

**Bettering the World's Art System: the Antiquities Trade,
Encyclopedic Museums, and the Ethics of Identity**

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Abstract

This paper analyses the arguments behind the highly contentious antiquities trade debate as located in issues of cultural heritage and policies. Ethical debates stem from the current state of the antiquities trade, which will be identified and analyzed in the paper. The role and values of encyclopedic museums and the archaeologists' arguments opposing encyclopedic museums will be compared. The roots of national retentionist cultural policies in ideas of identity and culture as exemplified in major source nations such as Italy, Greece and China form a major part of the writing.

Two views of identity, national and cosmopolitan, lie behind this debate and justify the opposing positions. Bettering the world's art system is a matter of resolving the issue of identity. Through analyzing the ethics of identity behind nationalist cultural policies of a retentive nature and internationalist policies, it will become clear that the cosmopolitan view of identity is the most reasonable way from which to view the antiquities debate and to better the world's art system.

To properly address the issues involved, this paper utilized current scholarship in the fields of law, archaeology, museum studies and ethics.

word count: 187

The world's visual art system is divided into two broad paradigms: public and private. The former is a system of visual arts that is deemed to be a governmental responsibility, a system that builds down from the state. The latter deems visual arts to be private responsibility and builds up from a base of individuals.¹ The former is also a system of “source” countries following nationalist retentionist cultural policies and effecting those policies through laws in the areas of exportation-importation, state ownership of antiquities, claims for repatriation and so forth and, the second, “market” countries sharing an approach similar to the American art system based on the roles of individuals such as traders, dealers, collectors, donors and including museums operating on principles of public trusteeship.² The former paradigm has come to direct the world's art system such that today, the government and courts of the United States are assisting other countries in enforcing their retentionist cultural laws. The cornerstone of this environment is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export or Transfer of Ownership of Cultural Property (hereinafter, “UNESCO 1970”), which supports nationally based retentionist policies and its implementation with regard to antiquities.³ UNESCO 1970 was very much a result of the effort to stop looting of archaeological sites by stopping the trade in unprovenanced (no ownership history or documented find spot) artifacts.⁴ International Conventions and derivative laws have, however, failed to stop looting, rather they have contributed to the shift in the form of the antiquities trade, away from licit trade to black markets. The result is a diminution of the great encyclopedic museums such as the MET and the British Museum with attendant loss in effecting their education, preservation, and tolerance missions.⁵ A further effect of this environment is identified as the loss of antiquities due to lack of preservation.⁶

A better path forward needs to be found so that the goals of decreasing looting, preservation of the human record, the increase and dissemination of knowledge of mankind, and

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¹ Merryman, John Henry. (2009) *The American Art System and the New Cultural Policy*. *Stanford Public Law Working Paper*, No. 1489612, 2,3. <http://ssrn.com/abstract=1489612>

² *ibid.* p. 2

³ Merryman, John Henry. (Oct. 1986) *Two Ways of Thinking About Cultural Property*. *American Journal of International Law*, 844.

⁴ Brodie, Neil (Eds.).(2008). *Archaeology, Cultural Heritage, and the Antiquities Trade*. Gainesville: University. p. 9. Archaeologists use the term “artifacts”, whereas encyclopedic museum directors use “antiquities”. The latter conveys an aesthetic dimension to the object, the former, its scientific dimension.

⁵ Fitz Gibbon, Kate (Eds.).(2005) *Who Owns the Past? Cultural Policy, Cultural Property and the Law*. Piscataway: Rutgers University Press, p. 278 and Cuno, James (Eds.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 28.

⁶ Merryman, John Henry. (1987-1988) *The Retention of Cultural Property*. *University of California Davis Law Review* 477, 509.

the education and aesthetic experience of mankind can be attained. That path begins with the issue of identity. Through analyzing the ethics of identity behind the debate between nationalist cultural policies of a retentive nature and internationalist policies, it will become clear that the cosmopolitan view of identity is the most reasonable way from which to view the antiquities debate and the most promising way forward.

