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Abstract
This paper will question whether States have a right to the antiquities unearthed within their borders. The property claims to these antiquities fall into two categories: (1) claims based on cultural identity and (2) a claim based on territory as found in the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention. This paper argues that the cultural identity argument States make is usually inapplicable to cultural property and that territory based claims fail to provide good stewards and leave a puzzle as to what counts for the cultural heritage of states.

The Claims of States to Cultural Property

In 1988, the J. Paul Getty Museum paid $18 million for a statue of Aphrodite. Standing over seven feet tall, with rippling fabric clinging to the body of the goddess, Getty curator Marion True called it “the greatest piece of classical sculpture in this country and any country outside of Greece and Great Britain.”

It was apparent even then that the statue had been looted. The illegal and clandestine excavation occurred in Morgantina, an archaeological site in Sicily. In 2007, under legal pressure, the Getty Museum returned the statue to Italy. The repatriation of the Getty Aphrodite has been celebrated as a victory against looting and unethical collecting. The case had two salient features: (1) that the Getty Museum had no right to the statue, and (2) that it was assumed that the Italians did.

This paper will question whether States have a right to the antiquities unearthed within their borders. The property claims to these antiquities fall into two categories: (1) claims based on cultural identity and (2) a claim based on territory as found in the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention. This paper argues that the cultural identity argument States make are usually inapplicable to cultural property and that territory based claims fail to provide good stewards and leave a puzzle as to what counts for the cultural heritage of states.
Cultural Organization (UNESCO) Convention. First this paper will look at the cultural identity claims of the State, and then examine those based on territory, and finally offer an alternative grounding for the claim that some cultural property is rightfully claimed by the State.

Identity Claims

In 2006, the Metropolitan Museum of Art returned the Euphronios krater to the Italian government. Acquired by the Met in 1972, it is the only complete example of the Greek vase painter Euphronios and considered to be one of the finest surviving pieces of Greek vase work. When its return to Italy was imminent, Rocco Buttiglione of the Italian Culture Ministry said the aim of his ministry was “to give back to the Italian people what belongs to our culture, to our tradition and what stands within the rights of the Italian people.” Iana Valenti following the return of the Getty Aphrodite expressed a similar view: “There is a deep sense of patriotism in every one of us. The return of this statue is very important. It is like a piece of our culture, a piece of our country.” These statements typify the claims made by individual States on antiquities. They assert that due to the influence these peoples have had on their current culture, they have a property claim on these antiquities. However, these property claims based on cultural identity do not stand up to criticism. A request by the Italian government to impose import restrictions in the United States, will give a clearer picture of how the State utilizes this claim of cultural property to claim ownership of antiquities within its borders.

In 2001, the United States Treasury Office granted an Italian request to impose import restrictions on Italian archaeological material representing the pre-classical, classical, and Imperial Roman periods. In reference to antiquities and their importance the request had this to say:


The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people’s origin, history, and traditional setting. These materials are of cultural significance because they derive from cultures that developed autonomously in the region of present day Italy that attained a high degree of political, technological, economic, and artistic achievement. Furthermore, the cultural patrimony represented by these materials is a source of identity and esteem for the modern Italian nation.

Here Italy puts forward two claims: (1) artifacts which have originated from the region of present day Italy come from cultures that were insular or autonomous, that is separate from and developed independently of cultures outside of modern Italy; and (2) that these materials are part of Italian identity. These claims are interrelated; if the first claim is not true then other states could also claim that antiquities found in Italy are sources of their identity. First, we will look at the idea that these cultures “developed autonomously” in Italy and then, examine whether contemporary Italians have a special identity claim to the antiquities found there.

The Getty Aphrodite is instructive in examining whether the cultures of Italy were insular. An insular culture would be isolated from intellectual, artistic, ideological, and technological exchanges. The culture would develop independently of all others; its development and achievements would be unique to the place it occupied. There are examples of insular cultures such as tribes in Western Australia before 1984, various tribes in South American jungles, and a handful in the Asian jungles. No disputed antiquity has come from a truly insular culture. The Aphrodite is shown with wind-blown garments rustling and clinging to her. Phidias, an Athenian, introduced this innovation in sculpture. The two objects discussed so far, the Euphronios krater and Getty Aphrodite, were culturally Greek objects. The Greeks were not insular nor were they a single culture. They were, as Plato said, much like frogs or ants littered around a pond. If a State pursues the claim that its history represents an autonomous

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culture line it will turn out to be false. History will show insular cultures to be an exceptionally rare circumstance.

