

BOOK REVIEW

REVIEWING SHARON WAXMAN, *LOOT: THE BATTLE OVER THE STOLEN TREASURES OF THE ANCIENT WORLD*. NEW YORK, NEW YORK, TIMES BOOKS, HENRY HOLT AND COMPANY, LLC 2008. PP 432, HARDBACK ISBN-13: 978-0805086539

By
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INTRODUCTION

Every year, more than eight million people visit the Louvre and pay their respects to some of civilizations' greatest art. Of the 35,000 works on display in the museum,¹ there is one that captivates the crowds above all others: the *Mona Lisa*. Painted by Leonardo da Vinci circa 1504, the artwork was eventually acquired by the French king François I, and was displayed in his favorite chateau at Fontainebleau. In 1682, Louis XIV moved the royal court to Versailles and took the painting with him; his son later relegated the work to the office of the keeper of the royal buildings. During the French Revolution the painting was hidden in a warehouse; when Napoleon Bonaparte took power in 1800 he hung the *Mona Lisa* in his bedroom.² Today, the woman with the mysterious smile is locked in a box of bulletproof glass in the Salle de la Joconde on the first floor of the immense museum. For many, the experience of seeing the painting for the first time is surprisingly anticlimactic. According to Guy Kress, an experimental psychologist from California, "The Mona Lisa is probably the single most disappointing piece of work in the entire world. The picture everyone has in their minds is much larger and brighter."³ Yet each year,

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1. Databases, LOUVRE MUSEUM, http://www.louvre.fr/llv/oeuvres/bdd_oeuvre.jsp (last visited Apr. 4, 2011).

2. *Mona Lisa—The Myth*, PBS.ORG, http://www.pbs.org/treasuresoftheworld/mona_lisa/mlevel_1/m4myth.html (last visited Apr. 3, 2011).

3. Amelia Gentleman, *Smile, Please*, GUARDIAN, Oct. 19, 2004, <http://www.guardian.co.uk/>

millions of tourists flock to Paris to see her. And this is precisely the point: most people don't visit the *Mona Lisa* for the quality of the brushstrokes or even for the startling effect of her expression. They come instead to see her because she is the *Mona Lisa*. The painting has become a product, marketed to millions each year in the museum, sold to millions more on the front of postcards, water bottles, and umbrellas. Indeed, the *Mona Lisa* has become the international symbol of the Louvre itself, which offers her to us, impeccably preserved and protected.

Many countries and many miles away, the National Museum of India in New Delhi opens its doors to visitors who wish to view artwork and artifacts from the world's earliest civilizations. The museum was founded in 1949, following a successful exhibit in Burlington House in London of Indian artifacts collected from various museums around the country. The museum website boasts that the collection contains over 200,000 works of both Indian and foreign art, "covering more than 5,000 years of our cultural heritage."⁴ The museum is large and dimly lit, and it receives frequent visits from groups of Indian school children. The items are kept in large glass cases with little or no light illuminating them; some of the objects are covered in layers of dust. In several of the rooms, bubbles of moisture separate the plaster from the walls above the temperature and humidity monitors. Intricately carved, fifteen-hundred-year-old statues of the Buddha displayed atop wooden stands have traces of white paint on their undersides, as if the stands had been whitewashed with the artifacts on top.

This situation should give us pause. We entrust artifacts to museums precisely because they are able to care for them and protect them for posterity, and because they offer them to us in pristine, accessible facilities designed to enhance our visual and educational experience. But that is only part of the story. The other is a far less flattering one that reveals how we rationalize which museums house which artifacts. The Louvre can afford to give us the *Mona Lisa*, the *Venus de Milo*, the Code of Hammurabi in rooms with well-lit displays and functioning humidity monitors because it receives eight million visitors per year, and a generous endowment from the French government. The same buildings that now contain some of the world's greatest art were once home to the French royal family before the palace was transformed into a public museum during the French Revolution. The British and French fought over India in the late eighteenth century the same way they fought over possession of Egypt's Rosetta Stone at the beginning of the nineteenth century. Colonies and their cultural heritage were spoils of war for European powers wealthy enough to conquer or control them. What do we make of this history? What responsibility, if any at all, should we feel toward countries that were impoverished so that

artanddesign/2004/oct/19/art.france.

4. NATIONAL MUSEUM OF INDIA, <http://www.nationalmuseumindia.gov.in> (last visited Apr. 3, 2011).

others might become richer? Does art belong to one nation, or is it the cultural heritage of all human beings? It is these troubled waters that Sharon Waxman skillfully navigates.

