

Italian Antiquities in America:
Contextualizing Repatriation

by

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ABSTRACT

From inception, the earliest museums in Europe were a haven for artifacts, many of which represented world cultures within its walls. The tradition of encyclopedic collecting characterized European museums and U.S. institutions modeled themselves after this example. In the 20th century, defining cultural property, in the form of excavated objects, became a priority for many nations and resulted in the scrutiny of ancient artifacts, in particular. This led to the establishment of international protocols which sought to protect items during times of both peace and war. Despite international legislation, the trade of illicit antiquities continued. A major advocate for repatriation, the nation of Italy aggressively sought return of many objects from antiquity and recently approached the Metropolitan Museum of Art regarding several items whose provenance was suspect. Ultimately the conflict was resolved through The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006, which transferred the title of six antiquities to Italy in return for long term loans of equivalent objects to the museum. The landmark agreement represents a mutually profitable resolution to a situation potentially plaguing thousands of institutions worldwide. The implications of replication of the agreement can potentially change how museums, nations and the public understand concepts of ownership and may reduce the role of permanent collections in favor of sharing, rather than possessing, world heritage.

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Chapter 1

REPATRIATION: MUSEUMS AND DISPUTED OBJECTS

There are an estimated 17,500 museums in the United States. From small historical sites to massive institutions dedicated to the arts, science and history, most of these organizations collect and display objects.¹ Innumerable artifacts belong to these institutions. The Metropolitan Museum of Art, one of the premier art establishments in the world, possesses over 200,000 works.² Many artifacts representing ancient cultures have become iconic objects at the center of passionate ownership disputes.

One particularly emblematic work of art in the Metropolitan collection was surrounded by controversy until recently. The object is a rare, almost complete red-figure Greek ceramic vessel. Euphronios, an Athenian artist working from c. 520 to 470 B.C.E., painted the krater, which was purchased by the Metropolitan in 1972.³ Only eighteen vases survive with his signature,

¹ The Metropolitan Museum of Art will be referred to as the Metropolitan throughout this thesis. American Association of Museums, "Museum FAQ," American Association of Museums, http://www.aam-us.org/aboutmuseums/abc.cfm#how_many (accessed July 25, 2010).

² Metropolitan Museum of Art, "Works of Art," Metropolitan Museum of Art, http://www.metmuseum.org/Works_of_Art/collection_database/listview.aspx?page=1&sort=0&sortdir=&keyword=&fp=1&dd1=0&dd2=0&vw=1 (accessed August 26, 2010). The Metropolitan's online catalogue contains 208,978 entries. The site states not all collection items are currently available online, implying there are many additional works not currently included in the online catalogue.

³ The vessel, signed by Euphronios as painter and Euxitheos as potter and purchased by the Metropolitan, came to be identified as the Euphronios Krater, embodying both a description and one of the official names of the work of art.

identifying him as painter or potter. Deviating from the official story presented by the Metropolitan of the work coming from a private European collection, *The New York Times* identified a clandestine excavation north of Rome in 1971 as the source of the vessel.⁴ The allegations by the newspaper and the absence of export documentation clearly demonstrates the need for new laws protecting cultural property. Concurrent to the purchase of the Euphronios Krater, the 1970 UNESCO Convention developed to prevent the procurement of illegally excavated objects through export laws. Ratified by the Senate and under review in the House of Representatives, the new international legislation required proper documentation to prevent illegal export of items. If the Convention had been enacted in the U.S. at the time of the acquisition of the krater, the need for additional records, such as export permits, may have prevented the purchase, however, since that was not applicable, the museum maintained the legality of the acquisition for many decades.⁵

The vessel is also referred to as the Sarpedon Krater. This second title refers to the scene from Homer's *Iliad* depicted on one side of the vessel.

⁴ Nicholas Gage, "How the Metropolitan Acquired 'The Finest Greek Vase There Is,'" *The New York Times*, sec. 1, February 19, 1973; Proquest Historical Newspapers *The New York Times* (1851-2006) <http://www.proquest.com.ezproxy1.lib.asu.edu/> (accessed December 27, 2010). The newspaper conducted an investigation to determine the origins of the vessel by sending a team to Italy to interview a variety of individuals.

⁵ David Shirley, "Dillon, Metropolitan Present, Terms Vase Purchase 'Legal,'" *The New York Times*, March 1, 1973; Proquest Historical Newspapers *The New York Times* (1851-2006) <http://www.proquest.com.ezproxy1.lib.asu.edu/> (accessed December 27, 2010). See Ashton Hawkins, "The Euphronios Krater at the Metropolitan Museum: A Question of Provenance," *Hastings Law Journal* 27 (1975-1976): 1163-1181.

Publicity surrounding the vessel prompted an investigation by Italy into the origins of the krater. Despite years of investigation, incontrovertible evidence remained elusive. Italian resolve to determine ownership waned until the search was renewed when 3,800 objects, tens of thousands of documents and 4,000 photographs were seized from an art warehouse in Switzerland rented by Giacomo Medici in 1995. These items provided the means to trace antiquities from their original location, through restoration and finally to the collections of museums worldwide. The Italian carabinieri, as a result, concluded the inquiry which had begun in the 1970s, and requested the return of the krater and additional artifacts from the Metropolitan Museum of Art.⁶ These objects included a Laconian kylix, a red-figured Apulian dinos attributed to the Darius Painter, a red-figure psykter decorated with horsemen, a red-figured Attic amphora by the Berlin Painter and fifteen pieces of Hellenistic silver.

The thirty-five year dispute over the krater ended with “The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006”. This unprecedented accord transferred the title of the six contested antiquities to Italy. In return, the Metropolitan was absolved of any wrong doing and would receive reciprocal long term loans for the repatriated objects that are of equivalent significance.⁷ Philippe de Montebello, the former Director of the Metropolitan,

⁶ The documents and the reasons leading the Metropolitan to return the Euphronios Krater and the five additional items will be discussed in Chapter 4.

⁷ The agreement between the Metropolitan and Italy will be the subject of Chapter 4.

praised the arrangement as evidence of Italian generosity, for more works were loaned than the museum returned.⁸

The return of the artifacts to Italy highlights issues regarding cultural property and repatriation. Demands by the Italian Ministry of Culture for the return of objects alters how nations and scholars perceive the ownership of ancient artifacts and undocumented antiquities.⁹ In a globalized world, a precarious balance must be negotiated between claims for repatriation and public access, as they have major consequences for the academic pursuit of world cultural heritage.¹⁰

Five years after the ratification of the 2006 agreement between the Metropolitan and Italy, few scholars have assessed the accord. As requests for repatriation continue on a global scale, an equitable solution needs to be identified to address this international crisis. A balance needs to be negotiated between rectifying past improprieties and allowing museums to continue to display and protect artifacts. Current trends of relinquishing ownership of artifacts in the

⁸ Philippe de Montebello, "What Should Be Done with Objects," in *Whose Culture? The Promise of Museums and the Debate Over Antiquities*, ed. James Cuno (Princeton: Princeton University Press, 2009) 61.

⁹ Department of the Treasury "Federal Register Notice: January 23, 2001; 66 (15): 7399-7402, Import Restrictions Imposed on Archaeological Material Originating in Italy and Representing the Pre-Classical, Classical and Imperial Roman Periods," <http://culturalheritage.state.gov/it01fr01.html> (accessed May 15, 2009). The Implementation Act between Italy and the United States went into effect on January 23, 2001 and it restricted importing all materials dating from the 9th century B.C.E. through the 4th century C.E.

¹⁰ James Cuno, *Who Owns Antiquities? Museums and the Battle Over Our Ancient Heritage* (Princeton, Princeton University Press, 2008) 154.

United States endanger the future of encyclopedic museums within the nation. How do they continue to display of works of art spanning all times and cultures without significant losses of collections? Out of respect for world heritage, should museums investigate returning cultural artifacts to the nation of origin? Should items representing past cultures be distributed throughout the world for the enjoyment and education of all? The agreement between the Metropolitan Museum of Art and Italy presents an alternative solution to the ownership of antiquities. In the absence of a critical analysis of the accord between the Metropolitan and Italy, this thesis reviews and assesses of the agreement. This model of repatriation, although never completely replicable, may serve as a foundation for settling future disputes regarding the ownership of cultural property.

The acquisition of the Euphronios Krater and the ensuing controversy epitomizes the ethical issues of collecting ancient artifacts. Presenting an innovative solution to the ownership of ancient artifacts, the agreement between Italy and the Metropolitan represents an unprecedented conclusion. Italy's resolve to reclaim its ancient heritage demonstrates an ongoing dedication among source nations to recover lost artifacts.¹¹ Extraordinary actions by countries all over the world attempt to facilitate the return of cultural artifacts. Some are quickly

¹¹ Any nation that holds the remains of previous civilizations is a source nation. Remnants of past cultures may be incorporated into modern cities or underground in an archaeological deposit. However, the phrase source nation is also problematic as it provides a biased connotation of source vs. market. However this term dominates the literature and, therefore, has been used.

resolved while others continue to be debated by nations and museums. A review of several significant examples illustrates the diversity of ownership disputes and demonstrates the importance of the accord between the Metropolitan and Italy as a possible model for others to follow.

Disputes of ownership persist, and not all resolutions are as straightforward as the agreement between the Metropolitan and Italy. The controversy regarding the Elgin Marbles in the collection of the British Museum represents one of the longest unresolved disputes.¹² Lord Elgin removed over half of the remaining sculptures from the Parthenon between 1801 and 1812.¹³ Greece, under Ottoman control, provided Elgin with a *firman* or permit for access to the building, to draw, for the erection of scaffolding, and making molds on the site of the Parthenon.¹⁴ The document never explicitly permitted Elgin to remove and export the sculpture discovered on the building.¹⁵ Instead, it authorized the

¹² For more information on the Elgin Marbles, also referred to as the Parthenon Marbles, see John Henry Merryman and Albert E. Elsen, *Law, Ethics, and the Visual Arts*, 2nd ed. (Philadelphia: University of Pennsylvania Press, 1987); John Henry Merryman, ed., *Imperialism, Art and Restitution* (Cambridge: Cambridge University Press, 2006); and Stephen L. Dyson, *In Pursuit of Ancient Pasts: A History of Classical Archaeology in the Nineteen and Twentieth Centuries* (New Haven and London: Yale University Press, 2006) and Michael J. Reppas II, "The Deflowering of the Parthenon: A Legal and Moral Analysis On Why The "Elgin Marbles" Must Be Returned To Greece," *Fordham Intellectual Property Media and Entertainment Law Journal* 9 (2006): 911-980.

¹³ Lord Elgin was the seventh individual to hold this title; his given name was Thomas Bruce.

¹⁴ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts* 5th ed. (The Netherlands: Kluwer Law, 2007) 348.

excavation of the foundations to search for inscriptions and temporarily remove pieces for the creation of molds. Lord Elgin and his men interpreted this portion of the text as allowing for the removal of sculptures.¹⁶ Questions surround the legality of his actions, especially since Elgin stated he originally intended to only make models.¹⁷ In 1816, Elgin petitioned the government to acquire the marbles public display. The British government decided to procure the marbles after extensive debate by Parliament.¹⁸ A committee was convened to consider the procurement and to determine whether Elgin had appropriately acquired the

¹⁵ Ibid., 349. The Italian translation is the only surviving version, which was translated from English to Turkish and then Italian to English, reads:

It is our desire that on the arrival of the letter you use your diligence to act conformably to the request of the said Ambassador while the said five artists dwelling in that place shall be employed in going in and out of the gate of the Castle of Athens which is the place of observation; with fixing scaffolding around the ancient Temple of the idols, with modeling and vestiges of other ruined buildings; and with excavating as needed the foundation in search of stones with inscriptions among the rubbish; that they not be molested by the Governor of the castle nor anyone else, nor even by you to whom this letter is addressed; and that no one meddle with their scaffolding or implements nor hinder them from taking away any pieces of stone with inscriptions and figures.

¹⁶ Ibid.

¹⁷ William St. Clair, *Lord Elgin and the Marbles: The Controversial History of the Parthenon Marbles* (Oxford: Oxford University Press, 1998) 96.

¹⁸ Merryman, 351-4. The purchase of the marbles was voted on with 82 in favor and 30 against after significant discussion. In the House of Commons on June 7, 1816, the party against the acquisition argued to purchase the marbles so the British Museum could hold the sculptures until they would be demanded by possessors of the city of Athens. Until the request for return, the marbles would be carefully preserved. The party for the acquisition of the marbles stated Elgin followed all procedures by contacting the Turkish government and that he had saved the sculptures from ruin.

sculptures. The report concluded that the Turkish government had not expressed dissatisfaction with Elgin's actions, despite the broad interpretation of the *firman*. Publically removed over the course of several years, native laborers assisted in the extraction of the marbles without any objections.¹⁹ Regardless of the findings of the British Parliament, debates surrounding the legal ownership of the marbles flourished since their accession into the museum's collection, a subject of controversy even today.

One hundred and fifty years after Greece became an independent state, the Greek Minister of Culture requested restitution of the marbles to their homeland and formally submitted an appeal to the British government in 1983. Greece made an earlier request in 1965 to all nations of the world for the return of Greek antiquities, however, it did not specify the marbles in the British Museum. None of the nations and organizations responded to the initial demand.²⁰ The British government forwarded the official appeal to the Trustees of the British Museum, who denied the request.²¹

The response of the trustees aligns with the *British Museum Policy on De-Accession of Registered Objects from the Collection*. Guidelines in the document provide the only means through which the museum may remove an item from the

¹⁹ Jeanette Greenfield, *The Return of Cultural Treasures*, 3rd ed. (Cambridge: Cambridge University Press, 2007) 54-5.

²⁰ Dorothy King, *The Elgin Marbles* (London: Hutchinson, 2006) 296.

²¹ Kate Fitz-Gibbon, "The Elgin Marbles: A Summary," in *Who Owns the Past? Cultural Policy, Cultural Property and the Law*, ed. Kate Fitz-Gibbon (New Brunswick, NJ: Rutgers University Press, 2005) 109-114.

collection. The conditions that must be met for the removal of an object include physical damage, physical deterioration or infestation, the item in question is a duplicate of another artifact held in the collection or if it is found unfit to be kept.²² The only exception concerns objects from the Nazi era (1933-45), with claimants having lost ownership due to the actions of the National Socialist Government of Germany. Collection policies in the museum, last revised in 2010, have no provisions for repatriation.

Founded on the idea of representing the world in its entirety under one roof through works of art, the British Museum epitomizes internationalist views regarding the ownership of objects. Collecting broadly and inclusively, the museum places its holdings in trust for the world and in perpetuity.²³ The British Museum has revised its policies to adhere to the 1970 UNESCO Convention and will not acquire looted antiquities.²⁴ All new acquisitions must adhere to the strict guidelines of clear provenance dating prior to 1970. The museum's collection continues to be sustained and expanded to more accurately exhibit the civilizations and cultures of the world.

²² Trustees of the British Museum, "British Museum Policy on De-Acession of Registered Objects from the Collection," British Museum, http://www.britishmuseum.org/pdf/Deaccession_2010-03-04.pdf (accessed December 26, 2010).

²³ Neil Macgregor, "To Shape the Citizens," in *Whose Culture? The Promise of Museums and the Debate Over Antiquities*, ed. James Cuno (Princeton: Princeton University Press, 2009) 54.

²⁴ Trustees of the British Museum, "British Museum Policy on Acquisitions," British Museum, <http://www.britishmuseum.org/pdf/Acquisitions.pdf> (accessed December 26, 2010).

As a result of public debate, the museum utilizes the display of the Elgin Marbles to present its argument for the retention of the sculptures in London. Accessibility occupies the central position of the British Museum; for over two centuries the marbles consistently remained on exhibition and were cared for, free of admittance charges. It also argues that it is not the only institution housing Parthenon marbles; six additional institutions throughout Europe have sculptures from the building.²⁵ Other issues mentioned in the debate include the lack of sufficient funds for collections care in Greece, with many examples of sculptures from the Parthenon in Athens await conservation and are currently kept from public view.²⁶ Requests for repatriation continue and many scholars debate both sides of the controversy. Resolution regarding ownership of the marbles does not appear imminent.

Holding firm against claims for repatriation for items acquired hundreds of years ago, the British Museum disputes modern ownership claims. Adhering to the laws and customs at the time of procurement, the museum argues for retention of the debated objects.²⁷ Benefiting from its long history and early collecting

²⁵ The British Museum, "The Parthenon Sculptures," The British Museum, http://www.britishmuseum.org/the_museum/news_and_press_releases/statements/the_parthenon_sculptures.aspx (accessed January 8, 2011). Musée du Louvre, Paris; Vatican Museums; National Museum of Denmark (Nationalmuseet), Copenhagen; Kunsthistorisches Museum, Vienna; University Museum, Würzburg; Glyptothek, Munich; and the Acropolis Museum, Athens all house sculptures from the Parthenon.

²⁶ King, 303.

²⁷ Sharon Waxman, *Loot: The Battle Over of the Ancient World* (New York: Times Books, 2008) 268.

practices, the majority of the British Museum's collection was formed before the establishment of protocols in the twentieth century. Thus, the trustees continue to refute any claims brought by nations.²⁸ The ability to retain cultural artifacts in the United Kingdom has remained unmatched in museums throughout the world, and as of January 2011, no examples of repatriation have been identified.²⁹

Controversy surrounding the ownership of antiquities extends well beyond the Elgin Marbles. An examination of several instances exemplifies the diversity and magnitude of the claims by countries throughout the world. One of the most contested topics of contemporary times is the establishment of proprietary rights to ancient objects. Items identified as cultural property, regardless of when they were removed, continue to be requested and debated.

A more recent example of an unparalleled cultural property negotiation occurred in January 2005. Italy approached The J. Paul Getty Museum (Los Angeles) regarding fifty-two works of art in its collection which violated the 1939

²⁸ James Cuno, "Introduction," in *Whose Culture? The Promise of Museums and the Debate Over Antiquities*, ed. James Cuno (Princeton: Princeton University Press, 2009) 10. The Elgin Marbles are not the only objects requested by foreign nations. In recent years, Zahi Hawass requested the return of the Rosetta Stone to Egypt. Discovered in 1799 in Egypt, the stone was brought to London in 1802, remaining there ever since. The text, dated to 196 B.C., inscribed in the stone provided the key to translating hieroglyphs. For over two hundred years, the stone has been studied and viewed in London before Egypt requested the return of the object.

²⁹ Human remains are also an exception, in addition to Nazi era items. Lucy Ewing, "Museum's Commitment to Return Human Remains," *BBC News* <http://www.bbc.co.uk/news/uk-england-merseyside-11503589> (accessed January 9, 2011).

Italian patrimony law.³⁰ In the process of arbitration, Italy filed a legal suit in 2005 against Marion True, former Curator of Antiquities at the Getty.

Accusations against True included conspiring to acquire looted antiquities for the museum. After the discovery that she had breached the Getty's policy by failing to report a conflict of interest with the purchase of a vacation home on the Greek island of Paros in 1996, True resigned her post in October 2005.³¹ Despite the cessation of her employment, the Getty Trust paid for her legal defense.³² This trial represents the first action against an individual for his or her role in the procurement of ancient objects. After nineteen months of negotiations, forty objects were returned to Italy. The civil charges against True were rescinded after confirmation of the repatriation, while the criminal trial was dismissed in November 2010 because the statute of limitations had expired.³³

³⁰ Lyndel Prott and Patrick J. O'Keefe, "Handbook of National Regulations Concerning the Export of Cultural Property," *United Nations Educational, Scientific and Cultural Organization*, <http://unesdoc.unesco.org/images/0011/001191/119126eo.pdf> (accessed December 27, 2010) 113. Italy's patrimony law (Law of 1 June 1939 XVI, No. 1089) stipulated that any object of artistic, historic, archaeological or ethnographic interest exceeding fifty years in age became the property of the Republic of Italy. Regardless of the situation surrounding the find, any item meeting these criteria must be transferred to the state.

³¹ Hugh Eakin, "Embattled Curator Steps Down," *The New York Times*, October 4, 2005. <http://www.nytimes.com/2005/10/04/arts/design/04gett.html> (accessed July 26, 2010). True used her connection with a London based antiquities dealer to aid her in the procurement of a home. The dealer assisted True in establishing the needed contacts to secure a personal loan to buy a home. The failure to report the conflict of interest was in violation of the Getty's policy.

³² Sharon Flescher, "Getty Returning 40 disputed objects to Italy," *IFAR Journal* 9 (2007) 3.

The lawsuit against True and its ultimate outcome served to hold individuals responsible for aiding looting, intentionally or not. Paulo Ferri, the Italian criminal prosecutor, stated the actions against True were meant to be both punitive and preventative.³⁴ Ferri considered the case a success, as it encourages other museums to surrender objects under obligation. By doing so, the institution will not be subject to legal action.³⁵

True testified on March 19, 2009 that she unintentionally purchased the illegally excavated antiquities and stated proper procedures were always followed when procuring antiquities from the international market. These policies included contacting Ministry of Culture officials to inquire about liens on artifacts. Any

³³ Elisabeth Povoledo, "Trial Resumes For Former Curator," *The New York Times*, January 24, 2009. http://www.nytimes.com/2009/01/24/arts/design/24arts-TRIALRESUMES_BRF.html (accessed July 26, 2010). "Trial of Getty antiquities curator is finally over," *The Art Newspaper*, No. 218, pg. 7, Nov. 2010. Civil charges involve complaints in court from a private party and a request for financial compensation, while criminal charges suggest violation against a law and may include incarceration and fines as potential punishments. In the case of True, the return of forty objects by The J. Paul Getty Museum relieved her of Italy's fiscal complaint, however, the nation continued to press the criminal charges as they believed she intended to commit a crime. The closure of the trial resulted because in the eight years between the date of the original charges and the dismissal of the trial, the court system failed to officially find her guilty of a crime; therefore, the statute of limitations had been exceeded. In most nations, the court systems have a limited amount of time to conclude a trial and bring forth charges.

³⁴ Jason Felch and Livia Borghese, "Italy, Getty End Rift," *Los Angeles Times*, September 26, 2007. <http://articles.latimes.com/2007/sep/26/entertainment/et-getty26> (accessed January 9, 2009).

³⁵ Ibid.

item the Getty identified as stolen was returned to the country of origin, regardless of the statute of limitations.³⁶

Although the majority of the disputed artifacts between Italy and the Getty reached resolution, several items still require arbitration. Many ownership claims are complicated with no clear settlement. One particular object, a bronze statue of the *Fano Athlete* (also known as the *Victorious Youth*), recently received a confiscation order in early 2010 from the Italian courts. This work, obtained by the Getty in 1977, was discovered in international waters outside of Italy's sea boundaries in the 1960s. Part of an ancient shipwreck, the *Fano Athlete* was most likely removed from Greece and was traveling to Rome for reinstallation during antiquity.³⁷ The item never reached its destination. Since the individuals who found the sculpture brought it to Italy and the wreckage was Roman, the Italian government believes ownership of the artifact resides with the nation.³⁸ Italy's commitment to halt the devastation of its cultural property through instigation of the return of objects throughout the world manifests through the negotiations with the Getty. These actions created precedence for subsequent requests sent to other U.S. museums.

³⁶ Elisabeth Povoledo, "Getty Ex-Curator Testifies in Rome Antiquities Trial," *The New York Times*, March 20, 2009. <http://www.nytimes.com/2009/03/21/arts/design/21true.html> (accessed July 26, 2010).

³⁷ The J. Paul Getty Museum, *The J. Paul Getty Museum Handbook of the Antiquities Collection* (Los Angeles, California: Getty Publications, 2002) 44.

³⁸ Elisabeth Povoledo, "Italy Presses Its Fight for a Statue at the Getty," *The New York Times*, January 16, 2010. <http://www.nytimes.com/2010/01/16/arts/design/16bronze.html> (accessed August 1, 2010).

Another nation strongly committed to reclaiming objects, Egypt requested repatriation of ancient wall fragments from the Louvre in October 2009. The appeal for the objects resulted from the rediscovery of a painted tomb in Luxor in November 2008. Segments of the wall were missing and the fragments in the possession of the museum matched in size and content. Instead of reinforcing the provenance (or history of ownership) presented by the Louvre, the find connected the pieces with a known illegal excavation from the area in the 1980s.³⁹ Egypt alleged the Louvre had purchased stolen works of art. During the negotiations, Egypt suspended cultural collaborations with France, including joint archaeological endeavors. These actions created a new precedent for the nation; it will no longer collaborate with countries believed to participate in the illegal trade of its artifacts. Two days after the announcement of discontinuation of partnerships with Egypt, the French Ministry of Culture unanimously agreed to return the works.⁴⁰ Although other nations discontinued dealings with museums to resolve ownership disputes, the action against an institution such as the Louvre is unparalleled.

Zahi Hawass, then Secretary-General of the Egyptian Supreme Council of Antiquities, has occupied a central role in the repatriation of cultural items to their nation of origin. In April 2010, Hawass organized an international conference in

³⁹ Associated Press, "Egypt, Demanding Artifact's Return, Cuts Ties with the Louvre," *The New York Times*, October 7, 2009. http://www.nytimes.com/2009/10/08/world/middleeast/08egypt.html?_r=1&scp=1&sq=Louvre%20Museum%20returns%20antiquities%20to%20Egypt&st=cse (accessed March 19, 2010).

