Antiquities Trafficking in Modern Times: How Italian Skullduggery Will Affect United States Museums

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Comments

ANTiquITIES TRAFFicking in Modern TIMES: How ITALIAN SKULLDUGGERY WILL Affect united STATES MUSEums

Archaeology is not a science; it's a vendetta.¹

INTRODUCTION

A. The Old Story

For as long as colonialism has thrived and wars fought, countries have pillaged other civilizations' treasures and brought them home to demonstrate their nations' power and hegemony.² “No doubt, theft is at the root of many titles; and priceless archaeological artifacts obtained in violation of local law are to be found in reputable museums all over the world.”³ Because of centuries of tomb-robbers and raiders, numerous countries are lobbying foreign governments for the return of their national treasures. Greece, for example, requested the return of the Parthenon (Elgin) Marbles on display at the British Museum, Ethiopia sought the Obelisk of

1. Parthenon Puzzles, ECONOMIST, Dec. 19, 1992, at 83 (quoting Sir Mortimer Wheeler, British archaeologist); see also Neal Ascherson, The Villages of Kent Have More to Lament Than the Channel Rail Link, INDEP. (London), Feb. 6, 1994, at 20 (citing Sir Mortimer Wheeler) (“British archaeology has been privatised. The time of grand, leisurely excavations paid for by public money and designed to enrich the historical understanding of a nation, is passing away. Instead, archaeologists, like double-glazing merchants, must hustle for rich 'customers' and hide trade secrets from one another.”).

2. See, e.g., Daniel Williams, Met to Return Looted Artworks to Italy, WASH. POST, Feb. 22, 2006, at C1 (listing objects taken during conquest and war).

Germans contend that at least 134,000 works were removed by Soviet troops at the end of World War II, including paintings by van Gogh and Degas, and a Gutenberg Bible. Russia also retains thousands of artifacts taken from Hungary, Poland and other Eastern European countries. The Russians say Nazi troops dismantled and carted away a czarist-era room with amber-inlaid walls that has never been seen since.

Italy has seen items disappear from Greek, Etruscan and Roman ruins as well as from medieval, Renaissance and baroque palaces and churches. Napoleon helped himself to a vast collection of art when he conquered Venice in the late 18th century.

Id.

Axum from Italy, and Turkey demands the Weary Heracles from Boston’s Museum of Fine Arts. A

Looting, a practice as old as the tombs themselves, destroys valuable information regarding ancient civilizations, and guarding against looters is not always effective. “Ancient Egyptians sealed their mortuaries with heavy doors and long burial shafts or hid them in the hills to throw off robbers.” Despite these safeguards, European museums and private collections gathered stolen artifacts in the 1700s and 1800s before countries enacted laws safeguarding their cultural heritage; military campaigns and the wealthy’s “grand

4. See Williams, supra note 2 (“Greece wants the Elgin marbles, part of the Parthenon, from the British Museum.”); Jason Felch and Ralph Frammolino, Several Museums May Possess Looted Art, L.A. TIMES, Nov. 8, 2005, at A16 [hereinafter Felch & Frammolino, Several Museums] (noting British Museum houses Elgin marbles); Hugh Pope, Turks Undertake a Herculean Task for Art’s Sake, INDEP. (London), Apr. 6, 1994, at 11 (recounting piecing together two halves of Turkish statue in Boston Museum’s basement, forcing Boston’s Museum to reconsider its position on connections between halves). “[Jale Inan] had been excavating at the southern Turkish site of Perge in 1980 when she unearthed . . . a prize Second-century AD copy of the Weary Heracles by the ancient Greek master sculptor, Lysippus. The top half disappeared, only to surface mysteriously in New York in 1981.” Id. Italy has long been home to Ethiopian antiquities. See Christopher Reynolds, This Could Be Monumental, L.A. TIMES, Jan. 6, 2006, at E1 [hereinafter Reynolds, This Could Be Monumental] (explaining how Italy procured Ethiopian antiquities). The author describes:

When Mussolini’s troops invaded Ethiopia, their leader wanted to pick up a few tons of souvenirs, just as Roman emperors did on their adventures into Egypt and Mesopotamia in days of old. So in 1937, when Italian troops came across the monolith in the city of Axum . . . they brought it back to Italy.

Id. For more information on Italy’s return of the Obelisk of Axum, see The Axum Obelisk, http://www.ethioembassy.org.uk/fact%20file/a-z/Looted%20Treasure/The%20Axum%20Obelisk.htm (last visited Sept. 17, 2006).


Archaeologists and their colleagues believe that routine looting destroys the information that could be learned about cultures in situ. “The main thing with acquisition by looting is destroying this irreplaceable cultural heritage, this record of past cultures that we will never get back. . . . The context of where something is found and in association with what, all of that information, is the primary and almost sole way to learn about many ancient cultures of the world.”

Id. “In Egypt, looting is a daily affair. ‘It’s business as usual . . . .’ Egypt is very far from being alone. There is not a continent untouched by the pillage. This ‘business’ . . . tears history out at the roots: it is the illicit international traffic in antiquities.” Deborah Pugh et al., The Greed That Is Tearing History Out By Its Roots, GUARDIAN, June 13, 1992, at Foreign Section, at 13 (quoting London dealer).

tour trips” further enhanced Western collections. In contrast, “American museums started from scratch. The [Metropolitan Museum of Art] collected relics directly from archaeological expeditions in Egypt in the early 20th century and then built its collection through purchases and donations.” U.S. museums, utilizing bank accounts superior to those of their European counterparts, competed to amass the best antiquities exhibits, despite European possession of most art. These circumstances fueled the artifact trade.

B. Shifting Attitudes Regarding Potential Museum Liability

Antiquities are found in museums across the world, but public opinion is shifting as to the continued exhibition of antiquities outside their countries of origin. This shift in public opinion will aid prosecution of antiquities trafficking. U.S. museums face potential liability under both the National Stolen Property Act (“NSPA”) and the patrimony laws of individual countries, which, until now, were ineffective in prosecuting museums for possessing stolen antiquities. As nations become emboldened by recent repa-

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7. See id. (describing allocation methods); see also Alan Riding, Why ‘Antiquities Trials’ Focus on America, N.Y. TIMES, Nov. 25, 2005, at A16 (“For instance, the British Museum, the Louvre and the Pergamon ... built their collections ... when European explorers and archaeologists played a central role in rediscovering ancient civilizations. The results ... were often shipped directly to Northern European capitals.”).


9. See id. (“Traffic in archaeology goes from Italy to Switzerland, and from there, it’s sold to most art museums in America.” (quoting Rome prosecutor, Paolo Ferri)); see also Riding, supra note 7 (“With antiquities, the source is massively distributed, while demand is fairly localized ...” (quoting Neil Brodie)). But see Williams, supra note 2 (offering different point of view regarding who encourages looting). The author argues: Italian commentators for years have claimed that most of the art stolen from Italy winds up in American hands. [The Met director] has expressed some irritation at these claims. “On listening to the rhetoric from members of the Italian government on TV, it’s America and American buyers that encourage looting. It doesn’t seem like they want to take it up with European museums and collectors, or with [Persian] Gulf states that buy antiquities en masse ...” Williams, supra note 2 (quoting Philippe de Montebello, Metropolitan Museum of Art director).

10. See Riding, supra note 7 (citing Neil Brodie, coordinator of Illicit Antiquities Research Center at University of Cambridge).

11. See Hugh Eakin, Museums Assert Right on Showing Antiquities, N.Y. TIMES, Feb. 25, 2006, at B7 [hereinafter Eakin, Museums Assert Right] (“Over the last decade the benign image of the antiquities collector has given way to a far more sinister one. Once cast as generous lenders and donors ... such collectors are now seen as central cogs in a conspiracy to move artifacts looted from foreign soil into museum display cases.”).
triations (the return of notable antiquities to their countries of origin), chances increase that museums will no longer escape responsibility or prosecution.12

As countries are seeking the return of stolen artifacts and antiquities, repatriation is about property rights, not revenge.13 Foreign governments are utilizing the shift in public opinion to pressure museums to return stolen items and to prosecute individuals involved in the trade. One example is Marion True’s (“True”),14 former J. Paul Getty Museum (the “Getty”) curator, indictment for conspiracy and handling or receiving stolen objects.15 Under the NSPA, United States museum officials face criminal liability for knowingly acquiring antiquities that enter the U.S. as stolen objects.16 Similarly, museums are liable for purchasing stolen

12. See Interview by Deborah Solomon with Philippe de Montebello, Director, Metropolitan Museum of Art, in New York City, Questions for Philippe de Montebello: Stolen Art?, N.Y. Times, Feb. 19, 2006, § 6 (Magazine), at 30 [hereinafter Solomon, Interview with Philippe de Montebello] (“The world is changing, and you have to play by the rules. It now appears that the [krater] came to us in a completely improper way — through machinations, lies, clandestine night digging. As the representative of an honorable institution, I have to say no, this is not right.”). “The world has been atomized into a set of political entities. There is a resurgence of nationalism and misplaced patriotism. There is the sense that, ‘This is our identity.’” Id. (responding to question regarding surge in Italian aggression regarding antiquities’ repatriation).

13. See Elisabetta Povoledo, Italy Sends a Warning to Antiquities Traders With Trial of Curator, INT’L HERALD TRIB., Nov. 18, 2005, at 5 [hereinafter Povoledo, Italy Sends a Warning] (“This isn’t about seeking revenge for the past. It’s about re-claiming property rights for Italy.” (quoting Rocco Buttiglione, Italian Culture Minister)).

14. See Eakin, Museums Asset Right, supra note 11 (“[M]any museum officials said that a changing American legal climate for patrimony claims by foreign governments had left museums much more exposed than before. These days . . . few institutions are likely to borrow or acquire works that have any serious questions about them.”); Povoledo, Italy Sends a Warning, supra note 13 (“In pressing for the conviction of two prominent members of the international art community, Italy appears to be aiming to pave the way for claims against museums around the world. Making an example with the Getty trial will signal that ‘the age of trafficking in art pieces is over . . .’” (quoting Italian Culture Minister, Rocco Buttiglione)).

15. See Silver, Tomb-Robbing Trials, supra note 6 (describing charges as “handling or receiving 35 stolen objects and . . . conspiracy for her alleged role in a smuggling business that Hecht and Medici ran”). The details of True’s indictment and court proceedings are not easily accessed. See E-mail from Vernon Silver, Journalist, BLOOMBERG NEWS, to author (Jan. 23, 2006, 04:06 EST) (on file with author) (describing lack of access to Italian court documents not made public until after appeals have been resolved).

property under foreign patrimony law. These laws could have a major impact in the U.S. because American museums house a myriad of antiquities of questionable provenances, including the Getty’s thirty-nine antiquities; Boston’s vase, jar, and statue; Cleveland’s oil jar; Toledo’s (Ohio) water jar; Minneapolis’s vase; and Princeton’s psykter. Potential legal liability looms large for these holdings, as well as other U.S. institutions.

The international art world has been intently focused on True’s Italian trial. Although True is widely regarded as a respected authority in shaping U.S. museum ethics policies relating to antiquities, the Italian government indicted the former Getty curator in

17. See Solomon, Interview with Philippe de Montebello, supra note 12 (“If Italy says that an object found on its soil is Italian property, and I buy it, I have bought stolen property.”).