Sharon Waxman's book, *Loot: The Battle Over the Stolen Treasures of the Ancient World*, is about art—but more fundamentally it is about art's significance as a political, economic, and cultural force in a post-9/11 world increasingly divided between East and West. The battle takes place in a complex legal climate. Waxman paints a detailed and thrilling portrait of the high-stakes battles waged over the world's most precious antiquities, and populates it with a cast of characters ranging from Napoleon to common thieves to the curators of the world's greatest museums. But her book is much more than a well-narrated adventure story. As a former cultural correspondent for the *New York Times*, Waxman brings her journalistic experience to bear on some of the art world's most pressing unresolved legal issues. Readers who engage with *Loot* from a purely legal standpoint may find their expectations frustrated by the historical and political breadth of Waxman's analysis. Yet this is precisely what makes *Loot* such an important and unique contribution to this field. No problem is ever wholly legal, least of all when it involves art or cultural property. Waxman's book complicates battles over possession of objects which in simplest terms appear to be about property rights by forcing us to acknowledge that these are conflicts that call into question our most fundamental conceptions of history, art, colonialism, and nationalism. *Loot* gives readers the tools to think more sophisticatedly about these problems that implicate every one of us.

THE BATTLE OVER ANTIQUITIES

Waxman frames her account using four case studies involving four countries and four museums—Egypt and the Louvre; Turkey and the Metropolitan Museum of Art; Greece and the British Museum; and Italy and the J. Paul Getty Museum. In April 2007, former secretary-general of Egypt's Supreme Council of Antiquities, Zahi Hawass,⁵ began pressing for the return to Egypt of five objects currently held in Western museums, including the zodiac ceiling of the Temple of Denderah in the Louvre. The zodiac ceiling is one of the Louvre's most important pieces. The plaque next to it describes its carvings in great detail, but says nothing of how the ceiling came to be removed from its temple and placed in the museum. Such information might raise embarrassing questions that the Louvre is reluctant to answer. However, the story is a familiar one for this kind of acquisition. In the early 1820s, the French collector Sebastien Louis Saulnier traveled to Egypt with his agent, who forged special

5. On March 6, 2011 Zahi Hawass announced his plans to resign from his post following the political upheavals in Egypt that ousted President Hosni Mubarak. Kate Taylor, *Egypt's Chief of Antiquities Says He's Not Staying On*, N.Y. TIMES, March 3, 2011, <http://www.nytimes.com/2011/03/04/world/middleeast/04antiquities.html>.

instruments designed specifically to effect the removal of the ceiling. The Louvre's documentation on the ceiling notes that Saulnier obtained "the express permission of Mehmet Ali[,] then-ruler of Egypt, to extract it and ship it to France.⁶ For twenty-two days, the pair hacked and gouged at the ceiling. When they failed to dislodge it, they drilled holes, filled them with gunpowder, and exploded the ceiling out of the temple. They succeeded in delivering it to Paris, but only after it slipped off of its rollers on the way to a ship, and fell into the mud of the riverbank. Today the hole in the roof in the Temple of Denderah where the ceiling once was is filled in with a blackened plaster replica of one of Egypt's greatest contributions to culture. When asked about the destructive removal of the ceiling from the temple, the Louvre's chief Egypt curator, Christine Ziegler replied, "How else would you remove a stone ceiling?"⁷

Waxman's strength lies in her ability to ask difficult questions and to present, if not resolve, very important and thorough inquiries that do justice to both sides of the repatriation debate. The Temple of Denderah is accessible only by traveling with a convoy of buses to the temple at a fixed hour of the morning, and returning shortly after arrival at the site, since there are no hotels in the town. Tourists are forbidden to visit the temple on their own, for fear of terrorist attacks like the one that occurred at the Temple of Hatshepsut near Luxor in 1997.⁸ In the Louvre, scholars, students, and visitors can study the beautifully preserved ceiling at close range. Waxman also points out that while the ceiling is necessarily a part of Egypt's history and heritage, it is now also a part of France's history, having remained there for almost 200 years.⁹

The conflict over antiquities is no minor debate. The stakes are high, and the tempers short. "You end up thinking we're all a bunch of looters, thieves, exploiters, that we're some kind of criminals," said Aggy Lerolle, chief press attaché for the Louvre. "The Greeks may feel indignant now about the provenance of this or that statue, but who would be interested in Greek sculpture if it were all in Greece? These pieces are great because they are in the Louvre."¹⁰ Meanwhile, Hawass decided to take another approach to his request for the return of the five objects. He proposed a three-month loan of the pieces in question by the British Museum and the Louvre, among others, in time for the opening of Egypt's Grand Museum in 2012. When asked why he would settle for a loan when what he really wanted was their permanent return, Hawass replied, "I happen to like dancing with the English. I thought I should dance

6. SHARON WAXMAN, *LOOT: THE BATTLE OVER THE STOLEN TREASURES OF THE ANCIENT WORLD* 74 (Times Books, Henry Holt & Co. 2008).