Current State of the Antiquities Trade

The international trade of cultural objects consists almost exclusively of the voluntary transfer of privately held works. Artworks, antiquities, and historical objects in museums and public collections do not figure significantly in international trade. Thus cultural objects in private hands dominate the market.⁷ The impetus to much of the current retentionist environment was the need to stop the looting of archaeological sites in South America in the 1960's and 1970's where "(a)n illicit international trade in antiquities [was] obliterating the record of ancient American civilization."⁸ UNESCO 1970 promulgated the attribution of national character to antiquities, calling for the stopping of looting of archaeological sites and repatriation (return to the nations of origin) of cultural property.⁹ The result has been a strong shift away from trade by individuals and non-state entities (such as auction houses, museums) through markets to national retention of artifacts and artifact exchange between states and cultural entities or bodies. These retentionist policies prohibit not only the "illicit" (cultural objects exported contrary to the law of the nation of origin) international traffic in cultural property, but *all* export of cultural property.¹⁰

The Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter, "Hague 1954") constitutes the second way of thinking about cultural property, namely, as "common human culture."¹¹ The Convention aimed for the protection of cultural property, stemming from the principle that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world."¹²

Ethical debates stem from the current state of the antiquities trade. Stanford legal scholar John Henry Merryman states that by preventing the transfer of fragile works (in a source nation)

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⁷ Fitz Gibbon, Kate (Eds.).(2005) *Who Owns the Past? Cultural Policy, Cultural Property and the Law*. Piscataway: Rutgers University Press, p. 269

⁸ *ibid.* p. 221

⁹ Merryman, John Henry. (Oct. 1986) Two Ways of Thinking About Cultural Property. *American Journal of International Law*, 832

¹⁰ *ibid.* p. 843

¹¹ *ibid.* p. 831

¹² *ibid.* p. 836

to a locus of higher protection (for example, museums in America) while inadequately preserving them at home, countries such as Peru endanger mankind's cultural heritage. Some retentionist nations clearly lack the resources to care adequately for their extensive stocks of cultural objects. UNESCO 1970 and national retentive laws prevent the market from working this way, thus endangering cultural property.¹³ Other source nations forbid export but put much of what they retain to no use.¹⁴ They fail to spread their culture, they fail to exploit such objects as a valuable resource for trade and they contribute to the cultural impoverishment of people in other parts of the world.¹⁵ For example, many antiquities in Italy's storerooms lay waiting to be accessioned, researched, published and those few that are, are hardly accessible to the general public: "(t)hey almost always appear in reports prepared by specialists for specialists." These antiquities "remain off view in storerooms, mute and invisible, and can hardly be said to exist for the purposes claimed by the Italian government", that is, as sources of identity and esteem for the Italian people.¹⁶

UNESCO 1970 was based on the premise that the illicit traffic can be significantly reduced by adopting more extensive legal controls.¹⁷ However, empirical evidence shows that retentive laws have not effectively limited the trade in stolen cultural property. Retentionist cultural policies have resulted in institutionalizing the antiquities black market and leaving artifacts that, through the flow of the antiquities trade could otherwise be preserved, studied, and exhibited to the public, rotting in Churches or forgotten in academic reports.¹⁸

Further, prohibitions on the trade of antiquities from countries such as, for example, China, are said to be political gestures that go against the promise of humanism and the contributions of the encyclopedic (or universal) museum.¹⁹ This promise lies in presenting as evidence the interrelatedness of the world's cultures: nationalist retentionist cultural policies

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¹³ *ibid.* p. 849

¹⁴ On forbidding export, it is interesting that an Italian law permitting the government to deny export to any artwork over fifty years old was passed under Mussolini. See Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton & Company, p.125

¹⁵ *ibid.* pp. 846-47

¹⁶ Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, p. 128

¹⁷ Merryman, John Henry. (Oct. 1986) Two Ways of Thinking About Cultural Property. *American Journal of International Law*, 848