18. See Jason Felch, An Italian Offer U.S. Museums Shouldn’t Refuse?, L.A. TIMES, Feb. 11, 2006, at E1 [hereinafter Felch, An Italian Offer] (“The Italians’ 10-year investigation of [Giacomo Medici], dubbed Operation Pandora, [grew] to include other prominent dealers in the global trade of Greek and Roman antiquities . . . . Using photographs seized from Medici’s warehouse, Italian authorities began by tracking more than 100 objects to the Met, the Getty and six leading U.S. museums. . . .”); Elisabetta Povoledo and Hugh Eakin, Getty and Italy Negotiate Over Artifacts, N.Y. TIMES, Jan. 28, 2006, at B8 (“Italy has demanded the return of more than three dozen Getty objects, including Greek vases and marble sculptures.”). “Greece announced in November [2005] that it too would press a legal case against the Getty over four artifacts allegedly looted from that country.” Felch, An Italian Offer, supra note 18. Italy’s investigation of antiquities dealing has proved fruitful. See Geoff Edgers & Sofia Celeste, Italians Will Press MFA to Return Art, BOSTON GLOBE, Feb. 23, 2006, at B1 (“[In the Medici warehouse raid, Carabinieri] seized photographs of what they believe are a stolen vase, a jar, and statue later placed in the [Museum of Fine Art’s] collection. They also compiled a list of 29 objects at the MFA they say are looted.”). “[The chief of the Carabinieri Special Unit for the Protection of Artistic Patrimony] would not detail how many objects are in the dossier he’s preparing, but said the total is ‘many, many more’ than the 29 reported earlier.” Id. (quoting Colonel Ferdinando Musella Carabinieri Special Unit chief). “The artifact at Cleveland’s museum for which [Hecht is] charged is a lekythos, or oil jar, painted with black figures.” Silver, Tomb-Robbing Trials, supra note 6. Ohio is thought to house a stolen kalpis. See Felch & Frammolino, Several Museums, supra note 4 (“The Italians traced an ancient Greek water jar, or kalpis, with scenes of swimmers and dolphins, to the Toledo Museum of Art, court records show.”). Minneapolis also houses items of questionable provenance. See id. (“At the Minneapolis Institute of Arts, officials confirmed that one of its six Greek vases appears to match another Polaroid obtained by The [L.A.] Times.”). “[The museum director] said he intends to investigate the acquisition of the vase and confer with colleagues at other museums ‘who have received similar calls.’” Id. (quoting William M. Griswold, Minneapolis Institute of Arts director). In Princeton, the Italian police “tracked objects to the Princeton University Art Museum based on evidence other than photos. In his handwritten memoir, Hecht describes buying an ancient vase, painted with a banquet scene, from a man in Cerveteri . . . and later selling it to the university’s museum, court records show.” Id. “The museum’s website shows a similar vase to the one described in Hecht’s journal, also depicting a scene of men at a banquet.” Id.
2003.\textsuperscript{19} Now, like a Greek drama, the person noted for high ethical standards is the “most harshly treated.”\textsuperscript{20} True’s prosecution is particularly unique because a foreign government has never before prosecuted an American museum official, let alone a curator.\textsuperscript{21} Some of the most damning evidence against her are hundreds of Polaroid photographs taken by antiquity trader Giacomo Medici (“Medici”) that document his skullduggery and connect many objects in U.S. museums to his illicit digging.\textsuperscript{22} True’s co-defendant, Robert Hecht (“Hecht”), maintained a memoir detailing his antiquity dealing, which also is offered as evidence against both True and him.\textsuperscript{23} These incidents are forcing U.S. museums to second-guess their means of acquiring antiquities.\textsuperscript{24} Anticipating possible legal claims over objects loaned from private collectors, the new Association of Art Museum Directors (“AAMD”) guidelines urge museums to examine any legal or ethical issues surrounding antiquities before borrowing from private collectors.\textsuperscript{25}

\begin{enumerate}[19.]
\item Maria Puente, Antiquities Scandal: An Ill Wind Blows, USA TODAY, Oct. 18, 2005, at 1D (quoting Malcolm Bell, University of Virginia professor); see also Reynolds, The Puzzle of Marion True, supra note 19 (comparing True’s calendar to Greek drama script).
\item See Felch & Frammolino, Several Museums, supra note 4 (“[True is] believed to be the first American museum official targeted for prosecution by a foreign government. . . .”); see also Reynolds, The Puzzle of Marion True, supra note 19 (“True’s case has loomed as a daunting precedent for any museum holding artifacts obtained from foreign lands by obscure means.”); Tracy Wilkinson, Ex-Getty Antiquities Curator Appears at Italian Court Session, L.A. TIMES, Nov. 17, 2005, at A9 [hereinafter Wilkinson, Ex-Getty Curator] (“True’s trial marks a rare prosecution of an official of an institution as prestigious as the Getty.”).
\item See Felch & Frammolino, Several Museums, supra note 4 (referring to more than one thousand Polaroids Italian authorities seized in raid of Medici’s warehouse depicting antiquities allegedly dug up in Italy and displayed in museums).
\item See Landmark Antiquities Trial Under Way, ANSA ENG. MEDIA SERV., Nov. 16, 2005 (recounting Italian authorities seizure of Hecht’s memoir and passages within).
\item See Eakin, Museums Assert Right, supra note 11 (“Museums are struggling to figure out just what is still all right to show in their galleries.”).
\item See id. (“The guidelines . . . state that museums are duty-bound to examine any legal or ethical issues relating to ancient artworks that they borrow from a private collector.”). The guidelines, however, are non-binding and weigh in favor
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This Comment analyzes the effects of Medici and True’s antiquities dealing, examines U.S. museums’ potential liability under foreign patrimony laws and the NSPA, and suggests appropriate courses of action for U.S. museums to avoid liability and to curb the illegal sale of antiquities. Part I evaluates potential U.S. museum liability under both patrimony laws and the NSPA through precedent, the availability of a good faith defense, and past repatriation attempts. Part II provides the global background necessary to understand the U.S.’ involvement and role in the antiquities trade emphasizing ties to international players, organizations and treaties, and U.S. laws. Part III discusses antiquities trafficking generally, focusing on Medici’s role. Part IV examines options for museums and suggests possible measures American museums may implement to avoid liability and to stand against and to help curb antiquities looting. Part V concludes by offering better methods for countries of origin and the U.S. to prevent the looting of antiquities with questionable provenances and their subsequent exportation to the United States.
I. U.S. Museum Liability

A. Precedent Interpreting the NSPA and Its Application to Antiquities

The U.S. Supreme Court interprets the NSPA as having a broad purpose. In United States v. McClain (McClain II), the Fifth Circuit Court of Appeals found the NSPA "protects ownership derived from foreign legislative pronouncements, even though the owned objects have never been reduced to possession by the foreign government." Courts have applied the NSPA to objects stolen from foreign countries and subsequently transported into the United States.

The NSPA's broad purpose of curtailing criminals' use of interstate commerce applies to all felonious takings, not just thefts defined as common law larceny. "Stolen" means acquired, or possessed, as a result of some wrongful or dishonest act or taking, whereby a person willfully obtains or retains possession of property which belongs to another, without or beyond any permission given, and with the intent to deprive the owner of the benefit of ownership.

Knowledge of a country of origin's ownership is not required for conviction under the NSPA. In United States v. Hollinshead, the Ninth Circuit heard appeals of convictions under the NSPA for "conspiracy to transport stolen property in interstate commerce and of causing the transportation of stolen property in interstate commerce.

31. See United States v. Sheridan, 329 U.S. 379, 384 (1946) (citing H.R. Rep. No. 70-2528, at 2 (1929)) ("[Congress] contemplated coming to the aid of the states in detecting and punishing criminals whose offenses are complete under state law, but who utilize the channels of interstate commerce to make a successful get away and thus make the state's detecting and punitive processes impotent.").

32. United States v. McClain (McClain II), 593 F.2d 658, 664 (5th Cir. 1979) (citing McClain I, 545 F.2d at 994-97) (stating McClain I holding regarding NSPA).

33. See McClain I, 545 F.2d at 994 ("The Republic of Mexico, when stolen property has moved across the Mexican border, is in a similar position to any state of the United States in which a theft occurs and the property is moved across state boundaries.").

34. See United States v. Turley, 352 U.S. 407, 417 (1957) ("We conclude that the [precursor and model for the NSPA] requires an interpretation of 'stolen' which does not limit it to situations which at common law would be considered larceny.").

commerce . . . " Hollinshead, a pre-Columbian artifacts dealer, arranged, with a co-conspirator, to transport stolen objects from Central America to the U.S. The court held the government need not prove that the defendants knew the country of origin owned the artifacts and that removal of which required government permission. That knowledge "is relevant only to the extent that it bears upon the issue of their knowledge that the [object] was stolen."

A declaration of national ownership is necessary for conviction under the NSPA. In United States v. McClain (McClain I), a Fifth Circuit case, the defendants were indicted under the NSPA for "conspiring to transport and receiving through interstate commerce" artifacts they knew to be stolen. The defendants attempted to sell artifacts acquired in Mexico that were not registered with any Mexican government registry. Despite the defendants' claim that they "found" the artifacts on private property, the U.S. argued the defendants had stolen the artifacts from Mexico and that Mexico owned the artifacts. The issue on appeal was the trial judge's jury instructions, which stated that Mexico declared in 1897 that pre-Columbian artifacts found in Mexico belonged to the Mexican government. Instead, the court held that Mexico did not declare all archeological artifacts within its jurisdiction as property

36. Id. at 1155.
37. See id. (describing how artifacts were packed in boxes, marked 'personal effects,' and addressed to California location).
38. See id. at 1156 ("It follows that it was not necessary for the government to prove that appellant knew the law of the place of the theft.").
39. Id.
40. See McClain I, 545 F.2d 988, 1000-01 (5th Cir. 1977) ("We hold declaration of national ownership is necessary before illegal exportation of an article can be considered theft, and the exported article considered 'stolen', within the meaning of the National Stolen Property Act.").
41. Id. at 992 (listing artifacts as pre-Columbian "terra cotta figures and pottery, beads and a few stucco pieces" from Mexico).
42. See id. (observing artifacts were neither "registered with the Public Register of Archaeological and Historical Zones and Monuments of the Republic of Mexico . . . [nor] exported with[ ] a license or a permit from Mexico into the United States").
43. See id. at 993 (defining "found" as "by accident in overturning the soil or digging at archaeological sites").
44. See id. at 994 (quoting jury instructions). The district court instructed the jury that "since 1897 Mexican law has declared pre-Columbian artifacts . . . to be the property of the Republic of Mexico, except in instances where the Government" has issued a license or permit to private persons to possess, transfer, or export the artifacts. Id. (quoting trial judge). This instruction casts a cloud on the title of almost every pre-Columbian object in the United States.
until 1972, thus requiring the convictions' reversal. Additionally, the court found:

[A] declaration of national ownership is necessary before illegal exportation of an article can be considered theft, and the exported article considered “stolen”, within the meaning of the National Stolen Property Act. Such a declaration combined with a restriction on exportation without consent of the owner (Mexico) is sufficient to bring the NSPA into play.

