, and therefore establishments were initially hesitant to alter their policies (Leyten). In the last few years however, this has begun to significantly change.





In 2013, Dr. Neil Brodie, Senior Research Fellow in the Scottish Centre for Crime and Justice Research at the University of Glasgow and an archaeologist by training, cited the 2005 indictment of Marion True, former curator at the J. Paul Getty Museum who was prosecuted for illegal acquisitions, as an example of what he perceives to be a "criminogenic museum culture" (Brodie and Bowman Proulx 9). Brodie and his associates have concluded that this criminal culture is the result of the deviant behavior of "avaricious curators" who sidestep established conventions in their aggressive collecting practices.

Timely to the Kapoor case and after two prior decades of dispute concerning a claim of illegal acquisition, the Museum of Fine Arts, Boston finally agreed to repatriate the "Weary Herakles" statue to Turkey in 2011. They admitted that they had never verified the statue's provenance. The museum has since ensured that a full-time provenance expert remains on staff. "It is necessary for the MFA not to repeat the mistakes of our past," stated the curator of provenance, Victoria Reed (quoted in Seiff).

At the Metropolitan Museum of Art, the two "Kneeling Attendants" that had regally flanked the entrance to the Southeast Asian galleries for two decades were quietly repatriated to Cambodia in 2013. When these statues were first acquired by the museum in the 1980s, there was little consideration for a provenance check, yet the timing certainly follows a pattern: from the 1970s onwards, Cambodia became engulfed in a turbulent civil war, whereby looting became rampant and the country would hardly be in a position to pursue a case of illegal acquisition and export. The same is now true of the Middle East today.

The reception to a questionable and/or lacking provenance is likewise beginning to be seen in the auction world. In May, Christie's halted the London sale of Egyptian artifacts put up for auction by a man who claimed he had inherited them, after experts from the British Museum concluded that they had been stolen after the 2011 revolt. The auction house has since offered to repatriate a selection of Koh Ker statues that had been placed in their sales and found to have been illegally acquired post-1970. Christie's states that their acquisition policies and proof of ownership demands upon potential clients have changed dramatically, particularly in the past 18 months. During their inaugural participation in the 2013 Kathmandu UNESCO 1970 symposium, Christie's offered their commitment to work in tandem with UNESCO (and similar heritage agencies) in the fight against the trade of looted antiquities, and declared in an official statement: "Illicit cultural property will find no place in our saleroom."

In contrast, Sotheby's was embroiled in an extremely rare legal case last year whereby the U.S. government battled on Cambodia's behalf against the auction house for the repatriation of a statue, the fictional Hindu warrior, Duryodhana. Despite a prior refusal to comply, Sotheby's finally settled the case out of court in December 2013 by promising to repatriate the three-million-dollar-statue.

The reactions and feedback of the museum and auction sectors indicate that the time when an item without provenance would be accepted for acquisition or sale is waning. However, the depth of the cases of illegal looting that surface in these professions are miniscule in comparison to the actual, devastating circumstances that often accompany heritage theft.

As previously outlined, works lacking provenance often correspondingly lack adequate details of provenience, but the greatest loss is that of the archaeological record. Without the most basic transcript of where the item(s) was found, as well as how and in what setting, the





artifact(s) remains entirely without context or an ability to provide any deep level of understanding. "In a very real sense," states Neil Brodie, "looted archaeological sites are crime scenes" (quoted in Pringle). While the publication of an item without provenance may be made in an attempt to rectify this loss, it also indirectly fuels the circumstances under which it was acquired.

In 1991, Dr. Colin Renfrew-a former professor and Senior Fellow of the McDonald Institute for Archaeological Research at the University of Cambridge-was widely criticized for publishing on a collection of unprovenanced figurines (Renfrew et al.). After this incident, however, Dr. Renfrew has become one of the most active advocates in the battle against the publication and acquisition of unprovenanced artifacts. In 2000 he authored the highly acclaimed publication "Loot, Legitimacy and Ownership: The Ethical Crisis in Archaeology" and in 2009 went on to win the coveted SAFE Beacon Award. He does not mince words in his admonition of museum practices:

[The museums] are quite disgraceful and lead the world in purchasing antiquities without provenance [...] in effect, indirectly, they're supporting and financing the destruction of the world's

archaeological heritage. They include the Metropolitan Museum of Art, Boston Museum of Fine Arts, and the Art Institute of Chicago. (Safecorner, "Colin Renfrew")

At the moral core, there is a fear that the purchase of works without provenanceunless caused by inadequate recordkeeping-ultimately indicates to those opposing the ideology of unprovenanced works that an artifact has been stolen from its country of origin, and very often at a time of civil unrest. Purchasing artifacts without provenance can stimulate demand that leads to intentional looting for profit. The purchase of such artifacts can therefore be correlated to the direct support of this illegal action. Furthermore, the unfolding evidence that has begun to surface indicates a far more sinister involvement in criminal activity than the illicit-antiquities purchaser may realize.

Many buyers of unprovenanced works hold the idea that the illicit antiquities trade is relatively harmless, and the items would otherwise be lost or forgotten. However, this perception that the looting of artifacts is a "victimless crime" is false, according to the leading criminologist and professor Dr. Simon Mackenzie of the University of Glasgow (Barford). His inten-

sive fieldwork into the smuggling and sale of cultural heritage has shown strong links with antiquities traffickers to a number of serious crimes, including corruption, drug smuggling and prostitution. Further, according to new evidence sourced from the US army based in Afghanistan and Iraq, there is an indication that artifact smuggling syndicates are often closely linked with violent insurgents and perhaps ultimately the funding of terrorism (Pringle).