¹⁸ Fitz Gibbon, Kate (Eds.).(2005) *Who Owns the Past? Cultural Policy, Cultural Property and the Law*. Piscataway: Rutgers University Press, p. 12; Merryman, John Henry. (1987-1988) The Retention of Cultural Property. *University of California Davis Law Review* 477, p. 509

¹⁹ Merryman, John Henry (Ed.).(2006) *Imperialism, Art and Restitution*. Cambridge: Cambridge University Press, p. 26. The P.R.C. has requested U.S. government import restrictions on practically all objects spanning nearly 2 million years of human artistic production. For the term "universal museum" see p. 15

reduce the moral purpose of encyclopedic museums by restricting the potential antiquities hold for all of us to understand our common past.²⁰

Encyclopedic Museums and Archaeologists

Encyclopedic museums are a focal point of cosmopolitanism: “dedicated to preserving and exhibiting the diversity of the world’s common artistic legacy.”²¹ They embody a certain vision of knowledge in relation to antiquity acquisition and preservation, public education and display, openness to the public without prejudice, and cross cultural understanding and tolerance. They enlighten the individual by opening the door for our species to experience the full diversity of human culture to better understand our place in the world, “as of but one culture and one time among many.”²² By disseminating learning, encyclopedic museums serve as “a force for understanding, tolerance, and the dissipation of ignorance and superstition about the world.”²³ This also results from the encyclopedic museums’ telling of a cosmopolitan story as opposed to a nationalist one which can view an individual’s culture as superior to all others, thereby potentially spreading hatred. The challenge for encyclopedic museums in the twenty-first century is to continue to build collections representative of the world’s artistic legacy. They are being threatened by the domination of retentionist policies with roots in Counter-Enlightenment ideas of culture and nationalism.

The British Museum is the inspiration of all encyclopedic art museums. The original donor could have easily placed his collection in Paris or St. Petersburg, his aim was not a national museum but a cosmopolitan one open to all peoples. London was his preference for the best location because it offered access to the most people and the greatest diversity of people.²⁴ It is a repository of the heritage not of Britain, but of the whole world.²⁵

Counter to the ideals of the encyclopedic museum and the trade of antiquities is the

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²⁰ *ibid.* pp. 28, 31, 33; and see Cuno, James. (Ed.).(2004) *Whose Muse? Art Museums and the Public Trust*. Princeton: Princeton University Press, p. 49. The WWII London bombings and 911 point to another moral aspect: during attacks on civilization people turn to objects of beauty. Responding to public demand, the London National Gallery hung one masterpiece per month during the bombing and during 911, the MET became sanctuary for those seeking beauty, civilization, even affirmation of a just and purposeful world.

²¹ Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, 123

²² *ibid.* p. 123

²³ *ibid.* p. 123

²⁴ Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 40

²⁵ *ibid.* p. 39

archaeologists' perspective that the true value of cultural property "can be appreciated only in relation to the fullest possible information regarding its origin, history, and traditional setting," found in the context of archaeological sites.²⁶ Thus an antiquity is deemed useless in assisting "a greater understanding of how humanity has evolved in its many cultural forms", if it is "looted" (removed from the site illegally or without proper archaeological methods of documentation).²⁷ Although all museums in the United States have adopted policies not to acquire stolen property, it is usually impossible to prove that an unprovenanced antiquity is stolen.²⁸ Therefore archaeologists advocate laws prohibiting encyclopedic museums from acquiring and displaying any unprovenanced object, as these museums are seen as playing "the central role in creating a demand for unprovenanced antiquities." Archaeologists believe that by presenting as acceptable the collecting of looted antiquities, the world's major museums, i.e. the encyclopedic museums, foster looting as well as establish the ethos of the trade for the private collector.²⁹ UNESCO 1970 supports the archaeologists' claim that it is through the excavations of archaeological contexts that our knowledge of the early human record is established.³⁰ Archaeologists are opposed even to an exhibition that is structured around the historical or social significance of artifacts, or their use or function; thus seeking an end to the museum's role in educating the public.³¹ They argue that the only ethical solution is: no documentation, no acquisition.³² However, antiquity preservation itself poses an ethical issue: is it not better for a museum to acquire an object that is valuable to all mankind, even if it may have been looted, if it prevents the destruction of the object?