Later, the Fifth Circuit Court of Appeals reheard the case, which had been remanded, and upheld the conspiracy convictions.

Foreign countries' patrimony laws are valid to establish ownership under the NSPA. In United States v. Schultz, a Second Circuit Court of Appeals case watched closely by the antiquities community, the U.S. indicted the defendant for conspiracy to receive stolen antiquities under the NSPA. The defendant collaborated to create a false provenance for the head of Pharaoh Amenhotep III, an ancient sculpture smuggled out of Egypt, by encasing it in plastic and painting it to resemble a cheap tourist souvenir. The ques-

45. See McClain I, 545 F.2d at 994 (recognizing jury instructions would cast doubt on provenance of all pre-Columbian objects in U.S.). The court continues: This Court . . . recognizes the sovereign right of Mexico to declare, by legislative fiat, that it is the owner of its art, archaeological, or historic national treasures, or of whatever is within its jurisdiction; possession is but a frequent incident, not the sine qua non of ownership, in the common law or the civil law. The district court's instruction was erroneous. Not until 1972 did Mexico enact a law declaring all archaeological objects within its jurisdiction, movables and immovables, to be the property of the Nation.

Id. at 992 (emphasis in original).

46. Id. at 1000-01 (internal citations omitted).

47. See McClain II, 593 F.2d 658, 672 (5th Cir. 1979) (“Given the strength of . . . evidence regarding the continuing illegal purpose of appellants which, if effectuated, would necessarily entail dealing in 'stolen' property under any view of Mexican law, we hold that the dubious shifting of the determination of Mexican law constituted harmless error as to the conspiracy count.”).

48. See United States v. Schultz, 333 F.3d 393, 416 (2d Cir. 2003) (“We conclude that the NSPA applies to property that is stolen from a foreign government, where that government asserts actual ownership of the property pursuant to a valid patrimony law.”).

49. See id. at 395 (noting procedural history).

50. See id. at 396 (describing facts of conspirators' smuggling). The Second Circuit explains:

In 1991, Schultz met [Parry], a British national, through a mutual friend. Parry showed Schultz a photograph of an ancient sculpture of the head of Pharaoh Amenhotep III, and told Schultz that he had obtained the sculpture in Egypt earlier that year from a man who represented himself to be a building contractor. Parry had used an Egyptian middle-man . . . to
tion presented was whether the antiquities were "owned" by Egypt under Egypt's Law 117; if not owned by Egypt, such antiquities would not be deemed stolen under the NSPA. The court held "the NSPA applies to property that is stolen in violation of a foreign patrimony law." It then explained, "our courts are capable of evaluating foreign patrimony laws to determine whether their language and enforcement indicate that they are intended to assert true ownership of certain property, or merely to restrict the export of that property." This holding recognized U.S. judicial validation of foreign countries' patrimony laws establishing ownership under the NSPA.

B. Repatriation Attempts: Past and Present

Museum liability depends upon a combination of foreign patrimony law and the NSPA. It also may result in the forfeiture of antiquities as a remedy. These factors were again before a U.S. court in United States v. An Antique Platter of Gold. In Antique Platter, the defendant, through a U.S. art dealer, bought a platter from a Sicilian dealer for over one million dollars. In preparing to transfer the platter to the U.S., the defendant's art dealer listed Switzerland as the platter's country of origin and its value at $250,000. The

facilitate the deal. Parry had smuggled the sculpture out of Egypt by coating it with plastic so that it would look like a cheap souvenir, then removed the plastic coating once the sculpture was in England.

Parry and Schultz discussed the problems that might arise if they were discovered to have the piece, and set out to create a false provenance for the sculpture, so that they could sell it. They decided that they would claim that the sculpture had been brought out of Egypt in the 1920s by a relative of Parry and kept in an English private collection since that time. Parry and Schultz invented a fictional collection, the "Thomas Alcock Collection," and represented to potential buyers that the sculpture came from this collection. With Schultz's knowledge, Parry prepared fake labels, designed to look as though they had been printed in the 1920s, and affixed the labels to the sculpture. Parry also restored the sculpture using a method popular in the 1920s.

Id. 51. See id. ("Schultz contended that the Egyptian antiquities he allegedly conspired to receive were not owned by anyone, and therefore could not be stolen.").
52. Id. at 410.
53. Schultz, 333 F.3d at 410.
55. See id. at 133 (connecting defendant, Michael Steinhardt, to U.S. art dealer, Robert Haber, who dealt with Sicilian coin dealer).
56. See id. (describing export/import process of "Phiale," antique gold platter, from Sicily to John F. Kennedy International Airport in New York City). The court explained:
defendant possessed the platter for three years, until Italy sought U.S. help in investigating its ownership. Pursuant to a warrant, the U.S. seized the platter from the defendant. At trial, the defendant argued, inter alia, that false statements on customs forms regarding the platter were immaterial and that the NSPA did not cover property presumed to belong to a country of origin under patrimony law. After finding the customs forms' statements material, the court held it need not reach the defendant's second contention.

For Italy, its patrimony law and evidence like Medici's Polaroids and Hecht's memoir allow authorities a substantially easier time in prosecuting U.S. museum officials, especially curators, for their roles in procuring stolen antiquities. True may not be the

Haber sent a fax to Jet Air Service, Inc., Haber's customs broker at John F. Kennedy International Airport in New York, which included a copy of the commercial invoice. Jet Air prepared an Entry/Immediate Delivery form to obtain release of the Phiale prior to formal entry. This form listed the Phiale's country of origin as "CH," the code for Switzerland. In addition, Jet Air prepared an Entry Summary form, which also listed the country of origin as "CH" and stated the Phiale's value at $250,000, as Haber's fax had indicated. Haber was listed as the importer of record.

Id. at 134 (explaining Italy's involvement). "On February 16, 1995, the Italian government submitted a Letters Rogatory Request to the United States seeking assistance in investigating the circumstances of the Phiale's exportation and asking our government to confiscate it so that it could be returned to Italy."

Id. at 133 (listing defendant's contentions: customs statements were immaterial and NSPA does not govern objects declared as state-owned through foreign patrimony laws). The defendant further argued that "both statutes afford him an innocent owner defense, and . . . the forfeiture violates the Eighth Amendment." Id.

Id. at 133 ("Soon [after the seizure] the United States filed [this] in rem civil forfeiture action. The government claimed that forfeiture was proper . . . because of false statements on the customs forms . . . and proper . . . because the Phiale was stolen property under the NSPA as a result . . . of Italy's patrimony laws.

59. See Antique Platter, 184 F.3d at 133.

60. See id. ("We hold that the false statements on the customs forms were material and, therefore, need not reach issue (ii). We further hold that there is no innocent owner defense and that forfeiture of the Phiale does not violate the Eighth Amendment.

61. See Riding, supra note 7 ("The photographs seized in Geneva in 1995 were unusually important in that they seemed to provide rare evidence that the antiquities . . . were recently looted."); see also Russell Berman, Met's Return of 'Hot Pot' May Invade More Claims, N.Y. SUN, Feb. 3, 2006, at 1 ("[The Met's deal with Italy] could open the floodgates for claims of stolen artifacts at cultural institutions. 'I actually do think this will be the beginning of countries asking for their objects to be returned . . . '"). (quoting Cindy Ho, president and founder of advocacy group Saving Antiquities for Everyone). "Greece and Peru [are] countries that have recently been seeking the return of works they say were stolen. Whether the Met could face charges about pieces in its collection from other countries remains to be seen. 'I think it's possible . . . '") Id. (quoting Cindy Ho).
last U.S. museum official prosecuted by the Italian government. Museums’ strong reliance on donations and on the purchase of collections amassed by private individuals, who acquired their collections through private art dealers, permits an object’s uncertain or falsified provenance to be manufactured long before the item reaches the museum.62 For example, Shelby White (“White”), a prominent New York antiquities collector and Metropolitan Museum of Art (the “Met”) trustee (funding the new Roman gallery), is the subject of an Italian investigation arising out of her connections to Medici and Medici’s illicit antiquity dealings.63

According to documents from the Italian investigation, photographs of looted antiquities found in the warehouses match some of the objects in Ms. White’s collection: “‘One can affirm with abso-

62. See, e.g., United States v. Schultz, 333 F.3d 393, 396 (2d Cir. 2003) (recounting defendant’s invention of “Thomas Alcock Collection” complete with fake labels and restoration techniques representative of 1920s to give objects look of 1920s, in scheme to evade Egyptian patrimony law). The court recounts:

They endeavored to bring more Egyptian antiquities into America for resale, smuggling them out of Egypt disguised as cheap souvenirs, assigning a false provenance to them, and restoring them with 1920s techniques.

Parry testified about six items or groups of items, in addition to the Amenhotep sculpture, that he and Schultz attempted to remove from Egypt and sell under the false provenance of the Thomas Alcock Collection.

Id. “‘There is a group of dealers where doubts have been expressed. One could link together [an Egyptian dealer] and Symes, and Hecht and Medici, where any serious museum would be cautious in purchasing antiquities from them. And the same is true of collectors’ . . . .’” Jason Horowitz, How Hot Vase It?, N.Y. OBSERVER, Feb. 20, 2006, at 1 (quoting Colin Renfrew, former director of University of Cambridge-based McDonald Institute for Archaeological Research). The author quotes Philippe de Montebello:

[H]e was convinced by the emergence of a number of documents “of all sorts of patterns of activity, dealers, middlemen and so forth,” which made it “sufficiently clear to us that the likelihood was pretty high that [the Euphronios krater] had been, in fact, indeed illicitly removed, that we felt it ought to be returned.”

Id. (quoting Philippe de Montebello interview with Charlie Rose).

63. See Horowitz, supra note 62 (linking Shelby White to Medici and brothers Ali and Hicha Aboutaam, who are both facing investigations and convictions in New York and Egypt). In 1985, Shelby and husband Leon Levy bought a sixth-century B.C. Attic black-figure neck amphora from Sotheby’s, which Italian investigators charge was looted and that Robin Symes facilitated its sale. See id. (“Indeed, most of the objects under the scrutiny of Italian investigators were sold to Ms. White and Mr. Levy by dealers they since have come to consider as traffickers in stolen antiquities.”). “There is a dubiously close relationship between the trustee of a museum who happens to be a collector, the generosity of building a wing, and the museum’s possible acquisition of that trustee’s doubtful objects . . . .” Id. (quoting former director of McDonald Institute for Archaeological Research Colin Renfrew). White is not the only New York collector subjected to Italian scrutiny. See id. (“[New Yorkers Barbara and Lawrence Fleishman [sic] donated their collection to the Getty. . . . [T]he Italians have charged that the Fleishman [sic] collection contains many stolen pieces.”).
lute certainty that the eight works examined were fenced by Medici and sold by him, directly or through a third party, to the Levy-White Collection . . . .”64 The investigation could have a significant impact because multiple museums have connections to the Levy-White collection.65 To be prosecuted under the NSPA, a curator need only know of an object’s questionable provenance at the time of its acquisition.66

If Italy chooses to bring claims against U.S. curators/museums under the NSPA, there may be a greater chance of repatriation through litigation, which could be less costly than previous repatriation attempts under various other laws.67 For example, in Republic of Turkey v. OKS Partners, Turkey sought the repatriation of nearly two thousand silver Greek and Lycian coins.68 After ten years of costly litigation,69 the parties finally settled.70 Similarly, in Republic

64. Id. (citing documents from Italian investigation).

65. See Stephanie Cash, Antiquities Angst, ART IN AM., Jan. 2006 ("Also at issue but reportedly not discussed at the meeting [between Italians and the Met] are works owned by . . . White, some of which are currently on loan to the museum and are anticipated to eventually be given to it.").