⁴⁰ Ibid.

Cairo, Egypt addressing the return of indigenous artifacts held in foreign museums. Hawass hoped the colloquium would create partnerships to increase the pressure on institutions to return objects through joint ventures.⁴¹ He emphasized that the focus of the summit was not for museums to return their entire collections of Egyptian antiquities, but rather the repatriation of iconic works representing and defining their ancient pasts, including the Rosetta Stone (currently in the British Museum, London) and the Bust of Nefertiti (on display at the Neues Museum, Berlin).⁴²

These examples represent the polarities in the debate over repatriation. In each situation, the museum maintains its innocence as a purchaser of the artifacts. However, these instances represent a small part of a larger amount of disputes. Requests for return or repatriation of cultural items require consideration in the post-colonial world. As territories developed from settlements to independent nations, early imbalances of power facilitated the removal of culturally significant items.⁴³ Newly independent, these nations identified artifacts representative of their heritage and pursued the repatriation of any object illegally removed. The first steps towards the creation of international legislation to protect cultural

⁴¹ Jason Koutsoukis, "Egypt pushes for return of antiquities to origin countries," *The Sydney Morning Herald*, December 7, 2009. <http://www.smh.com.au/world/egypt-pushes-for-return-of-antiquities-t> (accessed March 18, 2010).

⁴² Ibid.

⁴³ Barbara Hoffman, "Introduction: Exploration and Establishing Links for a Balance Art," in *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara Hoffman (Cambridge: Cambridge University Press, 2006) 4.

property originated from the desire to halt the seizure of objects as plunder during war. These practices were questioned, especially as many of the claimed objects were placed in the museums.⁴⁴ Beginning in 1899, international protocols were established to provide legal protection for artifacts in their country of origin.

Several recent publications analyze of the current state of issues surrounding repatriation. These include an anthology edited by James Cuno, *Whose Culture? The Promise of Museums and the Debate Over Antiquities* and *The Acquisition and Exhibition of Classical Antiquities: Professional, Legal and Ethical Perspectives*, edited by Robin Rhodes.⁴⁵ Cuno received his Ph.D. in art history from Harvard in 1985 and serves as the President and Director of the Art Institute of Chicago and teaches at Northwestern University. As a museum director, Cuno's position on repatriation centers on internationalism and the importance of museums in our society. He views objects as ambassadors of culture rather than hostages provides a balance to the discussion of the return of

⁴⁴ Patrick Boylan, "The concept of cultural protection in times of armed conflict: from the crusades to the new millennium," *Illicit Antiquities: The Theft of Culture and the Extinction or Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London: Routledge, 2002) 45.

⁴⁵ James Cuno, *Whose Culture? The Promise of Museums and the Debate Over Antiquities* (Princeton University Press, 2009); Robin Rhodes, ed., *The Acquisition and Exhibition of Classical Antiquities: Professional, Legal and Ethical Perspectives* (Nortre Dame, Indiana: University of Notre Dame Press, 2007). Additional books consulted but not discussed include: Colin Renfrew, *Loot, Legitimacy and Ownership* (London: Duckworth, 2006); Barbara Hoffman, ed., *Art and Cultural Heritage: Law, Policy and Practice* (Cambridge: Cambridge University Press, 2006); John Henry Merryman, Albert E. Elsen and Stephen K. Urice, eds., *Law, Ethics and the Visual Arts*, 5th ed. (The Netherlands: Kluwer Law International, 2007); and Jeanette Greenfield, *The Return of Cultural Treasures* 3rd ed. (Cambridge: Cambridge University Press, 2007).

cultural artifacts. In *Whose Culture?*, Cuno collaborated with museum directors, curators and scholars who support the concept of the museum as a steward for cultural artifacts. Resulting from a conference held in spring 2006, the participants emphatically argued for the value of museums in the debate regarding the ownership of antiquities. Participants included Neil MacGregor (Director, the British Museum), Sir John Boardman (Professor Emeritus, Oxford University), Philippe de Montebello (former Director, the Metropolitan Museum of Art), and John Henry Merryman (Professor Emeritus, Stanford University). The essays are divided into three subject headings: the value of museums, the value of antiquities and museums, and antiquities and cultural property. Well received by the museum community, *Whose Culture?* argues the internationalist position in favor of maintaining cultural artifacts in museum collections. Some source nations and several archaeologists vehemently oppose the work, for it advocates cultural artifacts are the property of the world and not belonging to specific nations.⁴⁶

The edited volume *The Acquisition and Exhibition of Classical Antiquities: Professional, Legal and Ethical Perspectives* resulted from a symposium which addressed cultural property and stewardship.⁴⁷ Thefts, trials

⁴⁶ Any nation that holds the remains of previous civilizations is a source nation. Remnants of past cultures may be incorporated into modern cities or underground in an archaeological deposit. However, the phrase source nation is also problematic as it does not provide a bias connotation of source vs. market. However, this term dominates a significant portion of the published literature and therefor has been used.

⁴⁷ Robin Rhodes, ed., *The Acquisition and Exhibition of Classical Antiquities: Professional, Legal and Ethical Perspectives* (Notre Dame, Indiana: University of Notre Dame Press, 2007). The symposium convened in February, 2007.

and requests for repatriation motivated this conference to address questions of ownership, the return of antiquities, and to determine if a consensus exists among different interest groups. Through the presentation of a diversity of viewpoints, the book clearly summarizes the opinions of archaeologists, museum directors and legal perspectives associated with the ownership of antiquities. The publication provides a largely objective and well balanced view.

A review of two exhibition catalogues published by Italy demonstrates insight into the Italian position. Both publications celebrate the success of the Italian carabinieri and highlight the return of objects of cultural heritage. *L'arma per l'arte*, by Cristina Marchetti, contains short essays by key figures in Italy associated with the Ministry of Culture, the Italian carabinieri, museums and archaeological sites.⁴⁸ The publication deplores plundering of Italy from 1939 all the way to the present and celebrates the efforts of the carabinieri to reclaim lost heritage through the successful return of artifacts. The second catalogue, *Nostoi: Capolavori ritrovati* by Louis Godart and Stefano De Caro, includes statements from directors of The J. Paul Getty Museum, The Metropolitan Museum of Art, Museum of Fine Arts, Boston and Princeton University Art Museum in the U.S., which all facilitated agreements to return artifacts to Italy.⁴⁹ Each director lauds the establishment of accords with Italy, primarily for the unprecedented access to

⁴⁸ Cristina Marchetti, *L'arma per l'arte: Archeological che ritorna* (Livorno Italy: Sillabe, 2009).

⁴⁹ Louis Godart and Stefano De Caro, *Nostoi: Capolavori ritrovati* (Roma: Segretariato Generale della Presidenza della Repubblica, 2007).

Italian artifacts generously offered by the nation. Both of these publications present the return of objects of cultural heritage and demonstrate Italian dedication to repatriation.

Perhaps the largest collection of information regarding current repatriation claims is from newspapers and art-based publications, which capture much attention in the media. Limited by the lengthy publication process of journal articles and books, which tend to be produced years after an event occurs, many recent repatriation requests have yet to be fully explored by scholars. The peer review process of these types of works is valuable, in contrast to the lack of such safeguards in news articles, which must be carefully reviewed for accuracy and bias.

The second chapter of this thesis traces the development of cultural property protocols, with specific attention to the legislation leading to the agreement between the Metropolitan and Italy. The 1954 Hague Convention and the 1970 UNESCO Convention focus on two of the most important pieces of international legislation protecting heritage objects. The first combats the illegal removal of archaeological materials during armed conflict and the latter protects cultural property during times of peace. The 1970 UNESCO, through the provision for the foundation for the agreement, attempts to end the illegal antiquities trade. Examination of UNIDROIT (International Institute for the Unification of Private Law), proposed in 1995, reveals innovative legislation but lacks real agency, as it lacks acceptance internationally by many nations,

including the United States. UNIDROIT provides methods to recover stolen cultural property.

The examination of these conventions derives from the original legislation and protocols. These conventions are useful primary sources and are available to the public. Numerous secondary sources assess each convention and supplement the review of each protocol. One particularly authoritative source on The 1954 Hague Convention is Patrick Boylan's essay "The Concept of Cultural Protection in Times of Armed Conflict: From the Crusades to the New Millennium" in *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*.⁵⁰ This study critically analyzes the historical development and practicalities of the Hague Convention using legal and governmental records.

John Henry Merryman, an expert on cultural property legislation in relation to art law, compares the Hague Convention with the 1970 UNESCO Convention and examines their significance in "Two Ways of Thinking about Cultural Property."⁵¹ Merryman explains the implications of both legislations and contends that UNESCO sought to end the destruction of cultural artifacts outside of armed conflicts. The anthology *Art and Cultural Heritage: Law, Policy and Practice* edited by Barbara Hoffman, a New York art lawyer, is crucial to the examination of all the protocols. The volume provides a variety of perspectives

⁵⁰ Patrick J. Boylan "The concept protection in times of armed conflict: from the crusades to the new millennium," in *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, eds. Neil Brodie and Kathryn Walker Tubb (London: Routledge, 2002) 43-108.

⁵¹ John Henry Merryman, "Two Ways of Thinking About Cultural Property," *The American Journal of International Law* 80, no.4 (Oct., 1986): 831-853.

from lawyers, archaeologists, governmental officials, architects, and museum professionals, all of which address national and international laws to protect cultural heritage. Several essays, including “International Art Transactions and the Resolution of Art and Culture Property Disputes: A United States Perspective,” by Hoffman, explains the implementation of the 1970 UNESCO in America, as it clearly presents the development of policies in the U.S.⁵² Additionally, this anthology examines the protection of underwater cultural heritage (discussed further in this thesis) through two articles by Forrest Booth and Tullio Scovazzi. These authors discuss the two dominant sides of the issues surrounding ownership of underwater culture. Another work, *Who Owns the Past? Cultural Policy, Cultural Property and the Law*, edited by Kate Fitz-Gibbon, provides a comprehensive account of the development of legislation.⁵³ Contributors to this volume include legal scholars, museum professionals, anthropologists, archaeologists and collectors. In its concluding statements, the work suggests the focus should be on cultural internationalism, which advocates the development of methods to share heritage. In addition to returning objects, one means to achieve cultural internationalism involves utilization of technology and expertise to build additional cultural centers, the dedication of funds to support institutions in crisis and the establishment of endowments to financially

⁵² Barbara T. Hoffman, ed. “International Art Transactions and the Resolution of Art and Cultural Property Disputes: A United States Perspective,” in *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara T. Hoffman (Cambridge: Cambridge University Press, 2006)159-177.

⁵³ Kate Fitz-Gibbon, ed., *Who Owns the Past? Cultural Policy, Cultural Property, and the Law* (New Brunswick: Rutgers University Press, 2005).

support archaeological endeavors. Although not universally accepted, it suggests a method which allows for collaboration and public access to global heritage throughout the world. The agreement between Italy and the Metropolitan embodies this ideal.

As the Metropolitan Museum recently responded to ownership disputes, it reflects an establishment changing its policies to comply with international legislation and thus is the focus of Chapter 3. The Metropolitan, one of the oldest and most significant museums in the United States, is a leader among cultural institutions in the nation. An examination of the Metropolitan reveals a history of questionable collection practices and inadequate conformation to developing international protocols regarding artifact acquisition, all of which led to the scandal surrounding the Euphronios Krater.

In contrast to the easily accessible legal documents, newspaper articles and academic secondary sources, the internal archives of the Metropolitan are unavailable to the public. This lack of transparency in museum practices is further obfuscated by books endorsed by the Metropolitan. These texts, which are authored by or about individuals associated with the museum, include Calvin Tomkins' *Merchants and Masterpieces, the Story of the Metropolitan Museum of Art*.⁵⁴ This informative source examines the history of the Metropolitan. Tomkins collaborated with retired and current staff and the widowed wives of former museum employees and noted in his introduction that the director of the museum

⁵⁴ Calvin Tomkins, *Merchants and Masterpieces: The Story of the Metropolitan Museum of Art* (New York: Henry Holt and Company, 1989).

did not influence the content. However, the museum played a significant role in the generation of the manuscript, as the idea for it was originally developed by the Metropolitan and the museum aided in paying researchers and editing the document.⁵⁵ Thus, Tomkins' book reflects the history of the museum as the institution wants it perceived. In direct opposition to this biased approach (favorable to the museum), recent publications by Sharon Waxman (*Loot*),⁵⁶ Peter Watson with Cecilia Todeschini (*The Medici Conspiracy*)⁵⁷ and Michael Gross (*Rogue's Gallery*) present a less attractive view of the museum's history.⁵⁸ Waxman discusses a select number of problematic acquisitions by the Metropolitan and conducted many interviews with key individuals at the museum over the last twenty years. Unfortunately, it is difficult to accept her claims in their entirety, due to her sensational approach to the facts and her highly problematic use of anonymous sources. However, the reticence of the Metropolitan to allow public access to its internal records adds more authenticity to her work. *The Medici Conspiracy* summarizes the raid by the carabinieri, which provided the evidence for the illegal acquisition of the krater and subsequent trial

⁵⁵ Michael Gross, *Rogues' Gallery: The Secret History of the Moguls and the Money that Made the Metropolitan Museum* (New York: Broadway Books, 2009) 2.

⁵⁶ Sharon Waxman, *Loot: The Battle Over of the Ancient World* (New York: Times Books, 2008).

⁵⁷ Peter Watson and Cecilia Todeschini, *The Medici Conspiracy: The Illicit Journey of Looted Antiquities, from Italy's Tomb Raiders to the World's Greatest Museums* (New York: Public Affairs, 2006).

⁵⁸ Michael Gross, *Rogues' Gallery: The Secret History of the Moguls and the Money that Made the Metropolitan Museum* (New York: Broadway Books, 2009).

of Giacomo Medici. Watson, a research associate at the McDonald Institute for Archaeological Research at the University of Cambridge, also has a career as a reporter. Cecilia Todeschini, an Italian journalist, aided Watson in his investigation and works as a reputable researcher and translator. Although clearly dedicated to a popular, general audience, primary documentation and interviews form the base for the evidence presented in this book.⁵⁹ *Rogues Gallery*, the work of New York journalist Michael Gross, covers the entirety of the museum's history and centers on the individuals associated with the institution, such as former directors, trustees and donors. Written sensationally, a team of researchers supported Gross in presenting the untold history of the Metropolitan.

An examination of the history of the Euphronios Krater (Fig.1), an object repatriated by the Metropolitan Museum of Art, illustrates the complexities surrounding the return of contested cultural property. The fourth chapter presents the history of the acquisition of the krater and assesses the response of the museum to cultural property laws and the Italian request for repatriation. Controversy surrounded this object from the initial announcement of its acquisition. Thomas Hoving, Director of the Metropolitan from 1967-1977, recounted withholding information from the acquisitions committee and states in print that both he and Dietrich von Bothmer, Chief Curator of the Department of Greek and Roman Art, were aware of the probability of illegal excavation of the

⁵⁹ Peter Watson and Cecilia Todeschini "The Medici Conspiracy: An Exchange," *The New York Times Review of Books*, <http://www.nybooks.com/articles/archives/2006/jul/13/the-medici-conspiracy-an-exchange/> (accessed December 27, 2010). The contested points in this article are relatively minor, focusing on the exact date of an occurrence rather than significant issues.

object but did not share their concerns with the museum's collection committee.⁶⁰ Occurring just before the ratification of the 1970 UNESCO Convention, the timing of the purchase of the vessel was intentional. Guidelines set forth by the convention were consciously ignored, although the convention was not yet fully ratified in the U.S. Thirty years later, the krater was returned to Italy. The fulfillment of the repatriation request and policy revisions to the Collections Management Policy at the Metropolitan to ensure conformity to the 1970 UNESCO Convention demonstrates the failure to adhere to policies outlined for the acquisition of ancient artifacts. The acquisition of the Euphronios Krater was well documented and, according to Roger Atwood, was the single catalyst in the increasing enforcement of prohibition of the import of unlicensed antiquities.⁶¹ Long term loans of equivalent artifacts to the Metropolitan from Italy for the repatriated objects enables the Metropolitan to secure its future as a universal survey art museum, i.e., a museum which displays art representing the history of world civilizations. The Metropolitan's response to past transgressions, including the subterfuge of the acquisition of objects prior to implementation of the 1970 UNESCO Convention in the United States and continuing to procure items without clear provenance before 1970, illustrates its to conform to new guidelines and viewpoints. Although Italy retains ownership under the new loan agreement, the artifacts lent to institutions enable museums to show important objects which

⁶⁰ Thomas Hoving, *Making the Mummies Dance: Inside the Metropolitan Museum of Art* (New York: Simon & Schuster, 1993) 319.

⁶¹ Roger Atwood, *Stealing History: Tomb Raiders, Smugglers, and the Looting of the Ancient World* (New York: St. Martin's Griffin, 2004) 149.

would otherwise be unavailable to their audiences. Loans permit more access to museum visitors to the diversity of artifacts and allow the Metropolitan to develop more comprehensive exhibitions. Many more additional works of art than the amount returned have been offered as four year loans to the museum. Without this provision, the museum would not have any access to Italy's collections.

A central provision of the agreement between the Metropolitan and Italy, also discussed in Chapter Four, is the instigation of long term loans of equivalent materials in exchange for the items repatriated. This accord enables the Metropolitan to secure its future as a universal survey art museum, i.e., a museum displaying works of art representing the history of world civilizations. The Metropolitan's response to past transgressions illustrates its new resolve to conform to new guidelines and viewpoints. Although Italy retains ownership under the new agreement, loans enable museums to show important objects which would otherwise be unavailable to their audiences. Loans permit more access by larger audience to museum collections and provide museums, such as the Metropolitan, to develop more comprehensive exhibitions. The agreement encourages more items lent than the amount returned. Without this provision, the museum would not have any access to Italy's collections.

The *International Journal of Cultural Property* published the agreement in its entirety.⁶² Two secondary sources regarding the Metropolitan-Italy agreement

⁶² The Ministry of Cultural Assets and Activities for the Italian Republic and The Metropolitan Museum of Art, "The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006," *International Journal of Cultural*

include a recent publication by Aaron Briggs, “Consequences of the Met-Italy Accord for the International Restitution of Cultural Property,” and a book by Simon Mackenzie and Penny Green, *Criminology and Archaeology: Studies in Looted Antiquities*.⁶³ Briggs’ article critiques the agreement between the Metropolitan and Italy from a legal perspective. He reviews the accord and explores the possibility of the agreement as a model for subsequent dispute resolution. The anthology by Mackenzie and Green explores the illicit antiquities market from the perspective of criminologists and archaeologists and focuses on the 2001 Memorandum of Understanding (MOU). In his article, “Border Controls in Market Countries as Disincentives to Antiquities Looting at Source? The US-Italy Bilateral Agreement 2001,” Lobay assesses the probability of success for the agreement.⁶⁴ He illustrates that without larger application, the benefits of import restrictions in the United States will not globally halt the procurement of Italian antiquities.

Property (2006) 429-432. It is also found in “The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006,” in *Law, Ethics and the Visual Arts*, 5th ed., eds., John Henry Merryman, Albert E. Elsen and Stephen K. Urice (The Netherlands: Kluwer Law International, 2007) 406-413.

⁶³ Simon Mackenzie and Penny Green, *Criminology and Archaeology: Studies in Looted Antiquities* (Portland, OR: Hart Publishing, 2009), and Aaron Kyle Briggs, “Consequences of the Met-Italy Accord for the International Restitution of Cultural Property,” *Chicago Journal of International Law* 7 (2006-2007): 623-653.

⁶⁴ Gordon Lobay, “Border Controls in Market Countries as Disincentives to Antiquities Looting at Source? The US-Italy Bilateral Agreement 2001,” in *Criminology and Archaeology: Studies in Looted Antiquities*, eds., Simon Mackenzie and Penny Green (Oxford and Portland, OR: Hart Publishing, 2009) 59-80.

Consideration of the debate regarding mediation of the ownership of antiquities by following the guidelines of the 1970 UNESCO Convention and the future role of the encyclopedic museum concludes Chapter 5. A balance of continuing to display ancient works of art with a commitment to protecting cultural property must be achieved. Every collections management policy should outline procedures to ensure that every antiquity has clear provenance before 1970. Museums should continue to develop relationships with source countries in order to facilitate exhibition of works from all cultures and periods from the world.

The Metropolitan Museum of Art exemplifies an institution conscientiously responding to cultural property laws and requests for repatriation by other nations. Allowing for reflection on the best practices for museums in the modern era, the Metropolitan negotiates collection building and accountability to cultural property legislation. One of the ways the museum supplements its ancient object collection is through temporary loans from museums throughout the world. In the past, nations have not been as dedicated to sharing their resources. The agreement between the Metropolitan and Italy specifically addresses the exchange of objects. Renewing the commitment to loan works of art through this document, Italy strives to create beneficial collaborations which will continue for many years.

The acquisition of the Euphronios Krater and the ensuing ownership dispute represents ethical issues of the collecting of ancient artifacts. The determination of the best practices for ancient artifacts without clear provenance

demonstrates a difficult challenge for the world. A conscientious balance must be reached between an institution presenting and preserving objects for the public and continuing to purchase works with missing or falsified provenance, thereby supporting the illegal trade of artifacts. Additionally, museums possess some of the best resources to determine the possible origins for works without complete provenance.

A new precedence in ownership disputes began with the repatriation of the Euphronios Krater. The methods for expanding ancient art collections have greatly changed in the modern era. Guidelines regulating the exchange of objects led to the development of international conventions. The development and acceptance of these protocols are explored in the following chapter.

Chapter 2

LEGISLATION: CULTURAL PROPERTY

Viewpoints regarding the ownership of ancient objects continue to be debated.¹ For centuries, victors of war removed any monument, work of art or archive they desired from the homeland of the defeated. These objects were then installed in royal palaces or governmental offices and signified the valor of the conqueror. Importation of Roman ancient sculptures began in earnest in the sixteenth century and filled the houses of the wealthy.² Another means of acquiring antiquities in source nations was clandestine digs. The circumventing of national authorities allowed objects to exchange hands and permitted dealers to ignore property laws.

As time progressed, many source nations began to view the items representing their ancient heritage differently and were in a political position to halt the practice of the removal of objects that had previously been customary. The peninsula of continental Europe, now recognized as Italy, was controlled by a

¹See Kate Fitz Gibbon, *Who Owns the Past? Cultural Policy, Cultural Property and the Law* (New Brunswick: Rutgers University Press, 2007); Jeanette Greenhill, *The Return of Cultural Treasures*, 3rd ed. (Cambridge: Cambridge University Press, 2007); Barbara Hoffman, ed., *Art and Cultural Heritage: Law, Policy and Practice* (Cambridge: Cambridge University Press, 2006); Karl E. Meyer, *The Plundered Past* (New York: Atheneum, 1973), Neil Brodie, et al. eds., *Archaeology, Cultural Heritage, and the Antiquities Trade* (Gainesville: University Press of Florida, 2006); and Robin Rhodes, ed., *The Acquisition and Exhibition of Classical Antiquities: Professional, Legal and Ethical Perspectives* (Notre Dame: University of Notre Dame Press, 2007).

² Francis Haskell and Nicholas Penny, *Taste and the Antique: The Lure of Classical Sculpture 1500-1900* (New Haven: Yale University Press, 1981) 53.

succession of invaders following the fall of Rome in the 5th century until the foundation of a single kingdom in 1860. The new nation was beset with civil war and foreign influence until the end of World War II.

Rising to power in 1925 with his election as Prime Minister, Benito Mussolini offered new hopes to the fractured and weak nation through fascism and the promised resurrection of Italy to its past glories.³ Mussolini viewed ancient Rome as the heritage of the new Fascist state he ruled, providing the link from the past to the future through the rebirth of imperial Rome.⁴ He sought to protect the era he desired to recreate. In 1939 under Mussolini, Law of 1 June 1939 V XI, No. 1089 *Concerning the Protection of Objects of Artistic and Historic Interest*, became law. This national legislation vested ownership of all cultural objects found during archaeological excavations or by chance as property of the state and required a license to export the artifacts. The link between ancient and modern times Mussolini sought to evoke was not innovative. Nationalistic writers, including Vincenzo Cuoco, utilized explored the foundations of Italy through the early civilizations of the Etruscans and Romans to inspire the spirit of unification since the eighteenth century.⁵

³ Christopher Duggan, *The Force of Destiny: A History of Italy Since 1796* (Boston, New York: Houghton Mifflin Company, 2008) 449.

⁴ *Ibid.*, 498-9. Mussolini was elected the 40th Prime Minister of Italy and became the dictator of the nation, ruling from 1923 until 1943.

