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Ownership and Heritage: The Crimean Case

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Citation

Jungschläger, R. (2023). *Ownership and Heritage: The Crimean Case*.

Version: Not Applicable (or Unknown)

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Note: To cite this publication please use the final published version (if applicable).

Ownership and Heritage

The Crimean Case

Rogier Jungschläger



<https://www.parool.nl/amsterdam/van-wie-is-het-krim-goud-in-het-allard-pierson-museum~bfe7f58f3/>

Ownership and Heritage The Crimean Case

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Master Thesis Heritage and Museums Studies 1084VTHMY

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The Hague 15-6-2022 Final Version

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Chapter 1: Introduction

Ownership and restitution of cultural objects have always been a topic of discussion within the field of Archaeology (Cuno, 2008 and Carman, 2005), and especially today, it has become a broader societal subject matter. My thesis will focus on a variety of topics concerning the Crimea case. Cuno (2008), for example, shows us that archeology is innately political despite any desires for it to not be. Furthermore, he emphasizes the role that modern nation states have in the manipulation of cultural heritage for their own benefit. One could argue that this is also the case in the exhibition that is the subject of this thesis as it was organized to put Crimea on the map as an important meeting place for culture and trade between east and west throughout history.

Carman (2005), in his work, considers the concept of ownership in relation to cultural heritage and the issues that arise from this. The matter of ownership is very much prevalent in the Crimean case, as there are two opposing sides claiming to be the rightful owner of the 'Crimean treasures'. Naturally, there are international rules and regulations set out to deal with such disputes. However, Cuno (2008) argues that these rules and regulations are nationalist and retentionist in nature and have a tendency to favor the nation state when it comes to claims of ownership as is evident in the Crimean case.

In March of 2014, the Crimea was seized from Ukraine by Russia, shortly after the exhibition 'Crimea- Gold and Secrets of the Black Sea' had started in the Allard Pierson Museum in Amsterdam. This event led to the question: are we to return the objects to the museums involved or the state of Ukraine? In December of 2016, the Amsterdam district court ruled that the objects are to be returned to the state of Ukraine. The participating museums, the Bakhchisaray History and Culture State Preserve of the Republic of Crimea, the Kerch Historical and Cultural Preserve, the Tavrida Central Museum in Simferopol and the National Preserve of 'Tauric Chersonesos' in Sevastopol, appealed this decision. Recently, October of 2021, the Amsterdam Court of Appeal ruled that the disputed objects are to be returned to the state of Ukraine, ending the Allard Pierson's obligation to return the objects to the Crimean museums. The Crimea case is not merely a dispute on ownership of cultural objects, it has become a pawn in a larger geopolitical game between Europe and Russia with all its consequences.

My main research question for this thesis is: 'How does the court's verdict in the Crimea case reflect (or not) current academic debates on ownership and restitution of cultural objects?'. Further research questions are: Who owns Crimea's past? What are the consequences of this recent court decision for other disputes of ownership and restitution? In order to answer these questions, I will be taking a broad theoretical approach from an archaeological perspective.

I will begin this thesis on the subject of context and provenance of antiquities. I will be discussing the importance of context in the field of archaeology and examine the current debate. Lastly, the views on how best to deal with unprovenanced objects shall be considered. In chapter 3 I will be discussing looting and the illicit trade in antiquities. I shall consider the issue of looting and the suggestions made to impede it. In closing, I will be taking a closer look at the trade in illicit antiquities and go over the proposed solutions to curb it.

In chapter 4 I shall discuss the political dimension of our cultural heritage. Furthermore, the opposing views to these nationalistic ideas will be discussed. Lastly, I will go over the return of cultural objects to their source nations and the disputes to which this can lead. In chapter 5 I will provide an overview of the most important international conventions and treaties regarding the protection of our cultural heritage. In addition, the differing opinions on the effectiveness of them and some of the critiques that have been voiced will be considered.

In chapter 6 I will be discussing the various categories of property in which cultural heritage can fall. Subsequently, the value regimes to which heritage can be attributed shall be considered. In closing, I will examine some of the alternatives for property that have been put forward. In chapter 7 I shall be taking a closer look at the Crimea case. I will provide a timeline of the case and an account of the courts' decisions that have been made. Lastly, I shall give answer to the research questions I have posed above.

Chapter 2: Context and Provenance of Antiquities

In this chapter I will be focussing on the relevance of context and provenance of antiquities. Firstly, I will consider how antiquities are defined, and the distinctions that are made depending on the field of profession. After this, I will be discussing the importance of context in the field of archaeology and examine the fierce debate that is currently being held on the significance of it. Lastly, I will be looking at provenance and antiquities, and consider the opposing views on how best to deal with such objects that lack a (complete) history of ownership and possession.

A Definition of Antiquities

The field of archaeology is normally involved with various remains ranging from fragments of objects to monumental structures, to the landscape itself in which these remains are to be found. These remains that are at the centre of the field of archaeology can be typically divided into two categories. The first category being objects that have been intentionally made such as tools, weapons, works of art et cetera. The second category being the result of human activity such as the erosion of soils or the draining of wetlands.

The Oxford English Dictionary defines antiquities as: "objects, buildings or works of art from the ancient past" (Oxford English Dictionary, 2020). Anderson (2016) states that this term can be subsequently divided into two categories. Namely, that of archaeological material, and that of ancient art. Archaeological material, as defined by the Cultural Property Implementation Act (1982) from the United States, is: "an object that is of cultural significance; at least two hundred and fifty years old; and was normally discovered as a result of scientific excavation, clandestine digging or accidental digging, or exploration on land or under water". In short, the CPIA affords protection to such objects as long as they are the result of discovery, whether intentional or not.

Anderson (2016) defines ancient art(works) as: "objects created in antiquity that lack a known archaeological context or setting" (Anderson, 2016, p.8). An example of such an object could be a Greek amphora on display in a museum, or other institution, of which we have no information of its discovery, and often accompanied with an incomplete history of previous ownership. It is, perhaps, possible to date and classify the amphora by comparing it to other such vessels that have a known place of discovery. Since the classification of objects into

these two categories is not of legal relevance, there is no official institution that is dedicated to it. However, categorising can still be of practical use due to the fact that objects that possess a context could be of interest to prosecutors including governmental organizations tasked with finding objects that belong to a particular country. For ancient works of art, it might be more difficult to make such a claim because there is often no compelling evidence that the objects were illegally acquired. (Anderson, 2016, p. 10).

In contrast to academics, who are more reluctant to make distinctions between these interrelated categories, museum professionals are more likely to make more precise definitions, considering the category of archaeological materials are often to be found unsuitable to be obtained by museums. Archaeological materials, of which the particular site or findspot is known, could potentially lead to a claim from a given nation. Therefore, museums that are still actively collecting antiquities must be well informed on the status of such objects to prevent any future claims since this could potentially lead to damage in reputation and financial losses.

The Importance of Context

The discipline of archaeology allows for the study of the human past anywhere on the planet through the medium of its material culture. Human history is an essential component of the heritage of human beings, and wherever it is to be found, it can be considered as part of our common heritage. Insight into the human past through the study of material remains can only be achieved, Renfrew argues, by the methodical study of context. The aim of contemporary archaeological fieldwork is to determine the context of discovery, which allows for the understanding of cognitive, social, and economical facets that characterise human cultures throughout antiquity. Renfrew (2000) argues that objects that have been separated from their context hold little, to no scientific value. Indeed, they may be appreciated as works of art in and of its own, but they are unable to give us a better understanding of the past (Renfrew, 2000, p. 9-10).

The reason why the context of archaeological findings is so important can best be illustrated with the aid of an example. For instance, a Greek vase that was made in the sixth century BC in Athens. The vase was created, painted, and could subsequently be acquired by anyone interested. On many occasions such decorative vessels were acquired by Etruscan families,

where it was put on display in households, and appreciated as a vital part of day-to-day rituals. When the head of the household passed away, the vase, along with other cherished objects such as jewellery, was buried in a subterranean tomb. In ancient times this vase would have had, at the very least, three distinct contexts, in what are currently two sovereign nations. Any information that could be gathered on the events surrounding that vase is of vital importance to an archaeologist as it gives us a better understanding of our past (Anderson, 2016, p. 35-36).

Cuno (2008), however, argues that antiquities also have meaning outside of their archaeological context, such as iconographic, epigraphic, aesthetic, or technological. Take for example Mayan history, most of what we now know has come from unprovenanced ceramics. The same can be said for the Ancient Near East, through unprovenanced cuneiform tablets and cylindrical seals we have learned a great deal about this region. Aside from the meanings previously mentioned, antiquities also have political meaning. They allow modern nations to lay claim on a past and legitimize politically prevalent cultures as if it were national cultures. Their specific archaeological context is not relevant for their objectives (Cuno, 2008, p. 9).

The value of context is currently fiercely debated. The two opposing camps, which can be loosely identified as those preferencing object-focussed appreciation (e.g. Cuno) and those preferencing archaeological information (e.g. Renfrew), are diametrically opposite one another, and there are currently hardly any attempts to find common ground. The information that is lost on an object's circumstances upon its discovery deprives the object of its worth, to many archaeologists, so much so that the object need not be further investigated (Anderson, 2016, p. 39). Other archaeologists, such as Cuno, are inclined to be more forgiving on the absence of context, as there is still some information that such objects can provide us, as is the case in Mayan history and the Ancient Near East.

The two antagonistic points of view can be summarised as one preferencing the intrinsic value of an antiquity, and the other preferencing its extrinsic value. From an archaeologist's point of view the most important aspect of an object is the information that it can convey on the ancient world. Although an archaeologist understands that the object may be thing of rarity or beauty, they are not relevant in gaining a better understanding of the past. From a collector's point of view the intrinsic significance of an object, such as the choices made by the craftsman in shaping and decorating the object, is of greater importance. Naturally, the

collector recognises that the information of an object's circumstances of discovery or origin can be of use, it is just that this is supplementary to its intrinsic value (Anderson, 2016, p. 41).

Provenance and Antiquities

Archaeologists have campaigned for years to implement more rules and regulations regarding the prohibition of the international circulation in antiquities. For the majority of these years' museums collecting ancient objects have been against these efforts. The opposing views between museums on the one hand, and archaeologists on the other, is now also more prevalent in the public realm through books, symposia, newspapers, and magazines on this subject. At its core, the dispute revolves around the topic of unprovenanced antiquities. Archaeologists state that unprovenanced antiquities have, in nearly every case, originated from lootings. Provenance, however, is a subject of ownership and not archaeological status, and since some nations permit the ownership of an object but not its export, one can illegally export an unprovenanced antiquity that is legally owned. The public debate on the purchase of unprovenanced antiquities is largely on the legal aspects of their ownership, it is either legal to own them, or it is not. This does not imply that it is easy to resolve disputes on ownership for unprovenanced antiquities, since in most cases there is little evidence available.

To some archaeologists (Renfrew, 2000), antiquities that are without provenance, or information on their primary archaeological context, are tarnished, as they do not have the required paperwork to prove that they have not been acquired through looting. As a consequence, these objects cannot, morally speaking, be given a worthy home outside their country of probable origin, Renfrew calls this a 'good home' (Renfrew, 2000, p.10). The problem, in my opinion, is that the place of modern discovery can be difficult to ascertain for such objects. Take for example a Greek vase, without any information on its provenance which country would we consider to be a 'good home'? Since such objects are found across the Mediterranean it would be almost impossible to locate its modern place of discovery, and in turn determine which country has the right to a claim. Furthermore, even if a country of origin can be determined, it is often the case that these countries have museums with chockfull storerooms, and restituted objects that lack a precise archaeological context are, on many occasions, not welcome.