66. See 18 U.S.C. § 2315 (2000) (amended 1994) (describing criminal act of selling or receiving stolen goods); see also Marilyn Phelan, A Synopsis of the Laws Protecting Our Cultural Heritage, 28 NEW ENG. L. REV. 63, 97 (1993) ("If a foreign country asserts legal title to artifacts located within its boundaries, the courts may apply the National Stolen Property Act to the illegal importation of such artifacts even though the artifacts may never have been physically possessed by agents of that nation.").

67. See, e.g., Republic of Turk. v. OKS Partners, 797 F. Supp. 64, 66 (Mass. Dist. Ct. 1992) (holding Turkey had pled sufficient facts under Racketeer Influenced and Corrupt Organizations Act to avoid motion to dismiss). The same court ruled Turkey had standing to prosecute the action. See id. at 66 ("[Turkey’s allegations of ownership] are . . . enough to overcome the defendants’ arguments that Turkey’s lack of ownership interest in the coins fails to provide Turkey with standing to state a claim."). The defendants eventually settled with Turkey. See Peter K. Tompa, Decadrachm Hoard Case Settles, CELATOR, Apr., 1999, available at http://www.carrmaloney.com/a042599.htm ("In March 1999, the ‘Decadrachm Hoard’ case settled on the eve of trial following ten years of litigation . . . . ‘It should be known that all historic artifacts that are smuggled out illegally will be tracked down . . . . and they will be returned to Turkey.’" (quoting Turkish Minister of Culture))

(alteration in original).

68. See OKS Partners, 797 F. Supp. at 66 ("[T]urkey alleges that the coins were unearthed in Turkey in 1984, and that under Turkish law all such artifacts within Turkey’s borders are the property of Turkey even before they are discovered.").


70. See id. at 88 ("Ultimately, the parties settled this case. In exchange for the rest of the Hoard - some sixty-four coins including six decadrachms - the sellers reportedly received an additional $800,000.").
of Turkey v. Metropolitan Museum of Art, Turkey, basing two claims under New York law, sought the Lydian Hoard from the Met.\textsuperscript{71} Following almost six years of litigation costing over three million dollars, the parties settled.\textsuperscript{72} In Greek Orthodox Patriarchate v. Christie’s, Inc., a Greek religious institution requested the return of the Archimedes Palimpsest, a tenth century manuscript that includes copies of Archimedes’s writings.\textsuperscript{73} The court granted the defendants’ summary judgment motion.\textsuperscript{74} These cases illustrate the difficulties of litigating claims under laws other than the NSPA, which is now the preferred avenue for foreign governments in asserting repatriation claims.

An alternative route available to foreign governments is U.S. federal law, such as 18 U.S.C. § 2315. A successful prosecution under 18 U.S.C. § 2315 requires three elements: (1) the act of receiving or disposing of stolen goods that meet the requisite value, (2) the progression of those goods through interstate commerce, and (3) the knowledge that the goods were stolen.\textsuperscript{75}

True, the first U.S. curator on trial in Italy, has been charged under Italian patrimony law. True is claiming a good faith defense

\textsuperscript{71} See Republic of Turk. v. Metro. Museum of Art, 762 F. Supp. 44, 45 (S.D.N.Y. 1990) (observing Turkey’s first claim was based on assumption that Met was \textit{bona fide} purchaser and second claim asserted Met acted in bad faith by purchasing objects and concealing objects’ illicit origins). Turkey asserted that the artifacts were unearthed from burial grounds in Turkey in 1966, exported to the U.S. and purchased by the Met. \textit{See id.} (describing Turkey’s allegations).

\textsuperscript{72} See William D. Montalbano, \textit{Turkey Retrieves Its Riches}, L.A. Times, Apr. 27, 1994, at A1 (“Six years and almost $3 million later, with the lawsuit still unresolved, the Met bowed gracefully to . . . ‘a unique confluence of factors.’” (quoting de Montebello)). Turkish authorities provided evidence showing the Lydian Hoard “may indeed have been removed clandestinely from tombs in the Usak region, much of it only months before the museum acquired it. . . . [O]ur own records suggested some museum staff during the 1960s were likely aware, even as they acquired these objects, that their provenance was controversial.” \textit{Id.} (quoting de Montebello).

\textsuperscript{73} See Greek Orthodox Patriarchate v. Christie’s, Inc., 98 Civ. 7664(KMW), 1999 U.S. Dist. LEXIS 12957, at *2 (S.D.N.Y. Aug. 30, 1999) (“The . . . text . . . was written in the tenth century and is a copy of two of Archimedes’s most significant works, ‘On Floating Bodies’ and ‘Method of Mechanical Theorems.’ The originals . . . are believed to have been destroyed in the fire that consumed the library of Alexandria, Egypt, in the third century.”).

\textsuperscript{74} \textit{See id.} at *25 (“[T]he Patriarchate . . . has simply cast aspersions on the validity of the . . . title . . . . [Plaintiffs] ‘must do more than simply show that there is some metaphysical doubt as to the material facts.’” (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)) (internal citations omitted).

\textsuperscript{75} See United States v. Schultz, 333 F.3d 393, 411 (2d Cir. 2003) (“A defendant charged with violating the NSPA may argue that he did not know a certain \textit{fact} that made his conduct criminal, that is, that he did not know the objects in question were stolen.”).
to challenge the claims against her. A good faith defense is “a state of mind consisting in either (1) honesty in belief or purpose; (2) faithfulness to one’s duty or obligation; (3) observance of reasonable commercial standards of fair dealing in a given trade or business; or (4) absence of intent to defraud or to seek unconscionable advantage.” In addition to a good faith defense, a defendant charged under the NSPA may argue a lack of knowledge that the objects were stolen. That defense can defeat the mens rea element of an 18 U.S.C. § 2315 violation.

II. THE CURRENT STATUS OF THE GLOBAL ANTIQUITIES TRADE

A. The Game

As governments increasingly protect their countries’ antiquities, the current objective is to avoid liability when obtaining and selling antiquities in the U.S. “Over the last 15 years, the antiquities field has gotten even more perilous as Mediterranean countries have strengthened their enforcement of laws banning artifacts export and museums have been forced to tighten acquisition policies.” While many European museums amassed their collections

76. See Wilkinson, Ex-Getty Curator, supra note 21 (“Marion True acquired these objects in absolute good faith.”) (quoting Marion True’s attorney); Tracy Wilkinson, Framing the Case Against Curator; Prosecutors Say Photos, Papers Prove a Former Getty Official Knowingly Bought Looted Items, L.A. TIMES, Dec. 6, 2005, at A3 [hereinafter Wilkinson, Framing the Case] (”True’s main defense attorney . . . said his client made her acquisitions ‘convinced of their legitimate provenance.’”). The Met, like True, insists it acquired the Euphronios krater, Hellenistic silver, and other Italian objects in good faith. See Press Release, The Metropolitan Museum of Art, Statement by the Metropolitan Museum of Art on Its Agreement With Italian Ministry of Culture (Feb. 21, 2006) (on file with author) (“[T]he agreement stipulates [the objects] were acquired by the Museum in good faith . . .”).

77. BLACK’S LAW DICTIONARY 701 (7th ed. 1999).

78. See Schultz, 333 F.3d at 411 (“[I]f a jury finds that a defendant knew all of the relevant facts, the defendant cannot then escape liability by contending that he did not know the law.”). But see United States v. Antique Platter of Gold, 184 F.3d 131, 138-39 (2d Cir. 1998) (holding when Congress expressly included innocent owner defense in several statutes, its omission was deliberate in others). “While numerous statutes contain an explicit innocent owner defense, see, e.g., 18 U.S.C. § 981(a)(2); 21 U.S.C. §§ 881(a)(4)(C), 881(a)(7), Section 545 does not, and there is no reason to believe that the omission in Section 545 was anything but deliberate.” Antique Platter, 184 F.3d at 138-39 (interpreting 18 U.S.C. § 545).

79. See Schultz, 333 F.3d at 411 (noting that NSPA “does include a mens rea element with respect to the status of the goods as having been stolen” (quoting United States v. Rosa, 17 F.3d 1531, 1546 (2d Cir. 1994))).

80. See Reynolds, The Puzzle of Marion True, supra note 19 (noting more stringent approach to law enforcement and its effect on museums); Riding, supra note 7 (“The question now is how Italy’s new push for greater transparency will affect acquisitions by museums and collectors.”).

81. Reynolds, The Puzzle of Marion True, supra note 19.
over one hundred years ago, U.S. museums are faced with the task of stocking their exhibits today.82

As museums attempt to fill new exhibits, they must overcome a mounting public relations problem.83 "In 2002, 19 [museums] . . . including the Getty and the Met, signed a declaration that condemned the illegal traffic in archaeological, artistic and ethnic objects, but stressed that 'objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era.'"84 Condemning illicit antiquity trafficking while asking for leniency regarding items acquired "in earlier times" appears unimpressive to some because it is a "'statement of self-interest made by a group representing some of the world's richest museums . . . .'"85 Museums want to see their antiquity investments of "earlier times" protected because it is within "a $4-billion-a-year illicit trade" that they must procure new items.86

B. How to Play Skullduggery

To understand possible U.S. museum liability, it is important first to appreciate the various means by which museums procure items. Illicit antiquity trafficking begins with excavators and looters at burial sites. "'[The items] come from theft, originating with clandestine digs and illegal purchases that for the most part damage[ ] sites such as tombs.'"87 The looters then sell the items to dealers/traffickers who authenticate them using different methods, largely because "authentication can increase an object's value 10-fold."88 Methods used to authenticate include archaeology labs and

82. See Riding, supra note 7 (citing Neil Brodie, research director of Illicit Antiquities Research Center in Cambridge, England).
83. See id. (describing museums' public stances regarding antiquities trafficking). "'We now know there is the broad support of American public opinion that has recognized that our demands are legitimate and grounded in international law, and in one sense, natural law, in ethics . . . . Without the support of the American . . . and . . . European public, it would not be possible what we have done.'" Felch, An Italian Offer, supra note 18 (quoting Rocco Buttiglione, Italian Minister of Culture).
84. Riding, supra note 7.
85. Id. (quoting Geoffrey Lewis, chairman of Ethics Committee of International Council of Museums).
86. Frammolino & Felch, Web of Deals, supra note 19 ("Court records detailing [the] investigation, along with internal Getty documents and rare interviews with [Medici, Hecht and Symes], provide a clear look at the inner workings of a $4-billion-a-year illicit trade that floods the antiquities market.").
87. Silver, Tomb-Robbing Trials, supra note 6 (quoting Hecht and True's indictment).
88. Id. (citing Mark Pollard, new director of Oxford lab).
auction houses.\footnote{89} Traffickers then evade customs by concealing objects or using duty-free zones.\footnote{90} At auction, dealers, museums, and private collectors then bid on the antiquities.\footnote{91} Some dealers sell piecemeal fragments of an item to museums, and because a whole item is worth more than its fragments, museums pay increasing amounts to assemble the object into its whole form.\footnote{92}

