

| Unwanted antiquities

by Neil Brodie

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What should happen to cultural property that the country of origin does not want returned?

The recent return to Italy by several US art museums of antiquities claimed by Italian investigators to have been illegally excavated and traded has attracted a lot of celebratory attention. But the publicity surrounding these returns should not be allowed to obscure a further fact, which is that Italy has not pressed for the return of the many more antiquities that left the country by similar means. One reason may be evidential – it is easy to assume that objects with no provenance are looted but not so easy to prove. But another reason may be one of cost. Taken out of archaeological context, many of the unclaimed objects have lost much of their historical value and in purely artistic terms cannot compete with artefacts inside Italy. The Italian authorities may be reluctant to go to the trouble and expense of recovering what they regard as second-rate material, only to be faced with the prospect of spending yet more to secure its long-term storage and curation. If the goal is to reduce the illegal excavation of archaeological sites by discouraging future acquisitions of illicit material,

then the Italian authorities may well think that the high-profile returns have served their deterrent purpose and that further action is unnecessary.

Possible scenarios

Italy is not the only country facing such a dilemma. In January 2008 US federal agents raided four art museums in southern California. The museums had acquired through donation minor antiquities smuggled from several south-east Asian countries, largely Ban Chiang material from Thailand. It is alleged that these donations were made as part of a conspiracy to commit tax fraud. In the United States charitable donations to museums are tax-deductible, and donations over US\$ 5,000 are subject to independent appraisal. The donations that formed the focus of the US investigation normally comprised several objects appraised together at a value of less than US\$ 5,000, presumably to avoid independent oversight.¹ Thus the individual items comprising the donation can have been of only limited artistic importance. The aim of the conspiracy was not to place great works of art in US museums but to make money, although the museums involved as possibly unwitting accomplices seemed content to acquire free artefacts. But again these objects have no archaeological context and are of limited historical and artistic importance. Should Thailand be expected to press for the return of this material and pay for its long-term curation, or should it be left in the possession of the US museums, who will then have benefited from a criminal activity, or in the possession of the US federal authorities, who might then choose to sell it?

The examples of Italy and Thailand could be repeated many times over, but they are sufficient to pose an important question: what should happen to illegally exported cultural property if the country of origin does not want it returned? The *de facto* answer at the moment is that it is left where it is, in the possession of foreign owners, who become beneficiaries of a criminal trade. For many commentators this fact in itself points to a solution. There is an oft-repeated argument that a legal market in all but a few of the most important antiquities would go a long way towards eradicating the illegal trade and looting of archaeological sites. Why, then, not release legally excavated artefacts of the type not being reclaimed into circulation in the first place? The answer is simple. As already mentioned, the unclaimed artefacts, which may be characterized as unimportant, have been shorn of archaeological context. Legally excavated artefacts that retain their context would be more important and not so readily released on to the market. Unimportant artefacts are produced only by illegal excavation.

Still, the Italian strategy, if such it is, of reclaiming only high-quality artefacts and relinquishing ownership of the rest may be a dangerous one. It seems to be based on the belief that if the most important collectors, whether institutional or individual, are deterred by successful claims for repatriation, then demand will be severely reduced and the incentive for looting will be seriously diminished. This reasoning seems sound enough and may even have been vindicated by the 2008 revision of the guidelines of the Association of Art Museum Directors (AAMD) on the acquisition of archaeological objects, which now recommends

that member museums should not acquire an object unless there is documentation to show that it left its country of origin prior to 1970, the date of the UNESCO Convention. The timing and nature of this revision suggest that it was prompted in part by the Italian returns. But it leaves the way open for an unprincipled collector (individual or institutional) to acquire a large number of objects, secure in the knowledge that, at most, only a few of them will be reclaimed. When a claim is made, the collector can respond publicly and magnanimously by returning a piece, receiving the gratitude of the claimant country and walking away with personal reputation enhanced and collection largely intact. It should not be forgotten, either, that antiquities are economic capital. Museums make money from their displays, and, when kept in foreign museums, that money remains outside the country of origin.

The new recommendation made by the AAMD referred to in the previous paragraph has complicated the situation still further. There is now potentially a large circulating store of antiquities, moved illegally out of their country of origin since 1970, that the country of origin may not want to reclaim and that US museums may not want to acquire. What should happen to them? This question is not a trivial one. In the United States the debate over the collection and repatriation of antiquities is a very public one, and although the trial in Rome of the ex-Getty curator Marion True and the museum returns to Italy have swung opinion towards the source countries, there is no guarantee that in the future it won't swing back towards museums and collectors. The debate is ongoing. If no convincing solution to

the problem of apparently unwanted artefacts is forthcoming, then it will be easy for collectors or their sympathizers to argue that in abandoning artefacts source countries have demonstrated that they do not enforce their own patrimony laws and do not care about their own heritage. What will be characterized as source-country indifference and neglect will be contrasted unfavourably with the more positive attitude towards ownership shown by collectors and museums in the United States.

Considered answers to the question of unclaimed cultural are beyond the scope of this short article. There is an urgent need for intergovernmental discussion and consultation, perhaps mediated by UNESCO and for relevant NGOs such as the International Council of Museums (ICOM) and the International Council on Monuments and Sites (ICOMOS) to take an interest. Some solutions, however, almost suggest themselves. One may be that, if a museum or collector comes into possession of a piece that probably moved out of its country of origin after 1970, the relevant country may choose to assert title over the object, while leaving it in the possession of the foreign holder, although subject to certain stipulations. These stipulations could include restrictions on the sale or transfer of possession of the object, or requirements for descriptive materials that should be displayed alongside the object, emphasizing that it is the property of the country concerned and that it was first acquired in destructive and illegal circumstances. This would serve to place the object within a framework of understanding that is relevant to contemporary concerns about the commercially led destruction of archaeological

ETHICAL AND LEGAL ASPECTS

heritage and that would counter the aesthetic framing of the museum. A second strategy might be to remember the economic aspect, and, quite simply, to rent it out.

| NOTE

1. J. Felch, 'Four Southland Museums Raided in Looting Probe', *Los Angeles Times*, 24 January 2008.