It is becoming increasingly common that unprovenanced antiquities do not find their way to any museums. Currently, American, and European museum authorities are wary when it comes to both acquiring and accepting donations of unprovenanced antiquities. Especially given recent successful prosecution. Not only museum officials have to be more careful in their acquisition of unprovenanced antiquities, but private collectors have also come to the realisation that this could potentially lead to civil liability. In the United States, but in Europe as well, the three previously mentioned places where unprovenanced objects commonly end up can no longer be considered refuges. As a result, discoveries to come are even more likely to end up on the black market where they are hidden to the public, and to scholars. Which, in turn, will probably lead to the destruction of more archaeological sites by looters (Anderson, 2016, p. 38-39).

Supporters of the cosmopolitan view (Cuno, 2008) argue that unprovenanced antiquities are entitled to as much study as objects that possess a context. The term cosmopolitan suggests that such objects have a universal value that is of greater importance than the conditions of their creation and burial as they can still provide us with a great deal of information, even though it is without contextual information. In addition, countries focussing on the restitution of unprovenanced antiquities should instead pass new finds on to an international institution that assists in the circulation of these objects.

The majority of unprovenanced antiquities that have been acquired by museums were done so before the ratification of international agreements between nations. Before such agreements, museums were only expected to perform due diligence and make a good faith effort to determine whether the object in question has been illegally taken or not. Cuno (2008) argues that if the object was illegally taken from its source country, it would be better off in a public museum than it would be circulating in the antiquities market. The acquisition of antiquities by museums, predominately in America, has decreased significantly in the last decade as there were several instances in which members of museum staff have been brought to court. Unfortunately, the looting of archaeological sites and the smuggle in antiquities has not decreased which suggests that unprovenanced antiquities that previously went to institutions are now going some place else. These objects are likely to be either donated or sold to museums in countries that do not implement foreign heritage laws, or to linger in the realm of dealers and private collectors.

Another point of critique as to the acquisition of unprovenanced antiquities is that it is unethical. Cuno (2008) argues that archaeologists believe that any context in which an ancient object has been discovered is an archaeological site, and that every archaeological site is of significance. The question whether or not an unprovenanced antiquity was in an archaeological site at some point depends on the definition of an archaeological artifact, or what Cuno calls an antiquity. Antiquities are frequently included with other objects under the term cultural property. The interchangeable use of the terms antiquities and cultural property in the public and governmental debate is not beneficial, and is intended to aid a country's nationalist ambitions, Cuno argues, instead of its expected goal of protecting archaeological sites (Cuno, 2008, p. 6).

Conclusion

What emerges in this chapter, and in the general literature, is the dichotomy that is currently present in the field of archaeology when it comes to the importance of context and provenance of antiquities. The question that arises is; what should we value more? The object in and of itself, regardless of its exact findspot and history of ownership? Or are the circumstances under which the object has been buried and its subsequent history of ownership more important? In my opinion, both context and provenance are vital to the field of archaeology. The context of a particular object can provide us with a wealth of information on our past, if the context of an object is unknown, this information is lost. Provenance is relevant to the field of archaeology in the sense that we should avoid, as much as possible, in dealing with object that could potentially be the result of looting since this currently poses one of the greatest threats to our cultural heritage. In the next chapter I will be discussing the issues of looting and the illicit trade in depth.

Chapter 3: Looting and Illicit Trade

In this chapter I will be discussing the problem that looting, and the illicit trade in antiquities, poses for our cultural heritage. I will begin this chapter with the issue of looting and consider the suggestions that have been put forward by scholars to impede it. Subsequently, I will discuss the manner in which private collectors and institutions have dealt with antiquities in the past and how these standards have changed. Lastly, I will be taking a closer look at the trade in illicit antiquities and go over the proposed solutions to curb the circulation of these objects.

The Issue of Looting

Colin Renfrew (Renfrew, 2000) argues that the greatest threat to archaeological heritage today is looting, as it is the primary source of the destruction of our heritage. Looting constitutes the illegal, undocumented and unpublished excavation of archaeological sites to come into possession of antiquities which could then be sold, in some cases for substantial amounts of money. Countries which are most afflicted are those that have an abundance of prehistory, of which we often have little information, and short written histories. Many countries in Africa and South America, for example, are especially affected, but the problems are, unfortunately, more widespread.

Renfrew (2000) suggests two ways in which we can address this problem of looting. The first being to greatly reduce, or dispose of entirely, the surreptitious excavation in nations where these antiquities originate. Which in and of itself is a monumental task. He argues that all nations should have in place robust laws that protect its antiquities and a knowledgeable antiquities service. Furthermore, national monuments are to be well presented and protected, followed by a network of communal museums that are focused on a national museum. Renfrew (2000) argues that putting these systems in place will ultimately benefit local communities since the economic value of heritage in the form of tourism and travel will discourage the looting of heritage for personal financial gains (Renfrew, 2000, p. 6-7).

Although I agree with his reasoning, not always will the increase in wealth that tourism generates directly affect the local communities in question. One example that springs to mind is that of the archaeological site of Jerash, Jordan (World Bank report, 2005). Local residents benefit little from tourism both economically and culturally, as most of the money the site

generates flows to the central government, despite the fact that the site is the second most visited in Jordan. This resulted in an indifference towards, and in some cases, hostility towards the site and their cultural heritage. Although the site of Jerash poses its own set of problems that need to be overcome in order to be of a benefit to the local community, I am certain that it is not alone in its existence.

Cuno (2008), argues against Renfrew's (2000) call for more and stricter legislation since they have been unsuccessful in curbing the looting and destruction of archaeological sites. He argues that the cultural property laws that have been put in place over the last decades have not, and will not, stop this. The call for more and stricter legislation will not have intended results. The looting of antiquities will continue as long as there are those who are willing to pay for them, and the provision of such antiquities will continue as long as there are individuals who are willing to unearth and sell them because they are living in poverty. Looting is done out of hopelessness, and those who remain hopeless, will continue looting. The destruction of archaeological sites will not only continue through looting, but also through environmental catastrophes, unbridled development, and war (Cuno, 2008, p. xxxiii).

The second manner in which the problem of looting is to be addressed, according to Renfrew (2000), is to put a stop to the circulation and consumption of illicit antiquities. The academic community is to play an important role in this, as it is to inform, and in turn, convince the general public that the acquisition of unprovenanced antiquities will ultimately result in a continuation of the looting process. Naturally, there are objects in circulation that have been excavated a long time ago. The 1970 UNESCO convention on the 'Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property' allows for the acquisition of unprovenanced antiquities only when it is unquestionable that they have been publicly known since *before* 1970. Resulting in the general agreement that public institutions, such as museums, should refrain from acquiring unprovenanced antiquities that do not meet the 1970 UNESCO convention criteria. Furthermore, Renfrew (2000) argues that today's private collectors, or worse public museums, who amass unprovenanced antiquities are contributing to the practice of looting through the provision of funds, which in turn not only benefits the looters, but also results in the further destruction of archaeological sites (Renfrew, 2000, p. 7).

According to Cuno (2008), the reason for the looting of archaeological sites and the selling of antiquities is because archaeologists argue that they have commercial value, if these objects would have no value the looting and sale would be non-existent. The only way to protect archaeological sites from looting is to deprive antiquities of their commercial value, and the only way to that is to stop buying them. Naturally, they should also stop looting and selling antiquities but that is up to the source nations to regulate, which is an insurmountable task to achieve due to available funds, number of sites, and the borders being too permeable. Instead, market nations should impose restrictions on the acquisition and import of unprovenanced antiquities, Cuno argues. When market nations forbid the acquisition and import of unprovenanced antiquities other nations will follow, the market for such objects will cease to exist and archaeological sites will not be looted anymore. Naturally, there will still be individuals willing to loot and acquire unprovenanced antiquities illicitly. Cuno (2008) argues that the illicit antiquities market will dry up when all source nations and market nations enforce import, export, and ownership laws equally, resulting in rewards being too low, and risks being too high, for those willing to loot and sell unprovenanced antiquities (Cuno, 2008, p. 7).

What is odd is that Cuno (2008) subsequently argues that when museums are faced with the choice whether or not to acquire an unprovenanced antiquity, it should do so since the looting has already transpired and the knowledge that might have been attained from its scientific study is already lost. Furthermore, he argues that the possible benefits of bringing the object into the public realms outweighs the continuation of the illicit antiquities market. Of course, this argument is diametrically opposite to what he has previously argued since the acquisition of unprovenanced antiquities perpetuates the problem of the looting of archaeological sites for monetary gains. Cuno's arguments hold no ground because when you pay for an object someone is set to benefit from it, and this will continue the problem of looting.

In order to illustrate the alarming state in which the world of archaeology is currently in, as well as the domain of collecting, it is best to discuss a, relatively, recent case. The case of the Lydian Horde, which I will discuss briefly, exemplifies how our archaeological heritage is currently being mistreated, often by those who are sympathetic towards that very same heritage. The reason why the case of the Lydian Hoard is interesting is two-fold. Firstly, it

illustrates that not all is lost when it comes to our campaign against looting, as it shows that looted objects that were acquired by a notable public institution were restituted to the country of origin after legal intervention. Secondly, it demonstrates that some museum curators agree, albeit reluctantly, to the acquisition of antiquities that have been proven to be looted.

During the mid-1960's in the Ushak region of west-central Turkey several burial mounds that were believed to contain valuable objects from the period of King Croesus of Lydia were broken into, and subsequently looted, by local residents. Soon after, between 1966 and 1970, the Metropolitan Museum of Art in New York acquired many of the objects originating from these tumuli. What is interesting is that this acquisition was never publicly announced, or even at all, by the Museum. Only when some of these objects were put on permanent display in 1984 it became clear to Turkish officials that they were, in fact, dealing with objects originating from the looted tomb in Ushak. In 1987, legal actions were undertaken by the Republic of Turkey, despite the Museums' desire for the dismissal of the case on the basis of the statute of limitations. The court denied the dismissal of the case because the Museum had kept the ownership of the objects a hidden for twenty years. Furthermore, the court also ruled that the Museum had failed to practise due diligence at the time of its acquisition of the objects (Renfrew, 2000, p. 29).

In other words, these objects were acquired by the Metropolitan Museum of Art without any regard of where they might have come from. The Museum subsequently kept the items in storage for a period twenty years, which just so happens to be the maximum amount of time in which any parties involved in a dispute have to initiate legal proceedings, leads me to believe that this was a deliberate action in the hope to thwart any claims on the basis of the statute of limitations. The statute of limitations states that the right to a legitimate claim of cultural heritage can no longer be made if the object in question has been in possession for an extended amount time. However, most modern nations refuse to accept that the current owner of a artifact, collection, or monument has the right to hold onto it simply because it left its country of origin many years ago. The amount of literature concerning repose, and the statute of limitations for that matter, is extensive, and conflicting (Herscher, 1987, p. 213-223). The Metropolitan Museum of Art, in all likeliness, knew that it was acquiring antiquities

that were looted from Turkey some time earlier. Before the trial was set to take place the Museum quickly settled outside of court, and shortly after, returned the objects to Turkey.

Institutions and Private Collectors

Some of the earliest (serious) collections of antiquities have been formed during the period of the Italian renaissance, not only in the cities of Italy, but well beyond. Concurrently, we see the formation of Cabinets of Curiosities, which, in addition to antiquities, included wide-ranging ethnographic collections (Schnapp, 1993). As soon as the late 18th century considerable national collections were being put together. Not long after, the imperial powers of the world were amassing antiquities originating from their colonies. Despite their somewhat contested origins, these early procurements provided us with a great deal of information, or at the very least prompted noteworthy scholarship. As some of them are connected to the inception of field archaeology. Since the onset of the 21st century it is generally agreed upon that each nation not only has the right, but also the duty to safeguard and take care of their national heritage. Nowadays, almost every nation on the planet has in place its own legislation in order to govern the treatment of its monuments and archaeological sites. The majority of these nations also forbid the export of noteworthy antiquities found within its borders without the necessary documentation. These general propositions that nations are expected to uphold have been specified in several international conventions (Renfrew, 2000, p. 8-9).