7. *Id.* at 75.

8. In November 1997, radical Islamic terrorists massacred sixty-two French, German, Japanese, Swiss, and British tourists visiting the Temple of Hatshepsut in Deir el-Bahri. In an effort to attract tourists horrified by the tragedy, the Egyptian government instituted the above-mentioned security measures to reduce the risk of attack. *Id.* at 90.

9. *Id.* at 91.

10. *Id.* at 65.

with them first, before I kiss them. Before I fuck them.”¹¹

Hawass isn't the only one trying to dance with the British, who, as it turns out, are reluctant to do so. In the 1980s, Greek culture minister Melina Mercouri began to militate for the return of the so-called Elgin Marbles from the British Museum, which acquired them from Greece (then a territory under Ottoman control) in 1812. In 1800, Lord Elgin was sent by the King of England to Constantinople as an ambassador to secure England's access to the Black Sea against the French, who had recently invaded Egypt under the command of Napoleon Bonaparte, and who were a constant source of worry for the British. But Lord Elgin had a personal mission, one that included making plaster casts and drawings of the sculptures of the Acropolis for the edification of British society, which considered Greek art to be the pinnacle of human artistic accomplishment. These plans soon expanded to include the actual removal of the marble statues and friezes from the Parthenon. When the French surrendered to the British in 1801, and England gave Egypt back to the Ottoman Empire, Lord Elgin, as his country's representative, found himself a celebrity.¹² He received the much-wanted *firman*¹³ granting him permission to work atop the Acropolis, but not to remove any of the marble metopes¹⁴ from the walls of the Parthenon. Nevertheless, Lord Elgin did remove the metopes and shipped them to England, where he was certain they would prove “of inestimable service in improving the National Taste.”¹⁵ He did not see himself as destroying the Parthenon, but rather as rescuing it. For centuries, the Ottomans had used the Acropolis as a military garrison to store weapons and gunpowder. In 1645, the Parthenon exploded when it was struck by lightning, and in 1687 the roof was destroyed by a cannon blast.¹⁶ Meanwhile, the Turks dismantled reliefs to use the lead inside of them for bullets, and incorporated ancient fragments into the walls of the homes they built around the Acropolis.

When Greece gained its independence from the Ottomans in 1833, it made its first requests to Britain for the return of the marbles, but was instead offered plaster casts of the sculptures. Britain's most compelling argument over the years for why it should be allowed to keep the marbles has been that it has done an impeccable job of preserving what would otherwise have been destroyed either by the French, or later by the industrial pollution Greece has allowed to

11. *Id.* at 20.

12. *Id.* at 225.

13. A *firman* is an edict or order issued by an Oriental sovereign, *esp.* the Sultan of Turkey; a grant, license, passport, permit. *Firman Definition*, OED.COM, <http://www.oed.com/view/Entry/70589?redirectedFrom=firman#eid> (last visited Apr. 25, 2011).

14. A metope is the square area between two triglyphs in a Doric frieze. *Metope Definition*, OED.COM, <http://www.oed.com/view/Entry/117630?rskey=RXrlp0&result=1&isAdvanced=false#eid> (last visited April 25, 2011).

15. WAXMAN, *supra* note 6, at 226.

16. *Id.*

erode the remaining statues of the Parthenon. However, in 1998 it was revealed that in the late 1930s, the British Museum permitted a museum donor to undertake a cleaning of the marbles with metal tools and harsh chemicals in order to make them white, instead of the honey-brown color the stone had naturally acquired over time. The museum's own report from the period describes the pieces as "greatly damaged."¹⁷ In 2009, Greece opened the doors to its state-of-the-art New Acropolis Museum, built on the southeastern slope of the hill, with a special room for the Parthenon Marbles, which for now contains plaster casts of the originals in England. According to Greece, more than half of the Parthenon's sculptures are in London. "You must understand what the Parthenon Marbles mean to us. They are our pride. They are our sacrifices. They are our noblest symbol of excellence. They are a tribute to the democratic philosophy," Melina Mercouri explained.¹⁸