⁵ *Ibid.*, 28. Vincenzo Cuoco wrote one of the first patriotic novels in Italy and connected the modern nation to the Etruscan state as its foundations. Vincenzo Cuoco and Rosario Diana, *Platone in Italia: sette possibili itinerari* (Napoli: Pagano, 2000). Originally published in 1804-6, Cuoco sought to spur and unite

Ancient artifacts continued to embody the concept of the nation in Italy, with many items imbued with symbolism for a collective distinctiveness.⁶ Centuries of inconsistent government rule had created an ideal environment for the pilfering of ancient sites and the discontinuation of this practice became a central focus beginning in 1939. Law No. 1089 had sought to halt these practices, yet the penal code in Italy saw the theft of archaeological material as an insignificant crime with little consequences.⁷ This further facilitated the illegal trade of archaeological goods, with objects entering private collections and museums worldwide. In 1969, Italy founded the carabinieri to aid in the repatriation of stolen artifacts. This organization also began actively protecting objects of cultural heritage in Italy and promoted the increasing of the consequences for its theft.⁸ Through the enactment of international legislation to protect cultural property and national protocols, nations such as Italy slowly began to reclaim their heritage by requesting the return of items removed illegally.

the people while the French began advancing on the peninsula. As the years progressed, this connection to the past continued through the work of subsequent writers.

⁶ Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge: Cambridge University Press, 2006) 19.

⁷ Giovanni Pastore, "The Looting of Archaeological Sites in Italy," in *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, eds. Neil Brodie, Jennifer Doole and Colin Renfrew (Cambridge: McDonald Institute for Archaeological Research, 2001) 155 and 160. Effective as of January 2000, Decree Number 490 increased severity of punishment for archaeological crimes.

⁸ Cristina Marchetti, *L'arma per l'arte: Archeological che ritorna* (Livorno, Italy: Sillabe, 2009) 10-11.

Objects are considered to be art by some and cultural artifacts by others further complicating cultural property disputes. Museums, collectors and dealers negotiate complex international treaties, customs policies and national, civil and criminal laws in order to lawfully exchange objects. Over the last century, international conventions combated the destruction and removal of cultural property in times of war and peace. Each subsequent agreement generated worldwide legislation providing protection to objects representing the heritage of a nation. Despite these attempts, the electoral nature of these conventions, with nations able to decide whether or not to comply with the legislation, has prevented international enforcement, allowing for inconsistencies in the treatment of cultural artifacts. Without universal acceptance, objects of heritage are not completely protected.

This chapter analyzes the development of international legislation and treaties, as well as national laws in the United States, which serve to determine ownership and protect objects of cultural property. Despite worldwide issues of ownerships, this analysis centers on one nation, the United States. This choice allows for a more complete analysis of the legislation that led to the return of objects from the Metropolitan Museum of Art to Italy. Furthermore, policies written specifically for museums and observed by the Metropolitan, including the International Council of Museums (ICOM), the American Association of Museums (AAM), and the American Association of Museum Directors (AAMD), reflect the principles guiding collection development in art museums in this country.

The term *cultural property* refers to any object deemed pivotal to the cultural development of a society or representative of its origins. Such items may also be archaeological or ethnographic in nature.⁹ The Federal Register Notice (a list of agreements and laws of the United States) notes these “items often constitute the very essence of a society and convey important information concerning a people’s origin, history and traditional setting.”¹⁰ General knowledge of mankind increases upon study of these objects, allowing for the enrichment of all people from different cultures.

The main sources of information about the past civilizations include monuments, objects and artifacts (or cultural property) and trace the development of specific civilizations, providing insights into their daily life, beliefs and society. Museums, which display such objects, are responsible to a diverse public who engage with original works of art. These institutions introduce the diversity and connections of the world’s cultures.¹¹ Accessibility to a variety of artifacts representing all times and civilizations increases the knowledge of the viewer,

⁹ Archaeological refers to artifacts, generally found in the ground, which represent past cultures while ethnographic objects may or may not be found in the ground but are associated with a particular cultural group. Some objects of cultural property circumvent these two descriptions and yet are still considered cultural property because of their accepted cultural significance.

¹⁰ Federal Register Notice: January 23, 2001; 66 (15): 7399-7402, Import Restrictions Imposed on Archaeological Material Originating in Italy and Representing the Pre-Classical, Classical and Imperial Roman Periods. <http://culturalheritage.state.gov/it01fr01.html> (accessed January 3, 2009).

¹¹ James Cuno, *Whose Culture? The Promise of Museums and the Debate Over Antiquities* (Princeton and Oxford: Princeton University Press, 2009) 17.

expounds individual refinement and serves to enlighten the populace.¹²

Collections which represent a significant portion of civilizations, past and present, promote inquiry.¹³

International Protocols: Hague Conventions The Hague Convention 1899

Spanning a period of one hundred years, a series of interconnected international conventions created protocols protecting objects and monuments during times of war or armed conflict. The conventions continued to undergo reaffirmation and evolved to address issues in modern wars. The first formal international treaty, the 1899 Hague Peace Convention, provided protection for cultural property.¹⁴ Instigated by the Tsar of Russia, the goal of the conference centered on lessening the evils of war by halting the development of advanced armaments and creating amicable settlements of disputes.¹⁵ The Industrial

¹² Tony Bennett, *The Birth of the Museum: History, Theory, Politics* (London and New York: Routledge, 1995) 24.

¹³ Cuno, 37.

¹⁴ Geoffrey Best, "Peace conferences and the century of total war: the 1899 Hague Conference and what came after," *International Affairs* 75 (1999) 619. The name of the convention refers to the location of the meeting, The Hague in the Netherlands. The timing of the treaty followed several significant wars, most importantly the Franco-Prussian War (1870-1871). Following the resolution of this conflict was the initial 1874 Conference. In the interim years, conflicts also occurred during the Russo-Turkish War (1877-1878), which may have fostered the implementation of the 1899 Hague Convention. An arms race dominated the world's military establishments, and the three most powerful and oldest empires, China, Spain and the Ottoman began to lose supremacy. As a result of this political environment, new governments arose out of significant conflict and caused an immediate need for international respect for ancient artifacts and buildings during these conflicts.

Revolution had dramatically changed how wars were fought in the nineteenth century, and this convention hoped to mitigate the consequences of martial conflicts. Twenty-six nations attended the convention, including Belgium, France, Germany, Italy, Russia, the United Kingdom and the United States. The convention created the laws of war, set guidelines for the development of weaponry with standards for the protection of citizens during bombardment, and instigated an international court to negotiate differences.

Central to The Hague Convention was the *Regulations Respecting the Laws and Customs of War on Land*. Comprised of sixty articles, the Regulations created an outline of policies of war, as well as prohibitions against the use and development of specific classes of armaments while discouraging the destruction of cultural monuments. Article 56 of the document prohibited the seizure, destruction, or intentional damage to religious, charitable and educational institutions, historic monuments and works of art and science. Under this article, regardless of ownership, cultural artifacts should be treated as private property rather than belonging to the State.¹⁶ The view of these artifacts as property of an individual rather than nations diminished the symbolic value of an object upon removal from a nation, the case in earlier conflicts such as the Napoleonic Wars when procured items were brought by Napoleon to the Louvre for display. Designation of objects as private property attempted to lessen the nationalistic

¹⁵ Ibid., 622.

¹⁶ John Merryman and Albert Edward Elsen, eds., *Law, Ethics, and the Visual Arts: Cases and Materials*, 2nd ed. (Philadelphia: University of Pennsylvania Press. 1987) 14.

symbolism of removing artifacts during conflict.¹⁷ The identification of works as private property lessened the probability of theft by lowering the prestige of the act as it was against an individual and not the nation. Today, over a century later, the 1899 Hague Peace Convention still represents customary international law and in its time established the mechanism for the creation of international courts that would be realized a century later.¹⁸

The Hague Convention 1907

The addition of regulations were further clarified in 1907 in The Hague Convention. After a series of conflicts and wars, the international community expanded on the 1899 Convention. Revisions only slightly differed from the 1899 Hague Convention and specified the adoption of a series of interrelated treaties relating to the Laws and Customs of War and Annexed Regulations.¹⁹ When comparing the two documents, there are changes in language for clarification as

¹⁷ The 1899 Hague Peace Convention preceded the definition of cultural property; instead the convention sought to stop the removal of items as prizes of war. Cultural property was defined in the 1970 UNESCO Convention.

¹⁸ Patrick J. Boylan, "The Concept of Cultural Protection in Times of Armed Conflict: From the Crusades to the New Millennium," in *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, eds., Neil Brodie and Kathryn Walker Tubb (One World Archaeology, Vol. 42, London; New York: Routledge. 2002) 48. See David D. Caron, "War and International Adjudication: Reflections on the 1899 Peace Conference," *The American Journal of International Law* 94 (January 2000) 30. Customary International Law is a law or rule considered to be binding by the international community regarding but not limited to use of force, crimes against humanity, genocide, piracy and slavery. See Anthea Elizabeth Roberts, "Traditional and Modern Approaches to Customary International Law: A Reconciliation," *The American Journal of International Law* 95 (Oct. 2001) 757-91.

¹⁹ Boylan, 48.

well as additions. Containing fifty-six clauses, the most important sections to cultural heritage include Articles 25, 27, 28 and 56.²⁰ These articles are equivalent to the articles of the 1899 Hague Convention. Minor additions to Article 27 included the clarification of the requirement of the besieged to display distinctive signs on buildings and historic monuments to guarantee protection under the article.²¹

Two significant modifications to vocabulary in Article 56 of The Hague Convention Respecting Laws and Customs of War on Land and Annexed Regulations of 1907 created implications for cultural property. The first line of

²⁰ Hague 1907 Convention. International Committee of the Red Cross, “Convention (IV) respecting the laws and Customs of War on Land and its annex; Regulations concerning the Laws and Customs of War on Land. <http://www.icrc.org/IHL.nsf/Full/195?OpenDocument> (accessed March 25, 2010). The articles listed below are directly quoted from the convention: Article 25: “The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.” Article 27: “In sieges and bombardments all necessary steps must be taken to spare as far as possible, buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.” Article 28: “The pillage of a town or place, even when taken by assault, is prohibited.” Article 56: “The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.”

²¹ Hague 1899 Convention and Hague 1907 Convention. International Committee of the Red Cross, “Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land”. <http://www.icrc.org/IHL.nsf/FULL/150?OpenDocument> (accessed March 25, 2010).

the article changed from the property of the communes to that of municipalities. Although in some countries the terms may be reciprocal, the use of municipalities created a stronger tie to urban political units, implicating wider governmental jurisdictions. The second modification included the addition of the word “legal” to the consequences for improper treatment of the property defined in the article and added the provision for judicial proceedings to resolve conflicts.

The Hague Convention 1954

The first convention to use the term “cultural property” and the next development in legislation was the UNESCO (United Nations Educational, Scientific and Cultural Organization) *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, also known as The 1954 Hague Convention. This Convention possessed two protocols: the first dated to 1954 and the second to 1999. Eighty-six nations participated in the conference, which originally convened in 1945 following World War II and the Nuremberg trials. Nine years after the original meeting on May 14, 1954, the Convention was completed. The participants recognized the magnitude of the damage to cultural property resulting from the recent armed conflicts. One of the first charges of the document created a concise definition of cultural property, which the High Contracting Parties determined to be both movable and immovable property of significance to world heritage. Included among these possessions were monuments of architecture, art or history, archaeological sites, manuscripts,

books, and scientific collections.²² The Convention built on its predecessors through several important principles. One of the most significant involved the concept of international interest in the cultural heritage of all of humanity and, thus, required protective measures at an international level.²³ For the first time, cultural property was recognized for its value to society as a whole.

The safety of cultural property during times of conflict embodied another principle included in the Convention. Article 3 states, “The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.”²⁴

Guaranteeing the safety of such items requires determination of a physically secure area for the object to reside and military training to identify and avoid such areas.

Parties to the Convention must respect cultural property in their own territories as well as those of other contracting parties as part of Article 3. They agree not to requisition movable cultural property.²⁵ The only waiver of these

²² United Nations Educational, Scientific and Cultural Organization, *Convention on the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention* (Hague, 1954) http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed August 10, 2009).

²³ Boylan, 63. See John Henry Merryman, “Two Ways of Thinking about Cultural Property” in *The American Journal of International Law* 80 (Oct. 1986) 841.

²⁴ UNESCO (Hague, 1954), Article 3.

protocols is when “military necessity imperatively requires such a waiver.”²⁶ If a building or other cultural monument is used militarily during a conflict, then the item may be targeted. For example, preceding the Convention during World War II, principles of this legislation were already in practice and allowed for the destruction of a monument. Situated between Rome and Naples, the location of the Abbey of Monte Cassino was crucial for the Allies to break through German lines.²⁷ As a result of intelligence reporting the presence of the Germans and their vehicles combined with pressure from commanders, the building was bombed by the Allies.²⁸ The military actions were justified by Allied intelligence and identification of the misuse of a cultural monument by enemy forces.

Only half of the attending nations signed in 1954, with neither the United States nor the United Kingdom initially accepting the Convention. Since the original meeting, the High Contracting parties to the legislation have periodically conferred on implementation activities and have exchanged views on national

²⁵ Movable cultural property is any item that may be removed and carried off by an invading party. This includes sculptures in plazas, items in museums or other institutions, among additional items.

²⁶ UNESCO (Hague, 1954) Article 4 No. 2.

²⁷ Lynn H. Nicholas, *The Rape of Europe: The Fate of Europe's Treasures in the Third Reich and the Second World War* (New York, Vintage Books, 1995) 246.

²⁸ Nicholas, 247. In the aftermath of the destruction of the abbey, Allied troops found the building destroyed but the Germans entrenched around the abbey unharmed. Seizure of the area resulted only when the Germans abandoned the site. The destruction of the building and loss of life did not reap the intended benefits and resulted in significant criticism of the Allied forces for their practices. Despite the justification of “military necessity”, this building did not need to be destroyed.

enforcement.²⁹ At the seventh meeting in December 2007, both the United States and the United Kingdom announced their intentions to join the Convention. The U.S. ratified the 1954 Hague Convention in March 2009.³⁰ The fifty-five year delay in joining the Convention had been the result of, in part, increasing Cold War tensions. After the collapse of the Soviet Union in 1990, the U.S. military withdrew objections to the Convention, and the Senate voted in September 2008 to become a party to the 1954 Hague Convention.³¹ The looting in Iraq museums and archaeological sites between 1991 and 2005, along with the public attention associated with these acts, motivated the U.S. Senate to become a party to the Convention.³² Although the United States previously followed many of the principles through policy, such as training personnel in cultural property

²⁹ United Nations Educational, Scientific and Cultural Organization, “Seventh Meeting of the High Contracting Parties,” (Hague 1954) <http://unesdoc.unesco.org/images/0016/001603/160373e.pdf> (accessed April 2, 2010).

³⁰ Society for Historical Archaeology, “U.S. Ratifies Treaty to Protect Cultural Property in Time of War,” *Society for Historical Archaeology*, <http://www.sha.org/news/documents/USRatifiesTreatytoProtectCulturalPropertyinTimeofWar.pdf> (accessed April 2, 2010). See American Anthropological Association, “US Senate Ratifies Agreement to Protect Cultural Resources,” *American Anthropological Association*, <http://www.aaanet.org/issues/policy-advocacy/AAA-Supports-the-1954-Hague-Convention.cfm> (accessed April 2, 2010).

³¹ It is unclear why the United States waited twenty years after the Cold War to sign the Convention. Disputes over the ownership of artifacts may have resulted in the review of the legislation leading to final acceptance.

³² Society for Historical Archaeology “U.S. Ratifies Treaty to Protect Cultural Property in Time of War,” *Society for Historical Archaeology*, <http://www.sha.org/news/documents/USRatifiesTreatytoProtectCulturalPropertyinTimeofWar.pdf> (accessed April 2, 2010).

protection, ratification further clarified the responsibilities of the military. These included considering the protection of cultural property early in military planning as well as the recruitment of preservation professionals.

The effectiveness of the 1954 Hague Convention has increased in recent years. Today, only one of the five permanent members of the U.N. Security Council has not ratified the Convention.³³ The United Kingdom has yet to implement the Convention into law. The British Parliament introduced the Armed Conflicts Bill to ratify the Convention, however, in December 2008 the legislation failed because of insufficient support and prevented the United Kingdom from becoming a party.³⁴ Enforcement of the Convention was enhanced, as most of the leading powers of the world are in agreement regarding the protection of cultural objects during armed conflict.

In 1999, the Hague Convention refined the original draft of the 1954 Hague Convention with the Second Protocol. The changes in the Second Protocol addressed the failure of the previous document to prevent losses over the past forty-five years. Among many items clarified in the new protocol was the

³³ Boylan, 76. Boylan originally stated three of the five permanent members had not signed the Convention, however, since the publication of his article both China and the United States ratified the 1954 Hague Convention.

³⁴ United Kingdom National Commission for UNESCO, "UK Alone in Heritage Protection Omission," http://www.unesco.org.uk/uk_alone_in_heritage_protection_omission (accessed April 2, 2010). The reasons for the failure of the Armed Conflict Bill remain unclear. Omitted from the House of Parliament in December 2008, the bill did not receive the needed support in order for the legislation to continue to ratification. One factor which may have influenced the removal of the bill may be the disputes regarding the ownership of cultural artifacts in the British Museum.

refinement of the term “military necessity”. The Convention determined that within the course of conflict, an object or monument of cultural property can only be destroyed, captured or neutralized if the property itself, by its function, has become a military object. A waiver may be obtained to allow the use of an object of cultural property for a military operation as long as no other options exist.³⁵ Additionally, a system of protection was established specifically for designated cultural property and the creation of a committee to develop guidelines for the implementation of the protocol during conflict and peace.³⁶ Peacetime preparations included developing adequate inventories and catalogues of monuments, sites, and museum collections.³⁷ Plans must be established for relocation and protection of cultural property against possible damage during times of conflict.³⁸ If an enemy uses cultural property as a shield, retaliation may be chosen if there is no reasonable alternative.

³⁵ United Nations Educational, Scientific and Cultural Organization, *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999*, (Hague, 1999) http://portal.unesco.org/en/ev.php-URL_ID=15207 &URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed August 10, 2009) Article 6.

³⁶ Lyndel Prott, “Protecting Cultural Heritage in Conflict,” in *Archaeology, Cultural Property and the Antiquities Trade*, eds., Neil Brodie et al. (Gainesville: University Press of Florida, 2006) 26.

³⁷ Boyland, 84.

³⁸ United Nations Educational, Scientific and Cultural Organization, *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999*, (Hague, 1999) http://portal.unesco.org/en/ev.php-URL_ID=15207 &URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed August 10, 2009) Article 5.

International Protocols: UNESCO 1970 Convention

Prior to the 1999 Second Protocol on the Hague Convention, the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* introduced another set of guidelines to halt the destruction of cultural artifacts outside of armed conflicts. The new protocol sought to protect cultural property from illicit trade, complementing the defense of heritage initiated through the 1954 Hague Convention. One of the most important international pieces of legislation addressing cultural property today, the 1970 UNESCO Convention emphasized both protection and repatriation of such items. Under the guidelines of this Convention, the definition of cultural property included objects, “on religious or secular grounds is specifically designated by each state as being of importance for archaeology, prehistory, history, literature, art or science.”³⁹ Rare objects, property relating to history, archaeological excavations and antiquities over one hundred years of age are included in this definition.⁴⁰ As the significance of cultural objects may not be initially recognized, the time span allows for

³⁹ Jeanette Greenfield, *The Return of Cultural Treasures*, 3rd ed. (Cambridge, UK; New York: Cambridge University Press, 2007) 224.

⁴⁰ United Nations Educational, Scientific and Cultural Organization, *Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property*, (Paris, 1970) http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed August 10, 2009). The selection of the one hundred year time frame allows for inclusion of significant objects from recent settlements throughout the world. An increase in the age of an object may exclude newer cultures which, despite the short length of time, are facing their extinction. The chosen period in the Convention is designed to ensure protection of items before their true significance has been identified; Sokal, 51.

protection of items with unrealized importance. Another provision included is that the objects in question must also connect to the nation claiming interest as representative of its cultural heritage.

Consisting of twenty-six Articles, the Convention delineated basic principles requiring compliance by participants. Spanning a wide variety of issues, several key Articles addressed the acquisition of ancient artifacts. Impoverishment of the cultural heritage of countries of origin results from the illicit import, export and sale of cultural property as stated in Article 2. Each object's full appreciation is enhanced through the accurate knowledge of its origin, history and traditional setting.⁴¹ The Convention encouraged the protection of an object's history, including that of ownership. Museums and other cultural institutions must dutifully increase their collections while respecting universally accepted principles and procedures as outlined by the Convention.

Article 7 obliged that state parties undertake measures to ensure museums and similar institutions do not acquire illegally exported cultural property.⁴² The Convention stops the movement of objects through import restrictions. Every item must possess permits demonstrating permission to remove an object from the country of origin and a title of ownership or the provenance tracing the object to the current possessor.⁴³ Participants to the Convention agree to recover any

⁴¹ Ibid., Article 2.

⁴² Ibid., Article 7.

⁴³ This may include the bill of sale and other documents a purchaser receives when procuring an item.

cultural property requested by another state if the item contains documentation and evidence establishing export from the country of origin after 1970. If provenance research demonstrates illegal export, state parties must facilitate the return to the rightful owners.

Article 10 dictates education, information and vigilance for the cessation of the movement of cultural property. The public must be educated regarding the desecration of cultural property through theft, clandestine excavation and illicit exports, however, no specific methods are outlined to complete this instruction.⁴⁴

A new requirement for antiquity dealers, in Article 5, involves a mandatory inventory with records of the origin of each object, with penalties for noncompliance. These records must disclose the supplier, price and a description of the item. The subsequent purchaser needs notification of any export prohibitions surrounding objects similar to the ones acquired by the collector.⁴⁵

Creating an educational environment that demonstrates the importance of cultural property to everyone serves as the best means to protect these items.

Signatory nations to the UNESCO Convention must enact national services to protect their cultural heritage.⁴⁶ Included in this mandate is the understanding that any time an item or specific type of object receives confirmation of risk of pillage, a request of aid from other States should be made, preventing import of threatened items. Provisional measures must be taken by

⁴⁴ Ibid., Article 10.

⁴⁵ Ibid., Article 5.

⁴⁶ Ibid., Article 10.

each State to protect the heritage of the nation requesting assistance to avert the importation of the threatened cultural property.⁴⁷

Currently, 119 nations are party to the 1970 UNESCO Convention. Ratification and acceptance of the Convention continues with Haiti's ratification in 2010 following Belgium and the Netherlands in 2009.⁴⁸ The addition of the last two countries completed all art importing nations becoming party to the Convention. Thus, the goal of the Convention restricting the trade of cultural property to market nations reached a conclusion.⁴⁹

The United States was the first market nation to sign UNESCO 1970, with Congress approving partial ratification eleven years after implementation in 1983. Debate ensued over the enactment of the legislation with arguments presented by art dealers and others in the trade. Dealers contended that import controls would only direct items to a different recipient nation, negating the purpose of the Convention. This Convention provided for enforcement of cultural property laws

⁴⁷ Ibid., Article 13.

⁴⁸ See United Nations Educational Scientific and Cultural Organization, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (Paris, 1970) [http://erc.unesco.org/cp/convention .asp?KO=13039&language=E](http://erc.unesco.org/cp/convention.asp?KO=13039&language=E). (accessed January 1, 2010).

⁴⁹ Merryman, 843. Although the term "market nation" does not have a universally accepted definition, generally it includes the United States, the United Kingdom, Canada, Belgium, France, Germany, Japan, the Netherlands, Norway, Sweden, Finland and Switzerland. The activity level that constitutes a major market nation is quite high, with only nations with relatively strong economies included within this category. Supply and demand dominate this type of economy, with very little governmental controls. Each of these nations participates in the world market on a significant scale exchanging a variety of goods – including art.

of each nation, resulting in the limited ratification by the United States.⁵⁰ Final acceptance of the Convention resulted in recognition for the need for bilateral treaties instead of enforcement through the National Stolen Property Act with the prosecution of individuals or organizations.⁵¹ The articles ratified by the U.S. government concentrated on efforts in trade situations in designated artifacts as well as emergency situations. The Cultural Property Implementation Act (CPIA) of 1983 sanctioned the Convention, specifically Articles 7(i) and 9 into United States law.⁵²

⁵⁰ Paul M. Bator, “An Essay on the International Trade in Art”, *Stanford Law Review* 34 (1982) 370-384. When the U.S. implemented the national law to enforce the 1970 UNESCO Convention, the government only included two articles, resulting in a limited ratification. The provisions and regulations the U.S. agreed to implement were significant to the overall success of the 1970 Convention.

⁵¹ The National Stolen Property Act was established in 1934 and will be fully explored later in the chapter.

⁵² Hoffman, 160. Also see UNESCO (Paris, 1970).

Article 7 (i) of the UNESCO Convention reads:

“...to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution.”

Article 9 of the Convention reads:

“Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other State Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.”

Through the selection of these two articles, the United States only ratified a portion of the Convention. Among the articles not signed into law, the role of the government in protecting cultural property remains limited. One of the most significant areas avoided was Article 5, which calls for the establishment of national services dedicated to the protection of cultural heritage within the country as well as the enforcement of import laws.⁵³ Included in the specifications for this article are staffing requirements as well as seven areas for enforcement agencies to continually review to ensure proper implementation. The formation of such a department involves significant funding which may have precluded agreement. Section A of Article 7 requires the nation to prevent museums from acquiring illegally exported cultural property.⁵⁴ This provision involves significant participation of the government in the acquisitions of hundreds of private institutions within the United States. Such review would require considerable state resources being dedicated to private institutions which the government previously had little interaction with. Enactment of this article would require substantial alterations to the relationship between the government and museums which may not be desirable. Lastly, Article 13 stipulates that any signatory must respect any nation's right to declare any property unable to be

⁵³ United Nations Educational, Scientific and Cultural Organization, *Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property*, (Paris, 1970) http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed August 10, 2009). Article 5.

