

FORUM NOTE

Legal Threats to Cultural Exchange of Archaeological Materials

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Abstract

Legal action on behalf of victims of terrorism has attempted to force the sale of cultural artifacts on loan to U.S. institutions in order to compensate those victims. Such action jeopardizes the participation of American institutions in international cultural exchanges. The authors maintain that archaeological artifacts should not be sold to satisfy a court judgment, regardless of the actions of a particular regime, and that it should be possible for nations to share their cultural heritage without fear of loss.*

On 9 February 2009, the Archaeological Institute of America (AIA) made the following statement available on its Web site:

The Archaeological Institute of America believes that loans of cultural objects from foreign nations to U.S. cultural institutions serve the best interests of the people of the United States. We are concerned that legal actions and the threat of legal action on behalf of victims of terrorism now jeopardize the participation of American institutions in international cultural exchanges. These legal actions seek to force the sale of cultural artifacts on loan to or in U.S. institutions to satisfy court judgments obtained by these victims. The AIA strongly condemns all acts of international terrorism and supports efforts by victims of terrorism to obtain compensation. However, we believe that archaeological artifacts should not be sold to satisfy a court judgment, regardless of the actions of a particular regime, and that it should be possible for nations to share their cultural heritage without fear of loss.

In light of our concern that archaeological and other cultural objects should be part of cultural exchanges that benefit the American public, the Archaeological Institute of America calls on the U.S. Congress to enact new legislation to ensure that such cultural exchanges can take place. This legislation should prevent the sale of cultural objects to compensate those who have obtained court judgments under anti-terrorism provisions

of the Foreign Sovereign Immunities Act and would apply to cultural objects on loan from other nations to U.S. nonprofit institutions as part of public exhibitions that have a cultural and educational purpose.¹

This forum note repeats the call for congressional consideration of this matter and expands upon the background information that followed the original statement. The authors are archaeologists, and our main concern is to emphasize that current United States law puts important archaeological materials at risk of sale into the private antiquities market and impedes the loan of objects from certain nations to museums and other institutions in the United States. We point to the specific examples of materials in jeopardy of sale as the result of lawsuits against the Republic of Iran, including the Persepolis Fortification Tablets now held for study and publication by the Oriental Institute of the University of Chicago, and to the absence of objects from Syria in the Metropolitan Museum of Art's exhibition *Beyond Babylon: Art, Trade, and Diplomacy in the Second Millennium B.C.*² We state without equivocation that international terrorism is a scourge that threatens all cultures as well as the world's common understanding of our shared past and that legal remedies must be available to its victims, both as a matter of justice and as a matter of deterrence. Nonetheless, we firmly believe that cultural exchange can be a powerful counterbalance to the ignorance and hatred that breeds violence among nations.

BACKGROUND

In 1996, the U.S. Congress amended the Foreign Sovereign Immunities Act (FSIA), narrowing the traditional immunity that had been granted to foreign sovereigns and allowing individual victims of terrorist acts to sue those countries that the United States has listed

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¹Archaeological Institute of America 2009, 9 February.

²Aruz et al. 2008.

as state sponsors of terrorism. In January 2008, Congress amended the FSIA in order to facilitate recovery of judgments that had been awarded to terrorism victims. Both before and after the 2008 amendments were enacted, cultural artifacts on loan to or present in U.S. institutions were under threat.

A group of plaintiffs who were the victims of a Hamas bombing in Jerusalem won a judgment against Iran, which defaulted in the proceedings. Having difficulty locating Iranian assets in the United States, in 2004 this group sued the Oriental Institute of the University of Chicago, the Field Museum of Natural History, the Museum of Fine Arts in Boston, Harvard University, the University of Michigan, and the Detroit Institute of Art under both the FSIA and the Terrorism Risk Insurance Act. The plaintiffs sought to attach (i.e., obtain for purpose of sale to satisfy a judgment) two collections of archaeological finds from Iran (the Persepolis Fortification Tablets and objects from Chogha Mish) that had been on loan to the Oriental Institute from Iran since the 1930s and the 1960s, respectively. The plaintiffs are also seeking to attach additional artifacts in the collections of these institutions, alleging that the artifacts were purchased on the illegal antiquities market and therefore belong to Iran. While this litigation was ongoing, a second group of plaintiffs, relatives of U.S. military personnel killed in the 1983 Beirut barracks bombing, who had also won a default judgment against Iran, intervened in the attachment proceedings and are now also claiming a right to the monetary value of the artifacts.

DISCUSSION

Archaeologists have a stake in seeing this material remain available for study, as is amply shown by even a brief consideration of the Persepolis Fortifications Archive. This corpus consists of approximately 20,000 administrative tablets found in a gatehouse in the defensive wall of the Achaemenid imperial capital. Sealed in place by Alexander the Great's sack of the city in 330/29 B.C.E., the tablets were excavated in 1933 and 1934 by the Oriental Institute of the University of Chicago. After discovery, they were brought to Chicago on loan, where a program of active study and publication has produced insights that are fundamental to our understanding of the ancient world. The cuneiform tablets in Elamite and Aramaic provide extensive documentation of the administrative system of this

imperial capital, evidence that is otherwise extremely rare for the Persian empire. The tablets also provide information on the travels and actions of high officials and members of the royal family, furnishing new data on imperial Persian history. An additional window into the imperial Achaemenid world view and ideology is offered by the thousands of seal impressions, a priceless artistic corpus. With the tablets and sealings considered as a unit, the above issues and others can be studied in context, allowing for an understanding of how the imperial system functioned. If the tablets are distributed to numerous locations, there would be no hope of pursuing these fields of investigation.³