Because procuring antiquities is increasingly scrutinized by the public, museums have been forced to use other means to obtain the items they desire.\footnote{93} Specifically, U.S. museums have collaborated

\footnote{89. See id. (citing Doreen Stoneham, the scientist who did the testing) ("Oxford University's archaeology lab went beyond authenticating artifacts for dealers and auction houses. It worked for robbers and smugglers before the university . . . stopped its commercial business of testing earthenware in 1997 . . . ."); Janelle Brown, Antiques Netshow, SALON, June 22, 1999, http://www.salon.com/tech/feature/1999/06/21/auctions/index.html (noting Sotheby's has been authenticating for 255 years).}

\footnote{90. See, e.g., Baker, supra note 5 (describing how Jonathan Tokeley-Parry disguised head sculpture of 18th Dynasty pharaoh Amenhotep III when he dipped "the sculpture in clear plastic and painted it [to resemble a cheap] souvenir"). Medici used the Geneva Freeport to avoid Swiss customs. See Frammolino & Felch, Web of Deals, supra note 19 ("After several years running his own shop in Rome, Medici moved his business in the mid-1970s across the border to Geneva, where he set up shop in a warehouse in the Swiss city's duty-free zone.").}

\footnote{91. See Frammolino & Felch, Web of Deals, supra note 19 ("Medici recalls making a name for himself in . . . auction houses . . . describing one of the times he outbid some of the heavyweights of the art world. 'I was the big player . . . and I got a lot of attention because an unknown dealer had beat the Met and the Getty . . . .'") (quoting Medici)).}

\footnote{92. See id. (describing Hecht's conspiracy with other dealers). The authors write: The dealers would distribute the fragments of an important vase among themselves — at times by breaking up an intact vase, the Italians say.

After one dealer donated a "seed" fragment to a museum's curator, other dealers would approach the curator with a matching piece, authorities say. Because the curators were desperate to complete objects in their collections, each fragment became more valuable than the last.

True told Italian prosecutors she also had concluded that dealers were working together to extract higher and higher prices for matching fragments.

The fragments she was being sold had sharp edges that fit neatly with other fragments being sold, not the worn edges one would expect from an ancient fracture, she said.

"I came to realize we were being blackmailed," she said. "Clearly the pieces seemed to be smashed . . . . It was clear these fragments had been dispersed over a huge market."

Id. (quoting True).

93. See Riding, supra note 7 ("Many [museums] have relied on donations or purchases of collections assembled by private individuals who have acquired antiquities at auctions or from dealers.").}
with private collectors. 94 “The museum has an interest in the private collector and even advises what to buy,” an advantageous move for collectors because of U.S. tax incentives for making donations. 95 Moreover, some U.S. museums, including the Getty and Met, have acquisition budgets far exceeding most European museums, allowing the U.S. museums to afford more expensive objects. 96

C. The Players of International Antiquity Trafficking

International antiquities trafficking involves many players. Excavators find burial sites, perform clandestine digs, and sell their wares to middlemen.97 For example, in Cerveteri (home of many Etruscan tombs just outside Rome), as many as sixty tombaroli (tomb raiders) used to work at any given time; their ranks have thinned, but those who remain refuse to quit.98 Middlemen, like Medici, dubbed “The Wholesaler,” possess extensive contacts with diggers who scour the countryside for objects.99 The middlemen then sell their wares to dealers like Hecht, known as “Mr. Percentage,” and Symes, known as “The Frontman.”100 The dealers have connections

94. See id. (“If a private collector gives to a museum, he can claim back taxes . . . . So they work together.” (quoting Neil Brodie, research director of Illicit Antiquities Research Center in Cambridge, England)).
95. Id. (quoting Neil Brodie, research director of Illicit Antiquities Research Center in Cambridge, England).
96. See id. (noting funding disparities in U.S. and Europe).
97. See Ralph Frammolino, In Italian Town Known for Tomb-Raiding, Joy Over Return, L.A. TIMES, Feb. 6, 2006, at A3 [hereinafter Frammolino, In Italian Town]. The author describes:

For decades “tombaroli” have supplemented their day jobs by plundering the tombs in nighttime raids with shovels, picks and homemade steel rods. They have sold off jewelry, vases and urns, sometimes even dumping out charred bones and ashes left from ancient funeral rites . . . .

Soon [Giuseppe Masala] was selling to middlemen or carting his wares to weekend markets in Rome and Tuscany where he hawked them from a stand.

Id. (citing former tomb-raider, sixty-four year-old Giuseppe Masala). Egypt, too, is reckoning with looters. See Silver, Tomb-Robbing Trials, supra note 6 (“Many . . . tombs are unexplored, making them prizes for archaeologists and looters alike. Robbers smashed the carved walls of the tomb of Hetepka, a hairdresser to the royals. They extracted a false door, a stone slab carved with hieroglyphs that ancient Egyptians believed was a pathway to the afterlife.”).

98. See Frammolino, In Italian Town, supra note 97 (noting tomb-raiding’s effect on tombaroli).
99. See Frammolino & Felch, Web of Deals, supra note 19 (“[Medici] was more ambitious . . . . [He] rose early each morning and toured the villages of Etruscia visiting clandestine diggers . . . .” (quoting from Hecht’s memoir)).
100. See id. (citing Frieda Tchakos Nussberger, Swiss antiquities dealer) (“Hecht earned his nickname ‘Mr. Percentage’ because he always took a cut when connecting sellers to buyers.”). “[Symes and his partner Christo Michailidis] built [their company] up to probably one of the world’s major antiquities dealerships,
to collectors who may be bona fide purchasers.101 For example, Hecht dealt with Nelson Bunker Hunt, a Texas billionaire who bought a looted Fifth Century Before Christ roof ornament and sold the piece at auction.102 Symes then purchased and re-sold the object on the same day to New York collector Lawrence Fleischman.103

The authentication of items, a procedure performed by auction houses, archaeology labs, and museums, is a quintessential facet of the antiquities trade because it augments items' market values.104 According to Rena Moulopoulos, the attorney who leads Sotheby’s compliance division, "[o]ur basic policy is that we won’t sell anything that we know has been illegally excavated."105 The compliance division is charged with determining the legitimate provenance of objects. Normally, though, a seller’s word is enough.106 Despite Sotheby's disclaimer, journalist Peter Watson alleged that Sotheby’s has accepted looted antiquities; his investigation forced Sotheby’s to close its London-based antiquities division.107 Because of the less-than-stringent policies regarding

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101. See BLACK’S LAW DICTIONARY 1249 (7th ed. 1999) (defining “Bona fide purchaser” as “[o]ne who buys something for value without notice of another’s claim to the item or of any defects in the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”).

102. See Frammolino & Felch, Web of Deals, supra note 19 (providing example of how item was given appearance of authenticity).

103. See id. (explaining how artifact was given appearance of clean provenance, according to Italian authorities).

104. See Silver, Tomb-Robbing Trials, supra note 6 (noting financial benefits of items' museum ties). The author explains:

In a Bloomberg survey of 1,773 auction lots handled by . . . Sotheby’s . . . from December 2000 through June 2005, items that had been exhibited, associated with a museum or authenticated sold for 98 percent more than the average estimate Sotheby’s projected before the sale. Items that lacked such an imprimatur sold for 70 percent more.

Id.


106. See id. ("If a seller warrants that an object is legally and ethically acquired, then we treat it as legitimate and we can sell it. This is not a science and we are not detectives. We try to avoid anything that has been recently looted, but we’re not perfect.").

107. See Frammolino & Felch, Web of Deals, supra note 19 ("Sotheby’s shut down its London antiquities sales in 1997 after an investigation by British journalist Peter Watson alleged that the auction house had accepted hundreds of looted antiquities from a frontman for Medici while suspecting their illicit origin.").
antiquities’ provenance, Sotheby’s and other auction houses are no strangers to litigation.\(^{108}\)

Similar to auction houses, archaeology labs at universities also authenticate antiquities.\(^{109}\) The labs use thermoluminescence to date pots and statues.\(^{110}\) Museums also authenticate objects, by their exhibition, as well as through examination.\(^{111}\) Curators, like True, and directors, like the Met’s Philippe de Montebello (“de Montebello”), are highly involved in what items museums procure and display.\(^{112}\) Although museum curators and directors play a large role in a museum’s collection, they are subject to oversight by museum trustees and other regulatory organizations.\(^{113}\) Museums and their directors have teamed up to form several advisory bodies.


\(^{109}\) See Silver, Tomb-Robbing Trials, supra note 6 (“Don’t ask me about the legality of it . . . . That’s not my problem. I just take the money and tell them if it’s genuine or not.” (quoting Doreen Stoneham, scientist previously of Oxford University’s Research Laboratory for Archaeology and History of Art)).

\(^{110}\) See id. (recognizing process “measure[s] how much radiation objects have absorbed, yielding an approximate date of when the pottery was originally fired”).

\(^{111}\) See United States v. Antique Platter of Gold, 184 F.3d 131, 134 (2d Cir. 1999) (noting Metropolitan Museum of Art in New York authenticated item through thorough examination); Willard L. Boyd, American Academy of Arts and Sciences, Museums as Centers of Controversy, 128 Daedalus 185, 200 (1999).

[T]he public is not aware of who the creators of exhibits or the authors of explanatory texts are; it is the museum as an institution that appears to be speaking. When an institution speaks it carries more weight than an individual - more than an expert. The museum profession is ever conscious of the fact that the institution essentially authenticates the objects and ideas of an exhibit. Such institutional power of speech carries with it great privilege and even greater responsibility to the audience.

\(^{112}\) See Reynolds, The Puzzle of Marion True, supra note 19 (describing True’s work as “hunting down works on behalf of one of the world’s wealthiest buyers . . . [and] spend[ing] millions buying high-profile pieces”); Hugh Eakin & Elisabetta Povoledo, Italy Offers the Met a Deal on Disputed Art, N.Y. Times, Jan. 13, 2006, at B1 [hereinafter Eakin & Povoledo, Italy Offers the Met a Deal] (describing director’s talks with Italy regarding museum’s continued exhibition and ownership of allegedly Italian-owned antiquities).

\(^{113}\) See, e.g., Eakin & Povoledo, Italy Offers the Met a Deal, supra note 112 (explaining de Montebello’s receipt and eventual approval of Italian restitution offer “is subject to review and approval” by Met’s trustees); see also The Metropolitan Museum of Art, Sept. 1999, http://www.metmuseum.org/home.asp (follow “Press Room” hyperlink; then follow “General Information” hyperlink; then follow “An Overview of the Museum” hyperlink) (providing overview of Met’s governance).
For example, the U.S. is home to the National Association of Dealers in Ancient, Oriental, and Primitive Art as well as the AAMD, whose role is to support its members and to increase art's contribution to society.\textsuperscript{114}

Like the different people and organizations involved in museum governance, different governments also play a role in the antiquities trade.\textsuperscript{115} Specifically, they enforce laws and create policy.\textsuperscript{116} Likewise, international organizations set policy standards and objectives for the international antiquities community. For instance, the United Nations Educational, Scientific, and Cultural Organization ("UNESCO") "functions as a laboratory of ideas and a standard-setter to forge universal agreements on emerging ethical issues. . . [It] disseminat[es] and shar[es] . . . information and knowledge – while helping Member States to build their human and institutional capacities in diverse fields."\textsuperscript{117} Also, the International Council of Museums ("ICOM") "is the international organisation of museums and museum professionals which is committed to the conservation, continuation and communication to society of the world's natural and cultural heritage, present and future, tangible and intangible."\textsuperscript{118}

In addition, the International Council of Monuments and Sites ("ICOMOS") "is an international, non-governmental organization..." \textsuperscript{119}

\textsuperscript{114} See Association of Art Museum Directors, http://www.aamd.org/about/ (last visited Feb. 11, 2006) (describing inter alia organization's mission, members, code of ethics, values, and governance). The website offers:

The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice; serving as forum for the exchange of information and ideas; acting as an advocate for its member art museums; and being a leader in shaping public discourse about the arts community and the role of art in society.