The archaeological approach further denies the validity of any other way to study and appreciate antiquities, for example, aesthetically.³³ Professor Cuno and James Watt point to the importance of the aesthetics of antiquities because "the context can only provide limited

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²⁶Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p.121 "Cultural property" is a term of some debate. Cuno says it is a political construct not suitable for identifying antiquities, whereas Merryman sees including antiquities within the category of cultural property as justifiable, museums after all acquire and display them. See Fitz Gibbon, Kate (Eds.).(2005) *Who Owns the Past? Cultural Policy, Cultural Property and the Law*. Piscataway: Rutgers University Press, p. 144 and Merryman, John Henry. (Oct. 1986) Two Ways of Thinking About Cultural Property. *American Journal of International Law*, 831

²⁷ Brodie, Neil (Eds.).(2008). *Archaeology, Cultural Heritage, and the Antiquities Trade*. Gainesville: University, p. 276

²⁸ *ibid.* p. 15

²⁹ *ibid.* p. 247

³⁰ *ibid.* p. 246

³¹ *ibid.* p. 18

³² *ibid.* p. 248

³³ *ibid.* p. 308

information, especially in the study of individual objects.”³⁴ “No amount of archaeological method or theorizing”, observes Watt, “can tell us why some people would want to produce an object such as the *cong*.”³⁵ Michelangelo, upon seeing the “Hellenistic sculptural group known as the Laocoon,” called it “a singular miracle of art.”³⁶ It, like the Rosetta Stone, are antiquities without archaeological context. The influence on the world of both these antiquities has been profound. The logic of the current archaeological position would declare them meaningless, but this doesn’t hold.³⁷ Antiquities express the artistic language of its time; this can not be described by archaeological terms today or brought forth through archaeological methods, as culture is not a set of resources.³⁸ The sight of an antiquity inspires a certain degree of awe (its “aura”); this can not be found nor is it enhanced by the context. “The closer we come to the workings of the human spirit,” for example, the music a set of bronze chimes produces, the less useful the information provided by archaeological evidence.³⁹ Archaeologists argue that people who view monuments and artifacts for their aesthetic value rarely establish holistic connections with the people or societies that produced and used the objects.⁴⁰ Cuno and Watt would counter by saying that the aura that is produced from the direct aesthetic appreciation inspires and instructs us to seek to learn about ourselves, our civilizations, and our own past and worth. They enhance our awareness of humanity, something that can not be reduced to scientific data.⁴¹ Through the aesthetic connection, we are able to express in our own language today something that echoes through the ages.⁴²

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³⁴ Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 89

³⁵ *ibid.* p. 91. Cong: an exquisite neolithic jade object, eastern China, ca. 2400 B.C.

³⁶ *ibid.* p. 5. The Laocoon was accidentally found by a farmer digging in Rome in 1506.

³⁷ *ibid.* p. 11

³⁸ Lukes, Steven. (2008) *Moral Relativism*. New York: Picador, p. 118

³⁹ Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 101

⁴⁰ Brodie, Neil (Eds.).(2008). *Archaeology, Cultural Heritage, and the Antiquities Trade*. Gainesville: University. p. 273

⁴¹ *ibid.* p. 308

⁴² Cuno points out that as both encyclopedic museums and archaeologists seek to stop looting and preserve antiquities, the true debate is not between them but with nationalistic retentionist cultural policies to which archaeologists contribute. See Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, 146

Enlightenment, Counter-Enlightenment: Cosmopolitan versus National Identity

The encyclopedic museum follows enlightenment ideals of knowledge: universal knowledge and that our means of knowing is based on reason.⁴³ The great achievement of the Enlightenment (encyclopedic) museum was that the museum would allow truths to emerge that could not emerge if the objects were studied only in the context of objects of the same culture.⁴⁴ The Counter-Enlightenment understood reason as limited, even as ineffective in the face of incommensurable (having no common standard of measurement) values and cultures; a major figurehead of this perspective was the philosopher Herder.⁴⁵