The earliest collections of great international museums were established in a time before the creation of heritage laws. The manner in which such collections came to be would be considered inappropriate nowadays, but perhaps not so some time ago. An example of this is the practise of partage, which meant that excavations were conducted in source nations led by foreign archaeologists, who provided equipment and expertise, in exchange for a share in the findings that have been done. In this manner the collections of many museums around the world came to be. Partage was regarded as a practise that benefited both the international field of archaeology, and the local communities. With the introduction of retentionist cultural property laws in the 20th century, Cuno (2008) argues, the practise of partage ceased.

Museums all over the world are, especially in this day and age, very much aware of the ethical position they are in. It is expected of these institutions that they do not acquire any antiquities of which the provenance is unknown. Fortunately, there has been a considerable shift in the public opinion since the UNESCO Convention of 1970. Likewise, museums have changed their position on the matter and have implemented various reforms in order to keep unprovenanced antiquities at bay.

Unfortunately, some institutions have taken a considerable amount of time to adopt these new ethical standards and continue to support the acquisition of unprovenanced antiquities by private collectors. Despite this, never before has there been so much awareness to the fact that there is something innately distasteful to the collecting and dealing of unprovenanced antiquities. Furthermore, the guidelines that are set out by various conventions and codes cannot be enforced, and many museums tend to interpret it in the weakest way possible, only to waive the purchase of an antiquity when it is unrefutably looted. Renfrew (2000) argues that the future of our cultural heritage looks grim when notable organizations uphold acquisition policies that are unsuccessful in discouraging looting, or worse, seem to wilfully ignore it through their acceptance of gifts, or their questionable purchases.

For Renfrew (2000), and most archaeologists and museum professionals, acquiring objects of which we are not sure whether they have been looted, is expected to encourage further looting and the illicit trade in such objects. To some museum professionals (Cuno, 2008), collectors, and dealers, the acquisition of such unprovenanced objects is not unethical, but an act of rescue. The reasoning behind this is that a looted object from the art market might be subject to destruction, loss, or damage, unless it is acquired by a well-intentioned buyer (Renfrew's 'good home' argument, 2000, p.10). The rationalisation is that the object is better off in the hands of a private collector than to linger in a dealer's inventory since the private owner is likely to keep the object off the market and could someday donate the object to a museum. Even if the object was the result of looting, taking it away from the art market is an act of benevolence. The problem, however, is that these opposing views are uncompromising, and have resulted in a stagnation in the search of international solutions to lessen the looting of objects and the illicit trade (Anderson, 2016, p. 37).

In the not-so-distant past, museums started to look more seriously into the challenges that collecting brings with it. In 2003, civil and criminal prosecution of individuals began in the

United States which had a significant impact on the discussion regarding the purchase of antiquities. Prior to these prosecutions individuals or institutions did not have much to fear, apart from public embarrassment, there were now more profound consequences to the acquisition of questionable antiquities. This forced museums and institutions into changing their existing collecting practices. In the last decade, the prices for provenanced antiquities have risen significantly on the art market, and the research done on the history of purchasable objects by auction houses has become more extensive.

Illicit Antiquities and their Circulation

There are two types of illicit objects. The first type being objects that have been illegally removed or stolen (i.e. looted), this is not limited to objects that have been taken from archaeological sites (or soon to be sites), but also objects that have been illegally taken from museums or institutions. The second type of objects are those that are legally owned by someone other than the State but are restricted in that they cannot be legally exported to other countries. If such objects are exported without the required permissions, they are regarded as being illicit. Naturally, there are objects that fall within both of these categories. (Carman, 2005, 17).

There are various values that we can ascribe to our cultural heritage, such values can be archaeological, historical, aesthetic, and financial, to name a few. For collectors and lawyers involved with cultural heritage the context and provenance of such objects is not of great importance, as they are more interested in value and ownership. To them, antiquities are more seen as objects of 'art', rather than archaeology. Although provenance is not of direct concern to those who partake in the trade of cultural heritage, they are relevant in the sense that objects who lack a proper provenance are more difficult to trade, and in turn this will influence its monetary value.

It is often the case that the commercial market and the museum are seen as opposite entities that represent the private and public realms of undertakings. However, this distinction is not as clear as many think it is. The assumption that museums function on entirely different principles is not entirely true, since museum can be regarded and assessed as any other economic institution, regardless of the fact they have no commercial intentions (Johnson & Thomas, 1991, p. 6). Pearce (1995) argues that museums are inevitably part of the capitalist

system of supply and demand and are therefore involved in the market for objects that can be added to the collections of museums, but this necessitates that these objects are considered to be types of property (Pearce, 1995, p. 392-393).

Several propositions have been made to improve the current issues we are facing regarding the illicit trade in antiquities. For example, Isler & Kerényi (1995) propose that institutions and private collectors refrain from acquiring antiquities for vast amounts of money, and instead, redirect these funds towards the study and conservation of archaeological material, the long-term loan of objects, the protection of landscapes in impoverished countries, and the training of locals in the field of archaeology. Isler & Kerényi argue that these measures will allow for a invigoration of the dialogue which will ultimately contribute to a better understanding of our past by the public (Isler & Kerényi, 1995, p. 352).

Cannon & Brooks (1994) argue to allow for the market itself to create an environment that finds illicit objects (whether they have been stolen, looted, or illegally exported) less lucrative as opposed to object that have the required documentation. In turn, the documentation that accompanies such objects will gain monetary value, and the market will regulate itself from within. If a buyer acquires an object with documentation and these documents turn out to be falsified or incorrect, the buyer can then go to the vendor and ask for a reduction in price since the documentation has a monetary value in and of itself. This will lead to a significant drop in prices of objects that are without paperwork, and ultimately, make them less attractive for collectors and traders (Cannon & Brooks, 1994, p. 350).

Renfrew (2000) argues that the main responsibility of curbing the looting and trade of illicit antiquities should be borne by the informed public and the academic community. He states that academics should realise that offering expertise and authentication to assist in the sale of illicit antiquities is inappropriate and immoral, something that still too many academics fail to understand. Furthermore, the broader educated public should play a more important role. For the most part it is understood that the collecting of unprovenanced antiquities inevitably finances the looting, and with it the destruction of our cultural heritage. Hopefully, he states, the public will react negatively towards the purchase and display of such objects by museums. In addition, we should immediately put a stop to the legitimation of collections known to contain unprovenanced antiquities, which is approved by those who put such collections on display (Renfrew, 2000, p. 44).

Cuno (2008) argues that the actual argument over the acquisition of unprovenanced antiquities is not between archaeologists and art museums on the protection of cultural heritage against looting and the illicit trade, it is between museums and modern-nation states that make nationalist claims on that heritage. Cuno believes that antiquities should not stay under the jurisdiction of national governments as the ancient past and antiquities are essential to us all, and not just to governments of modern nations who happen to have authority over them. The best way to protect the archaeological record and unprovenanced antiquities, he argues, is to set up programs for sharing expertise and collections, found new encyclopedic museums and strengthen those already in existence, approve the sensible acquisition of unprovenanced antiquities, reintroduce the concept of *partage*, protect archaeological sites, and stimulate the scientific excavation of the archaeological record (Cuno, 2008, p. xxxiv).

Carman (2005) argues that many of the rules and regulations that have been proposed throughout the years are based on the belief that both licit and illicit collecting by individuals results in the looting of archaeological sites for monetary gains. To resolve this Carman proposes to restrict the ability to privately own archaeological remains, and instead pass this ownership onto the state or institutions that have a public function. This would mean that museums and academic institutions are responsible to act for the general well-being and to keep archaeological remains away from the economic market (Carman, 2005, p. 25).

John Merryman (2005) has suggested the use of other principles which he dubbed the 'triad of regulatory imperatives' (i.e. Merryman's triad). The first of this triad is preservation, protecting an object (and its context) from destruction. The second is the search for knowledge, for information on our past and the cultural, scientific, historical, and aesthetic insights an object and its context can provide us. The third is access, allowing for objects to be accessible not only to the public for enjoyment and education, but also to scholars in order to study them. He terms this triad 'preservation, truth, and access' (Merryman, 2005, p. 21). Merryman's triad moves our focus from the ownership of antiquities to their stewardship. Museums only own antiquities to the extent that they retain them for safekeeping. Antiquities are in museums because they are there for the public, and not for museums themselves.

Conclusion

The problems looting and the illicit trade in antiquities pose to our cultural heritage is widely acknowledged by academics. The manner in which this is to be addressed, however, is still heavily debated. Should we impose more rules and regulations in an effort to curb the looting and illegal trade? Or should we invest in the sharing of our cultural heritage in the hope that it is more appreciated, and people refrain from acquiring antiquities? Although we *have* made progress in the fight against looting and the illicit trade, it is still very much ongoing.

Therefore, one could argue whether more regulation, or more severe punishments, will have the intended results. Perhaps we should take a different approach and invest in poor communities in source-nations where looters often come from. This investment could take the form of education on their past and the significance of cultural heritage to gain a better understanding of it. Hopefully, this will result in a decline in the number of lootings that takes place there.

Chapter 4: The Role of the Nation State

In the following chapter I will be discussing the political dimension of our cultural heritage and the manner in which modern nation states make use of this heritage for the benefit of their political aims and objectives. Furthermore, I will consider an opposing view to these nationalistic ideas, namely that of cosmopolitanism which emphasises on what we as humans have in common, in contrast to how we are different from one another. In closing, I will discuss the return of cultural objects to their source nations and the disputes to which this can lead.

National Identity and Cultural Heritage

In the eighties and nineties of the last century there was increasingly more critique on the objective of archaeology and value of archaeological material, as practitioners of this field became increasingly more aware of the political and ideological structures that were present. This resulted in archaeologists becoming more critical of the processual theory of archaeology which was prevalent during the sixties and seventies. This processual theory regarded archaeology to be a purely scientific undertaking that is free of politics. The post-processual theory, which followed the processual theory, criticized it for failing to recognise that archaeology can be used for political aims. Considering the fact that national governments decide on many regulations within their jurisdiction, such regulations work *for* the state, and thus makes them part of a nationalist agenda (Cuno, 2008, p. 53).

The protection of archaeological heritage as a function of national identity, as opposed to religious or cultural, emerged with the inception of nation-states. A logical consequence of the development of national identities are claims to state ownership of antiquities. The rise of modern nation state came with a sense of pride in ancestral origins, often exaggerated to the point of fictitious memories. The sense of pride people have in their nation's history and cultural heritage brings with it an instinct to protect it, which eventually leads to rules and regulations against the damage or loss of that heritage. Since nation states are a modern invention, it is often the case that the boundaries of such states are not in accordance with the spheres of influence in antiquity, adding another complicating factor (Anderson, 2016, p. 96).

In my opinion, the current concept of a national culture is irrational since the national borders do not correspond with the geographic range of many cultures. Take for example Africa, its current borders have been established by colonial powers with no regard to the peoples living, and have lived, there, often leading to societies being severed from one another. In what sense can one speak of a common national identity or culture in African nations when existing cultural groups often cover several countries.

Another illustration of how this idea of a national culture is illogical is that of present-day Egypt. Throughout history, from the Pharaonic past to the present-day, there have been many influxes of different peoples, from Greeks and Romans to peoples from Sub-Saharan and Near East alike. Contemporary Egyptians do not speak the same language the ancient Egyptians did, the same can be said for the way they dress, play music, practice religion and so on. For the longest period of time modern Egyptians were not interested in the pharaonic past, it was only in the last decades of the 19th century that there was an increased awareness of this past. This newfound interest did arise out of a desire to be independent from the Ottoman Empire. I believe that the creation of this common past in which the Egyptians could have a sense of pride and fraternity was a potential tool to strengthen these separatist ambitions.