⁵⁴ *Ibid.*, Article 7.

exported.⁵⁵ The export laws of any nation must be enforced without any discussion and any item so identified must be recovered. Unwilling to enforce foreign law within the United States, the government made provisions to establish import restrictions on a case by case basis through a Memorandum of Understanding.⁵⁶ Restrictions have been granted to several nations since implementation.⁵⁷

Enactment of CPIA did not intend to preempt pre-existing federal or state laws in resolving matters, and CPIA articles provided guidelines for intensive collaborations between State Parties to prevent the trade of specific objects in emergency situations. The United States objected to the enforcement of the protection laws of source nations. If the government had agreed to all 1970 UNESCO Convention articles, the U.S. would be subjected to following the law of outside nations regarding cultural property. Many governmental authorities had issues with providing source nations with blind enforcement because it prevented the ability to review each case and determine if the U.S. agreed with the assessment. Criteria established with the CPIA requires that certain guidelines be met before import restrictions will be placed or objects returned. Included among these conditions is the necessity of a formal request from a foreign nation to

⁵⁵ Ibid., Article 13.

⁵⁶ Hoffman, 160.

⁵⁷ The Memorandum of Understanding with Italy will be discussed later in this chapter.

terminate the illegal removal of cultural heritage.⁵⁸ The nation must demonstrate in the application that it has taken measures to protect its heritage and that the import restrictions will benefit the international community.

Emergency restrictions may be enacted by the President on imports at the request of a State Party. The Cultural Property Advisory Committee (CPAC) advises the President and reviews protection requests received by the government. Comprised of archaeologists, ethnologists, art dealers, museum representatives, and members of the general public, the committee convenes upon Presidential request. Before granting import restrictions, the committee reviews the request of the appeal nation to ensure that the creation of a Memorandum of Understanding deters pillage and benefits the global community.⁵⁹ If these requirements are met, controls will be imposed on specified archaeological or ethnological materials. Continued restrictions will only be implemented if provisions halt the immediate threat and nations must reapply every five years for continued restrictions.

⁵⁸ Hoffman, 160. See Susan Keech McIntosh, "Reducing Incentives for Illicit Trade in Antiquities: the US Implementation of the 1970 UNESCO Convention," in *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, eds., Neil Brodie and Kathryn Walker Tubb (One World Archaeology, Vol. 42, London; New York: Routledge, 2002) 241.

⁵⁹ Greenfield, 167. One example of restrictions benefitting the global community occurred with cultural artifacts from Iraq. As a result of the intense pillage from the war, import restrictions sought to prohibit the import of these items into the U.S. and to facilitate their return to Iraq.

International Protocols: Underwater Cultural Heritage Convention

In recent years, two additional conventions protect cultural property in areas that have lacked clear jurisdiction. Initiated in 2001, the *Convention on the Protection of the Underwater Cultural Heritage* (CPUCH) served to prevent the commercial exploitation of cultural heritage discovered under the sea. Although no single catalyst drove the development of this Convention, one notorious case influenced the protocol.⁶⁰ The international legislation focuses on traces of human existence submerged for an excess of 100 years. Advances in technology for underwater detection and sea transportation endangers cultural heritage, as the majority of these activities are unregulated.⁶¹ Regional cooperation in the area of the find ensures maximum protection of any recovered items as it creates accountability for each item uncovered. The Convention rejects salvage laws and permits which allow the discoverer to retain the item(s) found.⁶² Law of Salvage lacks a universal accepted definition, however, the term generally refers to the

⁶⁰ Matha Lufkin, "Greek Bronze Will Stay in the Getty Villa", *The Art Newspaper*, <http://www.theartnewspaper.com/articles/Greek-bronze-will-stay-in-the-Getty-Villa/20504> (accessed April 24, 2010). One example is the *Victorious Youth* or *Fano Athlete* in the collection of The J. Paul Getty Museum and mentioned in Chapter 1.

⁶¹ Tullio Scovazzi, "The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage," in *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara T. Hoffman (Cambridge; New York: Cambridge University Press. 2006) 292.

⁶² For more information on law of finds and salvage see Mark A. Wilder, "Application of Salvage Law and the Law of Finds to Sunken Shipwreck Discoveries," *Defense Council Journal* (2000) 92-105. <http://www.rmsrepublic.com/reference/Volume67N o1Article6.pdf> (accessed December 30, 2009).

saving of a ship or property from imminent marine peril. After providing assistance to a fellow seaman, a reward was generally given to the salvor embodying the nature of the salvage law.⁶³ Underwater archaeological sites or ancient sunken ships remain outside of the jurisdiction of salvage laws.⁶⁴ However, in many ways these laws evolved to accommodate private gains as they allow for the first individuals there to capture their finds regardless of the original owner.

CPUCH sought to ban the searching for archaeological and historical objects, thus protecting lost items of heritage from commercial gain. Additionally, it set forth procedures for ships to follow. Any vessel associated with a State Party must report findings to their nation. CPUCH then requires notification be provided by the country to all other signatories. This Convention has resulted in an effective protection regime for immersed cultural property.

International Protocols: Intangible Cultural Heritage

Two years later, in 2003, UNESCO convened and developed further protection for cultural property with the *Convention for Safeguarding of the Intangible Cultural Heritage*. The definition of this type of heritage as clarified in the Convention involves:

practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith –

⁶³ Forrest Booth, “The Collision of Property Rights and Cultural Heritage; the Salvors’ and Insurers’ Viewpoint,” in *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara T. Hoffman (Cambridge; New York: Cambridge University Press. 2006) 293.

⁶⁴ Scovazzi, 288. These finds remain outside of the Law of Salvage as a result of the items being submerged in excess of 100 years.

that communities, groups, and, in some cases, individuals recognize as part of their cultural heritage.⁶⁵

Representations of these types of intangible items include oral traditions, the performing arts, social practices and rituals, and traditional craftsmanship. Safeguarding of this heritage through identification, documentation, research, preservation and protection occupies a central role to the protocol.⁶⁶ Educating the public both formally and informally regarding these practices is essential to the Convention. Through these means, another dimension of cultural heritage maintains protection for the benefit of future generations.

International Protocols: UNIDROIT

Following the UNESCO 1970 Convention, the United Nations assembled once more to address pillaging of archaeological sites and resulting trade of found objects without the approval of governmental authorities. The subsequent Convention, UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects* augmented the earlier UNESCO 1970 Convention and further developed codes of due diligence, seeking to halt the illicit procurement of cultural property.⁶⁷ Recovery of stolen cultural property is central to this Convention. A claimant has three years to act after the establishment of the location of a cultural object and identity of the possessor, however, petitioners only possess fifty years

⁶⁵ Yani Herreman, "The Role of Museums Today: Tourism and Cultural Heritage," in *Art and Cultural Heritage: Law, Policy and Practice*, ed. Barbara T. Hoffman (Cambridge; New York: Cambridge University Press. 2006) 419.

⁶⁶ *Ibid.*, 420.

⁶⁷ The acronym UNIDROIT stands for the International Institution for the Unification of Private Law, a translation from the French title for the group.

from the time of the theft to bring a restitution claim.⁶⁸ Cases may be brought before the judicial system in signatory states to expedite the return of cultural objects.⁶⁹ The possessor of a stolen cultural object receives fair and reasonable compensation if unawareness or reasonable doubt of theft and the exercise of due diligence can be proven.⁷⁰ Due diligence involves ensuring that every endeavor has been fully explored to ascertain the origin of an object before accessioning an item to a collection. An ideal provenance includes the entire history of the item since production (or discovery) to the current owner, noting all import and export documents as well as bills of sale.⁷¹

Article 5 of the Convention grants the government of one party the right to request the return of an illegally exported item directly to the court or other competent authority of the other country.⁷² This provision allows the cultural property laws of one country to be applicable in another if both signed the

⁶⁸ International Institute for the Unification of Private Law, *Convention on Stolen or Illegally Exported Cultural Objects*, Rome, 24 June 1995. <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.htm> (accessed November 7, 2009). Claimants are the individuals or institutions who procured items that may be identified later as cultural property. Petitioners are the individuals or institutions from whom objects were taken.

⁶⁹ Kate Fitz Gibbons, “Chronology of Cultural Property Legislation” in *Who Owns the Past? Cultural Policy, Cultural Property and the Law*, ed. Kate Fitz Gibbon (New Brunswick; New Jersey: Rutgers University Press, 2005) 6.

⁷⁰ UNIDROIT (Rome, 1995) Article 4.

⁷¹ International Council of Museums, *ICOM Code of Ethics for Museums* (Paris: ICOM, 2006) 14.

⁷² UNIDROIT (Rome, 1995) Article 5.

Convention.⁷³ The rigorous guidelines for actions regarding the return of cultural property leave many nations unwilling to sign the Convention, including the United States and the United Kingdom.⁷⁴ UNIDROIT provides generous time limits regarding repatriation, up to fifty years from the date of export, which may allow for significant examination of collections held in the museums of both countries. These inquiries may result in the return of objects. Acceptance of UNIDROIT by additional nations would assist in preventing the illicit trade of cultural property.

Museum Guidelines

In addition to international protocols and national legislation in the U.S., a professional organization for museums created codes of ethics addressing the global community and the U.S. to facilitate compliance within museums. This organization outlined the goals of previous conventions into policies that museums may incorporate into their institutional documentation. The professional organization also served as an intermediary between museums and national and international bodies to address the concerns of these institutions.

Created in 1946, the International Council of Museums (ICOM), a non-governmental organization, maintains formal relationships with UNESCO. Membership derives from museums and professionals committed to “the conservation, continuation and communication to society of the world's natural

⁷³ Greenfield, 235.

⁷⁴ Gibbon, 6.

and cultural heritage, present and future, tangible and intangible.”⁷⁵ A *Code of Ethics for Museums*, published in 2006, proposes minimum standards of professional practice and performance for museums.⁷⁶ Membership in this organization remains voluntary but many museums maintain association.⁷⁷ Individuals may also join the organization, illustrating their individual desire to abide by the *Code*. Most institutions do not yet require membership by professional staff.

Envisioned in the *Code* are integral guiding principles for professional self-regulation. Members of ICOM participated in several periods of consultation, resulting in the approval of the *Code* in 2004. Underlying the philosophy of the document is the concept of service to society, the community and the public and excellence among museums.⁷⁸ The *Code* encompasses eight principles which must be followed by members. These cover the basic operations of the museum, the development and maintenance of the collection, research, and exhibition.

⁷⁵ International Council of Museums, “ICOM Mission,” International Council of Museums, <http://icom.museum/mission.html> (accessed December 31, 2009).

⁷⁶ This Code is available through ICOM’s website: International Council of Museums, “Code of Ethics,” ICOM, <http://icom.museum/ethics.html> (accessed May 9, 2010). The Code was first introduced in 1986, however, the revisions of the 2004 document were consulted for this analysis.

⁷⁷ ICOM’s website does not maintain a public list of members, however, it does list select members from institutions in the United States and France, including the Metropolitan Museum of Art, Museum of Modern Art, the Guggenheim Museum, the Frick Collection, the Louvre, and the Musée d’Orsay.

⁷⁸ International Council of Museums, xi.

The development of collections and the view that these items represent a public inheritance that must be held in trust receives significant focus in the document. Museums' obligations reside in addressing issues of rightful ownership, permanence, documentation, accessibility and responsible disposal.⁷⁹ Every acquisition requires thorough research to ensure that at no point in the object's past was it illegally obtained. Provenance research establishes the full history of the object since discovery or production, although gaps naturally occur at times.⁸⁰ These principles form the foundation of ICOM's view on cultural property and repatriation as presented in Principle 6.

This Principle holds that museums must recognize that items representing any culture are significant. If any item receives a repatriation request, then each appeal for return requires unbiased analysis to ensure resolution between petitioners and museums.⁸¹ If an object violates international and national conventions and ownership resides in another country or people, museums should assume responsibility to return the object within its legal jurisdiction in a prompt and responsible manner.⁸² As collections continue to develop, it remains essential to guarantee that all acquisitions follow all laws and conventions to ensure legality throughout the process.

⁷⁹ Ibid., 3.

⁸⁰ Ibid, 15. Gaps in the provenance history result from lack of available documentation, destruction of records, or the lack of records being created. Small voids in an object's history do not always mean it was stolen.

⁸¹ Ibid., 9.

⁸² Ibid., 10.

Museums need to be knowledgeable on all conventions relevant to their collections ensuring professional conduct as outlined in Principle 7. Furthermore, practitioners should not support directly or indirectly the illicit traffic or market in natural or cultural property.⁸³ The Principles, as set forth by ICOM, assure professionalism in museums as well as acquisition policies with respect to all applicable laws regarding cultural property. The *Code* allows the international museum community to remain in compliance with international legislation even if their national governments are not signatories. Outside of international organizations, such as ICOM, and protocols, the United States created legislation to address the global issue of the ownership of heritage.

United States Protocols

Cultural property laws in the United States developed concurrently with international conventions. Additional national laws sought to prohibit dealings in stolen property. Although not a participant to every protocol, additional national legislation prohibits dealings in stolen cultural property. Developing from the early days of the nation to the modern era, many of these laws were originally intended to protect cultural artifacts of the United States. Passed in 1863, the first code, known as the Lieber Code, prevented unnecessary damage to property, including art. Enacted by Abraham Lincoln at the height of the American Civil War, the Code was developed to prevent unnecessary loss of significant objects and monuments.⁸⁴ Article 35 of the Code required:

⁸³ Ibid., 12.

Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.⁸⁵

However, the Lieber Code provided for removal of collections for protection as long as the items were not sold, disposed of or destroyed.⁸⁶ Determining ownership of these items following the end of the war resulted from the peace treaty. The Lieber Code became one of the first attempts to protect non-military targets, such as works of art, libraries and hospitals, during civil war. Europe followed suit with several complementary declarations and treaties to prevent the unnecessary destruction and theft in warring nations.⁸⁷

Enacted in 1934, the National Stolen Property Act (NSPA) created unexpected applications to the return of cultural property. Initially, the legislation served to aid states in recovering stolen motor vehicles.⁸⁸ NSPA established that the transportation of stolen goods, with a value in excess of five thousand dollars, is a federal crime. Furthermore, this law also applied to receiving, possessing or concealing items without a clear title.⁸⁹ Punishment for such offenses included fines or imprisonment, but not more than ten years or both.

⁸⁴ Gibbon, 3.

⁸⁵ U.S. Regulars Civil War Archives, “The Lieber Code of 1863,” <http://www.usregulars.com/Lieber.html>, Article 35 (accessed December 31, 2009).

⁸⁶ Ibid.

⁸⁷ Gibbon, 4.

⁸⁸ Hoffman, 165.

Application of the NSPA to cultural property disputes resulted from two court cases involving possession and transportation of stolen goods. In the 1970s these verdicts created precedence on how the United States resolved disagreements involving cultural artifacts. *United States vs. Hollinshead* entailed the theft of pre-Columbian artifacts originally discovered in 1961 at the Machaquila site by archaeologist Ian Graham. During his subsequent visits, he carefully recorded all of the monuments at the discovery site. In 1971, Graham was asked by the Brooklyn Museum of Art to review an object offered for sale by Clive Hollinshead, a California art dealer.⁹⁰ Graham discovered that the object offered was one of the artifacts he had excavated a few years previously. As a result, Hollinshead and two conspirators were indicted for transporting and conspiring to transport stolen property, violating NSPA in 1972.⁹¹ Exceptional circumstances dominated *United States vs. Hollinshead*, as the archaeologist who worked extensively at Machaquila was the individual contacted for consultation, allowing the objects to be restored to Guatemala.

The next influential court case which redefined the term “stolen” in NSPA and included unprovenanced antiquities occurred in 1974 with *United States vs. McClain*. Newly clarified, the term “stolen” extended beyond instances of known theft to include goods owned by nations and archaeological materials even if they

⁸⁹ U.S. Code Title 18 “National Stolen Property Act,” <http://exchanges.state.gov/heritage/culprop/index/pdfs/nspa.pdf> (accessed December 31, 2009).

⁹⁰ Bator, 69.

⁹¹ Hoffman, 165.

never physically possessed the items.⁹² *United States vs. McClain* offers a way for nations to claim objects without provenance when they are stolen and thereby circumvent the Implementation Act of 1983, which includes rigorous guidelines countries must follow.⁹³ The loophole created by NSPA allows nations to completely elude the formal request policies through UNESCO 1970 and directly approach the courts of the state holding the objects. Appeals for repatriation require fewer requirements placed on the plaintiff party to prove prior ownership through the U.S. court system. *United States vs. McClain* preceded implementation of the UNESCO 1970 Convention and created precedence for cases involving antiquities.

Defendants in this case conspired to transport and receive pre-Columbian artifacts from Mexico, violating NSPA.⁹⁴ These artifacts were not catalogued with the Public Registrar of Archaeological and Historical Zones and Monuments of the Republic of Mexico or any other nation registries. No permits or licenses granted their export from Mexico.⁹⁵ Over the course of the trial, the Mexican government offered no evidence regarding where the objects were procured from nor a timeline for export. Although none of the defendants disputed the claim of

⁹² Ibid.

⁹³ William G. Pearlstein, "Cultural Property, Congress, the Courts, and Customs: The Decline and Fall of the Antiquities Market?" in *Who Owns the Past? Cultural Policy, Cultural Property and the Law*, ed. Kate Fitz Gibbon (New Brunswick; New Jersey: Rutgers University Press, 2005) 16.

⁹⁴ Hoffman, 165.

⁹⁵ Greenfield, 162.

illegal export of the pre-Columbian artifacts, the court did not require Mexico to demonstrate proof of ownership.⁹⁶ According to court findings, ownership of the objects resided with Mexico.

In 2001, a new court case regarding antiquities derived precedence from the *McClain* trial. New York antiquities dealer, Frederick Schultz was convicted of conspiring to receive and possess stolen property. Schultz violated Egyptian Law 117 of 1983 which directed that all Egyptian antiquities over one hundred years old and having archaeological or historical significance to be property of the state.⁹⁷ Schultz, along with his co-conspirator, English restorer Jonathan Tokeley-Parry, created a fictitious collection belonging to Thomas Alcock to establish an aura of authenticity. Falsified documentation dated the collection to 1920, prior to the enactment of the Egyptian Law 117.

Schultz rallied the support of the National Association of Dealers of Ancient, Oriental and Primitive Art (NADAOPA) and other additional dealers' associations. The dealers had previously united to comment on legislation and issues directly affecting their industry, however, this significant action of supporting a fellow colleague had no precedent. Central to their backing was a united stance for the continuation of selling antiquities through support of Schultz. Those defending the position of the government included the Archaeological Institute of America (AIA) and others.⁹⁸ The AIA is the largest and oldest

⁹⁶ Ibid.

⁹⁷ Hoffman, 167.

professional organization in North America dedicated to archaeology and committed to the preservation of the world's archaeological resources.⁹⁹

Endorsement from the AIA aided implementation of cultural heritage legislation in the United States. As an independent organization, the AIA has extensive reach and influence throughout the archaeological world and the U.S. greatly benefited from the support of the association.

Both sides of the case presented compelling evidence to sway the court, however, the verdict found the defendant in violation of NSPA with stolen Egyptian property. CPIA (Cultural Property Implementation Act) did not usurp the national ownership law. CPIA is a civil law regarding customs, while NSPA concerns criminal acts with proof of intent to perform an illegal act.¹⁰⁰ Thus, the court upheld the rulings of *United States vs. McClain*. Schultz paid a fine of fifty thousand dollars, served thirty-three months in prison and returned all Egyptian antiquities in his possession to Egypt as a result of the trial. NSPA received further support in this case, increasing the law's jurisdiction in cultural property cases.¹⁰¹ Thereafter, individuals dealing in looted antiquities may be subject to

⁹⁸ Patty Gerstenblith, "Recent Developments in the Legal Protection of Cultural Heritage" in *Archaeology, Cultural Heritage, and the Antiquities Trade*, eds. Neil Brodie et al., (Gainesville: University Press of Florida, 2006) 71.

⁹⁹ Archaeological Institute of America, "Mission Statement," AIA <http://www.archaeological.org/webinfo.php?page=10027> (accessed May 9, 2010).

¹⁰⁰ Gerstenblith, 73.

¹⁰¹ *Ibid.*

criminal prosecutions under U.S. law as well as restitution of stolen objects to the plaintiff.

Another method to halt the trade in cultural property resulted from the provisions established by the UNESCO 1970 Convention through the enactment of the CPIA of 1983. CPIA allows for the implementation of import restrictions if the international community will benefit in educational and scientific exchanges of the objects of heritage. Approval of such controls is highly selective, with the requesting nation protecting cultural property and a threat of plunder must be evident.¹⁰² In 2001, an agreement was negotiated between the United States and Italy regarding archaeological artifacts originating from the latter nation.¹⁰³ The agreement, a *Memorandum of Understanding* (MOU), seeks to protect the cultural heritage of Italy through a strengthened collaboration between the two nations. Prohibiting the importation of any artifacts created between the ninth century B.C.E. and the fourth century C.E., the accord halts the destruction of the cultural heritage of Italy. Other signatory nations reached similar agreements on the import of cultural artifacts including China and Mexico.

One of the conditions of import restrictions involves the commitment from the source nation to halt pillaging within the borders of the country. Italy, in the

¹⁰² Hoffman, 161.

¹⁰³ U.S. Department of the State, "Italy 2001 Designated List Federal Register Notice," <http://culturalheritage.state.gov/it01agr.html> (accessed August 10, 2009). This agreement restricts the import into the United States of archaeological material from Italy that dates from the pre-Classical, Classical, and Imperial Roman periods. See James Cuno, "Beyond Bamiyan: Will the World Be Ready Next Time?" in *Art and Cultural Heritage: Law, Policy, and Practice* ed. Barbara T. Hoffman (Cambridge: Cambridge University Press, 2006) 41.

2001 memorandum, instituted prompt prosecution of looters with increased penalties. Moreover, additional training for the carabinieri Special Unit for the Protection of Artistic Patrimony resulted in intensified investigations by this division on the looting of archaeological sites.¹⁰⁴ With the renewal of the agreement in 2006, new amendments included the further limitation of metal detectors at archaeological sites and the promise to create innovative and effective ways to detect and stop the looting of archaeological sites.¹⁰⁵ Part of the agreement also provided for a long-term loan program.¹⁰⁶ This program allowed for objects to be exchanged for four years, extending a previous limit of one year. Several U.S. museums already participate with this provision including the Metropolitan Museum of Art, The J. Paul Getty Museum, and the Cleveland Art Museum.

Professional museum organizations in the United States, such as the American Association of Museums (AAM), issued standards in 2008 for the acquisition of archaeological material and ancient art. These guidelines include following all U.S. legislation concerning objects of cultural property, extensively researching each artifact's origin to ensure proper export and requiring donors to

¹⁰⁴ Gerstenblith, 73.

¹⁰⁵ U.S. Department of the State, "Extension and Amendment to the agreement between the government of the United States of America and the government of the Republic of Italy," <http://exchanges.state.gov/heritage/culprop/itfact.html> (accessed August 10, 2009).

¹⁰⁶ U.S. Department of the State "Guidelines: Loans of Archaeological Material Under the 2001 U.S.-Italy Memorandum of Understanding," <http://exchanges.state.gov/heritage/culprop/itfact/pdfs/it2001guidelines.pdf> (accessed December 31, 2009).

provide all necessary documentation.¹⁰⁷ Established in 1906, the mission of the AAM increases the value of museums to their communities through leadership, advocacy, and service. AAM developed standards and practices for United States museums. The issued guidelines regarding archaeological material and ancient art demonstrate the need for rigorous provenance research prior to acquisition.¹⁰⁸ Compliance with AAM standards is essential for accredited museums as these guidelines complement international legislation by providing clear guidelines to supplement existing collections management policies.

Ten years after the founding of the AAM, the Association of Art Museum Directors (AAMD) was formed in 1916. This organization was established as a forum for museum directors to discuss and create policies for nationwide application. One such document released by AAM provided guidelines for the acquisition of archaeological materials and ancient art.¹⁰⁹ The AAMD developed a new section on its website for museums to publish images and information on acquisitions of ancient objects.¹¹⁰ Museums present provenance information on

¹⁰⁷ American Associations of Museums, “Standards Regarding Archaeological Material and Ancient Art,” <http://www.aam-us.org/museumresources/ethics/upload/Standards%20Regarding%20Archaeological%20Material%20and%20Ancient%20Art.pdf> (accessed December 31, 2009).

¹⁰⁸ Ibid.

¹⁰⁹ Association of Art Museum Directors, “New Report on Acquisition of Archaeological Materials and Ancient Art,” <http://aamd.org/newsroom/documents/2008ReportAndRelease.pdf> (accessed December 31, 2009).

the website and justification for any acquisitions obtained without a clear history before 1970. The AAMD affirms its commitment to responsible acquisition with regards to cultural property and maintains aspirations to exhibit these works in the United States.