In support of these claims, Dr. Zafar Painan, in his address at the 2013 UNESCO Kathmandu symposium, explained how he had witnessed a clear correlation between drug smuggling and the looting of cultural heritage in Afghanistan. Further, Dr. Monica Hanna has stated that antiquities smuggled out of Egypt often use the same channels as drugs and arms, through the Sinai and into Israel. She has also found direct evidence that a recent drug bust in the country in June also uncovered looted Egyptian statuary (Safecorner, "Public hearing").

The civil wars and political unrest that have marred the Middle East, over the last decade most notably, have led to an opportunity for cultural heritage looting for those unsavory and/or desperate enough.





Akin to the destruction and theft that befell the National Museum in Baghdad and numerous archaeological sites throughout Iraq in the aftermath of the 2003 US invasion, Egypt is now sadly victim to the same crimes.

Since the Arab Spring revolt of 2011, the impact upon cultural heritage in Egypt has been devastating. The Egyptian Minister of Antiquities, Dr. Mohamed Ibrahim Ali, has lamented that hundreds, if not thousands, of unprovenanced archaeological objects, likely stolen by "cultural racketeers" since 2011, have been appearing for sale in the United States via art galleries and internet auctions—to the laudable exclusion of eBay, which has denied unprovenanced sales.

A brief survey of the data on the import of cultural artifacts from Egypt to the USA in the years 2013-2014 shows an incredible increase of 56 percent compared to previous years, even excluding Egyptian artifacts being sent to the US via secondary countries (St. Hilaire). In an attempt to counter this loss, in March of this year the Egyptian government submitted a formal MoU to the US Obama administration, requesting to impose emergency restrictions on the import of ancient artifacts

lacking both provenance and provenience from Egypt.

The MoU broadly outlines restrictions that would allow immigration agents the ability to seize Egyptian cultural artifacts entering the United States if they lack official documentation, as opposed to their current stance where they have no authority to seize Egyptian items. This same type of agreement is already in force between the USA and sixteen other nations, notably those which have signed agreements under a 1983 law, the Convention on Cultural Property Implementation Act (first ratified under the Ronald Reagan administration). Iraq is the exception to this group, and receives distinct consideration because of the looting that took place during the US invasion.

The Cultural Property Advisory Committee (CPAC) reviewed the MoU on June 2 of this year, with the results being largely in favor of supporting the movement. There is still a way to go before it can be implemented, however.

In light of the evidence, what could a viable solution be to the publication of unprovenanced heritage items? It is clear that the support–either the purchase or publication–of antiquities without prove-

nance has far deeper ramifications than merely turning a blind eye to a dubious ownership record. The evidence indicates that to buy and/or publish an artifact without provenance fuels the same vast, international crime circles that proliferate drug trafficking. If there were no demand for unprovenanced works, the supply would-in theory—stop.

Yet can exceptions be made? Perhaps in cases where the aim of the publication is to emphasize the loss of the archaeological context, and/or to highlight the situation of cultural heritage looting at present. This would allow for some knowledge exchange on the item but for the overall rationale to be the return of the piece to where it was stolen.

Such avenues do currently exist, to an extent, although more are clearly needed. The International Council of Museums publishes an online "Red List" of looted artifacts by country. Likewise, Interpol are in the process of updating their existing cultural heritage theft database with a new system termed PSYCHE (Protection System for Cultural Heritage) that will incorporate a greater cooperation with EU partners.

Fundamentally, the obligation for the future of artifacts without provenance falls





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on those countries with the greatest imports of looted antiquity, namely the Western world, both as the benefactor of archaeological projects and as the primary market for the destructive trade in illegal antiquities.

While the debate rages on, what can be concluded from this study is that the dispute largely boils down to two core questions: who owns history and who has a moral obligation to save it?

To the former question, George F. Comfort, a 19th-century American scholar and the founder of the Metropolitan Museum

of Art, surmised that history, and therefore historical artifacts, are not bound by time or country:

Homer sang not for the Greeks alone but for all nations, and for all time. Beethoven is the musician not of the Germans alone but of all cultivated nations. And Raphael painted not for the Italians alone, but for all of whatever land or age, whose hearts are open to sympathy with the beautiful in art. (de Montebello 55)

Yet those who advocate the moral case retain the belief that artifacts and works of art of such cultural significance belong in their original context. It is hard to deny that the majority of plundered artifacts have found their way to museums in Europe and America, notably leaving a vacuum of culture in their provenience of origin. As the anonymous author of the battered banner hung outside the Kabul Museum in the wake of the 2002 Taliban expulsion writes: "A nation stays alive when its culture stays alive."





Notes

¹Note: this article will predominantly deal with the instances of looting in the Middle East and subsequent purchases by auction houses and museums in America, Europe and Australia. The looting of heritage occurs worldwide, with goods also being trafficked out of Asia frequently. It is well known, however, that the vast majority of artifacts trafficked from the Middle East do

not go to Asia but instead to so-called "Western" locations. As such, this article excludes the study of Asia. For such an introduction to heritage trafficking routes, see culturalheritagelawyer. blogspot.com.

² For information regarding the involvement of museums in the Kapoor case, see Finchman.

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