But not all requests for repatriation have ended in deadlock. In 1993, facing the threat of imminent trial by the Turkish government, the Metropolitan Museum of Art in New York returned the famed Lydian Hoard, sold to the museum after being illegally excavated and exported from Turkey in the 1960s. The hoard was stolen from a tomb and consisted of 125 gold and silver objects, whose masterpiece was a golden brooch in the shape of a hippocampus—a horse with wings and a fish's tail. Kazim Akbiyikoglu, curator of the museum in Uşak, was one of the most respected archeologists in Turkey and was instrumental in securing the return of the hoard. The objects were displayed first in Ankara, and then in a one-room museum in Uşak, where even the looters of the hoard came to see them. Then in 2006, the newspaper *Milliyet* published some shocking news: the golden hippocampus of the Lydian Hoard was a fake. Several weeks later, the Culture Ministry delivered another blow: Kazim Akbiyikoglu, the same curator and archeologist who so valiantly investigated and fought for the return of the hoard, had been arrested as the prime suspect in the theft. Some believe Akbiyikoglu was framed. Others say the Lydian Hoard is cursed, and that the same curse that caused one of the looters to go blind, another to die in a tractor accident, and a third to be paralyzed is what put the curator behind bars. In 2009, the court found that Akbiyikoglu had been in contact with the alleged thieves who stole the brooch, and sentenced him to serve twelve years and eleven months in prison. The brooch has never been recovered, and some fear that it has been melted down to destroy evidence.¹⁹ The saga of the Lydian Hoard lays bare a conflict central to the dispute over the repatriation of cultural heritage. On the one hand, the theft might never have happened had the hoard not been allowed to return to a museum without a proper infrastructure and security system to care for it. On the other hand, some suggest that the \$1.7 million the Met paid to acquire the treasure would have been better spent to

17. *Id.* at 249.

18. *Id.* at 233.

19. *Id.* at 154.

improve the museums in Turkey, which could then legally loan the objects to Western museums.

It is a comforting fiction that our legal system is equipped to always fairly and efficiently resolve these kinds of difficult disputes. Property laws govern the legal relationships between people with respect to the economic value of resources, tangible or otherwise. From a theoretical legal standpoint, unless a resource meets the conditions of joint ownership, one party's claim to possession of an object or resource will always be greater than another's. In reality, the situation is rarely so simple, especially when the dispute is separated from the original conveyance by hundreds of years, several revolutions, and shifting political and legal structures governing possessory rights. In the nineteenth and early twentieth centuries, many of the Egyptian artifacts and art objects whose ownership is currently disputed were given to Western powers through a system known as *partage*, the name of which is derived from the French word *partager*, "to share."²⁰ Under the *partage* system, the excavator would share his findings with Egyptian authorities through a process overseen by an "Egyptian" official, who was in fact French. The Egyptian authorities could have the first say in forbidding any portion of the findings they deemed a national treasure from leaving the country. Too often this "sharing" reflected the prevailing attitude of the time, expressed by a nineteenth-century traveler in Egypt: "France. . . earns the right to the thanks of the learned of Europe, to whom belong all the monuments of antiquity, because they alone know how to appreciate them."²¹

At the time, *partage* was a legally sanctioned system of acquisition and export of ancient objects. Should that matter when attempting to adjudicate modern disputes, or does the repudiation of Western imperialism necessarily invalidate the laws that it put in place? Even if Saulnier did in fact receive express permission from Mehmet Ali to remove the zodiac ceiling, did the Albanian ruler of Egypt have the legal authority to grant that permission? Is it significant that Lord Elgin's *firman* was given to him by an Ottoman official, and not by a "Greek," as we understand the term today, or even as it was understood at the time the metopes themselves were created? Should we be concerned that the *firman* never gave Lord Elgin permission to actually remove the metopes, making his enterprise illegal?

One of the most difficult issues in cases of stolen art involves the tolling of the statute of limitations. Most jurisdictions consider that the cause of action tolls from the date when the theft victim first knew or reasonably should have known (through the exercise of due diligence) of the cause of action, including the identity of the possessor of the objects. Is this an effective way to think about how disputes over objects "legally" exported from source countries during the

20. *Id.* at 56.

21. *Id.* at 57.

nineteenth and early twentieth centuries should be resolved? If so, should Western countries be entitled to the defense of laches, whereby the party in possession of the object may demonstrate that the plaintiff has not exercised due diligence in attempting to reclaim the contested item? Does the placement of an object in the permanent collection of a museum constitute adverse possession of chattel, where possession must be hostile, actual, visible, exclusive, and continuous?