\textsuperscript{115} See, e.g., Felch, An Italian Offer, supra note 18 ("The Carabinieri, Italy's paramilitary police, are widely believed to be the world's leading specialists in tracking stolen cultural property."). "Italian authorities have shared information from their investigation with [U.S. Immigration and Customs Enforcement] officials in Los Angeles and New York, and further cooperation is expected . . . 'We're working closely with Italian authorities and have a number of ongoing investigations. . . .'" Id. (quoting Virginia Rice, spokeswoman for ICE in Los Angeles). "'Thanks to our investigative procedures and what's happening to the Getty, we are having more success and museums have been more open to our requests,' said Ferdinando Musella, a commander of Italy's national police section for protecting national treasures." Williams, supra note 2.

\textsuperscript{116} For a further discussion of various international and national laws and treaties regarding antiquities, see infra notes 131-41 and accompanying text.


dedicated to the conservation of the world’s historic monuments and sites.”\textsuperscript{119} “Europa Nostra endeavours to mobilise public opinion in defence of serious and urgent threats to heritage, and to influence relevant policy-makers, at national or European level . . . . [T]hrough Declarations, Resolutions and Executive Presidential letters, . . . policy papers and statements.”\textsuperscript{120} More research and investigation-based organizations include the International Foundation of Art Research (“IFAR”) and Interpol.\textsuperscript{121} All of these organizations have a common goal: discouraging the illicit antiquities trade from the looting to the exhibition level.

D. The Domestic and International Antiquities Laws

1. \textit{U.S. Legislation}

Starting with the Antiquities Act of 1906, also known as both the American Antiquities Preservation Act and National Monument Act, Congress enacted legislation to regulate artifacts found in the United States.\textsuperscript{122} Two years later, Congress also codified penalties for excavating or destroying ruins located in the United States.\textsuperscript{123}

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\begin{itemize}
\item \textsuperscript{121} See International Foundation of Art Research Online, http://www.ifar.org/ (last visited Feb. 11, 2006) (“IFAR offers impartial and authoritative information on authenticity, ownership, theft, and other artistic, legal, and ethical issues concerning art objects. IFAR serves as a bridge between the public, and the scholarly and commercial art communities.”); Interpol’s Three Core Functions, http://www.interpol.int/Public/ecpo/about.asp (last visited Feb. 11, 2006) (listing Interpol’s three core functions as: “[s]ecure global police communication services, . . . [o]perational data services and databases for police . . . [and] [o]perational police support services”).
\item \textsuperscript{122} See Law of June 8, 1904, ch. 3060, 34 Stat. 225, \textit{amended by} 16 U.S.C. §§ 431-433 (1906). The statute allows the following: Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: \textit{Provided}, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.
\item \textsuperscript{123} See 16 U.S.C. § 433. The statute states: Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated
\end{itemize}
\end{footnotesize}
In addition, the Archaeological Resources Protection Act of 1979 ("ARPA") specifically protects federal lands.\textsuperscript{124}

In 1934, Congress enacted the NSPA with the goal of penalizing "[w]hoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud."\textsuperscript{125} Congress also enacted implementing legislation, the Convention on Cultural Property Implementation Act ("CPIA"),\textsuperscript{126} to bring the U.S. into compliance with the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the "1970 UNESCO Convention").\textsuperscript{127} The CPIA provides in part:

on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than $500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

\textit{Id.} \textsuperscript{124} See 16 U.S.C. §§ 470aa-470mm (2000). The statute reads:
The purpose of this chapter is to secure . . . the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.

\textit{Id.} § 470aa(b).

\textsuperscript{125} 18 U.S.C. § 2314 (2000); see also \textit{id.} § 2315 (extending National Motor Vehicle Theft Act to other stolen property). Section 2315 reads:
Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken . . . .

\textit{Id.} § 2315.

No designated archaeological or ethnological material that is exported (whether or not such exportation is to the United States) from the State Party after the designation of such material under section 2604 of this title may be imported into the United States unless the State Party issues a certification or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

\textit{Id.} § 2606(a).

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No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this chapter, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.128

In passing the CPIA, Congress sought to address problems surrounding the illicit global antiquities trade; "[t]he accompanying Senate report pointed to the increase in looting and destruction of antiquities, which was depriving nations of their cultural patrimony and the world of knowledge of its past, as the main consideration necessitating the CPIA."129 Within the executive branch, Executive Order 12555 supports Congress's efforts to penalize illegal antiquity trafficking.130

2. International Agreements Regarding Antiquities

In 1954, UNESCO's Convention for the Protection of Cultural Property in the Event of Armed Conflict (the "Hague Convention") "declared it a grave breach — a war crime subject to universal jurisdiction — to 'destroy clearly recognized historic monuments, works

It is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export . . . .

... Considering that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles . . . .

Id.


The increasing demand in recent years for archaeological and ethnological materials and antiquities has spurred, in most experts' opinions, a great increase in the international exchange of such materials. But unlike other commodities, increased or new production of these articles cannot rise to meet the demand. Instead, the increased supply results from the sales of known artifacts and those newly recovered from archaeological sites. The unique origin and character of these articles raises serious trade issues distinct from the normal concerns of the reciprocal trade agreements program or U.S. trade law.


of art, or places of worship." The U.S., however, has not ratified the Hague Convention. In contrast, in 1983, the U.S. ratified the 1970 UNESCO Convention that provides in relevant part:

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Another international agreement, the 1995 UNIDROIT Convention on Stolen or Illicitly Exported Cultural Objects (the "UNIDROIT Convention"), applies to international claims for: "(a) the restitution of stolen cultural objects; (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage . . . ." The U.S. also has not ratified the UNIDROIT Convention.

3. Patrimony Laws, a.k.a “Found-in-the-Ground” Laws

To protect their antiquities, several countries have passed patrimony laws, thus laying claim to artifacts found within their borders and targeting the museums, collectors, and dealers who trade in

131. Elsea & Garcia, supra note 129.
those antiquities. Mexico’s 1934 Law for the Protection and Preservation of Archaeological and Historical Monuments, Typical Towns, and Places of Scenic Beauty illustrates the growing trend among countries with rich deposits of ancient objects. With that law, Mexico aimed to expand its previous patrimony law’s definition of “monuments” and officially declared Mexico’s ownership of both movable and immovable archaeological objects. Further, Italy’s 1939 patrimony law presumes that an archaeological item belongs to the state, unless its possessor can show private ownership before 1902. Likewise, Turkey’s patrimony law dates from 1906 and “asserts [Turkish] ownership of all undiscovered artifacts on or under [Turkish] soil.” Also, Greece’s Antiquities Act of 1932 attempts to criminalize the removal of Greek antiquities from Greek soil and to establish ownership over all Greek antiquities.


137. See McClain II, 593 F.2d 658, 666 n.11 (5th Cir. 1979) (citing 82 Diario Oficial 152, 19 de enero de 1954) (defining “monuments” as “all vestiges of the aboriginal civilizations dating from before the completion of the Conquest [1519]”). On May 11, 1897, Mexico declared: “archaeological monuments” to be the “property” ("propiedad") of the nation, but “archaeological monuments” were defined in article 2 as “ruins of cities, Big Houses [Casas Grandes], troglodytic dwellings, fortifications, palaces, temples, pyramids, sculpted rocks or those with inscriptions, and in general all the edifices [sic] that in any aspect may be interesting for the study of civilization and history of the ancient settlers of Mexico.” Id. at 666 n.10 (citing Diario Oficial de 11 de Mayo de 1897). In McClain II, the court found Mexico’s 1970 Federal Law Concerning Cultural Patrimony of the Nation “provides that movable objects not registered within the allowed time limits are presumed ‘the property of the nation.’” Id. at n.12 (citing 303 Diario Oficial 8, 16 de diciembre de 1970).

138. See United States v. Antique Platter of Gold, 184 F.3d 131, 134 (2d Cir. 1999) (“Under Article 44 of Italy’s law of June 1, 1939, an archaeological item is presumed to belong to the state unless its possessor can show private ownership prior to 1902.”).


Law on the Protection of Antiquities ("Law 117") represents yet another nation’s attempt to protect its cultural heritage by prohibiting the removal of objects from their historic locations.\(^{141}\)

### III. GIACOMO MEDICI AND HIS ANTIQUITIES CONSPIRACY

The Medici family name is known for being connected to art patronage, ruling Florence for three centuries, producing three popes, and patronizing Michelangelo.\(^{142}\) The family name, however, may now forever be linked to antiquities trafficking. Giacomo Medici does not disclaim his name's heritage, but he may have cre-

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141. See Law 117: The Law on the Protection of Antiquities (1983) (cited in United States v. Schultz, 333 F.3d 393, 399-400 (2d Cir. 2003)). The following are the relevant provisions of Law 117:

**Article 1**
An "Antiquity" is any movable or immovable property that is a product of any of the various civilizations or any of the arts, sciences, humanities and religions of the successive historical periods extending from prehistoric times down to a point one hundred years before the present, so long as it has either a value or importance archaeologically or historically that symbolizes one of the various civilizations that have been established in the land of Egypt or that has a historical relation to it, as well as human and animal remains from any such period.

**Article 6**
All antiquities are considered to be public property - except for charitable and religious endowments. It is impermissible to own, possess or dispose of antiquities except pursuant to the conditions set forth in this law and its implementing regulations.

**Article 7**
As of [1983], it is prohibited to trade in antiquities.

**Article 8**
With the exception of antiquities whose ownership or possession was already established [in 1983] or is established pursuant to [this law's] provisions, the possession of antiquities shall be prohibited as from [1983]. United States v. Schultz, 333 F.3d at 399-400 (citing Law 117).