Herder saw radically distinct societies with radically distinct values leading to incommensurable ways of life. Every nation has their “own standard of perfection” therefore we can not understand the Samurai system of morality because it is different from our own values.⁴⁶ His solution to reconcile incommensurable values in practice, is found, not in reason, but in commitment and authenticity (discovering your true self or true identity).⁴⁷ Appiah, rejecting the essentialism behind this view, does not believe there is a true self “buried somewhere waiting to be dug out”; Cuno agrees that there is not one core identity.⁴⁸ Thus two competing views exist when dealing with incommensurate values: they must be resolved by acts of will, or by choice through reasoning.

Harvard professor Amartya Sen, argues for the priority of reason (for we are reasoning beings, not just culture beings) before identity, when deciding the relative importance to attach to the respective competing identities of an individual.⁴⁹ There are two opposing viewpoints on multiple identities: “identity disregard,” and “singular affiliation.” The former ignores the influence of any sense of identity with others, while the latter assumes that any person belongs to

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⁴³ Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press p. 37

⁴⁴ *ibid.* p. 42

⁴⁵ Gray, John. (1995) *Berlin*. London: Fontana Press, pp. 119-120

⁴⁶ Lukes, Steven. *Moral Relativism*. New York: Picador, 2008, p. 103

⁴⁷ Gray, John. (1995) *Berlin*. London: Fontana Press, p. 135

⁴⁸ Appiah, Kwame Anthony. (2005) *The Ethics of Identity*. Princeton: Princeton University Press, p. 107 and Cuno, James. *Who Owns Antiquity?* Princeton: Princeton University Press, 2008, pp. 121-2

⁴⁹ Sen, Amartya. (2006). *Identity and Violence: The Illusion of Destiny*. New York: W.W. Norton & Company, pp. 24, 33

one collectivity only.⁵⁰ “Singular affiliation” appeals to communitarians, where “one’s identity with one’s community must be the principle identity a person has.”⁵¹ Communitarians would support repatriation policies, stating that the social background based on community and culture determines the individual’s reasoning and ethics, and that identity is a matter of discovery not choice.⁵² Harvard professor Michael Sandel says, “[c]ommunity describes not just what [we] have as fellow citizens but also what [we] are, not a relationship [we] choose but an attachment [we] discover, not merely an attribute but a constituent of [our] identity.”⁵³ However, Sen maintains, both viewpoints are inadequate when dealing with identities because real human beings belong to many different groups, through birth, associations, and alliances.⁵⁴ Our cultural identities “do not stand starkly alone and aloof from other influences”; culture is not a homogenous attribute.⁵⁵ The alternative to “discovery” is that choices continue to exist in any encumbered position an individual happens to occupy.⁵⁶ Because of this, individuals must take on the task of reasoning and choice to first decide whether a particular group they belong to is important, and then the relative importance of each identity must be weighed.⁵⁷

In 1982, the Minister of Culture of Greece, made an appeal for repatriation of the Elgin Marbles:

“This is our history, this is our soul....[T]hey are the symbol and the blood and the soul of the Greek people....[W]hen we are born, they talk to us about all this great history that makes Greekness.”⁵⁸

Whether Greek, Chinese or African, these ideas on culture are from the Counter-Enlightenment

⁵⁰ *ibid.* p. 20

⁵¹ *ibid.* p. 33

⁵² *ibid.* pp. 5, 36 and see Sandel, Michael. (2009). *Justice*. New York: Farrar, Straus and Giroux, pp. 208-11

⁵³ Sandel quoted in Sen, Amartya. (2006). *Identity and Violence: The Illusion of Destiny*. New York: W.W. Norton & Company, p. 36. Sandel is not fully comfortable with being labelled a communitarian; see Sandel, Michael. (2005). *Public Philosophy: Essays on Morality in Politics*. Cambridge: Harvard University Press, p. 252