Study of this material has also had impact beyond the ancient Near East. Root cited three tablets, each bearing the impression of a coin: two tablets impressed with a silver Athenian tetradrachm and one tablet bearing the impression of a Persian coin with kneeling archer, commonly known as a "Daric."⁴ Although none of the tablets is directly dated, the study of the Fortification Tablets as a corpus strengthens the conclusion that the coins were issued prior to 500 B.C.E. Root's article appeared in the context of Vickers' challenge to the chronology of Late Archaic Greek art, and her use of the numismatic evidence helped maintain a set of inferences on which the timeline of Greek sculpture and architecture still relies.⁵ Our point is not to assess the validity of these familiar arguments but to further stress that the sale of these items could not occur without a loss to our understanding of the past. We do not know what future discoveries lie in their ongoing translation, publication, and study, a process that would be brought to a halt by dispersal on the antiquities market. Just as importantly, the threat of attachment means that the generosity of the Iranian people that facilitated this study may not be repeated by other nations.⁶

In 2008, when the Metropolitan Museum of Art in New York was organizing its major exhibition *Beyond Babylon: Art, Trade and Diplomacy in the Second Millennium B.C.*, Syria gave the museum permission to borrow 55 objects. Under the Immunity from Seizure Act, the U.S. State Department can grant immunity from seizure to objects brought into the United States on temporary loan for exhibition purposes. However, when the Metropolitan Museum requested immunity for the objects to be loaned by Syria, which is standard procedure for international loans, there was concern

³Many of these issues are addressed in the contributions to Briant et al. 2008.

⁴Root 1988. Starr (1976) is an earlier discussion of the two tablets sealed with an Athenian coin.

⁵Vickers 1985.

⁶See the *amicus curiae* brief filed by the National Iranian

American Council to the U.S. District Court for the Northern District Illinois Eastern Division, stating that the Iranian antiquities housed at the University of Chicago qualify as cultural property and "form an important part of the cultural identity of persons of Iranian descent" (National Iranian American Council 2009).

that, in light of the 2008 amendments, even a State Department grant of immunity might not protect the objects from attachment by individuals who have claims against Syria for supporting terrorist activity. According to a statement by the Metropolitan Museum of Art, it was therefore not possible for these objects to be part of the exhibition. This was particularly unfortunate, since *Beyond Babylon* was an explicit celebration of the “open world” of diplomacy and communication that existed in the eastern Mediterranean and ancient Near East in the second millennium B.C.E.⁷ As is the case today, economic and cultural progress was enabled by contact and cultural exchange.

The ability of nations and institutions throughout the world to loan objects is crucial to achieving international cultural exchange and increasing understanding of different places, different times, and different people. Such archaeological artifacts should not be sold to satisfy claims that are unrelated to the objects themselves. While the earlier litigation related to Iran had already indicated some threat to cultural interchanges, the Metropolitan Museum’s inability to borrow objects from Syria for an exhibition indicates the danger this legislation and litigation pose to cultural exchange. American citizens have been deprived of the opportunity of appreciating and learning from archaeological artifacts and works of art from one of the world’s oldest civilizations. The actions in question therefore pose a serious threat to cultural exchange and cultural diplomacy, which are extremely important in building understanding among peoples.

It is important to point out that loans to museums and other institutions in the United States play an increasingly significant role in the presentation of the ancient world to the American public. This is seen in recent Memorandums of Understanding made in accordance with the United States’ implementation of the UNESCO “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.”⁸ For example, in 2007, the United States and Peru extended in amended form the Memorandum of Understanding governing the trade in archaeological and ethnological materials from that country to the United States. The revised text contains the following:

The Government of Peru will consider granting, within current Peruvian law, long-term loans of objects of archaeological and ethnological interest for exhibit

or study at museums and academic institutions in the United States, under circumstances in which such exchange does not jeopardize the cultural patrimony of Peru.⁹

Nearly equivalent language is also found in the 2007 Memorandum of Understanding with Mali.¹⁰ We also note that the return of the Euphronios krater from the Metropolitan Museum to Italy was facilitated by the loan to the museum of equally important examples of ancient Greek ceramic accomplishment.¹¹ Similar arrangements were made between Italy and the Getty Museum and the Museum of Fine Arts, Boston.¹² It is clear, then, that loans offer a concrete way forward in the debate over the ownership and display of material culture from the ancient world, an opportunity recognized both by government entities and private institutions.

Returning to our central point, if the United States is in the practice of confiscating artifacts that belong to other nations, then other nations will be unlikely to lend objects to U.S. cultural institutions. In addition, the United States will make itself vulnerable to the confiscation of its own cultural objects on loan in foreign nations. In the suit against the Oriental Institute, the government of the United States has, in fact, recommended against attachment of the tablets, presumably in part because of the bad precedent it would set for U.S. interests elsewhere. As archaeologists, we additionally deplore the prospect of selling culturally important objects into the private market, and we call on Congress to enact legislation to preserve the principle that objects of cultural heritage should be made available for public viewing and cultural exchange in the interest of promoting greater understanding of our shared past.

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⁷Aruz et al. 2008, vii.

⁸UNESCO 1970, 14 November.

⁹United States of America and Republic of Peru 2007.

¹⁰United States of America and Republic of Mali 2007.

¹¹United States of America and Republic of Italy 2001, Article II.E; Metropolitan Museum of Art 2006, 21 February.

¹²Museum of Fine Arts, Boston 2006, 28 November; J. Paul Getty Trust 2007, 1 August.

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