These professional organizations serve as a means to complement the legislation introduced in the U.S. Protocols bring institutional policies into agreement with international guidelines regarding cultural property. Legislation instigated conventions, such as the 1970 UNESCO Convention, into U.S. law while national laws had unexpected provisions for stolen cultural objects through NSPA. The analysis of the development of these legislative initiatives illustrates the changing views on the ownership of cultural property.

UNESCO issued in 1976 a *Recommendation Concerning the International Exchange of Cultural Property*, outlined a suggestion to allow all surplus materials of minor or secondary importance to be shared throughout the world.¹¹¹ These exchanges may be loans of various lengths, donations, sale or multilateral trades. The *Recommendation* highlights that every object participating in any type of exchange must include legal title and an agreement for proper protection. State parties to UNESCO are advised to consider establishing special bodies to facilitate the international exchange of cultural property and to look into granting

¹¹⁰ Association of Art Museum Directors, "Object Registry," <http://aamdoobjectregistry.org/A-Browse> (accessed December 31, 2009).

¹¹¹ UNESCO, "*Recommendation concerning the International Exchange of Cultural Property*," http://portal.unesco.org/en/ev.php-URL_ID=13132&URL_DO=DO_PRINTPAGE &URL_SECTION=201.html (accessed December 31, 2009).

financial assistance to facilitate completion of loans. Application of this *Recommendation* has become more prevalent with agreements such as the 2001 MOU between the United States and Italy.

Working through legislation and professional practices, museums in the United States diligently changed their standards to adhere to these guidelines. Museums previously pursued the creation of a collection representing worldwide cultures from ancient to modern times. Several acquisitions violated protocols in museums across the world, as collecting ancient artifacts continued concurrently with the development of international legislation.¹¹² A new era of repatriation has resulted with nations approaching museums for the return of cultural property. Following the discussion of cultural property laws, the subsequent chapter examines the development of one museum, the Metropolitan Museum of Art. This institution desired to create a collection representative of the history of world art. Recently, the Metropolitan returned to other nations several acquisitions which had violated international protocols. By examining the history of the institution, the complexities of collecting cultural property will be explored. The

¹¹² Collecting continued at individual institutions especially during the eleven years before the 1970 UNESCO Convention became part of United States law and generalized statements cannot be assumed for all institutions. See The Metropolitan Museum of Art, *The Metropolitan Museum of Art: Notable Acquisitions 1965-1975* (Boston: The Leether Press, 1975). The Metropolitan Museum of Art regularly publishes its notable acquisitions in a report almost every ten years. For example, between 1971 and 1975, the Metropolitan Museum of art accessioned twenty-eight objects of Greek and Roman Art, and between 1965 and 1970 the museum acquired twenty-four objects from the same period. Since the publication only notes that it publishes “notable” acquisitions, some works of ancient art may be excluded. However, the illustrations in the book show a slight increase in acquisitions in 1971-1975, up from the number of accessions of the previous five years.

Metropolitan Museum of Art will demonstrate how one institution responded to changing views regarding the ownership of cultural property.

Chapter 3

STOLEN OR NOT: THE METROPOLITAN MUSEUM OF ART AND COLLECTING

The Department of Greek and Roman Art illustrates the Metropolitan Museum of Art's commitment to possess a comprehensive collection of classical art. Many factions developed over the years to build the antiquities collection at the Metropolitan with diverse holdings. This chapter traces the establishment of the department by both individuals and key acquisitions. A critical assessment of policies at the museum, including the collection management policy, the expansion and importance of this specific collection are investigated. The discussion illustrates how the mission of collecting in the museum began to oppose the developing protocols protecting cultural property. Museum policies explored in this chapter will be applied to specific acquisitions included in the accord with Italy to be discussed in the following chapter.

Including more than 17,000 works, dating between the Neolithic era and the Roman Empire, the objects in the collection comprise a broad geographical range spanning the ancient boundaries of the Greek and Roman worlds, with objects from Asia Minor, the Mediterranean basin, the shores of the Black Sea, Cyprus and the Near East.¹ Through the endeavors of trustees, directors and

¹ Metropolitan Museum of Art, "Introduction to Greek and Roman Art," Metropolitan Museum of Art, www.metmuseum.org/works_of_art/introduction.asp?dep=13 (accessed May 27, 2009).

curators, this department developed into one of the most significant collections in the United States.

A small group of New Yorkers, united in the belief that the United States required a national institution devoted to the arts, founded the Metropolitan Museum of Art.² On July 4, 1866, at Le Pré Catelan, a Parisian restaurant, a group gathered to celebrate the holiday while on vacation. John Jay, an eminent lawyer, advocated for the formation of a museum in New York City during this event to a group of residents of the city.³ He requested the individuals in attendance inaugurate the plan. Jay's audience included members of the Union League Club, some of the most renowned men in New York City with strong social consciences, who supported the founding of the museum. Union League Club members present at Le Pré Catelan included William Cullen Bryant, William T. Blodgett, Joseph H. Choate, John Taylor Johnson, Frederick Law Olmsted, and Reverend Henry W. Bellows. The club was more involved in politics than cultural endeavors, making the selection of this elite group peculiar.⁴ Consequently, this new cultural venture was uncharacteristic for the club.

² Leo Lerman, *The Museum: One Hundred Years and the Metropolitan Museum of Art* (New York: Viking Press, 1969) 7. See Nathaniel Burt, *Palaces for the People: A Social History of the American Art Museum* (Boston: Little Brown Company, 1977) 14-22.

³ Calvin Tomkins, *Merchants and Masterpieces: The Story of the Metropolitan Museum of Art*, rev. ed. (New York: H. Holt. 1989) 28.

⁴ *Ibid*, 28. The Union Club was established in 1863. After their sojourn in Paris, they returned to New York and three years of deliberations took place before the idea of the founding of a museum was presented to the entire club.

After deliberations within the Union League Club, a public meeting was scheduled to include community members in the discussion. Desiring to deviate from the storage model of other prominent museums, the proponents of a museum in New York sought to create an instrument of elite education.⁵ After gathering the support among its members, the Union League Club turned to creating the needed legal documents.⁶ Incorporated on April 13, 1870, the charter of the Metropolitan Museum of Art outlined the intentions of the founders, which continue to guide the museum into the present.

Forging ahead without a collection, financial support or a physical location, the museum established a Board of Trustees and obtained a charter. The Board included twenty-one elected and six *ex-officio* trustees chosen by the Union League Club in January 1870.⁷ Two responsibilities were immediately brought before the Board: the need to build a collection and locate a space for the new museum. As a result, a fundraising campaign ensued to raise a quarter of a

⁵ Carol Duncan and Alan Wallach, "The Universal Survey Museum," in *Museum Studies: An Anthology of Contexts* ed. Bettina Messias Carbonell (Malden, MA: Blackwell Publishing, 2004) 23; and Nathaniel Burt, *Palaces for the People: A Social History of the American Art Museum* (Boston: Little, Brown and Company, 1977) 14. The storage model developed from European museums. Many collections in Europe began as royal collections or cabinets of curiosity visible to only a few. As they became public collections, they retained many princely ceremonial functions. One such purpose was the concept of a reception room, which served to impress visitors with the greatness of the owner through their collection. In contrast, American museums began with an idea, not a collection. American institutions were also dependent on the public for support and development of their collections.

⁶ Tomkins, 31.

⁷ *Ibid.* *Ex-officio* means members of the board who may have a voice but do not vote.

million dollars for these endeavors.⁸ William Blodgett, one of the trustees, preemptively purchased three private collections in the summer of 1870. These included 174 Dutch and Flemish seventeenth century paintings, with a few Italian, French, English and Spanish works spanning the sixteenth to the nineteenth centuries.⁹ A Roman marble sarcophagus given by Abdullah Debbas, American vice-consul in Tarsus, was also accepted by the museum in 1870.¹⁰

Representing the first foray into the creation of a connection to the classical arts of Greece and Rome, this acquisition was very important to the fledging institution. Since the Renaissance, artists and intellectuals have engaged in a continuous dialogue with the classical past. Copies of many ancient works, in a variety of media, filled private collections and museums all over the world.¹¹ A study of these ancient works was requisite for any artist, as they were seen to represent the apex of artistic sensibilities. Artists sought to show parallels between their contemporary rulers with ancient predecessors.¹² Patrons selected historical sovereigns to reference for political reasons. Their association continued the

⁸ Ibid., 17.

⁹ Ibid., 37.

¹⁰ Carlos A. Picón, et al., *Art of the Classical World in the Metropolitan Museum of Art: Greece, Cyprus, Etruria, Rome* (New Haven: Yale University Press, 2007) 3.

¹¹ Francis Haskell and Nicholas Penny, *Taste and the Antique: The Lure of Classical Sculpture 1500-1900* (New Haven: Yale University Press, 1981) xiii.

¹² Michael Greenhalgh, *The Classical Tradition in Art* (London: Gerald Duckworth & Co., Ltd, 1978) 220.

purpose of the original ancient work serving the agenda of reigning monarchs and leaders.

The ancient revival in Europe developed concurrently with the Enlightenment. Many followers of the Enlightenment sought to recapture the pride, spirit and creativity of the ancient Greeks and Romans. These ideals were stimulated by archaeological discoveries at Pompeii and Herculaneum in the eighteenth century, which created a direct connection to Italy's past.¹³ The classical tradition infused all art and architecture into the nineteenth century, collectively referred to as Neoclassicism.¹⁴ Instead of artists traveling abroad to gain the foundation they needed, the Metropolitan sought to provide examples within the country.¹⁵

Another key element which fueled an interest in antiquity was the phenomenon of the Grand Tour. Beginning early in the eighteenth century and continuing through the nineteenth century, young noblemen toured Mediterranean countries. These travels were an essential part of an ideal education of the social elite, especially immersion in the classical world.¹⁶ Their itineraries included

¹³ Michael Grant, *Cities of Vesuvius: Pompeii and Herculaneum* (Middlesex, England: Penguin Books, Ltd., 1971) 215. Regular excavations began in 1738, after disastrous tunneling in 1709.

¹⁴ Greenhalgh, 15 and 197.

¹⁵ Stephen L. Dyson, *Ancient Marbles to American Shores* (Philadelphia: University of Pennsylvania Press, 1998) 11-14. A group of American expatriate artists resided in Florence and Rome. As a collective, they further impressed antiquity into Americans through their imagery.

visits to architectural monuments, archaeological sites and galleries.¹⁷ At these locations, many tourists drew on their foundation in the classics and compared the sites with the descriptions recorded by ancient writers such as Horace, Pliny, Strabo and Virgil.¹⁸ The ancient past of Italy illustrated the apex of society, approachable and open to reinterpretation in the present. By completing their travels in Italy, the education of young noblemen was fulfilled.

Enhancing the appeal of art of the classical world during the Grand Tour was the work of Johann Joachim Winckelmann (1717- 1768). The greatest authority on Greek and Roman art in Europe, Winckelmann published a *History of Ancient Art* in 1764, bringing him fame throughout the educated in Europe.¹⁹ He also held the position of Superintendent of Antiquities in Rome, which provided him access to many ancient works. One of Winckelmann's most noted achievements was the development of a chronological account of ancient art. Through his works, he established the primacy of Greek and Roman art and was, in part, responsible for the Greek revival and Neoclassicism.²⁰

¹⁶ Jeremy Black, *Italy and the Grand Tour* (New Haven: Yale University Press, 2003) 3.

¹⁷ Stephen L. Dyson, *In Pursuit of Ancient Pasts: A History of Classical Archaeology in the Nineteenth and Twentieth Centuries* (New Haven: Yale University Press, 2006) 5.

¹⁸ Black, 156.

¹⁹ Haskell, 100. The German title of Winckelmann's book is *Geschichte der Kunst des Alterthums*.

²⁰ Vernon Hyde Minor, *Art History's History* (Upper Saddle River, NJ: Prentice Hall, 2001) 85.

Curiosity in ancient sculpture was stimulated by explorations of archaeological sites and publications by Winckelmann and others. As a result, examples of classical statuary began to fill stately homes, both original works and copies.²¹ By the end of the nineteenth century, tours subsided but the collecting of classical art did not. The appeal of the finest examples of classical art resonated with the Metropolitan.

After obtaining the first works for the collection, a temporary home for the Metropolitan was found in 1872. Formerly known as Allen Dodworth's Dancing Academy, the museum occupied the space located at 681 Fifth Avenue. The building underwent minor renovations, and the paintings purchased by Blodgett and the gift from Debbas were exhibited alongside loans of additional paintings and sculptures from Johnson and others.²²

This residence was a temporary location until a more permanent building was obtained. On April 1, 1872, the trustees ratified a proposal by the Park Commissions to permanently place the museum in Central Park.²³ As a result of the procurement of a large collection, however, the museum needed a new temporary site by the end of 1873 before construction of the Central Park building began. Until the permanent structure was completed, Douglas Mansion provided

²¹ Black, 194.

²² Tomkins, 43.

²³ Winifred E. Howe, *A History of the Metropolitan Museum of Art*, Volume I and II, (New York: Metropolitan Museum of Art, 1913, 1946) 152. The location within the park is between 79th and 84th Streets and Fifth Avenue and the Drive and remains the home of the Metropolitan today.

significantly more wall space at 128 West Fourteenth Street to display the collections.

The new acquisitions included 35,000 Cypriot antiquities sold by General Luigi Palma di Cesnola (1879 – 1904).²⁴ Procurement of this collection was divided between two installments in 1874 and 1876. This acquisition propelled the museum into international standing, as this collection contained several of the oldest items of ancient art in the world.²⁵ The Cesnola Collection was comprised of vases, statues, busts, sarcophagi and objects in precious stones and metals. The museum contracted the General to unpack, repair and set up the collection for display. His connections with the Metropolitan flourished over the next few years and led to his appointment as the first Director of the museum. Cesnola, a controversial figure, impacted both the American archaeological scene as well as the Metropolitan.

Working as the American Consul in Cyprus from 1865 to 1878, Cesnola augmented his income by collecting antiquities.²⁶ By 1868, his collection exceeded two thousand objects and the European market received regular consignments from the General.²⁷ Cesnola's methods of exploration and

²⁴ The dates following the names of individual indicate years of service at the Metropolitan.

²⁵ Howe, 156.

²⁶ Anna G. Marangou and Brenda Goodwin, ed., *The Consul Luigi Palma di Cesnola 1832 – 1904: Life and Deeds* (Nicosia: The Cultural Centre of Popular Bank Group, 2000) 161. The salary for the consular post was \$1,000 annually and did not support the lifestyle Cesnola desired for his family.

excavation were scrutinized by the field of archaeology and other scholars. A military general, not an archaeologist, he wreaked havoc within the emerging archaeological world, retaining no records of his excavations.²⁸ Typically, Cesnola's men explored and collected antiquities for him through haphazard digs in various areas and then transported the finds to his residence. They excelled at accumulation, gathering thousands of objects, however, the General was not present during most of these excavations.²⁹ His intentions were blatantly commercial, as his main focus was the sale of the objects discovered. During the eleven years he was stationed in Cyprus, Cesnola's workers identified sixteen cities, excavated fifteen temples, sixty-five necropoli and 60,932 tombs.³⁰

Cesnola claimed the discovered antiquities were legally his property as he usually obtained a *firman*, or permit, from the Turkish governor general.³¹ The Turkish governor general stressed to the General that the *firman* did not allow for packing or export, and the Ottoman Public Education Law of 1869 did not

²⁷ Ibid., 176; Elizabeth McFadden, *The Glitter and the Gold* (New York: The Dial Press, 1971) 79 and 143. In a letter to Wilhelm Froehler, an archaeologist and art dealer who lived in Paris, Cesnola outlined his 2000 works, of which 700 were vases. Cesnola began referring to himself as "General" during the voyage to Cyprus to begin his consular post. Cesnola claimed his promotion to the commission of general was on Lincoln's agenda on the eve before his assassination and was later signed by President Andrew Jackson. Another account suggests Lincoln verbally gave Cesnola this title.

²⁸ Marangou, 125

²⁹ Ibid., 126.

³⁰ Tomkins, 56.

³¹ Ibid., 53.

provide for the export of archaeological material.³² Cesnola moved quickly to ensure his collection left the country before he could be stopped, and he utilized his Russian Consular post as a means to facilitate the shipment, as his ability under his American position was prohibited.³³

In his haste, the condition of the Cypriot antiquities suffered under the direction of Cesnola. From the removal of the objects from the ground to their transport by sea, the safety of the artifacts was not the main priority. Once in New York, Cesnola unpacked the crates of objects from Cyprus and prepared them for exhibition. Instead of maintaining the authenticity of the item, Cesnola manipulated the broken pieces to create complete statues.³⁴ Many heads, as well as limbs, were glued on, with any cracks or joints filled with a wash to camouflage the additions.³⁵

In 1879, Cesnola became the first Director of the Metropolitan and oversaw the institution with an authoritative hand. Under his leadership, the museum relocated to Central Park and actively collected ancient art, increasing its holdings.³⁶ Cesnola continued as Director until his death on November 21, 1904,

³² Marangou, 24.

³³ McFadden, 89. Cesnola also worked as a consul for Greece, Russia and another nation he never named.

³⁴ Vassos Karageorghis, *Ancient Art from Cyprus: The Cesnola Collection in The Metropolitan Museum of Art* (New York: Harry N. Abrams, Inc. 2000) 4.

³⁵ Marangou, 241; McFadden, 149. McFadden also discusses the difficulty of determining which head went with what torso, suggesting the possible removal of the heads of sculptures before transport.

devoting twenty-seven years to the Metropolitan. His Cypriot collection still stirs debate regarding the manner in which it was obtained and the use of the objects to further his own interests.³⁷

Beginning in the twentieth century, deaccessions greatly decreased the Cesnola Collection at the Metropolitan.³⁸ Rather than holding the 35,000 objects in storage, the trustees sold duplicate items to other collectors and museums. Duplicates were also sold in pieces through individual sales in the museum store. The reduction in the collection resulted from the need for additional storage and the ridicule the collection received from the American public.³⁹ Despite the reduction, the collection still constitutes a significant assemblage of Cypriot antiquities outside of Cyprus.⁴⁰

Sir Caspar Purdon Clarke (1905 -1911) succeeded Cesnola as Director of the museum. His role in the development of the Greek and Roman Department would not be as significant as the next Director, Edward Robinson (1905 - 1931). Appointed as the Assistant Director, Robinson also served as head of the

³⁶ Picón, 4.

³⁷ Additional sources on Cesnola include: Luigi Palma di Cesnola, C. W. King, and A. S. Murray, *Cyprus : Its Ancient Cities, Tombs, and Temples: A Narrative of Researches and Excavations during ten years' Residence in that island* (London: John Murray, 1870); and John Myres, *The Metropolitan Museum of Art: Cesnola Collection for Ancient Cyprus* (New York: Metropolitan Museum of Art, 1914).

³⁸ Picón, 4.

³⁹ Gisela Richter, "The Department of Greek and Roman Art: Triumphs and Tribulations," *Metropolitan Museum Journal* (1970) 3, 92.

⁴⁰ Picón, 5; Karageorghis, 15.

Department of Classical Art until 1925. Trained as a classical archaeologist, Robinson previously was the Director of the Museum of Fine Arts, Boston. In 1911, Robinson became the Director of the Metropolitan Museum of Art and retained the position until 1931.⁴¹ As an archaeologist, he desired to further increase the holdings of Greek and Roman art.⁴² Robinson hired a purchasing agent in Europe, John Marshall (1905-1928), to develop the collection. Given resources for acquisitions by the museum, Marshall lived in Rome and regularly shipped the items he procured to New York.⁴³ In the *Bulletin of The Metropolitan Museum of Art* (1907), Robinson discussed a plan for “developing the Museum’s collection of classical art along systematic lines, strengthening it where it was weak, rounding it out as a whole, maintaining for its development a high standard of artistic excellence, and constructing ultimately both a large and a choice collection.”⁴⁴ The art market of the time was brimming with items available for purchase. Just as Robinson desired, the collection grew exponentially until Marshall’s death in 1928. The acquisition budget also increased accordingly, from

⁴¹ *Ibid.*, 9.

⁴² Gisela Richter, “The Department of Greek and Roman Art: Triumphs and Tribulations,” *Metropolitan Museum Journal* 3 (1970) 73.

⁴³ Vinnie Nørskov, *Greek Vases in New Contexts: The Collecting and Trading of Greek Vases – an Aspect of the Modern Reception of Antiquity* (Gylling, Denmark: Aarhus University Press, 2002) 148.

⁴⁴ Edward Robinson, “New Greek and Roman Acquisitions, I: Terracottas,” *Bulletin of The Metropolitan Museum of Art* 3 (January 1907) 5.

\$45,000 in 1917 to \$94,000 in 1923 and \$185,000 in 1926.⁴⁵ As each item was procured, it was published in the Metropolitan's *Bulletin*, allowing information about the objects to be accessible to scholars and other interested parties.⁴⁶

As the years progressed, the department grew with the appointment of additional staff. Gisela Richter was hired in 1906 (1906-1948) and assumed the position of head Curator of the Department of Greek and Roman Art. A prolific writer, she published many books on the museum's holdings, including *A Handbook of the Classical Collection*. Richter was the first woman on the curatorial staff and remained at the Metropolitan Museum of Art until her retirement in 1948.⁴⁷ She continued to work closely with the Metropolitan in her retirement and in 1970 wrote about the triumphs and tribulations of the Greek and Roman art department.⁴⁸

In 1972, Richter recounted the procurement of a kouros in 1932 to explain the policies guiding museum purchases of ancient art.⁴⁹ The exact reasons for her disclosure are unknown, but the statement followed the establishment of the 1970

⁴⁵ Tomkins, 124. The acquisition funds at the Metropolitan increased with the dividends paid from the investments from the various endowments the museum received.

⁴⁶ Richter, 80.

⁴⁷ Gisela Richter, *My Memoirs: Recollections of an Archaeologist's Life* (Edinburgh: R. & R. Clark Ltd., 1972) 14. Although she retired in 1948, she continued to work on publications at the Metropolitan until 1952.

⁴⁸ Richter, 1970, 73-95.

⁴⁹ The kouros is an exceptional example of a free standing statue. It is seventy-six inches high and dates to ca. 610-600 B.C. (32.11.1).

UNESCO Convention and were published the same year the Metropolitan purchased the Euphronios Krater.⁵⁰ Included among the requirements for acquiring ancient art, Richter identified two questions to be asked; the first explored the authenticity of the object and the second considered how it was exported from the country of origin. Richter explained the process of purchasing the kouros with respect to the two questions she posed. Research proved the originality of the work and consultation of outside scholars ensured these findings. She indicated that the museum procured the statue from a Swiss dealer and, as a result, did not deal with the export permits of this work.⁵¹

At the time of procurement of this statue in 1932, violation of international legislation regarding cultural property had not occurred. Additionally, the laws of the country of origin must be examined. In the same year as the purchase of the kouros, Greece created new laws regarding cultural property. Instigated by Presidential Degree No. 5351, the 1932 Act protected all ancient artifacts within the boundaries of Greek territory and, declared all such objects property of the state.⁵² The acquisition of this statue, in the same year as implementation of the 1932 Act in Greece, calls to question the legality of the transaction, although Greece never filed a request with the Metropolitan. After the accession of this work, Richter recounted a previous conversation with Mr. Oikonomos, the

⁵⁰ See Chapter 2 for more information on the 1970 UNESCO Convention.

⁵¹ Richter, 1970, 90.

⁵² Aggi Dimacopoulou and Andreas Lapourtas, "The Legal Protection of Archaeological Heritage in Greece in View of the European Union Legislation: A Review," *The International Journal of Cultural Property* 4 (1995): 313.

Director of the National Museum of Athens. He stated that the statue would have been obtained by another museum if the Metropolitan had not acquired it.⁵³

Without the exact date of the original purchase by the Swiss dealer, deducing the legality of this acquisition remains difficult. Although she attempted to clarify and exonerate the collecting practices of the Metropolitan, Richter instead unintentionally illustrated the history of suspicious acquisitions.

Although in her retirement, Richter continued to work for the museum until her death in 1972. Christine Alexander (1923-1959) became Curator of the department, overseeing daily affairs. As the section expanded with new acquisitions, the areas dedicated to display decreased as the galleries underwent renovations in 1940 after the appointment of Francis Henry Taylor as the Director of the museum. His main goal was modernization and he significantly reduced the department's exhibition space, replacing these display areas with a restaurant and administrative offices.

Dietrich von Bothmer (1946-1990) followed Alexander as the next head of the department. He attended Oxford beginning in 1938 and studied with Sir John Davidson Beazley (1885-1970).⁵⁴ After completion of his education at the

⁵³ Richter 1972, 26. In 1932, when this work was added to the collection, it was a legal acquisition. It is interesting, however, to mention the museum held in the Swiss dealer in good faith and assumed they possessed a legal title to the work of art, with minimal questioning noted in this source.

⁵⁴ Dyson, 2006, 164. John Beazley, the leading twentieth-century scholar of Greek vases, provided the ordering principles and methodologies that still shape study of Greek ceramics today.