Cuno (2008) argues that national cultures are defined by and are designed to maintain the elite within a nation, by others they are defined as a means to differentiate between national cultures. Antiquities are of significance in this due to the fact that the people of a modern nation believe to have a direct racial link to the peoples that were previously inhabiting that space, or because a modern nation receives some sort of benefit from them, such as political or financial benefits. Even though antiquities can play a role in the creation of a national identity, it is mostly a politically fabricated one. Cuno (2008) argues that this notion of a national, cultural identity is sometimes abused by supporters of retentionist property laws to argue against the acquisition of unprovenanced antiquities, but in reality, they merely want to sustain the elite within a nation. (Cuno, 2008, p. 12).

Recent studies (Meskell et al., 2002 and Kohl & Fawcett, 1995) of archaeological practice recognize the nationalistic structure in which archaeology is, and has been, performed in countries with a rich archaeological heritage. An example of where this political aspect in archaeology apparent is the island of Cyprus. After the Turkish invasion, and subsequent

occupation, of the island in 1974 there was a deliberate destruction, or erasure, of its Greek past (Cuno, 2008, p. 84). But this cleansing of one's past was not limited to the invader, Cypriot nationalists were also responsible for the destruction, theft, and denial of repatriation of cultural heritage that the Turks deemed significant. To complicate matters more, how does ownership of cultural heritage play a role in this conflict? In this instance both Greece and Turkey have ownership over some of the archaeological remains found on Cyprus despite the fact that it was deposited during periods of when the island was controlled by a single power. One can imagine how this division of rights of ownership could be a source of hostilities between Cypriot Greeks and Turks, as cultural heritage deemed important by one group might be legally owned by another. Of course, this also goes for any future discoveries on or around the island, which could cause tension to flare between these groups.

Another example (Özdoğan, 2000) that demonstrates this political aspect of archaeology also involves Turkey, more precisely the Kurds in relation to Turkey. The Kurds are a stateless people that live in a area that crosses the borders of Armenia, Syria, Iraq, Iran, and lastly, Turkey. Over the last decades Turkey has been criticized for overlooking Kurdish cultural heritage within its modern borders. As I have mentioned above, the Kurds are a people without a state, some have argued that this denies them the right to lay claim to any such heritage because they lack the sovereign authority to support them. Those that support a cosmopolitan view of cultural heritage might argue against this notion in which state sovereignty dictates ownership. How come Turkey, which is a modern nations state that until a century ago did not even exist, have the right to lay claim to cultural heritage found in area in which the Kurds have lived for thousands of years. Furthermore, this state ownership of cultural heritage, which could be argued to 'belong' to the Kurds, can be abused by Turkey to deny the Kurdish people their right to a past. Without getting too much into the subject, the Kurds have always shown the desire to create a sovereign nation, in the case of Turkey these separatist aspirations have led to a conflict that is continuing to this very day. Turkey, I would argue, has the ability to abuse its rights as a sovereign nation to claim ownership of cultural heritage that can be considered to be Kurdish, as a means of applying pressure to the Kurdish people and their separatist desires.

These two examples demonstrate the manner in which Turkey has used, and still uses, its archaeology to benefit the nation state. On the one side Turkey lays claim to anything within its modern national borders, and to objects found in the former Ottoman Empire that were situated in Turkey, in order to create a national identity. Furthermore, by denying the Kurds, their right to a past through the neglect of their cultural heritage, they are applying pressure to the Kurds and their separatist desires.

A Cosmopolitan Perspective

The cosmopolitan, or international, view is diametrically opposite to the ideas of nationalism. The concept has found its inception in the 18th century and, as the term implies, promotes the thought of people being 'citizens of the world', as opposed to being part of a distinct group of people based on aforementioned attributes. Encyclopedic art museums were inspired by this 18th century concept of cosmopolitanism, as it emphasises what we humans have in common and the interrelatedness and hybridity of cultures, in contrast to how we are different from one another (Cuno, 2008, p. 124). However, one could argue against encyclopedic art museums saying that since they are mostly located in the First World it seems that this is merely an excuse for such museums to acquire extensive collections from the Third World. Cuno argues against this by saying that it is true that they are mostly in the West, this does not mean that the concept of the encyclopedic museum is something to oppose, and that it is desirable that such museums exist all over world (Cuno, 2008, p. 144).

Those that support the cosmopolitan view (Cuno, 2008 & Merryman, 1994) believe that it is intellectually dishonest to politically manipulate cultural heritage for nationalistic interests. The idea that nation states are not allowed to enforce their absolute authority over archaeological material discovered within their borders is the greatest weakness of the cosmopolitan view. It is well-established that sovereign nations lay claim to a host of resources that are within their borders, including cultural heritage. The fact that the cosmopolitan view rejects the right of modern nation states to enact laws that concern their heritage makes the followers of this view blind to the realities of international law (Anderson, 2016, p. 53).

A prominent supporter of the cosmopolitan view is Merryman (1994), as he views cultural property laws as being nationalist and retentionist. Instead, he proposes the inception of a

distinct licit trade in antiquities that is overseen by international law. Objects that Merryman would see fit are those that are moveable in the sense that this does not endanger the object itself, other objects that would also be appropriate are those that are of little scientific value (Merryman, 1994, p. 36). Furthermore, Merryman would allow for the illicit export of legally owned objects since illicit export is discernible from illicit acquisition and a matter for national law only (Merryman, 1994, p. 31). Allowing for the trade in licit objects, he believes, will result in a reduction of lootings since the creation of a legal market will reduce the demand for illicit objects. Simultaneously it will stimulate a shift in the politics of the trade that are currently focussed on nationalism, to one that focusses on internationalism. In Merryman's system the licit trade in antiquities will improve the values of the objects themselves and of the global exchange over those nations from which the objects originate (Merryman, 1994, p. 64).

Anderson (2016) argues that the two biggest issues with the cosmopolitan view are that it is both impractical and unreasonable. From the support of outdated practices such as partage, or the denial of the right nations have to sovereignty, the cosmopolitan view provides no answers to what currently plagues the field of antiquities. For most people who are involved with antiquities the cosmopolitan view is seen as a remnant from the past. It was a time when the West was in control, the trade in antiquities was without any restrictions, and the loss of cultural heritage was the consequence of amateurish policing (Anderson, 2016, p. 55).

Claims to Cultural Heritage

Over the last few years various claims made by source nations for cultural objects part of foreign public collections have been successful, albeit not without efforts made by institutions to refute such claims. Museums that continue to hold onto cultural objects despite claims of ownership argue that based on legal grounds they are within their right to do so. To some scholars, James Cuno (2008) for example, the 'retention' of cultural heritage by modern nations is irrational as merely succeeding ancient civilizations is not enough grounds to lay claim on cultural objects. Anderson (2016) argues that characterising source nations as being 'retentionist' is more so on the basis of sentiments rather than that of legal grounds, its aim is to undermine national laws on ownership to permit the sale and circulation of antiquities.

The notion of restitution suggests the return of a cultural object to the nation where it was most likely found. The return of such objects to their probable source nation is often

accomplished through legal action as institutions are, to a lesser extent today, hesitant to return cultural objects unless there is compelling evidence that objects were illegally exported or stolen. The concept of repatriation means the return of a cultural object to its native country, or *patria*. The term repatriation is generally used to represent restitution, with the added implication that the return of cultural objects is justified on the basis of moral grounds.

Retention, restitution, and repatriation are representative of the spectrum of opinions on claims of ownership. Dealers and collectors believe that retention gets in the way of the circulation of cultural objects in an open market. For nationalists' repatriation implies the return of antiquities to where they belong. For those who are in between, restitution represents the return of cultural objects, willingly or not, to their country of modern discovery (Anderson, 2016, p. 157).

Over the last few years cultural property claims by source nations have made headlines all over the world. Factors such as an increase in successful claims, nationalism, and a better insight into the acquisitions made by museums in the past will lead to many source nations being more watchful in protecting their cultural heritage, and more actively pursuing claims of ownership. The majority of these claims are expected to affect objects that have been in the care of market nation museums for a substantial amount of time. If claims made against objects that have been in possession for decades are proven to be successful, it is likely that more nations will follow with similar claims.

Cultural heritage taken during times of war can lead to disputes in ownership long after hostilities have ended. One of such examples is Priam's Treasure, which was entangled in a tug of war between nations for almost two hundred years. After its discovery in north-western Turkey by Heinrich Schliemann in 1837, it was subsequently shipped to Berlin. Some time later, during the Soviet invasion of Berlin, the Treasure was confiscated and transported to Russia. To this day, the fate of Priam's Treasure has yet to be resolved. Russia's justification for holding on to the Treasure is that it regards it as reparations for the damages done during World War II. Germany, however, states that a treaty signed by both nations in 1990 obligates Russia to return cultural property stolen during the conflict. To complicate matters even further, Turkey has recently made claims of ownership to the Treasure, as it was excavated at the time of Ottoman rule of which Turkey is the successor state. Both Germany and Russia, as well as Turkey, regard Priam's Treasure to be rightfully theirs, resulting in an impasse as to

where the final resting place of the Treasure should be. Whereas the law in all likelihood preferences Germany's claim, based on the merits of repose, the claims made by Russia and Turkey can be understood as well (Stephens, 1995, p. 59-112). The majority of disputes regarding ownership of cultural heritage are not so much based on laws, but more so on politics and a feeling of entitlement brought forth from relating national identity with cultural objects (Anderson, 2016, p. 99-100).

Conclusion

The fact that our cultural heritage is used for political aims by nations is undeniable. The question is whether this is desirable, given the examples I have discussed in this chapter, as they often lead to tensions between nations and its citizens. Should we, perhaps, take a different approach to our cultural heritage and invest in the sharing of it, as opposed to the efforts that are currently being put in its retention? There is, however, one advantage to the use of cultural heritage for nationalist purposes. Nations consider it to be vital to protect their cultural heritage in order for it to be used for their political aims. This resulted in the inception of rules and regulations to protect cultural heritage from loss or destruction. This could, arguably, be the only positive outcome of the current misuse of our cultural heritage by modern nations.

Chapter 5: International Conventions and Treaties

In this chapter I will provide an overview of the most important international conventions and treaties regarding the protection of our cultural heritage. In addition, I will be discussing the differing opinions on the effectiveness of these conventions and treaties and consider some of the critiques that have been voiced on them.

Following the end of World War II, a massive amount of claims and counterclaims of cultural heritage were being made, along with this came a widespread awareness about the degree to which our archaeological heritage is in danger. The suitability and effectiveness of market regulations, which aim to curb intentional and accidental destruction of our cultural heritage and their archaeological context, is still very much debated. Many believe that efforts made to repress the trade in archaeological objects had the unforeseen consequence of creating a black market and that further encouraging looting (Merryman, 2009, p. 274).

The legal framework in which the trade of antiquities functions is obscure and changes constantly. Inside a labyrinth of international treaties and conventions are different, and changing, national laws, policies, regulations, statutes, and practices. Ever-changing political parties at the heads of governments, who regard cultural heritage in their own way, complicates matters even more. Some politicians believe that archaeological heritage is an articulation of modern national identity. For other politicians, heritage is vital for attracting tourists (Anderson, 2016, p. 74).

Renfrew (2000) argues that national and international legislation concerning the illicit trade of antiquities leaves something to be desired. Although nearly all countries have in place, at least some, legislation to protect their own heritage, the public sale of antiquities that have been looted overseas is still insufficiently regulated. Fortunately, there are various international conventions that have proven, at least in some cases, to be effective (Renfrew, 2000, p.37).