⁵⁴ *ibid.* p. 20

⁵⁵ *ibid.* p. 112

⁵⁶ Sen, Amartya. (2006). *Identity and Violence: The Illusion of Destiny*. New York: W.W. Norton & Company, p. 35

⁵⁷ *ibid.* p. 24

⁵⁸ Quoted in Fitz Gibbon, Kate (Eds.).(2005) *Who Owns the Past? Cultural Policy, Cultural Property and the Law*. Piscataway: Rutgers University Press, p. 113

of the eighteenth and nineteenth centuries.⁵⁹ Single-minded celebrations of community often obliterate other associations and affiliations. By only celebrating the Greek identity and community, Greeks ignore connections with other cultures; connections between humanity which if realized, would lead to the preservation and exhibition of the diversity of the world's common artistic legacy, through which the Greeks along with every other community may better understand their place in the world by experiencing the full diversity of human culture.⁶⁰ This argument surely displays the need for the preservation of encyclopedic museums as necessary for the moral good of all humanity.

Two competing identities inform the antiquities debate: “national identity” versus “cosmopolitan identity.” The former bases identity on nationalism, “defining and locating individual selves through collective personality and its distinctive culture.”⁶¹ A critique of this view rests in the hybridity of human culture and its multiple identities.⁶² This cosmopolitan view maintains that in today's interconnected world, “people identify with and are identified as belonging to multiple culturally defined groups, for example, local, national, ethnic, and/or religious”.⁶³ Cuno argues that an individual who is French and Lebanese “can't divide [their identity] up into halves or thirds.”⁶⁴

Cultural nationalism argues for “cultural patrimony,” that is, “the products of a culture” must be returned to the country of origin because they are a source of identity that “constitutes the very essence of a society.”⁶⁵ People feel a connection to cultural objects “that are symbolically theirs, because they were produced from within a world of meaning created by their

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⁵⁹ The concept of culture is a Western import. See Appiah, Kwame Anthony. *The Ethics of Identity*. Princeton: Princeton University Press, 2005, p. 119.

⁶⁰ Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 76 and Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, p. 123. Arguably, the Elgin Marbles (part of the Parthenon Marbles) at the British Museum have done more for global appreciation of Greek artistic genius than if they had stayed on the Parthenon in Greece. During efforts at repatriating the Euphronios krater, a two and a half millennium old Greek vase at the MET, the Italian Culture Ministry declared their aim 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.” As with the krater, many “Italian antiquities” are products of ancient Greek, Roman or Etruscan craftsmen and artists.

⁶¹ Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, p.132

⁶² Merryman, John Henry (Ed.).(2006) *Imperialism, Art and Restitution*. Cambridge: Cambridge University Press, p.27 and *ibid.* p. 136

⁶³ Lukes, Steven. (2008) *Moral Relativism*.New York: Picador, p. 119

⁶⁴ Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, p. 122

⁶⁵ *ibid.* p.122

ancestors; the connection to art through identity is powerful”.⁶⁶ These assertions form the basis of all national retentionist cultural property laws.

The Princeton cosmopolitan philosopher Kwame Anthony Appiah asks: “But what does it mean, exactly, for something to belong to a people?”⁶⁷ For example, much of Norway’s cultural patrimony was produced before the modern Norwegian state existed. The Vikings who produced swords that were passed down from generation to generation “did not think of themselves as the inhabitants of a single country”; “they would have been astonished to be told” that their swords belonged to a nation.⁶⁸ If the argument for cultural patrimony is that the art belongs to the culture that gives it its significance, most art doesn’t belong to a national culture at all because “true art is cosmopolitan.”⁶⁹ For example, Michelangelo and Raphael’s frescoes in the Vatican: they are contributions, perhaps with a papal role, surely not of Italy, but certainly of individuals.⁷⁰ As Cuno argues, the impulse behind cultural nationalism and retentionist policies is political, as exemplified by China, where “cultural property laws are devised to serve the nationalist agenda of the state”, to “legitimize the current government by reference to an ancient culture”.⁷¹ Claims to ownership of antiquities tied to national identity aim to benefit the nation, not all of humanity.