University of California, von Bothmer began serving as Assistant Curator in the Department of Greek and Roman Art under Richter in 1946.

The Greek vase collection at the Metropolitan expanded under the direction of von Bothmer. His early purchases included sixty-five Greek vases from the Hearst collection in 1956.⁵⁵ This acquisition contributed to the elimination of gaps in vase holdings at the museum. Through this specific procurement, the direction of collecting for the next few years was evident.⁵⁶ Between 1965 and 1975, the museum obtained twenty-four notable Greek vessels.⁵⁷ Von Bothmer's most celebrated purchase occurred in 1972, a krater painted by Euphronios. Some of the rarest works in Greek ceramics include examples by Euphronios. Under von Bothmer's direction, the collection at the Metropolitan multiplied to include a greater number of works from the Late Archaic and Classical periods.

In 1967, Thomas P. Hoving accepted the position as Director at the Metropolitan Museum of Art, becoming the youngest person to hold the position. Prior to his retirement in 1977, Hoving attempted to change the public perception of the museum from a private institution to a place belonging to the people of

⁵⁵ Vernon Silver, *The Lost Chalice: The Epic Hunt for a Priceless Masterpiece* (William Morrow: New York, 2009) 255. One additional vessel purchased proved to be a forgery. William Randolph Hearst, at his death, possessed the largest collection of Greek vases in a private collection, and von Bothmer was only the sixth scholar to access to his collection.

⁵⁶ Dietrich von Bothmer, "Greek Vases from The Hearst Collection," *The Metropolitan Museum of Art Bulletin* 15, no. 7 (March 1957) 165.

⁵⁷ The Metropolitan Museum of Art, *The Metropolitan Museum of Art: Notable Acquisitions 1965-1975* (New York: The Metropolitan Museum of Art, 1975) 123-131.

New York. Attendance doubled from two million to four million people annually.⁵⁸ One of his most controversial acts included his involvement in the purchase of the Euphronios Krater. Hoving recounted his story of the acquisition in his book, *Making the Mummies Dance*.⁵⁹ He frankly discussed details of the purchase of this object and its reception prior to the enforcement of the 1970 UNESCO treaty, and Hoving believed the krater was the last monumental work of Italian origin to enter the United States.⁶⁰

Philippe de Montebello (1963-1969 and 1973-2008) began work at the Metropolitan in 1963 as a curatorial assistant in European paintings and, after a short respite in employment at the museum, he became Acting Director in 1976.⁶¹ Appointed to the position of Director of the Metropolitan Museum of Art a year later, Montebello continued in this post for thirty years, retiring in 2008. The Greek and Roman Art Department developed under the guidance of staff. By signing the agreement with Italy in 2006, de Montebello changed the future of the department.

The Collection Management Policy guided the museum from the beginning and aided de Montebello in forming the accord. This document is revised as necessary and directs the museum throughout its expansion. The

⁵⁸ Tomkins, 377.

⁵⁹ Thomas Hoving, *Making the Mummies Dance* (New York; London: Simon & Schuster, 1993).

⁶⁰ Hoving, 318. A detailed discussion of the Euphronios Krater will be addressed in Chapter 4.

⁶¹ Gross, 406.

procedures are available in the public domain on the website of the Metropolitan.⁶² Reaffirmed in 2000, the policy begins with a pronouncement of the mission statement of the museum,

The mission of The Metropolitan Museum of Art is to collect, preserve, study, exhibit and stimulate appreciation for and advance knowledge of works of art that collectively represent the broadest spectrum of human achievement at the highest level of quality, all in the service of the public and in accordance with the highest professional standards.⁶³

Seven goals and four areas of responsibility are outlined in the Collection Management Policy. One specific area addressed in the document centered on collecting in the museum. The holdings of the museum are to be increased by acquisitions of works of art representative of all periods of history and of the finest quality. Although this clause is not unique to the Metropolitan, it refers to the importance of enhancing collections in museums.⁶⁴

The Collections Management Policy provides basic policies guiding the development and care of the objects consistent with the mission of the museum and professional museum standards. This is in addition to the principles for the

⁶² Metropolitan Museum of Art Board of Trustees, "Collections Management Policy," Metropolitan Museum of Art http://www.metmuseum.org/works_of_art/collection_database/collections_mgmt_policy.pdf (accessed February 2, 2010).

⁶³ Metropolitan Museum of Art Board of Trustees, "Mission Statement," Metropolitan Museum of Art http://www.metmuseum.org/annual_report/2007_2008/pdf/04mission-statement08.pdf (accessed October 26, 2009).

⁶⁴ In a survey of mission statements of museums throughout the country, most include a statement about furthering their collection through new acquisitions. The museum mission statements consulted include the Museum of Fine Arts in Boston, The J. Paul Getty Museum, and The Los Angeles County Museum of Art.

adding to the holdings of the museum. According to the text, the collection should be accounted for, documented, preserved and secured.

The Metropolitan continues to grow in acquisitions through bequests, gifts, purchases and excavations sponsored by the museum. The Collections Management Policy also summarizes the methods of obtaining artifacts for the museum. Requiring the same standards for every item brought into the museum, the processing of purchasing a work of art necessitates additional examination. When an object furthers the mission of the museum and is in a state of acceptable preservation, curators propose it should be considered for accession. A report detailing the object including a description, condition report, publication history, provenance and justification for procurement is required. The head of the curatorial department must approve the report prior to submission to the Director. Any purchase over \$100,000 requires the approval of the acquisition committee.⁶⁵

Provenance must be thoroughly researched to ensure that a clear title passes to the museum. The work of art itself must be examined for marking or labels, as these may aid in tracing the movement of the item from one owner to the next. Most objects are physically marked to track the work of art within the collection of an individual, business or museum. Additionally, all written documentation tracing the ownership of the item is required to ensure that the last owner possesses a clear deed and can legally pass the artifact to the museum.

⁶⁵ Metropolitan Museum of Art Board of Trustees, "Collections Management Policy," Metropolitan Museum of Art, www.metmuseum.org/works_of_art/collection_database/greek_and_roman_art/collection_management_policy.aspx (accessed May 27, 2009).

These records include any authorized documentation, such as import or export registration, catalogues *raisonnés*, archives, and correspondence from art collectors, dealers and scholars. The exhibition and publication history, as well as auction house records, further clarify the ownership of a work of art. Any archaeological material or ancient artifact must have all import and export documentation to guarantee no ownership claims exist. The provenance must clearly demonstrate the item was outside the country of origin before 1970 or exported legally after 1970.⁶⁶ The history of most objects contain periods of time in which their location remains unaccounted for or resided with owners who requested anonymity.⁶⁷ These gaps do not immediately indicate theft, as many archival records befall destruction or misplacement. Many databases launched in recent years provide additional means to ensure appropriate acquisitions.⁶⁸

The Metropolitan Museum of Art joined professional organizations nationally and internationally to develop the museum and to follow the best

⁶⁶ Metropolitan Museum of Art Board of Trustees, “Collections Management Policy,” Metropolitan Museum of Art http://www.metmuseum.org/works_of_art/collection_database/collections_mgmt_policy.pdf, pg 6. (accessed February 2, 2010).

⁶⁷ Minneapolis Institute of Arts, “Provenance Research,” Minneapolis Institute of Arts http://www.artsmia.org/index.php?section_id=107 (accessed February 2, 2010).

⁶⁸ Many databases are available for researching provenance including: The J. Paul Getty Museum, Provenance Research http://www.getty.edu/research/conducting_research/provenance_index/; The International Foundation for Art Research <http://www.ifar.org/cattrais.php>; The Central Registry of Information on Looted Cultural Property 1933 – 1945 <http://www.lootedart.com/>; and Lost Art Internet Database [http://www.lostart.de/sid_E5288_83F73BD8DF751F2A58E3455D/Webs/EN/Start/Index.html?_nmm=true](http://www.lostart.de/sid_E5288_83F73BD8DF751F2A58E3455D55D/Webs/EN/Start/Index.html?_nmm=true).

policies and practices.⁶⁹ Two national organizations the museum retains relations with are the American Association of Museums (AAM) and the Association of Art Museum Directors (AAMD). Founded under the premise of ensuring that museums remain a vital part of the American landscape and develop standards and policies, the AAM has played a vital role in museums since 1906. The AAMD was established in 1916 and became a professional organization in 1969 to create an intimate forum for the exchange of ideas as well as initiating policies and guidelines for museums to follow. Both organizations develop policies responding to the diversity of issues museums commonly share and provide guidelines to ensure professionalism in the field. Recently these two organizations created guidelines regarding collecting archaeological material and ancient art which directly influenced the Collection Management Policy at the Metropolitan.

The Report of the Association of Art Museum Directors' Task Force on the Acquisition of Archaeological Materials and Ancient Art and the American Association of Museums' Standards Regarding Archaeological Material and Ancient Art influence the museum's policy on antiquities.⁷⁰ As a result of these guidelines, the Metropolitan will not acquire works of art unless provenance clearly demonstrates the object was either outside its country of discovery before 1970 or legally exported from its country of modern discovery after 1970. Two websites will also be updated with any provenance information on new artifacts,

⁶⁹ Museums worldwide maintain memberships in national and international organizations. The professional guidelines and policies published by these organizations direct or influence policies most museums follow.

⁷⁰ These documents are discussed in detail in Chapter 2.

the AAMD's website and the museum's own website.⁷¹ At any time the Metropolitan finds information that establishes another's right to ownership, the other party will be contacted and determine if a return should be initiated. The museum will promptly address any claims and respond accordingly. Objects with incomplete documentation may still be accepted for acquisition only after suitable research has been explored, which fulfills the museum's guidelines of due diligence. Artifacts with missing provenance must be considered carefully because additional information may be discovered at anytime.⁷² If documentation later proves the title invalid, the museum must rectify the prior fault.

The Collections Management Policy continuously evolves to adhere to national and international laws and to maintain professional standards. These policies and subsequent revisions illustrate the Metropolitan Museum of Art's dedication to ensuring compliance. Through this document, the museum demonstrates its commitment to adhere to legislation while developing its collection.

The transformation of perspectives regarding the acquisition of antiquities by the Metropolitan resulted in the alignment of the Collection Management Policy with the 1970 UNESCO Convention. The first mention of the acquisition

⁷¹ Association of Art Museum Directors, "Object Registry," Association of Art Museum Directors, <http://aamdoobjectregistry.org> (accessed February 1, 2010).

⁷² Metropolitan Museum of Art Board of Trustees, "Collections Management Policy," Metropolitan Museum of Art, www.metmuseum.org/works_of_art/collection_database/greek_and_roman_art/collection_management_policy.aspx (accessed May 27, 2009).

guidelines occurred in 1970 with a discussion by Richter. According to the retired curator, the majority of acquisitions originated from art dealers in New York, Paris, London and Switzerland. Any item purchased in Italy was exported with a permit after payment of taxes.⁷³ Two years after Richter's explanation, policies the press scrutinized these policies and Italy after the procurement of the Euphronios Krater. In particular, two aspects of the acquisition policy at the Metropolitan were analyzed: deaccessioning and provenance. In 1975, Aston Hawkins, the museum's legal counselor, noted that the Metropolitan had attended the 1970 International Council of Museums (ICOM), at which a resolution had been passed to ensure that satisfactory provenance was established before acquisition. The Board of Trustees adopted the Director's recommendation in 1970 not to acquire objects violating any country's export laws.⁷⁴ In response to the inquiries regarding the Euphronios Krater, the museum committee responsible for purchasing works of art, selected by the Board of Trustees at the Metropolitan Museum of Art, enacted the guidelines of AAM and AAMD to the procurement approval process.

In conclusion, the Metropolitan Museum of Art built a collection with a significant focus on the art of the ancient world. This direction was evident from the first gift to the museum of a Roman sarcophagus and the procurement of the Cesnola Collection of Cypriot antiquities. The Department of Greek and Roman

⁷³ Richter 1970, 90.

⁷⁴ Aston Hawkins, "The Euphronios Krater at the Metropolitan Museum: A Question of Provenance," *Hastings Law Journal* 27 (1975-6) 1164.

Art flourished under the direction of several key individuals and created the history of the unit as much about the curators and directors as the art. Robinson implemented his vision for a complete representation of arts of the classical world by employing a purchasing agent with appropriate funds and knowledge to expand the collection. During his tenure, the holdings increased dramatically at a time when objects inundated the market and international guidelines were yet to be established. Subsequent curators did not benefit from the acquisition environment Robinson enjoyed but curators throughout the years succeed in his charge to create a comprehensive Classical art department.

Parallel to the endeavors of the museum, source nations strove to prohibit the export of cultural property. As a result, several items procured by the museum violated prevailing protocols, although some acquisitions transpired prior to implementation of new practices within the United States. Additionally, the acquisitions of the objects in question were led by individuals who had yet to appreciate the multiplicities of cultural significance surrounding these works. The response of the leadership of the Metropolitan illustrates a begrudged willingness to rectify past transgressions when presented with irrefutable evidence and media scandal.

The next chapter explores the acquisition of the Euphronios Krater by the Metropolitan Museum of Art. Dominating the press since the announcement of the purchase, the provenance of this particular object was highly scrutinized. The following section addresses how this object came into the collection of the

Metropolitan and the significance of the krater in the agreement between the museum and Italy.

Chapter 4

REPATRIATION IN ACTION: A CASE STUDY

The agreement between the Metropolitan Museum of Art and Italy represents an amicable solution to a high profile ownership dispute over objects. On a global scale, nations struggle for the repatriation of plundered artifacts and this agreement serves as a model between museums and nations worldwide. Italy, a forerunner in the quest of reclaiming heritage, has dedicated the last forty years to reclaiming stolen artifacts. A partner in the accord with the nation, the Metropolitan embodies a museum willing to bring its policies and actions in alignment with international conventions. The negotiations between the two parties affirmed the importance of museums in our society and the international commitment to display ancient artifacts.

An object, a ceramic vessel by Euphronios, an ancient Greek artist, lies at the center of the accord between Italy and the Metropolitan. Unsurpassed in quality and condition, the krater represents the finest example of the artist's *œuvre*. Thomas Hoving, Director of the Metropolitan when the vessel was purchased in 1972, boldly proclaimed history would be revised after the identification of the Euphronios Krater.¹ Tracing the events from the announcement of the acquisition to repatriation of the vessel, this chapter illustrates an example of one object's journey from the excavation back to its

¹ Thomas Hoving, "Introduction," *The Metropolitan Museum of Art Bulletin* 31 (Autumn 1972) 1. The completeness of the vessel allowed for in-depth analysis of vase construction and decoration. By studying the Euphronios Krater, scholars could view a complete vessel and compare it with previous finds and statements regarding the work of the artist.

nation of origin. The agreement between the Metropolitan and Italy transferred ownership of the krater, a Laconian kylix, a red-figured Apulian dinos (attributed to the Darius Painter), a red-figure psykter decorated with horsemen, a red-figured Attic amphora by the Berlin Painter and fifteen pieces of Hellenistic silver from the museum's collection to Italy. This chapter presents museum policies regarding new acquisitions and analyzes international conventions regarding antiquities to demonstrate the strengths and weakness of the new Collections Management Policy. A critique of the response of the Metropolitan to cultural property laws concludes this analysis.

The Euphronios Krater

The work of Euphronios coincides with the early days of the red-figure style, with successive artists launching the process to maturity. Introduced in 530 B.C.E., the figure remains the color of the clay while a finely levigated slip of the same material creates the black lines in this painting style.² This contrasts its predecessor, black-figure technique, whereby characters and decorations were painted in black silhouette with incised linear detail. The new red-figure technique allowed for more delineation in anatomical features, resulting in greater realism.³

The levigated slip remains the same color as the vessel, distinguishable only by

² Tony Schreiber, *Athenian Vase Construction: A Potter's Analysis* (Malibu, California: Science Press, Div. of the Mack Printing Group, 1999) 53. The gloss is finely levigated and deflocculated Attic clay. Also see John Boardman, *Athenian Red Figure Vases, The Archaic Period: A Handbook* (New York and Toronto: Oxford University Press, 1979) 11.

³ John Boardman, *Athenian Red Figure Vases: The Archaic Period* (New York; Toronto: Oxford University Press, 1979) 11-14.

the sheen while the design is applied to the vessel. During the three step firing process, the color of the applied slip changes and produces a two-colored ware.

Painted by Euphronios and formed by Euxitheos, the red-figure vessel in the collection of the Metropolitan dates to 515 B.C.E. Measuring 7.1 cm tall and 8.3 cm in diameter, the vessel served to mix water with wine. Holding seven gallons of liquid, the shape represents one of the largest types of Attic vases. Resembling a bell-shaped flower, this form led to the name given to this vessel shape – a bell krater.⁴ Illustrated with a scene from the *Iliad*, the obverse of the krater depicts the death of Sarpedon and the reverse displays soldiers donning their armor.⁵ The *Iliad*, an epic poem written sometime in the eight century B.C.E., recounts the historically unsubstantiated decade long siege between the Achaeans and the Trojans, which occurred several hundred years prior to Homer's composition.⁶

⁴ Schreiber, 138.

⁵ *The Iliad*, 8th century B.C.E., this work is generally attributed to Homer. Also see, Homer, *The Iliad*, trans. E. V. Rieu (New York: Barnes and Nobles Classics, 2005), Book 16, lines 550-600.

⁶ Carol G. Thomas and Craig Conant, *The Trojan War* (Westport, CT and London: Greenwood Press, 2001) xxi. Scholars continue to debate the historical accuracy of the *Iliad*. Several cities mentioned in the epic poem have been identified by archaeologists, but the existence of cities does not provide evidence for the war. For additional information on the Trojan War and the *Iliad*, see Carl W. Blegen, *Troy and the Trojans* (New York: Frederick A. Praeger, 1963); Heinrich Schliemann, *Ilios: The City and Country of the Trojans* (New York and London: Benjamin Blom, 1968); Barry S. Strauss, *The Trojan War: A New History* (New York: Simon & Schuster, 2006); Michael Wood, *In Search of the Trojan War* (New York, N.Y.: Facts on File, 1985); and Diane P. Thompson, *The Trojan War: Literature and Legends from the Bronze Age to the Present* (Jefferson, North Carolina and London: McFarland & Company, Inc., 2004).

Prior to the death of Sarpedon, the Trojans had advanced on the Greeks, reached their ships and prepared to set them afire in Homer's epic. Patroclus, a Greek and friend of Achilles, beseeched him to lend him his armor so he could defend the ships. Achilles prayed to Zeus to allow Patroclus to rescue the boats from further harm and return safely. Zeus chose to answer only of his requests.⁷

Sarpedon, son of Zeus and prince of Lycia, fought as an ally of the Trojans in the war. As the Greeks approached the ships, the Trojans began to retreat, with many soldiers trapped in the trenches, including Sarpedon. Zeus debated saving his son but his wife, Hera, prevented his interference, as his actions would be resented by the gods. Instead, she recommended that he send the gods Death and Sleep to return Sarpedon's body to Lycia.⁸ Patroclus and Sarpedon met in combat and Zeus allowed Patroclus to kill his son. However, in return, his life was forfeited, despite the prayer of Achilles. After the death of Sarpedon, Patroclus engaged Hector, a prince of Troy, in combat and died.⁹ The illustration on the krater in the collection of the Metropolitan focuses on only one scene from this epic poem.

Euphronios portrayed the lifting of Sarpedon's corpse by Death and Sleep on the obverse of the krater. The fine linear detail, made possible by the red-figure technique, allowed for more realism in representation through anatomical detail. Depicted frontally, the body of Sarpedon embodies this new realism in the

⁷ *Iliad*, 16: 21-130.

⁸ *Iliad*, 16: 497-524.

⁹ *Iliad*, 16: 940-1007.

delineation of abdominal muscles. The god Hermes stands directly behind the central figure and hides a portion of his body from view, creating depth within the scene. Inscriptions beside each figure identify each character. Remarkably, the krater is signed by Euphronios, a rare occurrence, as less than one percent of all the known vessels possess signatures.¹⁰

Public Announcement of the Acquisition

The entire issue of the 1972 *Metropolitan Museum of Art Bulletin* heralded the krater as one of the finest works of art ever obtained by the museum.¹¹

According to the Curator of Greek and Roman Art, Dietrich von Bothmer, the significance of the holdings by the Metropolitan in Greek vases increased through the procurement of the vessel.¹² The publication contextualized the Euphronios Krater in the development of Greek vase decoration and focused on the rarity and beauty of the work, however, the *Bulletin* omits any details regarding the acquisition. Only the object label was disclosed: Purchase, Gift of Darius Odgen Mills, Gift of J. Pierpont Morgan, and Bequest of Joseph H. Durkee, by exchange,

¹⁰ John Boardman, *The History of Greek Vases: Potters, Painters and Pictures* (London: Thames & Hudson, 2001) 128.

¹¹ Hoving, 1. *The Metropolitan Museum of Art Bulletin* was and continues to be distributed among museum members and subscription holders, therefore the publication has a limited reach to those interested in the publication. As a result, the museum also approached *The New York Times*.

¹² Dietrich von Bothmer, "Greek Vase Painting: An Introduction," *The Metropolitan Museum of Art Bulletin* 31 (1972) 3.

1972.11.10. This revealed that the funding of the acquisition derived from four different sources, two gifts, one bequest and an exchange.¹³

Concurrent with the release of the *Bulletin*, *The New York Times* published an article regarding the procurement of the Euphronios Krater. The feature recounted the provenance of the object provided by Hoving and von Bothmer.¹⁴ According to James Mellow, a critic and author, a reputable dealer contacted the museum regarding an available vessel from an established private European collection dating prior to World War I.¹⁵ The broker functioned as an intermediary in the negotiations between the owner and the Metropolitan.¹⁶

¹³ The Metropolitan Museum of Art, *The Metropolitan Museum of Art: Notable Acquisitions 1965-1975* (New York: The Metropolitan Museum of Art, 1975) 129. The exchange specified in the object label refers to the sale of a collection of ancient coins; Hoving, 1.

¹⁴ James R. Mellow, "A New (6th century B.C.) Greek Vase for New York," *The New York Times*, November 12, 1972; Proquest Historical Newspapers *The New York Times* (1851-2006) <http://www.proquest.com.ezproxy1.lib.asu.edu/> (accessed December 27, 2010) 42. Mellow was a critic and author focusing on the arts and literary biography. His books include *Charmed Circle: Gertrude Stein & Company* (1974) and *Hemingway: A Life Without Consequences* (1992). He also wrote for *Art News* and *Arts Magazine*, becoming the editor of the latter publication. Mel Gussow, "James R. Mellow Dies at 71; Author of Literary Biographies," *The New York Times*, November 25, 1997; www.nytimes.com/1997/11/25/arts/james-r-mellow-dies-at-71-a... (accessed March 30, 2011).

¹⁵ Although not disclosed, the dealer was Robert Hecht.

¹⁶ Gordon Lobay, "Border Controls in Market Countries as Disincentives to Antiquities Looting at Source? The US-Italy Bilateral Agreement 2001" in *Criminology and Archaeology: Studies in Looted Antiquities* eds. Simon Mackenzie and Penny Green (Oxford and Portland, OR: Hart Publishing, 2009) 75. The invisible market refers to transactions occurring outside of the public eye. The sale of the Euphronios Krater was part of the invisible market.

Neither Hoving nor von Bothmer disclosed the identity of the proprietor and claimed admission of this information would jeopardize future acquisitions since the owner (Dirkran Sarrafian) desired anonymity. Hoving confirmed the insurance value to be near two million dollars but withheld additional details regarding the vessel's complete provenance or price, a customary practice with new acquisitions.¹⁷

A major work by a well-known ancient artist, the vessel intrigued the general public and academics alike. The Metropolitan met queries by Italy, scholars and the public with equal ambiguity, as many doubted the alleged provenance of an old European collection. Several months after the Mellow article, *The New York Times* published an exposé in February 1973. The result of two months of investigation, the editorial questioned the stated provenance and proposed that the krater had been illegally excavated from Cerveteri, Italy in 1971.¹⁸ During the inquiry, *The New York Times* reporters interviewed art scholars, dealers, collectors, museum officials and government authorities.¹⁹ The writer, Nicholas Gage, believed the looters identified the value of the work and moved through middlemen to find Robert Hecht to purchase the krater for slightly more than \$100,000. Hecht then contacted the Metropolitan, advising them of the

¹⁷ Mellow, 43 and 114.

¹⁸ Nicholas Gage, "How the Metropolitan Acquired 'The Finest Greek Vase There Is,'" *The New York Times*, February 19, 1973; Proquest Historical Newspapers *The New York Times* (1851-2006) <http://www.proquest.com>.
ezproxy1.lib.asu.edu/ (accessed December 27, 2010) 1.

¹⁹ *Ibid.*, 1.

availability of a new work. Hoving and von Bothmer traveled to Europe in the spring of 1972 to inspect the krater and were immediately impressed with the vessel. Negotiations concluded quickly and the artifact arrived at the museum on August 31, 1972, personally delivered by Hecht.