142. See Albert Van Helden, *Galileo Patrons, Medici Family*, http://galileo.rice.edu/gal/medici.html (last visited Feb. 15, 2006) ("During [Cosimo il Vecchio’s] rule and that of his sons [sic] [Piero] and grandson [Lorenzo], Florence became the cultural center of Europe and the cradle of the new Humanism."). "The Medici family dominated Florentine politics for two and a half centuries and presided over a cultural achievement that is equaled only by Athens in the golden age." Id.; see also Medici, http://en.wikipedia.org/wiki/Medici_family (last visited Mar. 1, 2006) ("The Medici family was a powerful and influential Florentine family from the 13th to 17th century. The family produced three popes (Leo X, Clement VII, and Leo XI) [and] numerous rulers of Florence . . . . The family also helped to spur the beginning of the Italian Renaissance."); Michelangelo Buonarroti, http://www.michelangelo.com/buon/bio-index2.html (follow "Early Life" hyperlink) (last visited Feb. 15, 2006) ("After about one year of learning the art of fresco, Michelangelo went on to study at the sculpture school in the Medici gardens . . . .")
ated an unfortunate new art dynasty with which it will be associated.143

In amassing his art empire, Medici utilized *tombaroli* to loot antiquities from burial sites and tombs located on the Italian countryside.144 His contacts with the *tombaroli*, combined with turning his competitors into the Italian authorities, allowed Medici to monopolize the area.145 Using his companies as a front, Medici would auction off his antiquities, bid on them to drive up prices and ultimately re-purchase his own items.146 By doing so, he not only would successfully launder looted art, but he would also attain an auction house’s stamp of approval.147 This way, Medici created an inflated market value for over 900 antiquities; and through this market he could resell them for a substantial profit.148 In 1995, when Swiss and Italian police raided Medici’s warehouse, they uncovered nearly 4,000 objects “stacked on the floor and filling the room’s felt-lined bookshelves,” including “ancient pots, bronze figu-

143. *See* Frammolin&Felch, *Web of Deals, supra* note 19 (“Though he claims no blood link to the famous Renaissance dynasty of art patrons, Medici doesn’t shy away from the comparison.”). Medici placed some 900 antiquities into the international antiquity trade. *See id.* (noting Medici’s far-reaching influence).

144. *See id.* (“Medici’s contacts with the *tombaroli* allowed him to buy almost everything dug up in northern Italy . . . .”). “The foot soldiers in the underground antiquities trade are *tombaroli* . . . . who specialize[ ] in excavating Roman temples across northern Italy. The *tombaroli* fan out at night and use shovels, backhoes, even radar, to excavate the tombs that honeycomb Italy’s countryside.” *Id.* Tombaroli comb the countryside looking for entrances to tombs by *pok*[ing] the ground, feeling for walls or chambers.” *Frammolin, In Italian Town, supra* note 97. “The hills of Cerveteri cover thousands of tombs laid out by the Etruscans — a civilization that dominated central Italy before the rise of Rome — like orderly subterranean cities. The entrances to some of these necropolises beckon from behind trees and in the folds of the earth.” *Id.*

145. *See* Frammolin&Felch, *Web of Deals, supra* note 19 (citing Pietro Casasanta, tomb raider) (“[H]e kept competitors at bay by turning them in to Italian art police . . . .”)

146. *See id.* (“He would put antiquities up for auction through shell companies . . . . Then he would enter the bidding, drive up the prices and acquire his own objects.”).

147. *See id.* (describing Medici’s method of laundering art and receiving its benefits). The authors write:

> At the time, an auction house’s stamp of approval was widely seen as proof that the object had a legitimate ownership history, or provenance, and had not recently been dug out of the ground. If it was ever questioned, Medici could point to the auction catalog as evidence of any object’s value and pedigree.

*Id.*

148. *See id.* (“Italian prosecutors described Medici in court documents as a criminal mastermind who managed ‘a constant flow’ of illegally excavated antiquities that were then ‘smuggled and distributed among the museums and collectors around the world.’”).
rines, marble statuary, and mosaics . . . " 149 Despite its size, this Medici-led conspiracy represents only a portion of the lucrative "$4 billion-a-year illicit trade that floods the antiquities market." 150

A. The New Characters

Regardless of where trafficking takes place, catching an illicit antiquities dealer is extremely difficult; Polaroids of antiquities, however, help this daunting task. 151 In 2004, authorities convicted Medici in Rome for receiving and exporting stolen antiquities. 152 His conviction stemmed from a ten-year Italian-led investigation, which now entangles True as well, that initially focused on Medici, Hecht, and Symes. 153 Medici's skullduggery conviction led to True's indictment and subsequent trial in Rome. 154

Italian officials were investigating Medici as early as 1995, when Italian police raided Medici's Swiss warehouse and discovered thousands of Polaroids. 155 The photographs "depict[ed] how Greek

149. Id. ("[Swiss and Italian police] found a wealth of ancient art, some of it still bearing tags from Sotheby's.").

150. Frammolino & Felch, Web of Deals, supra note 19 (referring to Giacomo Medici, Robert Hect Jr., and Marion True's involvement in antiquities trade).

151. See Riding, supra note 7 (emphasizing photographs' importance). The author asserts:

[T]he problem of establishing an ancient work's provenance is far greater than that of, say, art looted by the Nazis from Jewish collections and later placed on the market. Unless a photograph is taken when an object is found, it is often impossible to know when or where it was excavated. Thus, the photographs seized in Geneva in 1995 were unusually important in that they seemed to provide rare evidence that the antiquities, some still covered in mud, were recently looted.

Id.

152. See Vernon Silver, Italy Lacks Proof Met's Antique Pots Were Looted, Papers Show, Nov. 30, 2005, http://www.bloomberg.com/apps/news?pid=10000088&sid=ajwMFEcAW10&refer=culture [hereinafter Silver, Italy Lacks Proof] (noting Medici's conviction and current appeal). "He says he's innocent, and is free while appealing the verdict, which isn't considered final until he exhausts two levels of appeals." Id.

153. See Frammolino & Felch, Web of Deals, supra note 19 ("For 10 years, the Italians have focused on the trio . . . as they have built a criminal case that eventually ensnared one of the men's biggest customers, Marion True, until this fall the curator of antiquities at the J. Paul Getty Museum."). Marion True is on trial in Rome for "handling or receiving 35 stolen objects and for conspiracy for her alleged role in a smuggling business that Hecht and Medici ran." Silver, Tomb-Robbing Trials, supra note 6. Robert Hecht, Jr. faces similar charges. See id. (connecting Medici's conspirators, Hecht, and True).

154. See Wilkinson, Framing the Case, supra note 76 ("Lead prosecutor Paolo Ferri said the evidence showed that objects looted in Italy ended up at the Getty and other prominent institutions such as New York's Metropolitan Museum of Art. He said that True, Hecht and Medici conspired to make that happen.").

155. See Silver, Tomb-Robbing Trials, supra note 6 (describing trade zone exempt from Swiss customs).
pottery and Roman statues looted from 2,000-year-old tombs in Italy made their way to the J. Paul Getty Museum in Los Angeles and the Metropolitan Museum of Art in New York.”

Medici and Hecht would visit the Getty and the Met, pose in front of objects that U.S. museums purchased from Hecht, and chronicle the event using a Polaroid camera.

“[T]he photos trace the items from excavation to repairs — and some of them to displays at the Getty, Met and other museums.”

In 2001, authorities seized a memoir from Hecht’s Paris apartment, which discussed encounters with infamous smugglers and plans to secure fresh items. Hecht’s memoir provided Italian authorities with details connecting the Polaroids to antiquities located in American museums. Paradoxically, True, prior to her indictment, helped the Italians link the objects from the Polaroids to many U.S. museums. During a deposition, Italian prosecutor Paolo Ferri (“Ferri”) presented True with Polaroids from Medici’s warehouse, and she identified the museums housing the various objects.

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156. Id. (citing Rome prosecutor Paolo Ferri discussing Italian investigation of Medici); see also Felch & Frammolino, Several Museums, supra note 4 (noting Polaroids “show antiquities in pieces, encrusted with dirt and unrestored — proof the Italians say, they have been excavated recently, and therefore illegally”).

157. See Silver, Tomb-Robbing Trials, supra note 6 (“One set of photos, taken by Medici on a trip to New York, showed the [Euphronios krater] behind a glass display case at the Met. Another set, of three Polaroids, showed the same jar, dirty and unrestored.”). “Other before and after photos” include those of a “kylix wine cup, an oinochoe pitcher, a 2,300-year-old dinos mixing bowl by the so-called Darius painter and a 2,500-year-old amphora by the so-called Painter of Berlin.” Silver, Italy Lacks Proof, supra note 152.

158. Silver, Tomb-Robbing Trials, supra note 6 (citing Italian prosecutor, Paolo Ferri).

159. See Wilkinson, Framing the Case, supra note 76 (describing contents of Hecht’s memoir).

160. See id. (describing testimony of Maurizio Pellegrini, archaeological consultant to regional ministry who testified on behalf of prosecution and linked Polaroid of jug to item at Getty Museum). The author explains:

In the journal, Hecht recounts flying to Rome at the urging of a reputed smuggler and driving to Cerveteri [Italy], a site rich in looted tombs, to inspect a newly discovered psykter, a jar used to cool wine.

“I immediately sent photographs to M. True at J.P.G.M.,” the journal entry says. “Her first reaction was enthusiastic . . . She said to bring it to Malibu as soon as it was cleaned, and she did not find unreasonable the price of $700,000.”

Id. (quoting journal kept by Hecht).

161. See Felch & Frammolino, Several Museums, supra note 4 (discussing antiquities traced to Boston’s Museum of Fine Arts, Minneapolis Institute of Arts, Toledo Museum of Art, Princeton University Art Museum, Getty, and Met). “Italian authorities have identified more than 100 allegedly looted antiquities at six leading museums in the United States . . . .” Id.
tiquities. True is the first American museum official prosecuted by a foreign government. Italy's investigation into Medici's activities has crossed the Atlantic and is now entangling museums across the U.S. Still, Italy has not charged any museums with wrongdoing. Stay tuned.

B. Museums Possibly Affected

1. J. Paul Getty Museum

Italian officials allege the Getty possesses at least fifty-two antiquities that belong to Italy. The Los Angeles Times obtained


163. See Felch & Frammolino, Several Museums, supra note 4 (discussing case against True and effects on other museums' acquisition policies). True "is the first museum curator to be prosecuted with the Polaroid evidence." Silver, Tomb-Robbing Trials, supra note 6.

164. See Eakin & Povoledo, Italy Offers the Met a Deal, supra note 112 ("Italy contends that many of these works were dug up by looters who worked for international art dealers with ties to top museums."). "[U]sing the carefully organized records of one of those dealers [whose name is being withheld while inquiry continues], Italian investigators say they have identified hundreds more allegedly looted objects at U.S. museums. An additional 10,000 objects mentioned in the records have not yet been located." Felch, An Italian Offer, supra note 18.

165. See Povoledo, Italy Sends a Warning, supra note 13 ("In pressing for the conviction of two prominent members of the international art community, Italy appears to be aiming to pave the way for claims against museums around the world."); see also Silver, Tomb-Robbing Trials, supra note 6 ("Italian judges haven't charged the museums with any crime."). The author informs:

[Italian authorities] are preparing to contact U.S. museums with requests for detailed information about ... how they acquired a growing list of suspect objects in their collections.

Depending upon the response of those museums, Italian officials say they will negotiate returns or file criminal or civil charges in both U.S. and Italian courts.

Felch, An Italian Offer, supra note 18.