The cosmopolitan argues that “cultural purity is an oxymoron:” nothing was developed “autonomously” anywhere, and “boundaries of nations are morally irrelevant,” being made from accidents of history.⁷² The claim that antiquities found within national borders is a nation’s patrimony, that it is a part of a nation’s identity and esteem, is equating a nation’s property to national identity. Identity is unique to individuals (an Italian may be a vegetarian, poet, and singer, while another is a meat-lover, a soccer player, and an artist); identity through nationality is a political construct dictated by the state, and social and political pressures may press an

⁶⁶ Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton & Company, p. 135

⁶⁷Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 74

⁶⁸ Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton & Company, p. 119

⁶⁹Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 55

⁷⁰ Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton & Company, p. 126

⁷¹ Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, p. 105

⁷²Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton & Company, p. 113 and Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, p.129

individual “to take sides or to stay within [one’s] own tribe,” forced to a core identity.⁷³

We are capable of other connections to art: “not through identity but despite differences.” Perhaps we can “respond to “our” art only if we move beyond thinking of it as ours and start to respond to it as art.”⁷⁴ Cultural nationalism ignores antiquities as important to our understanding of the world; a core value of the encyclopedic museum. Retentionist and nationalist laws retain a country’s cultural property for itself and not for an international, global human history. By forcing national identities onto works of art, nationalist retentionist cultural property laws narrow our vision of the world while cosmopolitanism expands it.⁷⁵ Greece could still preserve the identity and esteem for the modern Greek nation wherever the antiquity is, or enhance it by displaying it around the world to other peoples, as to better the understanding of Greek culture, but from a basis of a new identity.⁷⁶

The cosmopolitan sees that antiquities are of potential value to all human beings: they ought to be placed where all humans are able to access them for free. A cosmopolitan may agree that if the antiquity is of cultural value, such as the Nok sculptures, then keeping them in Nigeria would require the exercise of trusteeship by the government as trustees for humanity⁷⁷. However, the cosmopolitan asks, why should the sharing cease at national borders? Should all the greatest art be held in trusteeship by nations? Here the purpose of the encyclopedic museum, at root a cosmopolitan institution, is found again.⁷⁸ A cosmopolitan recognizes as well two things: that if an antiquity “is central to the cultural or religious life of the members of a community, there *is* a reason for it to find its place back with them”, and in the case of objects whose meaning would be deeply enriched by being returned to the context from which they were taken; site-specific art.⁷⁹ However, the key criteria are that “the culture that gave the object its cultural significance must be alive [and] the object must be actively employed for the religious or ceremonial or communal or purposes for which it was made.”⁸⁰ Just such an approach has been successfully employed with regard to U.S. natives through the 1990 Native American Graves Protection and

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⁷³ Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, p.122

⁷⁴ *ibid.* p. 135

⁷⁵ *ibid.* p. 124

⁷⁶ *ibid.* p. 127

⁷⁷ Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities.* Princeton: Princeton University Press, p. 75

⁷⁸ Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers.* New York: W.W. Norton & Company, p. 127

⁷⁹ Cuno, James. *Whose Culture? The Promise of Museums and the Debate Over Antiquities.* Princeton: Princeton University Press, 2009, p. 84

⁸⁰ Merryman, John Henry. (1987-1988) The Retention of Cultural Property. *University of California Davis Law Review* 477, p. 497

Repatriation Act (NAGPRA), which is “in stark contrast to foreign cultural property legislation that places the right of states over those of indigenous peoples.”⁸¹

The view that antiquities are “part of the world’s common ancient heritage and a source of identity and esteem for all of us,” that they are the cultural property of all humankind, i.e., the cosmopolitan perspective, is tied to the idea that antiquities are cultural property “of *people*, not *peoples*.”⁸² Returning antiquities to the descendants of their makers would be seen as irrational in cases such as Nigerians claiming a Nok sculpture as part of their patrimony, since they are claiming for a nation whose boundaries are less than a century old, the works of a civilization of more than two millennia ago.⁸³