The 1954 Hague Convention

The very first convention on the protection of cultural property was the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict in 1954. The aim of the Convention was to address the issue of transport and illicit export of cultural property that

originated from captured territories. Furthermore, the Convention was intended to settle any disputes over cultural heritage that came into being after World War II had ended. The problem, however, was that the Hague Convention was designed to only affect heritage objects that were displaced as the result of rebellion, revolution, and war. The Convention did not address the already existing trade of illicit artifacts (Anderson, 2016, p. 75).

The 1954 Convention introduced a cosmopolitan approach to cultural property, it was the first time that damage or destruction of cultural property anywhere in the world was seen as a detriment to all of mankind as each people contributes to the world. It was believed that our cultural heritage deserved protection, and for this to be effective it was required that there be both national and international rules and regulations to guarantee this. Cuno (2008) argues that antiquities, and archaeology in general, are frequently subjected to either abuse from national, sectarian politics or to the violence of armed conflicts, and that no international convention can keep this from occurring (Cuno, 2008, p. 26).

The UNESCO 1970 Convention

The second international convention addressing displaced cultural heritage is the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, also known as the UNSECO Convention. The aim of the Convention was to control cultural property that was stolen from public monuments, museums, or other such institutions as long as the institution in question could prove that the property belonged to their inventory.

Despite its confines, the convention did trigger an extensive reconsideration of the obligations of both market nations and source nations. Source nations, often located in the southern hemisphere with an extensive and valuable archaeological record, were urged to better protect and police their cultural heritage. Market nations, usually situated in the northern hemisphere with less archaeological heritage and with more wealth, were stimulated to curb the import of cultural heritage from source nations (Anderson, 2016, p. 76).

The aim of the 1970 UNESCO Convention was trifold. Firstly, it sought to apply pressure on source nations to keep the inventories of public collections up to date and guarantee their accuracy, install penalties for those that break national laws, keep an eye on the art trade, take up a protocol that allows for export certificates, and educate their citizens on their

cultural heritage. Secondly, it wanted to convince state parties that came into possession of imported cultural heritage *after* the ratification of the Convention (i.e. after the year 1970) to retribute that property to the nation making a request, with the provision that innocent buyers are to be compensated justly. Thirdly, its most extensive objective was to encourage bilateral and multilateral accords concerning cultural property between nations, with a focus on heritage that could be at risk of being looted. The UNESCO Convention was a well-intended and influential first step that aimed to protect monuments and museum inventories. What it did not do, however, was supply a means to address the greatest challenge we are currently facing in the circulation of antiquities, namely that of the fate of objects that were either discovered by chance or those that have been looted, and subsequently ended up on the legal or illegal market. Given the fact that UNESCO could not request participating nations to change their legislation regarding stolen property, these omissions could not be avoided (Anderson, 2016, p. 77).

Cuno (2008) argues that the 1970 UNESCO Convention has a nationalist point of view as it formulates the significance of cultural property around the value it has to modern nation states. Which does not come to a surprise since UNESCO is a cooperation between nations. Nations only join such ventures because they consider it to be in *their* best interest to do so. Conventions drafted by UNESCO can only be enforced if enough nations approve as such. In addition, they decide the fate of international conventions since nations can choose to enforce them or not, or whether they conform to them or not. In the case of the UNESCO Convention of 1970 a nation can always decide to ignore or reject it completely. The issue with the Convention is that its propositions cannot be enforced internationally. Nations that decide to ratify the Convention put them into action by means of laws that operate within their national jurisdiction. Meaning that when institutions or individuals violate the conditions of the national legislation (i.e. break the law), they are only liable in that country, and not internationally (Cuno, 2008, p. 27).

The legal framework regulating the trade in antiquities is that of ownership and export laws. These laws are intended to manage the movement of cultural property. Cuno argues that such laws are retentionist by design as they are meant to hold onto a nation's, self-proclaimed, cultural property. Laws on export and ownership of cultural property have grown significantly over the past decades, along with the number of nation-states. In the majority of

these nations exist retentionist cultural property laws either through laws on ownership, export, or a combination of both (Cuno, 2008, p. 33).

Bator, among others, has criticized that the UNESCO Convention allows for nations to claim anything within its borders as their cultural property. In addition, he states that the Convention suggests that it is desirable for a nation to retain all of its cultural property (Bator, 1983, p. 33). Another critique by Merryman is that the Convention actually supports cultural property nationalism, which is quite opposite of what it was intended to do. The Convention sets no punishment on a nation's interpretation of the cultural property that is allowed to be exported. Furthermore, he argues, it allows nations to make decisions that best serve their interest regarding the permission to export cultural property in certain instances. In this manner, the UNESCO Convention makes allowance for and encourages the practise of over-retention (Merryman, 2005, p. 11-39).

One might wonder what the value is of the UNESCO 1970 Convention. For starters, it set a norm for any conventions and bilateral agreements that came after. Furthermore, it set a moral and legal standard for nations to best respond to the issue of illegally exported and looted antiquities. As I have previously mentioned, international conventions have no force of law in and of their own. However, they often encourage the enactment of laws within a nation's jurisdiction. The UNESCO Convention (1970) did just that, as it was quickly ratified by various nations soon after its inception. However, one could argue the effectiveness of international conventions and the national legislations that followed since the trafficking in antiquities and the looting of archaeological sites continues to this day (Cuno, 2008, p. 43).

The 1995 UNIDROIT Convention

The International Institute for the Unification of Private Laws (UNIDROIT) is an autonomous, intergovernmental organisation that proposed a new international convention that sought to bolster efforts to protect cultural property by impeding transmission of this property across national borders. The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is comparable to that of the UNESCO 1970 Convention, although it is different in that it focusses on the return of illicitly exported or stolen cultural objects instead of the prevention of illegal export, import, and transfer of ownership (Cuno, 2008, p. 49).

Neither UNESCO 1970 Convention nor the UNIDROIT Convention are retroactive, meaning that they have no influence on any actions that have been taken *before* the ratification by a country. Therefore, public and private collections are not in danger when these conventions are implemented. Nonetheless, this definition is of great importance, as it will be challenging to obtain a good title for unprovenanced antiquities that have been excavated *after* the year 1970. Furthermore, it stresses the importance of 'due diligence' by collectors and dealers when trading in antiquities (Renfrew, 2000, p. 38).

The 1995 UNIDROIT Convention, much like the 1970 UNESCO Convention, did not resolve the challenges accompanying chance find or looted objects that ended up in the international art trade. Conflicting perspectives between source nations and market nations resulted in national treaties that have proven to be ineffective. Instead, source nations are increasingly taking disputes on cultural heritage to court in other nations, with mixed results (Anderson, 2016, p. 84).

The UNESCO 2001 Convention

The Convention on the Protection of the Underwater Cultural Heritage adopted by UNESCO from 2001 intended to protect so called 'buried treasure' on the ocean's floor that could give us insight into ancient trade routes and ship construction, to name a few. An example of such 'buried treasure' was the Belitung shipwreck found on the northern coast of Java in 2000. It contained sapphires, rubies, hundreds of thousands of Chinese Ye and Northern white, and glass ornaments with Arabic inscriptions. Archaeologists and Historians suggested that the shipwreck could be of great importance in providing us with new insights into the nature of trade in this period. The Indonesian government, however, thought otherwise as it stated that the shipwreck had more economic than historical value, and that they were only keeping around 10 % of its content, auctioning off the rest. Since the Belitung shipwreck was located in territorial waters the Indonesian government exercised its sovereign rights over it. Although the actions by the Indonesian government may seem to be in conflict with the UNESCO 2001, as it is intended to protect such material, it is actually feasible within the terms of the convention (Cuno, 2008, p. 46).

In my opinion this is where the problem lies, although the Convention sets out to protect underwater cultural heritage, as it acknowledges its importance not only to getting a better

understanding of the past, but also its significance as a common heritage that belongs to all of us, it allows for nations to do as they wish regarding 'our' cultural heritage. If a nation decides to sell off antiquities, as is the case with the Belitung shipwreck, it is free to do so without any repercussions, aside from some public outrage. In this the UNESCO 2001 grants no protection at all from damage or destruction of underwater cultural heritage, which is truly a shame in my opinion at least.

The UNESCO 2003 Convention

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage from 2003 sets out to protect not only knowledge, practices, and skills that communities or groups consider to be cultural heritage, but also cultural spaces, objects, and instruments. The main principle of this Convention is that it is critical that groups and communities decide what is or is not intangible cultural heritage, and not nations. However, the Convention does acknowledge the fact that it needs States Parties to enforce it. Furthermore, the Convention requires that, article 11 in particular, States Parties work together with groups and communities to decide what is or is not intangible cultural heritage (Cuno, 2008, p. 47).

In my opinion, the fact that the government still has a voice in deciding whether or not something is to be perceived as intangible cultural heritage goes against, to a certain extent at least, the core value of the Convention. Namely, that it is vital that communities decide what intangible heritage is, and that it should not be a consensus between said communities and the state. Another issue is when communities are situated in areas crossing several borders, take for example the Kurds stretching over areas of Turkey, Iraq, and Iran, and how does one agree to a common policy between these nations.

Conclusion

Throughout this chapter I have discussed the many conventions that have been brought forth by UNESCO, but what of their effectiveness? In my opinion the main issue with these conventions is that they are not enforceable in the sense that it is up to individual nations to decide what legislation to implement. Exactly this is the Achilles heel of these conventions, as there is no international accountability in the case of going against the values of these conventions. Take for example the case of the Belitung shipwreck (Coleman, 2013) where the Indonesian government decided that it was of no historical value and subsequently decided to

auction of the vast majority of its contest, surely this goes directly against the core values UNESCO 2001.

What then is the worth of these conventions? Despite the fact these conventions are not legally binding, they do have some worth in the sense that they set a moral standard for nations to uphold, of course they can still choose to do as they please. However, this is not to say that there are no consequences whatsoever. For instance, the Belitung shipwreck has received quite some negative publicity as there were many who questioned the manner in which the Indonesian government had acted towards cultural heritage that is perceived, to many, as common heritage that belongs to all of humanity. This is where the tension lies, when is cultural heritage perceived as property of an individual nation, and when is it considered to be of all of humanity? There is a fine line between these points of view and the conventions, unfortunately, do not offer a solution for this issue as they tend to support the right of nations to claim and hold onto this cultural heritage, in my opinion at least.

Furthermore, Anderson (2016) notes that in practice efforts made to integrate and enact national and international laws, statutes, and treaties have had varying degrees of success. The emergence of a public consciousness regarding the looting of antiquities and its associations to terrorist organisations and organized crime has proven to be as significant as the codification of state ownership. The stigma attached to the acquisition of unprovenanced antiquities from countries where terrorist organisations are active is a greater deterrent than any law currently in place. The greatest result of the legal and diplomatic debate since the 1970 UNESCO Convention is a growing sense of national pride in source nations, along with the disgust in market nations at how capitalizing on cultural resources is a driving force in the destruction of our shared cultural heritage and incentivising criminal activity (Anderson, 2016, p. 94).

Chapter 6: Property and Non-Property Alternatives

In this chapter I will consider the various categories of property in which cultural heritage can fall along with its associated rights and duties. Subsequently, I will be discussing the value regimes to which heritage can be attributed, where they originate from, and what values are ascribed to them. In closing, I will examine some of the alternatives for property that have been put forward by scholars.

Categorising Property

There are four types of property that are generally identified by lawyers and economists. The first being common property, which gives shared rights. The second being private property, which gives exclusive rights. The third being state property, which abrogates all rights to a national government. The fourth being open access, which gives rights that are not clearly defined. There is no major difference between private ownership and state ownership, both have absolute ownership rights with the only distinction being who makes the decisions. Common property is held by multiple individuals who each have particular rights and restrictions. Open access property is, in fact, not a property regime as it means the absence of one (Cole, 2002, p. 8-9).