There is obviously a problem with identity claims without the idea of insular cultures. If the culture was not territorially contained within a State then claims of identity are valid across political borders. For example, at its greatest expanse the Roman Empire contained almost all of Europe, North Africa, and the Middle East. What makes the Italian identity claim to a Roman antiquity more compelling than a British one? This exposes the problem of appropriating ancient cultures into present-day national identities. Ancient cultures did not share current political borders and to impose Italianness on Rome is to work backwards, retrospectively. As James Cuno pointed out, “Italy has been a republic only since 1946. It was a kingdom for less than hundred years before that...and thus has been a unified nation for less than 150 years. It has been a ‘nation’ only since the age of nationalism.”\(^6\) To say that a Roman antiquity more thoroughly represents an Italian identity than a Turkish or British one is to draw a distinction that does not exist. As Kwame Anthony Appiah, writing about yet another example, states,

> We don’t know whether the terra-cotta Nok sculptures, made sometime between about 800 BC and AD 200, were commissioned by kings or commoners; we don’t know whether the people who made them and the people who paid for them thought of them belonging to the kingdom, a man, to a lineage, or to the gods. One thing we know for sure, however, is they didn’t make them for Nigeria.\(^7\)

Like the Nok sculptures, any Roman antiquity in Italy was never intended for the *nation-state* of Italy. Any link that justifies a special identity between Italy and Rome is a fictive one. Thus, any property claim based on an identity claim between Italy and Rome is also fictive.

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A possible objection is that while a single culture may not fully determine the work (given cross-cultural pollination) couldn’t a legitimate claim be made that the object is a locally social product, which owes the majority of its existence to the territory in which it was made? This objection is just a weaker claim to cultural identity. It replaces the cultural identity of nations with a local identity. It still argues that the people who occupy Sicily are more Greek than I am and therefore have a rightful claim to what the Greeks once produced there. Imagine one day in my yard I find a treasure trove of 1,000 year-old Native American artifacts. Would the fact that they are a local product of a territory I now live in make my property claim through identity more compelling? I’ve never seen the culture or interacted with it. The culture that made these artifacts has only contributed to local identity through interesting factoids in history books. The Getty Aphrodite and most disputed antiquities follow this pattern as well. The Getty Aphrodite was buried for hundreds if not thousands of years. Her main purpose in life was part of a religion long lost. The fact that these antiquities were sometimes local products does not mean they share any connection with the locality as it is now.

This section has looked at the property claims made by Italy based on identity. These claims were supported by two faulty assumptions: (1) the cultures of Italy were native to and distinct from cultures in other States’ territory and (2) there is a special identity that only Italians can share with cultures and their artifacts that had previously occupied Italy’s political borders. The next section will examine territorially based claims to ownership of antiquities.

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8 This objection of course will not always apply as well. Some disputed antiquities were not products of where they were found such as the Getty Bronze. See Jason Felch and Ralph Frammolino, (ibid.), 4-26.
Territorial Claims

The UNESCO Convention of 1970 was the first international treaty regarding cultural property. It aimed to define cultural property, reduce looting, preserve archaeological knowledge, and encourage interstate cooperation. In its definition of cultural property the Convention has 11 categories, one of which includes “rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest.” It is certainly difficult to believe that the fossil of a *Tyrannosaurus Rex* is American; it is even more difficult to think that a certain sample quartz is one too! In fact, the Convention’s categories are so numerous and broad it is hard to think of anything that could not be considered cultural property. The UNESCO Convention also recognizes five categories that form the cultural heritage of each State. The first of these categories is the most interesting:

Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory.