Douglas Dillion, the President of the Board of Trustees of the museum, dismissed the article by Cage in *The Times*, emphasizing the legality of the purchase and its legitimate provenance.²⁰ Dillon lauded Hoving's support of the 1970 UNESCO Convention and his requirement for all new accessions to demonstrate proper provenance and adherence to the legislation's guidelines. However, he also revealed the acquisition committee solely relied on the information provided by the curator and the director.²¹ This confidence, in the case of the krater, allowed the two men to avoid a critical review of the provenance, negating due diligence. Two years after the initial acquisitions, the museum's legal counselor, Ashton Hawkins, published a rebuttal to *The New York Times* article in 1975, noting the museum participated in the ICOM (International Council of Museums) meeting in 1970 and adopted a policy to use "its best efforts not to acquire objects, whether by gift or purchase, which has been exported in violation of the laws of another country."²² In concordance with the policy, a

²⁰ David L. Shirley, "Dillion, Metropolitan President, Terms Vase Purchase 'Legal,'" *The New York Times*, March 1, 1973; Proquest Historical Newspapers *The New York Times* (1851-2006) <http://www.proquest.com.ezproxy1.lib.asu.edu/> (accessed December 27, 2010).

²¹ Ibid.

letter of inquiry must be sent to the Ministry of Antiquities of any possible country of origin if substantial provenance was unavailable. However, in the case of the krater, the presentation of sufficient information enabled the museum to circumvent contacting Italy or Greece.²³

The Hawkins report further clarified the Metropolitan's position by explaining that the acquisitions committee met on September 12, 1972 to review the purchase of the Euphronios Krater.²⁴ In the meeting, Hoving and von Bothmer presented that Robert Hecht, acting on behalf of his client Dikran Sarrafian of Beirut (Lebanon), offered an Attic krater for sale and the Metropolitan may purchase the item. Sarrafian claimed the krater had resided in his family's possession for over fifty years and his father had obtained the sherds. Hecht claimed the owner never assembled the vase.²⁵ Based on the information disclosed, the museum committee approved the acquisition.²⁶ This agreement to

²² Ashton Hawkins, "The Euphronios Krater at the Metropolitan Museum: A Question of Provenance," *Hastings Law Journal* 27 (1975-1976): 1164.

²³ *Ibid.*, 1164.

²⁴ This confidential information was given to the committee to approve of the transaction without anyone else being provided these details until publishing of this report in 1975.

²⁵ Hoving and von Bothmer inspected the krater for the first time in the home of the restorer Fritz Beuerki in Zurich. Hecht had contracted Beurerki to restore the vessel. Thomas Hoving, *Making the Mummies Dance* (New York: Simon & Schuster, 1993) 311.

²⁶ Hawkins, 1164-5.

purchase the Euphronios Krater for one million dollars surpassed the largest amount ever paid for a Greek vase at the time.²⁷

As a result of the procurement, the Italian press highlighted the krater as a means to discuss the loss of cultural patrimony.²⁸ However, none of the allegations regarding the alternate provenance of the krater proved true. Hawkins emphasized that many works of art remain unknown to the public as part of private collections.²⁹ The purchase of the krater followed all applicable laws but Hawkins acknowledged in his document an illicit excavation in Cerveteri in 1971, however, little evidence links the krater to this site. He also mentioned illegal digs also occurred in the same area in the mid-nineteenth century, during which thousands of excavated pottery fragments were distributed between museums and collectors and these finds were undocumented.³⁰

Although illegal excavation could not be proven in the late seventies, many still questioned the provenance of the krater.³¹ The controversy regarding the object subsided as evidence remained elusive and the vessel remained prominently on display in the museum. In 1993, Hoving published a book,

²⁷ Peter Watson and Cecilia Todeschini, *The Medici Conspiracy: The Illicit Journey of Looted Antiquities from Italy's Tomb Raiders to the World's Greatest Museums* (New York: Public Affairs, 2006) ix.

²⁸ Hawkins, 1170. Patrimony is the surviving artifacts representing ancient ancestors.

²⁹ *Ibid.*, 1171.

³⁰ *Ibid.*, 1179.

³¹ Vinne Nørskov, *Greek Vases in New Contexts* (Langelandsgade, Denmark: Aarhus University Press, 2002)154.

Making the Mummies Dance.³² In this text, he frankly discusses his time as the director and his recollections of the acquisition of the million-dollar krater. According to his account, the wife of Robert Hecht telephoned Hoving and advised him of a forthcoming offer of a new startling piece on consignment.³³ A resident of Rome, Hecht was an American who studied art and archaeology at the University of Zurich.³⁴ In the late 1940s, he had travelled to Rome on a fellowship, ultimately stayed and developed an antiquities business.³⁵ In early 1972, von Bothmer received a letter from Hecht about a red-figure krater available for purchase.³⁶ Hoving admitted in his book,

I thought I knew where it must have come from. An intact red-figure Greek vase of the early sixth century B.C. could only have been found in Etruscan territory in Italy, by illegal excavators. But when I said that to Bothmer, he replied that it was unlikely.³⁷

Von Bothmer believed the Etruscan ruins were exhausted of possible discoveries. The pair continued to probe Hecht for more information regarding his vase. According to Hoving, an unspoken understanding was established and discussions

³² Thomas Hoving, *Making the Mummies Dance* (New York: Simon & Schuster, 1993).

³³ Hoving, 308.

³⁴ Nørskov, 256.

³⁵ Stephen Kiehl, "Shadows in a Tomb" *The Sun* (Baltimore, MD), June 18, 2006. http://articles.baltimoresun.com/2006-06-18/news/0606190230_1_hecht-antiquities-rome (accessed December 30, 2010).

³⁶ Hoving, 308.

³⁷ *Ibid.*, 309.

regarding the origins of the vase did not occur. Originally offered to the Metropolitan Museum of Art for 1.3 million dollars, the final price of the krater amounted to 1 million.³⁸ Hoving noted to Hecht that due to the 1970 UNESCO Convention, he required clear and unquestionable provenance connecting ownership to Sarrafian.³⁹ Hoving later admitted he withheld from the acquisitions committee his suspicions that the letter from the owner was fictitious.⁴⁰

The ambiguous circumstances and the large purchase price attracted the attention of both the American Federal Bureau of Investigation and the Italian carabinieri. Proof of an illegal excavation eluded the Italian Ministry of Culture for many years, but the case remained. Twenty-three years after the announcement of the acquisition, the Italian carabinieri gained the necessary evidence that the vase had been illegally obtained when a raid was made upon a warehouse in Geneva, Switzerland.⁴¹

Giacomo Medici, an Italian whose family industry involved the antiquities market for many generations, leased the warehouse in Switzerland.⁴² Though

³⁸ Ibid., 319.

³⁹ Ibid., 316. Sarrafian died in a car accident in 1977. No one had queried him regarding the provenance before that time. Interestingly, his daughter was unaware of a million dollar payment for an item in the family's collection. Vernon Silver, *The Lost Chalice* (New York: HarperCollins, 2009) 121.

⁴⁰ Ibid., 320.

⁴¹ Watson, 20.

⁴² Silver, 12. The family name of Medici has a long history in Italy, although Giacomo's lineage was Roman and not related to the Florentine Medici family, known for its role in the finance world during the Renaissance.

restricted by the enactment of the 1939 antiquities law in Italy, the Medici family thrived. With the opening of his first gallery in 1968, the Antiquaria Roman, Medici continued the family tradition of trading in ancient artifacts to individuals establishing private collections.⁴³

Medici circumvented the Italian legislation by operating out of a warehouse in Geneva, Switzerland. Swiss imports and exports were not taxed and Switzerland allowed objects to assume a Swiss origin after import, legal or not, into the country.⁴⁴ During the raid on Medici's storehouse, the joint force of Swiss and Italian police discovered 3,800 artifacts, tens of thousands of documents and 4,000 photographs.⁴⁵ The Polaroids depicted many archaeological objects still encrusted with dirt from excavation. Forty-two objects were photographed up to four times in different settings. Each contained multiple images of the same object with dirt or encrustations, in different stages of restoration, in museum acquisition catalogues and finally a photograph of Medici himself with the item on display in the museum.⁴⁶ Two photographs of particular interest in the collection portray Medici and Hecht beside the Euphronios Krater in the gallery at the Metropolitan.⁴⁷ Investigators believed these photographs trace the object from

⁴³ Ibid., 34.

⁴⁴ Ibid., 174.

⁴⁵ Watson, 146.

⁴⁶ Ibid., 87-88.

⁴⁷ Now the property of the Italian carabinieri Art Squad, the photographs remain part of the evidence in the trial against Giacomo Medici. Although unpublished,

discovery to final sale and utilized the immediacy Polaroid to avoid commercial services and possible detection.

Additional discoveries strengthened the case for repatriation of the krater. A cult building dedicated to Hercules in Cerveteri was discovered in 1993 and further confirmed the carabinieri's suspicion that the vessel originated from Italy. The area had been previously cleared and refilled, suggesting items had been discovered in the area.⁴⁸ Since 1850, many clandestine excavations have desecrated Etruscan tombs in the northern Italy, leaving little *in situ*.⁴⁹ Five vases by Euphronios surfaced between 1960 and 1980, as the Etruscans highly prized his work.⁵⁰ Of these vessels, four were traced back to Hecht and three to Medici. Italian officials believed all of the works by Euphronios ultimately came from this site in Cerveteri.⁵¹

The items and photographs uncovered in the warehouse enabled Italy to connect the location of objects to museums and collections throughout the world

Peter Watson and Cecilia Todeschini accessed the photographs during their research for *The Medici Conspiracy*. Information regarding the photographs illustrates what documentation Italy presented to the Metropolitan Museum of Art to instigate the return of the krater. For research purposes of this thesis, I focus on the implications of the effects of the return of cultural objects to their nation of origin rather than the debate whether the evidence provided by Italy justified the return of the krater. Thus, copies of the photographs are not included in this document.

⁴⁸ Watson, 202.

⁴⁹ T.C.B. Rasmussen, "Archaeology in Etruria 1985-1995," *Archaeological Reports* 42 (1995-1996)53-54.

⁵⁰ Boardman, *Athenian Red Figure Vases: The Archaic Period*, 88.

⁵¹ Watson, 202.

and the Euphronios Krater to the Metropolitan. Despite this evidence, these photographs still allow ambiguity as they do not demonstrate prior possession or ownership. However, the combination of photographs, documents and his holding of objects proved enough to prosecute Medici. In May 2005, Italy convicted him of illegal exportation of works of art, reception of stolen goods, and conspiracy to steal ancient artifacts. He was sentenced to ten years in prison. All of the antiquities discovered during the raid became the property of the Italian government and Medici was ordered to pay \$14 million in restitution. Medici received the strongest punishment ever given for the crime of the illicit trade in antiquities, demonstrating Italy's new resolution to protect its cultural heritage.⁵² Despite a subsequent appeal, the court upheld the decision in July 2009, but the ruling reduced Medici's sentence to eight years incarceration. One last level of appeal remains and Medici plans on approaching Italy's highest court.⁵³

Following Medici's conviction, the Italian Ministry of Culture formally requested that the Metropolitan return six artifacts in its collections. The photographs from the Freeport warehouse in Geneva included a Laconian kylix, a red-figured Apulian dinos (attributed to the Darius Painter), a red-figure psykter decorated with horsemen, a red-figured Attic amphora by the Berlin Painter, the

⁵² Ibid., 107-8 and 283.

⁵³ Mike Boehm and Jason Felch, "Dealer who Sold Antiquities to Getty Loses Looting Appeal," *L.A. Times* July 15, 2009. <http://latimesblogs.latimes.com/culturemonster/2009/07/dealer-in-looted-antiquities-loses-appeal-has-links-to-embattled-exgetty-curator.html> (accessed July 16, 2009). Italian courts allow for three appeals, as each subsequent appeal approaches a higher court. The appeals are at the request of the defendant.

Euphronios Krater and fifteen pieces of Hellenistic silver. In November 2005, Philippe de Montebello, Director of the Metropolitan at the time, arrived in Rome to discuss the allegations of the disputed provenance of works in the collection.⁵⁴ His visit coincided with commencement of the trial against Marion True, a former antiquities curator from The J. Paul Getty Museum, charged with conspiring to acquire illegally looted items.⁵⁵ Negotiations between Italy and the Metropolitan proceeded quietly until a press release in 2006.

On February 21, 2006, the Metropolitan announced the surrendering of six antiquities to Italy, including the Euphronios Krater. In a joint statement, both parties acknowledged the agreement to transfer the title in exchange for the loan of objects of equivalent beauty and importance as those returned. De Montebello commented that the agreement presented an appropriate solution with an equitable arrangement.⁵⁶ The museum retained the ability to access Italy's holdings and thus fulfill its mission "to collect, preserve, study, exhibit, and stimulate appreciation for and advance knowledge of works of art that collectively represent

⁵⁴ Russell Berman, "Met Chief to Discuss 'Hot Pot' in Rome." *The New York Sun*, November 11, 2005. www.nysun.com/new-york/met-chief-to-discuss-hot-pot-in-rome/22903/?print=04298... (accessed July, 2 2009).

⁵⁵ Elizabeth Povoledo, "Prosecutors Bet Big on Antiquities Trial in Italy," *The New York Times*, November 16, 2005; Proquest Historical Newspapers *The New York Times* (1851-2006). <http://www.proquest.com.ezproxy1.lib.asu.edu/> (accessed December 27, 2010).

⁵⁶ Metropolitan Museum of Art, *Statement by the Metropolitan Museum of Art on its Agreement with Italian Ministry of Culture*, www.metmuseum.org/press_room/full_release.asp?prid={F9704AC3-2978-4704-999B-11ACC8E6804}. (accessed December 14, 2008).

the broadest spectrum of human achievement at the highest level of quality.”⁵⁷

Through loans, the museum continues to exhibit the finest examples of art from all epochs and cultures.

Repatriation of the Euphronios Krater

The Metropolitan’s cessation of ownership of the Euphronios Krater after many decades of resistance and the immediate praise for the agreement suggests significant consequences for disagreement. During negotiations, the museum was completing a fifteen year re-installation of the Greek and Roman art galleries. Central to the galleries was the newly renovated Leon Levy and Shelby White Court highlighting Roman and Etruscan art and looked to supplement its collection with the loan of additional artifacts from Italy.⁵⁸ The museum also regularly relies on Renaissance art from the nation and failure to concede to the request may have eliminated the option of loans to the museum.⁵⁹ As purchasing ability becomes further restricted, loans represent one of the most practical methods for creating exhibitions and highlighting works of art not in a museum’s collection. If a nation prohibits temporary exchanges of objects to certain

⁵⁷ Metropolitan Museum of Art, *Mission Statement*, www.metmuseum.org/works_of_art/collection_database (accessed December 14, 2008).

⁵⁸ Carlos A. Picón, et al., *Art of the Classical World in the Metropolitan Museum of Art: Greece, Cyprus, Etruria, Rome* (New Haven: Yale University Press, 2007) vii.

⁵⁹ Hugh Eakin, “Italy Using Art Loans to Regain Antiquities,” *The New York Times* (January 10, 2006). www.nytimes.com/2005/12/27/arts/27iht-loans.html (accessed August 13, 2010). The J. Paul Getty Museum was denied loans during their refusal to repatriate items to Italy.

countries or museums, these constraints prevent institutions from exhibitions of additional works to complement their existing collections.

The timing of the acquisition, which occurred prior to the ratification of the UNESCO treaty, influenced the Metropolitan's decision. Documentation indicated Dirkran Sarrafian owned the object before 1970, thus, the guidelines set forth by the Convention were ignored. Despite signing the Convention prior to the Metropolitan's purchase, the U.S. lacked legislation to enact the protocol into law. Signatory nations must create or adjust national laws to allow implementation, as the initial act of signing does not enforce the Convention.⁶⁰ Since the U.S. did not approve the CPIA (Cultural Property Implementation Act) until 1983, the acquisition of the krater occurred in the interim period prior to enforcement.

The book published by Hoving in 1993, *Making Mummies Dance*, presents his account of the true circumstances surrounding the "Hot Pot" and establishes another justification for the agreement.⁶¹ He acknowledged the procuring of the Euphronios Krater, an illegally excavated work. The Metropolitan could not deny the publication of his account, although they never publically responded to his memoirs. Hoving retired from the museum in 1977, however, for the decade he was the Director, the museum was plagued with scandals from deaccessionings and acquisitions. In his book, Hoving claims he was tired of museum work and ready for new challenges, however, it is also

⁶⁰ Lobay, 66.

⁶¹ Hoving, 307-340.

possible the Board of Trustees pressured him to leave.⁶² His publication also aided in the creation of a case enabling Italy to prosecute the museum under CPIA and NSPA. The acquisition of the Euphronios Krater violated CPIA because the artifact lacked proper export and import documentation and the museum did not possess clear title. Italy may have also pursued NSPA because Hoving and von Bothmer, as a result of the account, could have been sued for possession of stolen goods.

If Italy brought the Metropolitan to trial, the most damaging consequences would be the cost of legal fees and the reputation of the museum.⁶³ In Italian courts, a defendant is guilty until proven innocent and there is no provision for a speedy trial.⁶⁴ For the Marion True trial, the court convened forty-three times over sixty months for between two to four hours per session with translation. True stated the amount paid for her legal fees would cover years of conservation and educational programs at Italian museums and excavations sites.⁶⁵ Although negotiations between the Metropolitan and Italy corresponded with the beginning of the True trial, the legal representatives for the Metropolitan would have been

⁶² Ibid., 423 and Gross, 372.

⁶³ Aaron Briggs, "Consequences of the Met-Italy Accord for the International Restitution of Cultural Property," in *Chicago Journal of International Law* 7 (2006-2007) 644.

⁶⁴ Marion True, "Neither Condemned nor Vindicated," *The Art Newspaper* (January 5, 2011). <http://www.theartnewspaper.com/articles/%E2%80%9CNeither-condemned-nor-vindicated%E2%80%9D/22163> (accessed April 3, 2011).

⁶⁵ Ibid.

able to estimate the cost of such a trial. The J. Paul Getty Trust paid for the legal fees of True, and fortunately this case did not bankrupt the institution. However, The J. Paul Getty Museum and Italy continue to dispute the ownership of artifacts including the *Victorious Youth*.⁶⁶ The case also has further implications on the responsibilities of curators to their institution and industry. If True had been convicted, all individuals involved in the acquisition of objects may be prosecuted for neglecting details in the procurement of artifacts. Several past and present employees of the museum may have also been indicted with similar charges. Hoving, von Bothmer and de Montebello may have been the focus of personal lawsuits. Guaranteed protection against any legal proceedings for the return of the disputed objects must have greatly influenced the Metropolitan's decision.

The initiation of a trial would have required the Metropolitan to reluctantly share private records. A close inspection of provenance documents may have uncovered additional items in violation of the 1970 UNESCO Convention, requiring repatriation to nations worldwide. Acquisition records may have become public, financial statements may have been disclosed, and deaccessioned items may have been revealed. As a partially publicly funded institution, the U.S. government may also have intervened.⁶⁷ Recently, the U.S. government interfered in a separate repatriation case. The U.S. government

⁶⁶ The *Victorious Youth* was discussed in Chapter 1.

⁶⁷ The building, land, electricity and one third of the cost of maintenance and security for the collection are provided by the City of New York. The Metropolitan Museum of Art, *An Overview of the Museum*, http://www.metmuseum.org/press_room/full_release.asp?prid={9FF384DF-9FEA-4220-8634-D1684C00E35D} (accessed August 13, 2010).

formally demanded the St. Louis Art Museum return a disputed object requested by the Egyptian Supreme Council of Antiquities in 2006.⁶⁸ The case of the 3,200 year old mask of Ka-Nefer-Nefer (a nineteenth century noblewoman), demonstrates the government playing an active role in the decision making process regarding requests from foreign nations.

By agreeing to return the artifacts, the Metropolitan saved costly legal fees, avoided disclosure of guarded information about the operations of the museum and received the benefit of long-term loans of Italian works of art. Loans allow museums to display artifacts that its public would otherwise have no access to and, as part of the accord, the Metropolitan may borrow exceptional works. Awareness of past world cultures will be increased through access, permitting visitors to the Metropolitan to gain a greater appreciation for the cultural patrimony of the world.

The Metropolitan Museum of Art - Republic of Italy Agreement

The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006 clearly outlines the concessions and benefits to each party.⁶⁹

⁶⁸ Bruce Olson, "U.S. Demands Art Museum Hand Over Egyptian Artifact," *Yahoo News* (March 16, 2011) http://news.yahoo.com/s/nm.20010317/stage_nm/us_museum_mask/print (accessed March 31, 2011).

⁶⁹ The document is on file at both the Metropolitan Museum of Art and at the Italian Ministry of Culture and is available to the public. A complete copy was published in The Ministry of Cultural Assets and Activities for the Italian Republic and The Metropolitan Museum of Art, "The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006," *International Journal of Cultural Property* (2006) 429-432. Also see The Ministry of Cultural Assets and Activities for the Italian Republic and the Metropolitan Museum of Art, "The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006,"

Beginning with a list of the goals of both the Metropolitan and Italy, the accord illustrates the divergences and similarities between the two parties. Consisting of nine Articles, the document provides for the use of private arbitration in the case of a dispute that cannot be resolved. Central to the agreement, the first section requests the transfer of the title of six archaeological items to Italy. The Ministry of Cultural Assets and Activities affirmed the illegal excavation and sale of the items listed in Articles 3, 4 and 5.⁷⁰ Although deploring illicit and unscientific excavation, the Metropolitan rejects all accusations of prior knowledge of the illegal acquisition. Through the agreement, the museum denounces any civil, administrative or criminal liability and Italy waives all legal actions in exchange for the museum's participation in the agreement.⁷¹ An arrangement of cultural cooperation, involving reciprocal loans of archaeological artifacts and other works of art, grants continuing access to Italian cultural heritage. The accord does not contain any provisions regarding instigation of long term loans of objects from the Metropolitan to Italy, however, the museum chooses to loan items and Italy may request any item in the collection. Following the return of the krater, the Metropolitan received three vases from Italy, a jug in the shape of a woman's

in *Law Ethics and the Visual Arts*, 5th ed., eds., John Henry Merryman, Albert E. Elsen and Stephen K. Urice (The Netherlands: Kluwer Law International, 2007) 406-413.

⁷⁰ The Ministry of Cultural Assets and Activities for the Italian Republic and The Metropolitan Museum of Art, "The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006," *International Journal of Cultural Property* (2006) 429-432.

⁷¹ *Ibid.*, 428.

head, a cup signed by Euxitheos as potter and Oltos as painter, and a vase illustrating Oedipus solving the riddle of the sphinx.⁷²

For each artifact returned, Italy will provide equivalent objects of artistic/historical significance which both parties mutually agree upon. A list of potential substitutes was assembled for each artifact returned and included the returned object itself. For example, one of the possible substitutions for the Euphronios Krater was a hydria attributed to the painter Kleophrades with a depiction of the fall of Troy.⁷³ Each item selected dates to the same century and represents equal significance. While exhibiting any items loaned by Italy, the identification for the objects will include the legend “Lent by the Republic of Italy.”⁷⁴

The Metropolitan bears the financial costs associated with facilitation of the loans. An employee from the Ministry must accompany the loaned materials to New York and the museum arranges air transportation and necessary accommodations while in the U.S. Additionally, it must pay for packaging, insurance and shipment of the requested items to and from Italy.⁷⁵ Each loan

⁷² The Metropolitan Museum of Art, “Three Spectacular Vases Lent by Italy to the Metropolitan for Four Years to Replace Euphronios Krater,” *Metropolitan Museum of Art*. http://www.metmuseum.org/press_room/full_release.asp?prid={49999C65-6026-4E46-A655-13C62141A4F7} (accessed April, 3,2011).

⁷³ *The Ministry of Cultural Assets and Activities for the Italian Republic and The Metropolitan Museum of Art*, 430.

⁷⁴ *Ibid.*, 429-430.

⁷⁵ *Ibid.*, 433.

requires appropriate documentation guaranteeing the safety and optimum display of each object.

The Metropolitan Museum of Art, in accordance with the agreement, may conduct authorized excavations in Italy upon approval. Any objects discovered may travel to the museum for study and restoration at its own expense. After an agreed upon time period, the museum must send the restored artifact back to Italy, with the item available on four year loans if requested by the museum.

Lasting forty years, the accord may be renewed through the agreement of both parties. The conclusion of the document reaffirms that no possible civil, criminal, administrative, arbitral or other proceedings may be brought against the Metropolitan Museum of Art. Transfer of ownership does not imply admission of liability and the correspondence between the parties cannot represent negligence or any other misconduct. Both parties also agree to seek arbitration if a dispute occurs and warrants assistance to settle a dispute.⁷⁶

Policies within the museum are constantly refined to ensure the legal acquisition of works of art and to comply with the accord and international legislation.⁷⁷ The Metropolitan must clearly demonstrate complete provenance research and publically display its findings for any artifact accessioned. Open communication must be maintained with nations of origin and databases of stolen

⁷⁶ Ibid., 433.

⁷⁷ The Collection Management Policy lists at the top of the policy the last date of the revision, suggesting periodic adjustments. The Metropolitan Museum of Art, "Collections Management Policy," The Metropolitan Museum of Art. http://www.metmuseum.org/Works_of_Art/collection_database/collection_management_policy.aspx (accessed April 4, 2011).

artifacts consulted as well as confirmation of the legality of export permits.