In practice, it is often the case that these ownership rights are shared. For example, a particular site or monument is legally owned by a landowner, whilst other rights, such as the right to destroy it or how the site is to be used, lies with the State (Carman, 1996, p. 218). Cole (2002) also calls attention to this stating that there is no such thing as absolute private or public property, as they often overlap (Cole, 2002, p. 13). Such mixed property is for example conservation agreements or land trusts where the private owner has most rights, but some are possessed by a public entity. There are many different forms of such constructions that are vastly more intricate than the examples stated above that show how complex property relations can be.

There are many arguments for permitting, or the necessity, to have ownership over things. This concept of having exclusive rights to an object is likely to originate from the distant past and allowed for an individual's unimpeded exertion of perseverance, resourcefulness, and will in the world. Furthermore, it allowed for an effortless transmission of objects from one person to the other (Ryan, 1983, p. 231). This ownership of objects does not necessarily have

to be an individual, as they can also belong to the State, or to no one. Carman (2005) argues that the concept of property is not so much an issue, it is the exclusive ownership over archaeological heritage that is not appropriate. More precisely, it is 'the exclusionary nature of private property supported by the coercive power of law that is objectionable' (Carman, 2005, p.36).

Arguments against the notion of property and the market have been put forward for some time. In the following part I will, briefly, discuss some alternatives. The concept of Individualism, according to Godwin, calls upon human reason to be the judge of the distribution of goods; those who will have the greatest benefit of a certain good will have sole possession of it (Godwin, 1971, p. 282). With Individualism instead of the right to deny others access or use of a good, as with private ownership, the focus is based on use rather than exclusivity. Mutualism, much like Individualism, emphasises the use of a possession rather than exclusivity, access to produced goods is on the basis of reciprocal agreements by means of contracts of exchange for equal value, instead of the enforcement of theoretical and predeterminate rules (Carman, 2005, p. 39). Collectivism suggests that possession for use is not vested in the individual but in the group, with the intention that all things are kept in common by a shared group that is both self-regulating and voluntary.

Communism expunges all trace of the right to exclude and to enforce rights by compulsion and replaces this with a system of possession by voluntary organisations of individuals with the right, without restraint, to use as much as they need. All of these, aforementioned, concepts aim to create a new society in which mature individuals take full accountability for their lives and for themselves and willingly collaborate with each other to meet their needs and desires (Carman, 2005, p. 41). But how is cultural heritage perceived and managed within a communist society? One example we can look at is that of Communist China, of which I will highlight some laws that contrast with how we engage with cultural heritage in a capitalist society.

Already in 1930 China enforced laws that regulated the trade in Chinese cultural objects. The law on the Preservation of Ancient Objects made the export of such objects illegal. Furthermore, foreigners within China were not allowed to own Chinese cultural objects and were forbidden to conduct any archaeological excavations within its borders. The 1982 Cultural Relics Law permits both state and private ownership, with the exception that cultural

objects can only be privately owned, whether it be by an individual or collective, when they have been passed down through several generations. In addition, the law also states that all cultural objects that have been discovered are property of the state and that their export and/or sale can only be realised with state approval. In 1987 the Cultural Relics Law (1982) was issued with a Circular on Cracking Down on Activities Involving Smuggling and Illegal Excavation for Cultural Relics which strengthened state ownership of unearthed relics, outlawed private sales, and made it possible to severely punish those breaking the law, in particular government employees (Cuno, 2008, p. 94-96).

The concept of 'the gift' alters the meaning of the object from a commodity to a gift, from a use value to one of symbolic value (Mauss, 2016 or Hyde, 1983). Whereas the object, as previously discussed, was integrated in constructs of ownership and exchange for measured value, now it is the status of culture, the domain of heritage associated with identity and the inception of community by the gift of the self. Reducing the symbolic value to that of a use value by regarding the heritage object as though it were a commodity therefore signifies a type of private appropriation of the gift increase intrinsic in heritage, altering it into private property regardless of who (or whom) is responsible for this. Carman (2005) argues that by considering heritage as an object of ownership it devaluates the object to a commodity, it takes away the gift increase that symbolises the creation and continuation of community. Now the question is whether it is desirable to view our cultural heritage as commodities to which we can ascribe a market value effectively alienating ourselves from the object and, in turn, distances us from our shared past.

Types of Value ascribed to Cultural Heritage

The preservation of antiquities for their cultic or symbolic value is already observable in ancient times. For example, the concept of *pietas*, which can be translated to 'duty', 'loyalty', or 'religiosity', was one of the most important virtues among ancient Romans and manifested itself especially towards religious traditions (Gombrich, 1994, p. 76). This notion of *pietas* is illustrated by the Roman emperor Hadrian (117-128 AD) who mandated the preservation and protection of monuments, in particular those of classical Greece and Pharaonic Egypt. It is likely that the reason for this mandate lies in that these monuments possessed a combination of political, religious, and philosophical values that necessitated their preservation and protection. During periods in the Middle Ages, we see a similar attitude. In this instance,

artifacts that mainly had a religious or high symbolic value were preserved since they allowed for the continuity of their religion. Medieval sources from this period show us that ancient objects were also preserved for their aesthetic value, mostly in connection with religion; in order to better love God (Svoboda, 2013, p.4).

Within the field of archaeological heritage management there are several types of value ascribed to archaeological remains in the public realm. In most cases, these value types can be explained in terms of a common structure as they are drawn from a principle of archaeological heritage management, have specific values ascribed to them, and are derived from a field of study outside of archaeology. These value types can also be ascribed to a specific sort of managing institution, accompanied with a specific sort of language.

The first value regime is the *Accountability of institutions* which is derived from the discipline of accountancy and ascribes value in terms of financial/monetary. In various regions of the world, such as Australia, museums are expected to treat their collections as though they are available for purchase, meaning that they have to place a financial value on them. This premise is rooted in the idea that museums, which are public institutions, need to justify their spending of public money by demonstrating how relevant they are to society. It is argued that a monetary assessment is fitting and that it makes the museums undertakings more transparent. Currently, this method is only applied to public institutions. However, Micallef and Peirson (1997) argue that this concept should also be applied to other types of 'collections' such as monuments and sites that are either under State care, cared for under planning provisions or in National Parks or as National Monuments (Micallef and Peirson, 1997, p. 36).

Considering that the institution holding the collection is evaluated based on the monetary value of said collection, the collection itself is only important to the institution that is holding it. By treating items in the collection as being exclusively owned by the institution, they can also be treated the same as any other owned object. Therefore, objects in a collection can be viewed as a store of trade value, categorising such objects as commodities. By attributing a monetary value to these objects, it is considered suitable that they are the sole property of the institution that is holding them. Commodification and exclusivity, therefore, assist the role of the collection in giving value to the institution that is holding it. The primary benefit of this school of value is that the value of cultural objects is acknowledged on a universal scale. The

downside of this value regime is that it stands for a limited meaning of the idea of value (Carman, 2005, p. 53).

The second value regime is a *useful* heritage which derived from economics and ascribes value in terms of use and non-use. Included in this non-use value are nonconsumptive values that are uncertain in the future, such as existence value and option value. These types of values have mainly been put forward by Darvill (1993, 1995) who approaches value by the utility of heritage and subsequently ascribes them to categorise of use and non-use value. Under the category of 'use value' Darvill lists monetary and economic gain, integration and social solidarity, legitimation of action, recreation and tourism, symbolic representation, scientific and archaeological research, creative arts, and education (Darvill, 1993, p. 12-20). Under 'existence value' he lists resistance to change and cultural identity, and under 'option value' he lists mystery and enigma and stability (Darvill, 1995, p. 48). The 'option value' and 'existence value' are merely postponed use values since they illustrate uses that might occur in the future. All of the values listed above are representative of the productive *use* of a particular item, the only uncertainty is in what manner and at what time this use will take place.

Whereas the 'accounting' school of thought presents a commodity exchange value for heritage, this system pertains to the practical use of heritage objects to those that possess and manage them, which in many cases is the State. The state often does not claim exclusive ownership rights over cultural objects. However, it will assume particular powers of use and deposition allowing the State to behave as the preserver of objects. Rather than having ownership of an object the State will have custodianship or stewardship, in reality though they are remarkably similar. The foremost difference between ownership on the one hand and stewardship and custodianship on the other, is that under the latter the State is not allowed to destroy an object, which is one of the fundamental rights of ownership. Therefore, the function of steward is held for an unlimited time and with this the object will also be preserved forever. The origin and justification of ascribing utility value to cultural objects lies in this, or as Carman (2005) puts it, since we are paying for these objects, we might as well find a use for them.

The third value regime is a *social heritage* which derived from anthropology/Philosophy and ascribes value in terms of symbolic value. In this concept the belief is that the main purpose

of the heritage is merely to be the heritage. The institutions we have founded to create the heritage are all involved with setting it up as something that surpasses the ordinary, something that is outside the domain of economics. In this value regime the owning institution is the community itself and not a representative that acts on its behalf because this will return us to the value realms previously discussed. However, the community itself exists of a collective of individuals as opposed to a single entity that alters over the course of time as it defines itself in a different manner, this change might be in terms of geography or biological or cultural affinity. The community as an owning institution could provide a contradiction as on the one hand it can claim full exclusive rights of ownership, but on the other hand it cannot exercise its right of disposal or destruction by any members that are part of this community, both today, and in the future (Carman, 2005, p. 59).

Cultural Heritage as Private Property

Carman (2005) argues that regarding archaeological remains as a type of property will lead to us treating them and understanding them in certain manners. These manners are not at all related to the nature of the material itself nor are they related to ethos of archaeologists. Alternatively, we confine our understanding of ourselves and the material we work with to fit concepts that originate from fields exterior to that of archaeology since they have ideas about ownership and property that have a certain significance. However, Carman argues that by regarding archaeological material as 'cultural property', this serves economy and law and not history (Carman, 2005, p. 63).

Merryman (1989) argues that antiquities and marketable art objects not only represent a store of financial value, but also other (nonfinancial) values such as symbolic or cultural (Merryman, 1989, p.353). Objects that are held by public institutions act to create and reinforce the feeling of community in the interest of society. If such objects were possessed by an individual these symbolic and cultural value would accrue to its owner, and not to the community from which it originates. Carman (2005) argues that heritage is not intended for private ownership as it symbolises the appropriation of a feeling of community for the improvement of an individual's prestige, which consequently denies the aim of promoting objects to the status of 'heritage'.

The traditional response to heritage being under threat either by appropriation, private acquisition or looting is to increase State control on heritage objects, although some, such as Cuno (2008), strongly argue against this since they bring into effect nationalist retentionist cultural property laws. It is widely accepted that nations from which cultural objects originate, if one can establish this that is, are most suitable to own such objects since they are required to protect them by international law. In addition, national laws also allow for State ownership or control of archaeological sites or heritage objects. The argument for this is that the State is not the exclusive owner, but merely a steward for the sake of the public, which are the true owners. However, this stewardship, in practice, means that the State has either full ownership of heritage objects or something that is very similar to this. Meaning that the State, in essence, becomes the owner of such objects.

The general belief is that the acquisition of heritage objects by those other than the nation of origin leads to loss of its purpose. However, Carman (2005) argues that this also takes place when the State has ownership over them. It is far more likely that State ownership takes away the value of heritage from the community and subsequently transfers it towards the State as an institution, and as a consequence, the State accrues to itself the sense of community that the heritage bears and through this validates its own authority as the legitimate carrier of this sense of community (Carman, 2005, p.76). The symbolic value of this sense is subsequently transformed into a 'national heritage' from which the nation state, only when it exerts control over this heritage, gains prestige. The redirection of symbolic value to any other meaning denies the very purpose of heritage, which is unavoidable since it is not created to be appropriated, but to be shared.