The cultural heritage of the State is not defined by those within the culture nor its citizens; its sole marker is territory. Following this would make Thomas Paine’s works in the 1790s the cultural property of France. The second category of cultural heritage of the State is “cultural property found within the national territory.” Once again cultural property is defined by territory, not by the make-up of the State’s national identity. It will be argued that antiquities are too important to reduce to blanket territorial property claims, even if the owner, the State, is usually a good steward.

The Getty Aphrodite and the Euphronios krater are objects whose value to the culture of the world is immeasurable. Appiah has stated:

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10 Ibid. Article 4, Section A.

11 Ibid. Article 4, Section B.
Where objects have this special status as a valuable ‘contribution to the culture of the world,’ the rule should be one that protects that object and makes it available to the people who will benefit from experiencing it. So the rule of ‘finders, keepers,’ which may make sense for objects of less significance, will not do...Since these articles seldom have current owners, someone needs to regulate the process of removing them from the ground and decide where they go. It seems to me reasonable that the decision about those objects should be made by the government in whose soil they are found.\(^\text{12}\)

Appiah is correct that these objects are too valuable to be owned by the people who find them. However, it is not reasonable that they therefore belong to the government of the territory. Appiah is also correct that decisions about these objects must be made, someone or some thing must be their steward; but it should not be the State. States often make bad stewards for artifacts because not all States are created equally. Different States have differing amounts of resources, political stability, and political will to preserve antiquities, which are all in constant flux. To be a good steward of antiquities, consistent funding for their care is required and access to them should be prioritized. States will not always want to or be able to provide funding and rarely consider the importance to provide access for others. Recent comments by Senators John McCain and Tom Coburn illustrate a problem with the State as a steward: “$2 million to repair damage to the roofs of museums in Washington, D.C., while many in Hurricane Sandy’s path still have no roof over their own heads.”\(^\text{13}\) A State’s commitments are broad and its resources limited. If it is to fix the roof of the Smithsonian now, it would be politically impossible to fund it properly if Social Security wasn’t meeting its bills. Antiquities are expensive to care for and manage. They require climate control, storage or display, cataloguing, and security. These requirements are resource heavy and are a continuous cost. With purse strings dependent upon so many external

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\(^{12}\) Ibid. Appiah, 76-77.

factors States are not the best stewards for these objects. It should not be political borders that determine whether an important antiquity is preserved or not.

Basing claims on territory also presents another puzzle. Borders are constantly in flux. Say Tibet gained independence tomorrow, would China be obligated to return the antiquities it has excavated from the new borders? This presents unnatural shifts in what makes up a cultural heritage. Up until tomorrow, Chinese cultural heritage contained all things in Tibet, but tomorrow that heritage will be moved over to those in Tibet. Taking a territorial based approach leads to arbitrary situations. On the one hand, the UNESCO Convention recognizes that antiquities are important to a cultural heritage. On the other, cultural heritage in the UNESCO Convention can be made by the bullet.

To decide ownership based on territory does not provide a reasonable system. It leaves the stewardship of antiquities that have global importance to entities not designed to and not best able to handle them. Antiquities and the knowledge they can impart can’t be left in State-run museums under leaky roofs that might not be mended. The UNESCO Convention proposes a system that does not secure the best stewardship for these objects. These are objects of special concern and need special treatment, treatment that is not secured by ‘finders, keepers’ on the International level.

*Can the State have any Cultural Property Claims?*

So far it has been established that a State’s property claim through identity does not ground a right to antiquities. Further, territorial claims to antiquities do a disservice to these antiquities and give us unnatural shifts in whose cultural heritage an object represents. This paper will end by defusing a possible objection and giving an example of something that appears to be the cultural property of a State.

Is there a legitimate piece of cultural property that belongs to the State? Yes, an example of which would be the Constitution of the United States. What features separate this object from the
Getty Aphrodite? While this is not intended to be exhaustive, some features that differentiate it can be pointed out. The most striking and sensible difference is that the United States still exists. We’re not dealing with a forgotten antiquity buried for millennia and a product of a culture long dead. And secondly, there is no fictive link between the Constitution and the United States. It is a product that explicitly is a part of the State. Products explicitly for or from the State, while the State still exists, can be considered cultural property of it. If the Getty Aphrodite had satisfied these two conditions, then it would have been the rightful property of Italy.

Works Cited