Revisions to the Collections Management Policy stress the need for accuracy in all research and to discourage the environment which allowed for the acquisition of the Euphronios Krater.

Collections Management Policy

Governed by a Collections Management Policy, the Metropolitan adheres to this document to ensure problematic acquisitions, such as the Euphronios Krater, remain isolated.⁷⁸ The policy continues to evolve and undergoes continual adjustments to ensure compliance with international protocols. In addition, the document applies suggestions set forth by Marie Malaro, a leading scholar on collections issues. She advocates regular reviews to ensure conformity with current professional standards.⁷⁹ The most recent revision of the Metropolitan's policy on acquiring archaeological material and ancient art occurred in 2008. As a developing document, amendments usurp previous policies. With respect to ancient artifacts, standards of procedure state that the museum will not accession an object unless provenance research clearly demonstrates the item adheres to the 1970 UNESCO Convention.⁸⁰ Documentation of an artifact's whereabouts and

⁷⁸ The collection management policy is available online at: http://www.metmuseum.org/works_of_art/collection_database/collection_management_policy.aspx (accessed March 31, 2011) and the first version of the policy dates to the founding of the institution.

⁷⁹ Marie Malaro, *A Legal Primer on Managing Museum Collections* (Washington D.C.: Smithsonian Books, 1998) 110.

⁸⁰ Metropolitan Museum of Art Board of Trustees, "Collections Management Policy," Metropolitan Museum of Art

ownership prior to 1970 is required for any item under consideration prior to acquisition. Missing provenance information does not immediately disqualify the object, but such cases must be carefully considered and balance both financial and reputational harm with the preservation and presentation of the artifact. For works lacking history, the museum must follow AAMD guidelines and record the item in its database and the Metropolitan's own website.⁸¹ These postings allow public and professional access to the information and possibly permit for the completion of an object's missing history. Any nation or individual may submit findings to the museum holding the item to be reviewed and potentially it will be added to the provenance (upon verification). The museum will promptly present any information found to another party or nation if ownership may need to be ceded, however, since the initiation of this website no claims have been brought forward. Additionally, the Metropolitan guarantees prompt review of any claims brought to its attention and will facilitate a return, if warranted.

Due diligence in provenance research occupies an essential role in the acquisition of ancient artifacts. Clear documentation regarding all acquisitions, including deliberations and actions for each collection item, must be maintained.⁸² The need to obtain a legal title to any artifact is central to the document. However, as demonstrated in the case of the Euphronios Krater when unscrupulous

http://www.metmuseum.org/works_of_art/collection_database/collections_mgmt_policy.pdf (accessed February 2, 2010). Section IV, point 3.

⁸¹ The AAMD, or Association of Art Museum Directors, was discussed in Chapter 2.

⁸² Malaro, 110.

individuals created false histories, this policy needs continued re-evaluation.

Through fictitious documents and invoices, counterfeit records produce an aura of legitimacy surrounding an artifact. The Collection Management Policy within the museum must ensure examination of these histories by curators and researchers to prevent acceptance of erroneous information.

The loan provision of the agreement between the Metropolitan and Italy aids in evolving viewpoints regarding the acquisition of ancient artifacts through initiation of long-term loans. Receiving equivalent items to those returned on a four-year rotating basis, the museum continues to display the best examples of ancient art. This complements the museum's existing policy of borrowing works from a variety of countries, including Italy, for temporary exhibitions. Through these two avenues, more works of ancient art may be enjoyed in the U.S.

The agreement between Italy and the Metropolitan changes how nations and museums approach cultural property disputes. Encouraging the temporary exchange of artifacts, ancient and cultural objects may continue to be displayed worldwide. Adapting to changing views of ownership of cultural property, museums must determine the future of the encyclopedic institutions. As additional nations may begin the quest to reclaim lost items, more items held in collections may be repatriated. How do museums continue to represent world heritage and respect the patrimony of all nations? The next chapter analyses the accord between the Metropolitan and Italy and explores the possibilities of replicating the agreement.

Chapter 5

RE-EVALUATING OWNERSHIP: WHERE DO WE GO FROM HERE?

Recently rebroadcast on a subsidiary of the Discovery Channel, the program *Pharaoh's Revenge: The Lost Treasures of Egypt* focuses on the return of the mummy of Ramesses I to Egypt from the Michael C. Carlos Museum in Atlanta in 2003.¹ The documentary also discusses the requests for repatriation of several artifacts including the Rosetta Stone and the Bust of Nefertiti, all of which Egypt desires returned. Through the program, Egypt emphasizes the focus on select items removed in the last 200 years rather than the return of all objects to Egypt. In the documentary, Zahi Hawass, then Secretary-General of the Egyptian Supreme Council of Antiquities and a spokesperson for Egypt, recounted the reasons and circumstances surrounding the illicit removal of these objects and argued that these items are essential to Egyptian history and should be repatriated. Dr. Dietrich Wildung, Curator from the Egyptian Museum Berlin, next presented the German position on the Bust of Nefertiti; that it was legally obtained during a joint archaeological endeavor as part of the division of finds. He proclaimed that the sculpture would never leave Berlin. *Pharaoh's Revenge* sided with Egypt; it argued that the museum refuses to return the object as it benefits financially from ownership. The Discovery Channel's program clearly acknowledges Egypt as rightful owner of the bust. In another example, a similar argument characterizes the position of the British Museum; one interview with Carol Andrews, an

¹ *Pharaoh's Revenge: The Lost Treasures of Egypt*, Planet Green a subsidiary of the Discovery Channel, first aired August 10, 2004. Directed by Kate Nichollos (2004: Mark Stewart Productions).

Egyptologist affiliated with the British Museum for many years, states the display of Egyptian artifacts draws tourism to Egypt, and both Britain and Germany rely on and benefit economically from tourism.² Both Egypt and nations containing Egyptian artifacts benefit from television programs such as this one as it reaches diverse audiences and advertises what artifacts may be seen all over the world.

While it is not clear if Egypt financed the production, programs such as the *Pharaoh's Revenge* aim to increase public awareness of current ownership issues.³ Like Egypt, Italy shares concerns of antiquities ownership and dedicates significant resources to the repatriation of lost items, however, it focuses its efforts differently. While Egypt works to increase knowledge of ownership issues surrounding iconic objects, Italy seeks the return of items that clearly fall under the jurisdiction of the 1970 UNESCO Convention and the antiquities law of 1939. For example, for more than thirty years, Italy sought to reclaim the Euphronios Krater, an artifact from an Etruscan tomb that became part of the collection of the Metropolitan Museum of Art in 1972. An agreement reached in 2006 transferred

² The Annual Report of the Metropolitan states that 11 million dollars of revenue was created through sales on the website of the museum store, representing a 12% increase over the previous year. This only signifies a small portion of the total sales, illustrating the profitability of the museum stores. The Metropolitan Museum of Art, "Annual Report for the Year 2009-2010," The Metropolitan Museum of Art. http://www.metmuseum.org/about/pdf/annual_report/2010_Annual_Report.pdf (accessed April 4, 2011).

³ It is not clear who hired Mark Stewart Productions, a United Kingdom company, to create the documentary the *Pharaoh's Revenge*. The content and presentation of the issues surrounding repatriation suggest Egypt played a role in the development of the content of the show.

the ownership of the Euphronios Krater and additional items in exchange for long-term loans.

This chapter reviews the accord established between the Metropolitan and Italy and discusses the possibilities for the replication of this model. Additionally, deficiencies in cultural property laws regarding objects without clear histories allow the illegal trade of antiquities to continue; museums must negotiate the continued display of ancient objects and work within updated, culturally sensitive laws. Following an investigation of the original mission of museums, this thesis proposes suggestions for the transformation of the museum necessary for the continuance of these institutions. An overview of the benefits of the loan program initiated between the Metropolitan and Italy concludes the discussion.

The practices and policies of the Metropolitan reflect the standards of the time, with the development of new attitudes and protocols transpiring concurrently. The Metropolitan created a collection with a focus on ancient art to equate its holdings with those of European museums. A collection of the rare and unique was believed by curators to raise the perceived status of the museum and museums in this country sought to demonstrate their greatness. Also, providing works representing the Classical era aided in the education of Americans, allowing access to those who were unable to travel. Staff and leadership at the Metropolitan reinforced the dominance of ancient art for many years, dedicating financial support to its growth. However, beginning with the collection of Cypriot antiquities by the museum's first director, General Luigi Palma di

Cesnola, through the purchase of the Euphronios Krater by Thomas Hoving and Dietrich von Bothmer, controversy plagued the Metropolitan.⁴

A preliminary review of the records of the acquisition of the Euphronios Krater reveals a seemingly legal transaction with a private collector selling an artifact he possessed in storage for many decades. However, the timing of the purchase coincided with the pending enactment of the 1970 UNESCO Convention and the identification of a clandestine dig in an area in Italy known for collecting Euphronios vessels in antiquity, further questioning the probability of stated provenance. Establishing proof of the connection between Italy and the krater proved difficult, but documents found in Giacomo Medici's warehouse in Switzerland provided sufficient evidence. Medici's warehouse held papers, Polaroid photographs and artifacts documenting his role in the clandestine antiquities market. These documents, alongside the criminal trial against Medici, supplied enough evidence for Italy to recover artifacts identified in the warehouse's records.

In 2006, the Metropolitan Museum of Art agreed to return the Euphronios Krater and five additional antiquities to Italy. As part of the accord, the museum was not required to admit any wrongdoing in any of its actions and was

⁴ Controversy developed around the Cypriot collection to determine if the objects represented works by ancient artisans. For a period of time, the public was allowed to handle the artifacts and perform tests to determine authenticity. For more information see: Anna G. Marangou and Brenda Goodwin, ed. *The Consul Luigi Palma di Cesnola 1832-1904: Life and Deeds* (Nicosia, Cyprus: The Cultural Center of the Popular Bank Group and Theopress Ltd., 2000). The debates surrounding the Euphronios Krater can be reviewed in Chapter 4.

guaranteed protection from civil, criminal, administrative, arbitral or any other legal proceedings. Notably, this distinctly contrasts with the 2005 criminal case against Marion True, a former curator at The J. Paul Getty Museum.⁵ The statute of limitations was reached, resulting in the dismissal of the trial, however, the case ended True's career as an antiquities curator. The Metropolitan Museum of Art may have faced a similar trial, the fear of which may have facilitated the agreement.

The accord between the Metropolitan Museum of Art and Italy addresses a key issue in the global community, e.g., identifying ownership of objects of cultural heritage. Interestingly, the Euphronios Krater epitomizes the culture and traditions of Italy by the definition of the Ministry of Culture, but as an artifact, it is actually Greek in origin and was purchased by an Etruscan. Repatriation raises many questions about who should determine access and ownership for objects of shared cultural heritage, but the Metropolitan-Italy agreement presents a mutually profitable solution. The Metropolitan, in exchange for the items returned, receives long-term loans of equivalent objects. Attracting 5.2 million visitors last year, the Metropolitan is a destination which allows visitors to New York to gain access to the finest examples of Greek ceramics as a result of the continuing loan program.⁶

⁵ For more information on the Marion True trial see Chapter 1.

⁶ The Metropolitan Museum of Art, "Annual Report for the Year 2009-2010," The Metropolitan Museum of Art. http://www.metmuseum.org/about/pdf/annual_report/2010_Annual_Report.pdf (accessed April 4, 2011). Of this figure, it is estimated that two-third may be considered tourists and the numbers date from the fiscal year July 2009-June 2010. Barbara Kirshenblatt-Gimblett,

The agreement also provides additional means for the museum to conduct further research on objects, to restore them and further academic knowledge.

Part of the agreement requires the financial support of the Metropolitan, as it bears all costs associated with loans with Italy. This aspect of the accord represents the one item making larger application of the loan provision difficult. Very few institutions in the United States possess the financial means to facilitate the cost of object loans from Italy. Stewardship of objects requires a constant flow of artifacts to institutions throughout the world. The new loan agreement understates the importance of ownership in favor of temporary possession. Thus, artifacts representing our shared heritage may travel worldwide. As many institutions lack the financial support to facilitate such transactions, it is necessary to create incentives for donors, who are generally more likely to fund acquisitions.

For museums to be able to bear the financial means to borrow objects, the Inter-governmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin (established in 1979) may be able to facilitate such exchanges, if an increase in its responsibilities could be authorized.⁷ Lending

Destination Culture: Tourism, Museums and Heritage. Berkley; Los Angeles; London: University of California Press, 1998, 137.

⁷ Marie Malero, *A Legal Primer on Managing Museum Collection* (Washington: Smithsonian Books, 1998) 103-104. In collaboration with ICOM (International Council of Museums), UNESCO convened in November 1979 and established this committee at its general conference that was attended by party nations. The primary functions of the group are to act as an advisory committee for requests for the return of objects from member nations of UNESCO. Membership of the committee rotates, with individuals from each party state being selected. Additionally, the committee works with nations to determine which artifacts

objects to the committee for a specific period, a nation could allow the organization to initiate loans to institutions worldwide. If an international loan program is implemented, the continual exchange of and greater access to artifacts may hasten the evolution of public opinions regarding the ownership of antiquities, that is to say, actual ownership of items becomes insignificant when visitors have regular access and museums have long-term possession of antiquities. Museums dedicate monetary support to the care and preservation of objects in their collection as well as ongoing research. Loans, on the other hand, are only held for a relatively short period of time, generally resulting in less research and minimal preservation as care remains vested in the lender (or owner). Through the enactment of this program, in addition to changing views about ownership, artifacts on long-term loan may begin to equate with items in the permanent collection and receive equal research and care; in fact, all items in the collection may receive increased attention regardless of ownership status.

Museums need to adhere to cultural property laws in order to remain relevant to society today. Previous collecting guidelines were developed out of the desire to display the rare and exceptional in a manner that would compete with collections in Europe.⁸ As the keeper and protector of the objects of cultures and the history of civilization, the museum served to educate the public in the

constitute their cultural heritage and only assist in the repatriation of objects meeting that definition.

⁸ Carol Duncan, *Civilizing Rituals: Inside Public Art Museums* (London; New York: Routledge, 1995) 26.

ideologies of the state.⁹ Through the act of viewing, a visitor gained understanding about the history of civilization, placing contemporary times as the apex of society.¹⁰ The works and ideas on display are generally shared by the ruling elite and presented to the working class for their observation and leisure. Moral instruction, social interactions and politics were included in the education received by the bourgeois. The museum, therefore, demonstrated the greatness of the nation through its holdings; museums will lose both credibility and authority if they do not adhere to cultural property laws.

Legislation will eventually make private ownership of ancient artifacts impossible. With the continued desire of museums to present history to the public, loans will dominate acquisitions. As a result of both developments, the illegal market will deteriorate. Having received the largest amount of support worldwide, the 1970 UNESCO Convention is the most significant legislation for halting the illegal movement of artifacts. Through the enactment of this Convention, previous methods of acquiring ancient artifacts have dramatically changed. However, more change is still needed. In 1995, Lisa J. Borokin, an attorney in Los Angeles, suggested another alternative of nations allowing a limited trade in antiquities.¹¹ She recommends compensating looters economically if they provide an artifact

⁹ Ibid, 26-27.

¹⁰ Tony Bennett, *The Birth of the Museum: History, Theory, Politics*, (London; New York: Routledge, 1995) 2-7.

¹¹ Lisa J. Borodkin, "The Economics of Antiquities Looting and a Proposed Legal Alternative," *Columbia Law Review* 95 (March 1995) 377-417.

with archaeological context. A state auction would provide a means to sell objects with less cultural significance, however, high quality works must be included in the process.¹² Nations would be able to keep objects representing their cultural wealth and give foreign purchasers the option to buy artifacts complying with international laws.¹³

The acquisition of the Euphronios Krater demonstrates the need for verified documentation. In this case, the provided documents were falsified, erroneously connecting the vessel to a known private collection. The krater, however, most likely was never owned by the collector. Documents found in Medici's warehouse in Switzerland support a Medici/Hecht transaction rather than the ownership of Dirkian Sarrafian. Hoving's emphasis on the need for a clear title may have led to the creation of falsified documentation. Another recent acquisition by the Metropolitan highlights the need for further clarification and provisions for artifacts not adhering to the 1970 UNESCO Convention. In 2009, the Metropolitan accepted a gift of a Roman porphyry sculpture from Lewis M. Dubroff.¹⁴ The first mention of the object dates from 1992, with its sale at a public auction. Two years after purchasing the porphyry sculpture, the owner lent

¹² Ibid., 413.

¹³ Derek Finchman proposes another solution of export controls that allows institutions in the nation to have the opportunity to purchase an item before it is exported. For more information see Derek Finchman, "Why U.S. Federal Criminal Penalties for Dealing in Illicit Cultural Property are Ineffective, and a Pragmatic Alternative," *Cardozo Arts and Entertainment* 25 (1997): 597-645.

¹⁴ Metropolitan Museum of Art, "Object 2009.543," Association of Art Museum Dealers. <http://aamdojectregistry.org/node/80> (accessed April 4, 2011).

the item to the Metropolitan for seven years. A subject of a publication in 2003, the public announcement of the whereabouts of the vessel to the international community was deemed sufficient.¹⁵ The artifact was loaned to the museum again in 2007 before its permanent acquisition. Following the guidelines in the Collection Management Policy, approval was given for the procurement of this artifact. Extensive research revealed all available provenance, although the location of the object from discovery to 1992 remains unclear. A search of all relevant databases of stolen artwork was unsuccessful and no claims exist against the object.

Following the written policy of the Metropolitan national and international legislation, this recent acquisition poses questions for discussion. The museum determined that the accession of this object was acceptable, despite the missing history. This acquisition enhanced donor relations as the refusal of the porphyry may have severed the relationship; Dubroff, a New York doctor, previously donated another item to the museum, and he may provide the museum with additional items in the future.¹⁶ The Metropolitan continues to display the work, allows public access and notifies the international community of its possession. However, this acquisition emphasizes the lack of guidelines provided for artifacts without significant provenance to determine proper origin and ownership. The

¹⁵ Phillipe Malgouyres, *Porphyre: La pierre pourpre des Ptolémées aux Bonaparte*, (Paris: Musée del Louvre, 2003) 89, fig. 41.

¹⁶ He also contributed to the purchase of a Roman marble sarcophagus. <http://www.metmuseum.org/toah/works-of-art/2005.258> and http://www.sjhsyr.org/sjhhc/pdf/evitals/best_doctors.pdf (accessed April 4, 2011).

missing history from discovery to 1992 continues to be ignored, allowing the trade of less important antiquities to continue unless additional legislation is enacted. A significant portion of artifacts lack clear provenance before 1970, with scholars unable to determine their location of origin. Therefore, objects without clear provenance continue to be collected, allowing the illicit trade of lesser antiquities to prevail.

As part of its due diligence in receiving the sculpture, the Metropolitan posted its acquisition on both the website of the Association of Art Museum Directors (AAMD) and the museum. The Metropolitan Museum of Art, Museum of Fine Arts Boston and the Portland Art Museum currently place objects on the AAMD website. The entries provide written justification for all acquisitions with missing provenance. Through the public announcement of the acquisition and available provenance, the museums attempt to complete the history of the object. Research on the objects continues and at any time the museum finds information demonstrating ownership residing with a third party, or if an individual comes forth claiming ownership, the museum will review the repatriation of the artifact.¹⁷

Determining the best practices for ancient artifacts without clear provenance demonstrates a difficult challenge for the world. As private collectors worldwide still retain possession of countless items, their whereabouts only

¹⁷ Metropolitan Museum of Art Board of Trustees, “Collection Management Policy” Metropolitan Museum of Art [http:// www.metmuseum.org/works_of_art/collection_database/collection_management_policy.aspx](http://www.metmuseum.org/works_of_art/collection_database/collection_management_policy.aspx) (accessed August 26,2010) 5.

become known if the owner chooses to sell or donate an object. An inventory of all objects in private collections would be beneficial but it is unlikely that all collectors would submit a list and photographs of their collections to a third party, even at the request of an international entity. However, participation cannot be determined unless a request is actually made. A conscientious balance must be reached between an institution educating and preserving objects for the public and supporting the illegal trade of artifacts. Museums possess some of the best resources to determine the possible origins for works without complete provenance beyond those available to collectors.¹⁸ Employing curators who are experts on particular areas of focus, museums have access to research databases and other scholars in the field.

In November, 2010 research conducted by the Metropolitan Museum of Art determined ownership of nineteen objects in its collection as belonging to Egypt as they were found to be from the tomb of Tutankhamun.¹⁹ Laws enacted in Egypt in 1922 vested all items discovered through the excavation of the tomb as property of the nation and no longer divisible, a practice previously utilized in joint archaeological endeavors.²⁰ The artifacts in the Metropolitan were

¹⁸ Leah J. Weiss, "The Role of Museum in Sustaining the Illicit Trade in Cultural Property," *Cardozo Arts and Entertainment* 25 (2007): 874.

¹⁹ Metropolitan Museum of Art, "Metropolitan Museum and Egyptian Government Announce Initiative to Recognize Egypt's Title to 19 Objects Originally from Tutankhamun's Tomb," Metropolitan Museum of Art. http://www.metmuseum.org/press_room/full_release.asp?prid={C13C1810-152B-443D-AC7C-B62DB5AA71D2} (accessed February 14, 2011).

²⁰ *Ibid.*

accessioned into the collection between 1920 and 1940, and although not in violation of the 1970 UNESCO Convention, the acquisition violated the legislation surrounding the excavation of the tomb.²¹ Despite a previous review by Egyptian authorities, a connection to Tutankhamun's tomb remained unclear. Lengthy research by museum staff determined ownership resided with Egypt. In this regard, museums perform a significant service to world heritage, by researching and returning objects to nations of origin and, in this situation, discovering the object's original context. New information regarding the history of civilizations increases from the work of scholars advancing academic studies.

Although not an isolated case, the repatriation of the Euphronios Krater sets new precedence in ownership disputes and offers the possibility of being replicated in future disputes. International protocols now significantly alter how museums develop collections of ancient artifacts in the modern era. Former ideas regarding the ownership of cultural artifacts need to transform into stewardship, which allow for the continuance of our shared heritage within the twenty-first century. As public gathering spaces for the global community, museums allow for the exchange of ideas as well as shaping national identity and uniting diverse audiences.²² Evolving viewpoints regarding the ownership of antiquities may eventually equate to loans of cultural artifacts with ownership.

²¹ Ibid.

²² Steven Conn, *Do Museums Still Need Objects?* (Philadelphia: University of Pennsylvania Press, 2010) 232.

The Metropolitan Museum of Art constantly revises its policy regarding acquisitions, yet no additional revisions were needed after the agreement with Italy. At the time of the procurement of the Euphronios Krater, the museum already required documentation proving removal from its country of origin prior to 1970. The documents produced by the dealer, although suspicious to Hoving, aligned the acquisition to the guidelines of the museum. However, the process of verification was negated when the director withheld information. This situation demonstrates the requisite for the review of provenance information from a neutral party to ensure a critical assessment.

Repatriation remains a unique issue for museums of the United States. Although the Louvre in Paris returned artifacts to Egypt in 2009, the majority of European museums have yet to repatriate items because of their early collecting practices and their refusal to address claims regarding objects outside of modern-day international protocols. There are iconic battles over objects including the Parthenon Marbles, the Rosetta Stone and the Bust of Nefertiti, all of whose resolution seems unlikely.

In our multicultural world, with descendants of ancient cultures spanning the globe, we must identify ways to protect our shared heritage. Conflicts and wars continue in our modern era, as recently demonstrated in Egypt, and urgency for external protection of artifacts resonates as damage occurs to objects and monuments.²³

²³ President Hosni Mubarak resigned on February 11, 2011, after eighteen days of protests. *The New York Times*, "Hosni Mubarak," *The New York Times*

Methods further restricting the illegal trade of antiquities must be identified, while loan provisions require greater application to permit access to artifacts. As objects representing past cultures become more readily available, the lure of seeking illegal objects should decrease. Research will increase alongside greater access, intensifying knowledge of the past. The loan provision initiated by the Metropolitan and Italy has significant potential to resolve future ownership disputes and enable greater access to artifacts representing past cultures. Therefore, the global community may gain appreciation for the past and the similarities of mankind all by viewing cultural artifacts.

(March 3, 2011) http://topics.nytimes.com/top/reference/timestopics/people/m/hosni_mubarak/index.html?scp=1&sq=Hosni%20Mubarak%20resignation%20%22feb%2011%22&st=cse (accessed 3/20/11). As part of the revolution, several items were stolen from Cairo's Egyptian Museum as well as archaeological sites. Vernon Silver, "Egypt is Looted, Curators Balk," *Bloomberg Businessweek* (March 10, 2011) [http://businessweek.com/magazine/content/11_12b4220015661....\(accessed](http://businessweek.com/magazine/content/11_12b4220015661....(accessed) March 10, 2011).



Figure 1: *Euphronios Krater*, Euphronios (Painter) and Euxitheos (Potter) 515 B.C., 7.1 cm by 8.3 cm, Villa Giulia, Italy

Louis Godart and Stefano De Caro, *Nostoi: Capolavori ritrovati* (Roma: Segretariato Generale della Presidenza della Repubblica, 2007) Figure 9, 75-6.

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