Cultural Heritage as Common Property

The category of 'common' property is considered with scepticism since it is believed that the lack of control on archaeological material will inevitably lead to the supposed 'tragedy of the commons'. Briefly, this theory suggests that individual users who have unrestricted access to a resource that has no established rules or shared social structures that regulate access and use will act against the common good of all, and in favour of their own self-interest, resulting in the exhaustion of this resource by way of their uncoordinated action (Carter, 1989, p. 67-69). The same fate is expected for archaeological heritage if taken away from the domain of proper controls, when exclusive property rights are exercised.

Although the fields of economics and law tend to be more sympathetic towards private property regimes, some have supported the possible value of common property systems (Thompson, 2000). In most cases, favourable outcomes are linked to shared fisheries and agricultural land use, and not heritage conservation. The success of these studies is often assessed through sustainable economic production. However, more stringent means of assessment have been suggested, made up of the combination of three aspects. Namely, enhancement of the resource, no loss of the resource, and the absence of anarchy between the co-owners (Bromley, 1993, p. 3). These elements can be used to assess the preservation of archaeological heritage since they do not require economic productivity.

Archaeologists themselves have been experimenting with the role of common property regimes in association with archaeological remains. These endeavours are not termed property regimes, but 'democratic', 'collaborative', or 'community' archaeology. There are two types of coinciding communities that archaeologists come across. The first is the 'local' that is defined by geography, the second is the 'descendant' that is defined by affiliation (Marshall, 2002, p. 216). One or the other, or both, could be engaged in a community archaeology project. There are several degrees of collaboration between archaeologists and the community. The lowest being outreach, meaning the community is informed and educated by the archaeologist. Above this is the acknowledgement that members of the community can provide information and knowledge. The highest being the consultation of communities by archaeologists, which is most noticeable with descendant and indigenous communities (Moser et al., 2002, p. 221-223). In addition to these three types of collaboration, a multitude of other methods have been experimented with that appear to do well. Community archaeology projects do not, in most cases, characterise themselves in terms of property relations, although it is understood that the aim is a community 'ownership'. Community projects, however, symbolise the repudiation of claims of private ownership over the archaeological material or its products. Such projects, therefore, can be regarded as experiments in the common ownership of archaeological remains.

Carman (2005) argues that evaluating community archaeology projects as though they are common property systems is a helpful academic endeavour, but in reality, they do not mean property ownership in a strictly legal sense. In order to accomplish this, some type of property has to be created and rights need to be given appropriately. It has been suggested to

consider cultural resources as a type of intellectual property, similar to that of a patent or copyright. This idea originates specifically from issues that have been encountered in the appropriation of traditional knowledge for commercial use. Identifying such knowledge as a type of intellectual property privatises an open-access or common resource giving it value that was previously lacking and prevents abuse through market intervention (Ditchfield, 2000, p. 15). Ownership of rights in a valuable property, in this case knowledge, stimulates trade and production in said property and will result in an increase in overall well-being. Most favourably, legal ownership of a resource is put in the hands of a identifiable community with precisely established rights and with ample outside investment. The only obstacle that needs to be overcome is to identify a certain community as 'rightful' owners of the property, which at times can be a challenging task to accomplish (Carman, 2005, p. 95).

Cultural Heritage as an Open-Access Resource

Other approaches to exclusive rights to cultural property have, in practice, not often been regarded as being useful to environmental resources such as archaeology. In order to conserve environmental resources and to prevent their depletion a certain amount of restraint is necessary. In most cases this is accomplished by assigning property rights which prohibit those without such rights from access and use of a particular resource. There are, however, suggestions put forward which seek to avoid the allocation of exclusive property rights.

Theories on property presented by anarchists in particular, as previously discussed, reappear. Despite the fact that they are created to supplant ownership in its relation to economic production, they could potentially point us in the right direction. Some of these anarchist alternatives are the individualist who upholds a type of private right in property, the mutualist which is similar to a type of institutional ownership on behalf of a community. Considering the fact that anarchists renounce the State they are unable to provide us with an equivalent to State ownership. However, collectivist theories are similar to a type of common property arrangement. Unlike the alternatives mentioned above, communism stands for access for all irrespective of status, this is the closest concept anarchists have to a type of non-property or open-access regulation (Carman, 2005, p. 104).

Kropotkin's (1974) ideas on communism are founded on two important beliefs. The first being that there are enough resources at our disposal to provide all of humanity with everything they could ask for. The second being that as soon as people realise this any desire to lay claim to any resources will be taken over by a common readiness to permit others access to available resources, whatever they may be. These beliefs are directly opposite to arguments supporting State ownership of archaeological resources, claims of archaeologists to custodianship of archaeological resources, or arguments in favour of private ownership in order to protect against nationalist and retentionist policies.

As Carman (2005) points out, there is at least *one* clear understanding for the non-ownership of an environmental resource in existence. Namely, the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies which prohibits the appropriation of any object in outer space by any state for its exclusive right. This treaty is very much in line with the ideas of anarchist communism as it provides free access for all to any resources in outer space. The treaty prohibits the claiming of any part of outer space as private property, exclusive use, or as national territory. Furthermore, it produces no arrangement for the designation of property rights in outer space to any organisation to hold onto on behalf of humanity. As a result, outer space stays outside the domain of property relations. In order to prevent the 'tragedy of the commons' there is a shared consensus to not use a resource in such a manner that it obstructs the right of access of other possible users. Anyone who suggests (e.g. Renfrew, 2000) that environmental resources require the allocation of property rights in order to be protected from destruction or exploitation can be pointed to the Outer Space Treaty as an example of a different approach (Carman, 2005, p. 109-110).

A type of voluntary restraint is all that is necessary in order to protect environmental resources from wrongdoings. This idea is based on the acknowledgment that there is an adequate amount of a certain resource for all to benefit, and that there is no need to divide it between individuals (i.e. Kropotkin, 1974). The only problem is, in my opinion, is that cultural heritage, by definition, is a finite resource which is one of the prime reasons it is being looted and subsequently sold for substantial amounts of money. So how exactly would this fit in Kropotkin's model since there is no 'adequate amount for all to benefit'?

The Outer Space Treaty is an example of what has been named 'cognitive ownership' which is described as a connection to or interest in a cultural site that has been claimed, or implied to have been claimed, by an individual or group that is somehow invested in that place (Boyd et al., 1996, p. 93). These connections or interest vary and could be spiritual or conceptual, intellectual, or economic, to name a few. The values that can be ascribed to a cultural space are various and can be opposing. However, the attribution of other values to the same object at the same time is not prevented by anyone. This does not imply that this approach to value is flawless as studies have shown that there is a tendency to focus on the recent past and on positive values instead of those that are negative (Jones, 2004). Regardless of the uncertainty on 'social value' as a type of study, it is clear that cognitive ownership allows for full access to a resource by all without obstructing, or obstruction from, others. Carman (2005) argues that in this lies the most fundamental connection between value and property, when the value held by everyone is a social one, then no one needs to be given ownership rights over a resource in order to preserve it.

Conclusion

After close consideration of this chapter the main question that comes to mind is whether or not it is desirable that cultural heritage can be privately owned since this heritage can have certain meanings for individuals, or entire communities, that are not in possession of such cultural objects. With private ownership of heritage comes the power to do with the object as ones pleases, an owner can decide to display an object or sell it, and he/she can even decide to destroy it without any legal consequences despite the fact that it could be of significant value to others, arguably all of humanity. However, the reality is that in a capitalist society the private ownership of cultural objects is a fact and that it is unreasonable to suggest the abolishment of such private ownership of antiquities. Instead, we should focus on conveying the message that cultural heritage is vital to us all, not just to those that are in possession of it. Hopefully, collectors will realise that with the private ownership of antiquities also comes the duty, in my opinion, to make such objects available for study, and to the greater public.

Chapter 7: The Crimean Case

In the following chapter I will be taking a closer look at the Crimean case. I will begin with a brief history of the Crimea and discuss some of the main historical events that have taken place which illustrate the significance of the peninsula, and the Black Sea area as a whole, throughout the past. Subsequently, I will provide a timeline of the case that includes all major events, including an account of the courts' decisions that have been made.

The History of Crimea

Almost 3000 years ago the Crimean Peninsula was already an important meeting point in Eurasia. Shortly after the first foreign merchants came here and started trading with the Mediterranean and the Far East there were already many religions, languages, and different lifestyles found here. The reason for this was partly due to the geographical circumstances of the area. Migrants from all over Asia passed through the southern edge of the woods and through the corridor of the Pontic steppe towards the west, until they arrived at the Black Sea. Since they could move no further, many migrants decided to settle here. Over the course of time individuals, in some cases entire tribes, from different cultures originating from the eastern steppe arrived here to set up their own habitat in the Crimea (Ascherson, 2014, p. 9). In this manner, the peninsula became a kind of 'end moraine'; a series of glacier-like deposits of different cultures and languages that came to a halt after many migration waves.

Many of the immigrants, such as the Scythians and Sarmatians, were in contact with much larger populations that were culturally related to them that continued their lifestyle of nomadic herding on the Eurasian steppe. In turn, they were in contact with societies far to the east and southeast, which is evident from archaeological remains, for example Chinese lacquer boxes, that have been found in Crimea which illustrates the extent of the trade that took place during this time (Ascherson, 2014, p. 10). The nomads that have become sedentary never lost touch with their traditions and religions, not even after centuries of coming in close contact with Greek and Roman colonies along the Crimean coast.

The first Greek colonies along the Black Sea coast of Crimea were founded in the 7th or 6th century BC (Hammond, 1959, p. 109). This is relatively late since there were already many Greek colonies established in Italy and on Sicily. The reason for this is, in all likelihood, is the manner in which the Greeks viewed the world geographically. The Black Sea, the Greeks

believed, embodied a zone of chaos, on the edge of which was the realm of the dead. When they came to the conclusion that the Black Sea was in fact a large lake, its shores were quickly colonised. Over the course time, the composition of the population became increasingly more diverse in the Crimea. Peoples such as the Jews, Turks, Italians and Armenians, to name a few, were incorporated into a culturally hybrid lifestyle.

For many centuries the Byzantine Empire (330-1453) could keep out foreign influences from the Black Sea area because it controlled the Bosphorus at Constantinople. Due to the fact that the Crimea was cut off from the Mediterranean world it temporarily lost its significance as a meeting place between the eastern and western world. This changed with the 4th Crusade (1204) when crusader armies captured Constantinople and subsequently sacked the capital of the Byzantine Empire (Jacobi, 1999, p. 525). After its capture the Black Sea was open to trade and colonisation from the Mediterranean. Once again, the Crimea, and the Don delta, were *the* marketplace where East and West met and exchanged their wares and cultures.

In 1453 Constantinople eventually came into the hands of Ottoman armies, and with it came an end to the East-Roman Empire (Durant, 1957, p. 227). This event would have serious implications for the Crimea. Ottoman armies moved along the coasts of the Black Sea and destroyed the remaining centres of the Byzantine culture. In 1475 a combined army of Turks and Crimean Tatars stormed the fortress of Mangup and put an end to the Principality of Theodoro (or Gothia). After this, the Turkish sultans closed the Bosphorus for the 'infidels' and their ships which resulted in that the Genoese and Venetian cities withered away. Once again, the Crimea was closed off from the rest of the world. This time the isolation lasted for three centuries.

In 1783 tsarina Catharina II of Russia annexed the Crimea and dissolved the Tartar khanate (Anderson, 1958, p. 17). In the following century the Crimea was colonised by the Russians, Ukrainians and farming communities from Western Europe that were brought here by Russian tsars. At the beginning of the 19th century trade and prosperity shortly returned to the Black Sea area when there was a great demand of Ukrainian wheat from industrialised Europe. In 1954 Nikita Chroesjtjov brought control of the Crimea from the Russian Republic to the Ukrainian Soviet Republic. Although ethnic Russians formed the largest population group on the Crimea, Chroesjtjov's decision was not repealed after the fall of the Soviet Union in 1991.