Conclusion

The cosmopolitan view of identity and its attendant ethics is the more reasonable perspective from which to view the antiquities debate and to determine a better path forward. Every human being has multiple identities. The Counter-Enlightenment taught that diversity of languages, of forms of common life, exemplifies the necessary diversity of human identities, that they are not merely plural, but different, constituted by their differences.⁸⁴ However true this may be, the cosmopolitan denies the incommensurability of all values and cultures by showing us two things: that we connect “not through identity but despite difference” and we connect through what is human in humanity, the fact, for example, “that human beings made the Great Wall of China... [or] the Sistine Chapel,... things made by creatures like me.”⁸⁵

Nothing was developed autonomously anywhere; “true art is cosmopolitan.”⁸⁶ With the cosmopolitan view of identity in dealing with antiquities, encyclopedic museums, as

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⁸¹ Merryman, John Henry (Ed.).(2006) *Imperialism, Art and Restitution*. Cambridge: Cambridge University Press, p. 104 and Fitz Gibbon, Kate. *Who Owns the Past? Cultural Policy, Cultural Property and the Law*. Piscataway: Rutgers University Press, 2005, p. 6

⁸²Cuno, James. (2008) *Who Owns Antiquity?* Princeton: Princeton University Press, p. 146 and Appiah, Kwame Anthony. *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton & Company, 2006, p. 121

⁸³ Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton & Company, p. 119

⁸⁴ Gray, John. (1995) *Berlin*. London: Fontana Press, p. 131

⁸⁵ Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton & Company, p. 135 and Fitz Gibbon, Kate. *Who Owns the Past? Cultural Policy, Cultural Property and the Law*. Piscataway: Rutgers University Press, 2005, p. 146

⁸⁶Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 55

cosmopolitan institutions, must be of central importance. Their promotion of cross-cultural understanding and tolerance, antiquity preservation, public education, and openness to the public without prejudice allows each individual to share human culture and human identity, irrespective of an individual's culture or national identity.

The national cultural view of identity is irrational in situations where the antiquities modern states call for the return of, on the basis that they are integral to their identity and culture, were made before the modern state even existed. The cosmopolitan perspective is especially cogent when we realize source nations leave antiquities that are of value to all humankind in storerooms or when they do not possess the adequate resources to take care of such antiquities; by placing these antiquities in encyclopedic museums, such antiquities are protected and their value to humanity advanced.

This "new" world of identity is one where what is universal in humanity does not denigrate local identities and cultures: Appiah is not arguing for an international body with bureaucratic purview (and coercive authority) over the cultural heritage of mankind, he respects a world where states have a role but where the rights of states (or a supranational entity) are not placed over those of indigenous peoples (e.g., NAGPRA) and he celebrates where the particular shares with all other particulars in the aspiration to meet.⁸⁷ If we agree that "cultural property is important to cultural definition and expression, to shared identity and community" we see that "where choices have to be made between the two" views of identity, "the values of cultural internationalism [cosmopolitanism]- preservation,... distribution [and] access- carry greater weight."⁸⁸ Those values will in the longer run serve the interests of all mankind, as damage to cultural property means damage to the cultural heritage of all mankind. Bettering the world's art system begins with the idea that "[i]t isn't peoples who experience and value art; its men and women."⁸⁹

⁸⁷ Appiah, Kwame Anthony. (2005) *The Ethics of Identity*. Princeton: Princeton University Press, chapter 6 "Rooted Cosmopolitanism" and Bauer, Alexander A. (2008) New Ways of Thinking About Cultural Property: A Critical Appraisal of the Antiquities Trade Debates. *Fordham International Law Journal Vol. 31:690*, 712

⁸⁸ Merryman, John Henry. (Oct. 1986) Two Ways of Thinking About Cultural Property. *American Journal of International Law*, 853

⁸⁹ Cuno, James. (Ed.).(2009) *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, p. 75

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