At a conference in 2004, lawyers on both sides of the repatriation debate discussed the fate of the Bust of Nefertiti, the iconic limestone sculpture exported from Egypt in 1912 under the *partage* system and later donated to the Berlin Museum in 1920. Attorney Kurt Siehr argued that because Egypt was a British protectorate and not in control of its own fate until 1922, the statue should be returned. For Siehr, Germany's possession of the bust constitutes "unjust enrichment," though the statute of limitations for a claim on that basis has long since expired.²² On the other hand, Stephen Urice, director of the Project for Cultural Heritage Law and Policy, points out that because the sculpture was legally exported under the system of laws in place at the time, no redress is required.²³ Urice finds the cultural identity argument for repatriation even less compelling: "The cultural connection between Nefertiti's Egypt and contemporary Egypt is attenuated at best. . . . The former was pagan; the latter is predominantly Muslim; the former was a monarchy, the latter is a democratic state; and so on. . . . There is no evidence that the bust is essential for contemporary Egyptians to understand who they are and the values their culture currently holds in esteem."²⁴

Traditional debates over ownership of cultural objects can be divided into two main ideological camps—one that views cultural property as belonging to all of mankind, and the other that views it as belonging to a particular nation.²⁵ During World War II, art came to play a role in international conflict unlike it ever had before. To be sure, the looting of cultural artifacts had always been a means by which invading armies exercised dominion over the people they conquered; but Hitler formalized the custom by establishing the Einsatzstab Reichsleiter Rosenberg, a unit specially charged with stripping countries of their cultural heritage. The language of the 1954 Hague Convention following the Nuremberg trials reflects a universalist understanding of cultural heritage during times of war. Its preamble states that "[D]amage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind,

22. *Id.* at 61.

23. *Id.*

24. *Id.*

25. JOHN HENRY MERRYMAN, *Two Ways of Thinking About Cultural Property*, in THINKING ABOUT THE ELGIN MARBLES: CRITICAL ESSAYS ON CULTURAL PROPERTY, ART AND LAW 82, 82 (John Henry Merryman, ed., 2nd ed. 2009).

since each people makes its contribution to the culture of the world.”²⁶

The other view of cultural heritage attributes a national identity to cultural objects, and is embodied in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. Like the Hague Convention of 1954, this convention aims at protecting art objects, but it approaches the problem from a more economic, property rights-focused perspective that implies that cultural objects belong first and foremost to a particular national group. The convention was created in large part to limit the illegal excavation and export of valuable artifacts from often economically impoverished “source” countries to the wealthier nations with the means to purchase the objects. Detractors argue that imposing legal sanctions on such trade does not prevent it, but instead places the objects themselves in greater peril of being destroyed or damaged.²⁷

As is so often the case with important international accords, these discussions usually take place between diplomats, government officials, public intellectuals, and legal practitioners, and are not easily accessible to the people whose lives they directly affect. A more inclusive forum for such conversations is imperative. Books like Waxman’s are an important step towards demystifying these debates and reminding us of the more human side of what is at stake in the battle over cultural heritage.

CONCLUSION

In 1829, the Egyptian Hall in London displayed an exhibit of antiquities. A phrase accompanying the show read: “They say it is God’s property, and he gives it to whom he pleases.”²⁸ But history has woven a web far more tangled, one that Waxman succeeds masterfully in unraveling for the reader. This debate is so heated precisely because it is so complicated. There are no easy answers, no clear choices between right and wrong. The battle over art and antiquities has become dangerously polarized. In a sense, it is no longer the art objects themselves that are at stake, but something far more insidious: politics. History cannot be erased, it cannot be ignored—but neither can it be changed. Waxman is optimistic about the possibility of the “us versus them” mentality giving way to a genuine exchange of culture and collaboration that will benefit all.²⁹ She suggests that Western museums that are controversially in possession of foreign objects should at the very least publicly acknowledge and publish the provenance and history of those pieces. On the other hand, source countries demanding the return of ancient artifacts must be honest about when they are not capable of preserving and caring for those objects they want back. In recent

26. *Id.* at 88.

27. *Id.* at 102.

28. WAXMAN, *supra* note 6, at 376.

29. *Id.* at 373.

years, museums and their curators have been prosecuted for purchasing antiquities from questionable sources. Detractors argue that the West is destroying history by encouraging looting. But as Waxman points out, the repercussions of this demand that museums stop acquiring antiquities are far from certain. Will looting really cease, or will thieves simply take their business elsewhere, away from the public, so that these priceless objects disappear into the hands of private individuals?³⁰

These are troubling questions, but they must be asked. *Loot* tells a story that we all should know, so that when we visit the Louvre to admire the *Mona Lisa*, or India's National Museum to examine the treasures of the Indus Valley Civilization, we understand that these objects, these museums, and these countries are not bereft of the histories that shaped them. Yet neither are they without a future—and it can, indeed it must, be one that allows each side “to win in this battle, without further loss to patrimony.”³¹

30. *Id.* at 374.

31. *Id.* at 375.