Timeline of the Crimean Case

In the following part I will provide a bird's eye view of all major events concerning the 'Crimean Case'. Our journey starts in the spring of 2013 when an arrangement was made for the loan of circa five hundred objects from the Ukraine to the Landesmuseum in Bonn (Germany) in July of that same year and would subsequently be moved to the Allard Pierson Museum in Amsterdam from February 2014 after which the objects were to be returned to the Ukrainian museums (Campfens, 2017, p. 195). However, in March of 2014 the Autonomous Republic of Crimea (i.e. Crimea) was annexed by the Russian Federation, setting in motion a host of events I will outline below.

Shortly after the annexation of the Crimea in March of 2014 the four Crimean museums that participated in the arrangement requested the return of all objects as was decided in the loan agreements. The Ministry of culture of the state of Ukraine also made a request that very month for a premature return of the objects originating from Crimea, stating that the objects belong to the 'State Museum Fund' considering they are an important part of the cultural heritage of Ukraine.

In July of 2014, the Allard Pierson Museum postponed the return of all objects to the four Crimean museums, which went against the loan agreement as was agreed upon. The Allard Pierson Museum announced that it merely wanted the objects to return to their rightful owners, whomever that may be (Campfens, 2017, p. 196). The objects that were on loan from the National Museum of History of Ukraine (Kiev), however, were returned in August 2014, after the exhibition had run its course.

On the 19th of November 2014, the four Crimean museums took legal actions against the Allard Pierson Museum that were brought before the District Court of Amsterdam on the 8th of April 2015, several months later. The District Court of Amsterdam allowed Ukraine's appeal for intervention. Furthermore, in the aforementioned appeal the court rejected the request made by the Dutch State to be included as a party to the civil proceedings as the state did not have an explicit interest in the conclusion of the case, as the state was not planning to file a separate claim.

On the 14th of December 2016, the civil chamber of the Amsterdam District Court ruled that the Crimean treasures are to be handed over to the State of Ukraine, one of the reasons for

this is that the objects are part of the cultural heritage of the State of Ukraine (Rechtspraak, 2016). According to the judge, the claim made by the Crimean Museums that the objects belong to the cultural heritage of Crimea, or the Autonomous Republic of Crimea does not hold due to the fact that neither are sovereign states. In addition, Crimea was part of the State of Ukraine when the objects were lent.

Although the Crimean treasures are being claimed by two separate parties, the Amsterdam District Court did not address the subject of ownership and only sought out to answer, on the basis of the Dutch Heritage Act of 2016, to whom the Allard Pierson Museum is obligated to return the objects (Rechtspraak, 2016). The Court also ruled that the joining of Crimea to the Russian Federation is a change in circumstances that justifies the dissolution of the loan agreements and that the Allard Pierson Museum was therefore within its rights to suspend the return of the objects to the Crimean Museums.

Finally, the Court ruled that the State of Ukraine is obligated to reimburse the Allard Pierson Museum for any costs made for the temporary storage of the objects. The Crimean Museums have been ordered to pay for the legal costs made by the State of Ukraine and the Allard Pierson Museum (Rechtspraak, 2016). Shortly after this verdict, in January of 2017, the four Crimean Museums involved filed an appeal against the decision of the return of the objects to Ukraine.

On the 26th of October 2021, the Amsterdam District Court ruled, contrary to its previous decision, that the Dutch Heritage Act does not apply in this situation since the objects were released and transported, first to Germany and subsequently to the Netherlands, by authorities with valid export licenses (Rechtspraak, 2021). Therefore, the State of Ukraine cannot claim the Crimean treasures on the basis of the Dutch Heritage Act. The objects belonging to the collection of Tauric Chersonesos, which is one of the four museums involved, are property of the State of Ukraine. The Amsterdam District Court was not able to determine whether the remaining objects, originating from the other three museums, are owned by the State of Ukraine. In this verdict, however, the court was not required to determine whether the Autonomous Republic of Crimea or the State of Ukraine is the owner of the Crimean Treasures and in turn to whom the objects should be handed over.

Despite the fact that the Crimean Treasures originate from Crimea and, therefore, can be viewed as Crimean cultural heritage, they are also part of Ukraine's cultural heritage. The objects are considered to be a communal part of the Museum Fund of Ukraine, and as a result, the cultural significance of the conservation of these objects is of great public importance to the State of Ukraine (Rechtspraak, 2021). This interest is guaranteed by the implementation of the 1995 'Museum Affairs' and 'Law on Museums' which entails a system for the safeguarding of culturally important objects. This system is, partially, intended to prevent objects from getting outside of the domain of influence of the State of Ukraine, even if objects are not destroyed or damaged.

The Ukrainian Ministerial Regulation and Order, which is based on the Law on Museums, provides additional specifications regarding the protection of culturally significant objects. The order entails that the respective objects are to be returned to the National Museum of History of Ukraine (Kiev) pending the stabilization of the situation in the Crimea (Rechtspraak, 2021). This Order is a transitory measure. Despite the Crimean museums right of operational management, the Amsterdam District Court found that the State of Ukraine was justified in taking this provisional measure since the cultural significance is of greater importance than the interests of the Crimean museums. The fact that the objects were in the Netherlands does not matter as Dutch laws allow for the priority of Ukrainian regulation.

The Allard Pierson Museum was within its rights to postpone the return of the objects, because at the time, on the 12th of June 2014, there was reasonable doubt if the objects were to be returned to the Crimean Museums, based on the loan agreements, or that they were to be returned to the State of Ukraine. On the basis of the Law on Museums and the Regulation and Order, the Court of Appeals has ruled that the rights of the State of Ukraine have priority. The Allard Pierson Museums is, therefore, unable to fulfil its contractual obligation, and based on Ukrainian law they are no longer obligated to return the objects in question to the Crimean Museums (Rechtspraak, 2021). The Allard Pierson Museum has to release the objects to the State of Ukraine for protection until the situation in the Crimea have become more stable. The proceedings at the Court of Appeal have now ended with this closing statement, both parties are entitled to lodge an appeal at the Netherlands Supreme Court.

Conclusion

What is evident from the brief historical overview of the Crimea that I have provided is that the peninsula, and its hinterland, were of great importance throughout history as a meeting place for culture and trade between the east and the west. This is especially evident from the rich archaeology that the peninsula possesses. Objects from all over the 'civilised' world can be found here, from Asia to the Mediterranean. Something that also stands out is the wealth that many of the objects that are part of the exhibition exude since a great deal of them are made from gold. This is probably why the exhibition was named 'Crimea-Gold and secrets from the Black Sea'.

Chapter 8: Conclusion

My main research question is: 'How does the court's verdict in the Crimea case reflect (or not) current academic debates on ownership and restitution of cultural objects?'. The courts' verdict (14th of December 2016) to return the objects to the State of Ukraine is mainly based on that the Crimea, or the Autonomous Republic of Crimea, is not considered to be a sovereign state. Therefore, the claim made by the four Ukrainian museums that the objects are part of the cultural heritage of Crimea, according to the judge, holds no ground.

The fact that the court issued the return of the objects to the State of Ukraine, and not to the Crimean museums, might not come as a surprise since this is line with what Cuno (2008) calls 'nationalist retentionist cultural property laws'. Therefore, the court's verdict on the Crimea case reflects the ongoing academic debates on ownership and restitution very well.

International conventions and treaties and their ratification, by design, are in favour of the nation state. According to Cuno (2008) they have a nationalistic point of view as they formulate the importance of cultural property around the value it has to modern nation states. UNESCO, which issues these conventions, is by definition a cooperation between nations, and nations only join such organizations if it is in *their* best interest to do so.

Naturally, there are those (i.e. Renfrew, 2000) who are in favour of national and international rules and regulations as they, to some extent, protect our cultural heritage from being destroyed. The downside to this, Cuno (2008) argues, is that it allows for nation states to exert their power and gain control over cultural heritage, and subsequently abuse it for their own political gain. Is this the trade-off that we, as a society, are willing to make in order to protect our cultural heritage? To let the state take it away from individuals and institutions when there is the slightest chance it might fall outside of their sphere of influence. The fact that our cultural heritage requires protection is evident as the issue of looting and the illicit trade in antiquities is still very much prevalent. The question is whether all of these rules and regulations are desirable since they come with serious side effects.

My secondary research question is: 'Who owns Crimea's past?'. It is perhaps not entirely surprising that I will give answer to this question from an archaeological perspective, and not a legal perspective, considering I am an archaeologist and not a lawyer. Those who are supporters of the cosmopolitan view (Cuno, 2008 and Merryman, 1994) argue that cultural

heritage has value to us all, not just to those that are in possession of it such as private collectors or the state. Subsequently, they are against the ownership of cultural objects and, instead, promote the circulation of cultural heritage between institutions so that they can be seen, and appreciated, by as many people as possible.

Carman (2005) argues that the ownership of cultural objects in any shape or form, whether it be private collectors, institutions or nations, inevitably leads to the loss of its purpose. Especially when nations of origin have ownership over them since it is likely that the state takes away the value of heritage from the community and subsequently accrues it to the state in order to validate their authority as the legitimate carrier of this sense of community. In doing so, this denies the very purpose of heritage as it is created to be shared, and not appropriated.

But who owns Crimea's past? The answer to this question depends on who(m) you ask. If you were to ask the residents of Crimea, they would argue that it belongs to them considering it is *their* past. However, it can also be argued that the state of Ukraine is the owner of Crimea's past considering it is currently in possession of its cultural heritage (i.e. its tangible past). Or should we consider that it belongs to all of humanity, and not just to the Crimea or Ukraine, since it is *our* shared past?

My final research question is: 'What are the consequences of this recent court decision for other disputes of ownership and restitution? The verdict of the Amsterdam District Court illustrates that the legal framework, unsurprisingly, views nations states as the primary right holders of cultural heritage. The question is whether or not this will have an influence on future rulings between states and individuals, communities or institutions. It can be argued that the courts ruling strengthens the position of the state when it comes to disputes with non-state parties. Luckily, the rights of individuals and communities are more increasingly acknowledged, as well as the intangible aspects of cultural heritage.

Abstract

Ownership and restitution of cultural objects have always been a topic of discussion within the field of Archaeology (Cuno, 2008 and Carman, 2005), and especially today, it has become a broader societal subject matter. My thesis will focus on a variety of topics that concern the Crimea case. I will discuss the dichotomy that is currently present in the field of archaeology when it comes to the importance of context and provenance of antiquities and whether we should attach more value to the objects itself or to the circumstances under which the object has been buried and its subsequent history of ownership.

Subsequently, I will consider the issue of looting and the illicit trade in antiquities and how we should, perhaps, take a different approach and invest in poor communities in source-nations where looters often come from, as opposed to more rules and regulations. I shall also discuss the use of cultural heritage by nations for their political aims and argue in favour of the sharing of heritage instead of allowing nations to retain it. I will also provide an overview of all major international treaties and conventions and argue that the main issue is that they are not enforceable, allowing nations disregard them if they find it necessary.

Furthermore, I shall consider the types of property that our cultural heritage is currently ascribed to and argue that it is perhaps not desirable to privately own objects since they can be considered to be valuable to those that are not in possession of it. I will also provide a historical overview of Crimea's past that illustrates the peninsula's rich history. Additionally, I will provide a timeline of the Crimea case and discuss all major events that have taken place. In closing, I will give answer to my research questions and argue that the Crimea case reflects the current debate on ownership and restitution very well as many of the issues are currently prevalent in said debate. In addition, I argue that Crimea's past can be considered to belong to all of humanity since it is shared by us all. Lastly, I will acknowledge that the courts decision in the Crimea case may have consequences for future disputes of ownership between states and non-state parties.

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