166. See Silver, Tomb-Robbing Trials, supra note 6 (citing Italian court documents containing charges against Hecht, Medici, and True); U.S. Museum Returns Stolen Artworks to Italy, ANSA ENGLISH MEDIA SERV., Nov. 11, 2005 (noting Getty agreed to return three items, considered returning two additional items, and had thirty-nine items still being investigated). The three returned items are "a bronze Etruscan candelabrum, a carved gravestone from the 6th century BC and a painted bowl by the Greek artist Asteas dating to 340 BC and dug up in southern Italy." Wilkinson, Ex-Getty Curator, supra note 21. "At the end of October, the J. Paul Getty Trust set up a special committee to examine the claims, just days before its former antiquities curator was due to go on trial in Rome." U.S. Museum Returns Stolen Artworks to Italy, supra.
leaked internal Getty documents suggesting over eighty Getty items are of questionable provenance.\textsuperscript{167}

To get such pieces, True would tell Medici what she wanted to buy, Medici would sell the item to Hecht or other dealers and Hecht would sell the object to the Getty with paperwork that made it seem as if it had come from a known international source rather than from illicit excavations . . . .\textsuperscript{168}

While True continues to profess her innocence,\textsuperscript{169} Ferri alleges that museums were in the business of "plundering our cultural heritage."\textsuperscript{170}

True’s dealings with Symes are also questionable; according to Getty records, Symes contributed to the falsification of looted items’ ownership histories.\textsuperscript{171} True, employed by the Getty for over twenty years, helped to acquire from Symes what has been described as the U.S.’s greatest Greek sculpture: Aphrodite.\textsuperscript{172} Italy

\textsuperscript{167} See Scandal Rocks Getty Museum, Canberra Times, Feb. 4, 2006, at A8 ("The Los Angeles Times . . . says it breached no journalistic ethics and noted in one of its responses that the Getty did not challenge the authenticity of the documents.").

\textsuperscript{168} Silver, Tomb-Robbing Trials, supra note 6 (citing Italian prosecutor Paolo Ferri) (describing Hecht’s method).

\textsuperscript{169} See Wilkinson, Ex-Getty Curator, supra note 21 ("Marion True acquired these objects in absolute good faith . . . ." (quoting Francesca Coppi, True’s lead attorney)).

\textsuperscript{170} U.S. Museum’s Tomb Raid Traffic Claimed in Rome Trial, ANSA Media Serv., Nov. 17, 2005.

\textsuperscript{171} See Frammolino & Felch, Web of Deals, supra note 19 (explaining Symes’s role in antiquity conspiracy). “The Italians say Symes and Michailidis [Symes’s partner] racked up $12 million alone in 1992 by selling artifacts they acquired from Medici.” Id.


On the ground floor of the villa itself, it is almost impossible to miss the monumental limestone statue of Aphrodite (or possibly some other goddess) dating from the 5th century BC - a statue the Italian Government says was stolen from the Greek archaeological site at Morgantina in Sicily.

The Getty museum bought the Aphrodite statue from London antiquities dealer Robin Symes in 1986 for $US18 million [sic]. It has since been described as the greatest Greek sculpture in the US.

Some doubts have been expressed that it can be traced back to Morgantina. But internal notes and memos from the Getty museum leaked last year to the Los Angeles Times suggest the museum knew as far back as 1987 that it was possibly treading on shaky ground.
wants the statue, among other items, returned.\textsuperscript{173}

Recently, the Getty returned three disputed objects to the Italian government.\textsuperscript{174} Despite the Getty’s attempt to mend fences with foreign governments, newly opened exhibits are still viewed with suspicion and corruption. One critic reviewing the Getty’s re-opening noted, “[t]he disinterred Getty Villa is gorgeous, vulgar, filled with astounding treasure, tainted by corruption, often brilliant, more than a little decadent – not unlike the vivid twilight of [the Roman] empire itself.”\textsuperscript{175}

2. Metropolitan Museum of Art

The Met is also under public scrutiny. “The objects [of alleged questionable provenance] at the Met . . . are seven Greek-style vases and a 15-piece set of Hellenistic silver that Italian officials say was looted at Morgantina in Sicily.”\textsuperscript{176} In 1972, Hecht sold the Met one of its most prized antiquities, the Euphronios krater, “a 2,500-year-old pot painted by the artist Euphronios.”\textsuperscript{177} Many believe it was looted from an Etruscan tomb in Cerveteri, a site well-known for tomb-robbing located north of Rome.\textsuperscript{178} Hecht’s memoir describes

“"We know it's stolen," the then chief executive of the Getty Trust, Harold Williams, is quoted as saying in the museum director’s notes. "Are we willing to buy stolen property for some higher aim?"


173. See Elisabetta Povoledo, \textit{Italy and U.S. Sign Antiquities Accord}, \textit{N.Y. Times}, Feb. 22, 2006, at E7 [hereinafter Povoledo, \textit{Italy and U.S. Sign Antiquities Accord}] (“Italy is now pressing the [Getty] for the restitution of a statue of Aphrodite that experts suspect was . . . dug up in Morgantina.”).

174. See \textit{U.S. Museum Returns Stolen Artworks to Italy}, supra note 166 (“The ancient bowl, candelabra and funeral inscription were returned by the J. Paul Getty Museum after months of wrangling because it emerged they had been smuggled out of Italy illegally.”).


176. Silver, \textit{Italy Lacks Proof}, supra note 152 (describing which Met items are of questionable provenance).

177. \textit{Id.} For a visual representation of the krater, see \textit{The Metropolitan Museum of Art, Works of Art: Greek and Roman Art}, http://www.metmuseum.org/home.asp (last visited Feb. 5, 2006) (follow “Permanent Collection” hyperlink; then follow “Greek and Roman Art” hyperlink; then “Collection Highlights” hyperlink; then follow “Page 3” hyperlink) (depicting Euphronios krater as highlight of Department of Greek and Roman Art).

178. See Povoledo, \textit{Italy and U.S. Sign Antiquities Accord}, supra note 173 (“Court documents relating to [Medici’s] conviction . . . cite Mr. Medici as a party in the sale of the Euphronios krater . . . ”); Eakin & Povoledo, \textit{Italy Offers the Met a Deal}, supra note 112 (listing Met’s items of disputed provenance); Frammolino & Felch, \textit{Web of Deals}, supra note 19 (linking Hecht to Met’s collection). One author describes:
how he bought the vase from Medici in 1971.\textsuperscript{179} In 1972, a former
Met director, Thomas Hoving, paid $1 million for the krater, but he
now claims tomb robbers pilfered it.\textsuperscript{180} Italian negotiators used
evidence from Medici’s trial to reach a compromise with the Met, re-
quiring the Met to surrender some antiquities, maintain others on
loan while transferring their ownership to Italy, and receive loaned
objects in return.\textsuperscript{181} The Met transferred the krater’s title to Italy,
thereby avoiding further claims of its and other objects’ illicit prove-
nance.\textsuperscript{182} Signed on February 21, 2006, “[t]he . . . specifically absolve[s] the museum of any knowledge of wrongdoing and aver[t]s possible legal steps against the museum by the Italian gov-
ernment.”\textsuperscript{183} The Italian government’s agreement allows the Met

Made by a potter named Euxitheos, and painted by Euphronios, the
exquisitely designed bowl depicts a scene from Greek mythology:
the fresh death of Sarpedon, son of Zeus, from wounds he has received in the
Trojan War. The twin sons of Night—Sleep and Death—are carrying
him to his homeland for proper burial, while Hermes, the messenger
god, supervises.

The detail in the scene steals one’s breath. Hundreds of small loops
bring life to the scaled wings of Sleep and Death. Fine lines, perfectly
drafted, give definition to Sarpedon’s abdomen, to his musculature, to
his smallest toes. The blood gushing from his three wounds falls diag-
onally and to the left, giving the sense of his body being carried to the
right.

Dan Barry, \textit{A Tale of Intrigue You Won’t Hear on the Met’s Headsets}, N.Y. TIMES, Feb. 8,
2006, at B2. For a further discussion of Cerveteri, see Felch & Frammolino, \textit{Several Museums}, supra note 4 (describing Cerveteri as “a well-known looting site north of
Rome”).

\textsuperscript{179} \textit{See Landmark Antiquities Trial Under Way}, ANSA ENGLISH MEDIA SERV.,
Nov. 16, 2005 (recounting Italian authorities seizure of Hecht’s memoir and
passages therein); \textit{Italy Moves Closer to Recovering Greek Vase From the Met}, ANSA EN-
GLISH MEDIA SERV., Oct. 28, 2005 [hereinafter \textit{Italy Moves Closer}] (describing
Euphronios krater’s history).

\textsuperscript{180} \textit{See Silver, Tomb-Robbing Trials, supra note 6}. Hecht bought the krater
from Medici, paying $1.5 million Swiss francs or about $380,000 for the item. \textit{See Italy Moves Closer, supra note 179} (“When Hecht sold the vase on to the Met, he told
the museum he had purchased it from a Lebanese man whose family had acquired
it long before a 1939 Italian law banning the unauthorised export of ancient
artifacts.”).

\textsuperscript{181} \textit{See Felch, An Italian Offer, supra note 18} (detailing Italy’s proposed com-
promise with Met).

\textsuperscript{182} \textit{See Frammolino, In Italian Town, supra note 97} (“In exchange for long-
term loans of similar artworks from Italy, the Met has agreed to transfer the title
for the krater . . . and 19 other suspect items to the Italian government.”); Wil-
liams, supra note 2 (“Italy waived any right to pursue legal action against the [Met]
or its staff over the disputed items, and the Met acknowledged no wrongdoing.”).

\textsuperscript{183} Eakin & Povoledo, \textit{Italy Offers the Met a Deal, supra note 112}. Author
Povoledo describes:

Under the terms of the accord, the Met will immediately return four
archaeological pieces to Italy: a red-figured Apulian Dinos (340 to 320
B.C.) attributed to the so-called Darius Painter; a red-figured psykter
(circa 520 B.C.) decorated with horsemen; a red-figured Attic amphora

\textsuperscript{35} Published by Villanova University Charles Widger School of Law Digital Repository, 2007
to keep the Euphranios krater until January 15, 2008 and the Hellenistic silver through 2010.\footnote{184} In return, "the Met will receive objects of equivalent beauty and artistic or historical significance."\footnote{185} The unprecedented accord demonstrates a rare effort of good will between an American institution and the Italian government.\footnote{186}

by the Berlin Painter (circa 490 B.C.); and a sixth-century Laconian kylix, or drinking cup.

In exchange for the kylix, unique in the Met's collection, Italy has promised to lend a "first-quality" Laconian artifact to the Met for a renewable four-year period.

... The [Euphranios] krater will be returned to Italy by Jan. 15, 2008, in exchange for a mutually agreed-upon artifact of equal importance.

... Although the pact applies only to 21 objects that were the subject of Italian claims, a clause in it says that "future controversies concerning archaeological assets will be resolved with the same spirit of loyal collaboration that inspired the present agreement."

In cases where "mutually satisfactory resolutions" cannot be reached, it adds, disputes will be "settled in private by arbitration."

\textit{Povoledo}, \textit{Italy and U.S. Sign Antiquities Accord, supra} note 173.

\footnote{184} See \textit{Povoledo}, \textit{Italy and U.S. Sign Antiquities Accord, supra} note 173 (noting silver to be classified as on loan from Italy). The author continues:

The Met will . . . transfer title to a set of 16 silver pieces dating from the third century B.C. that experts claim were illegally excavated from Morgantina . . . The pieces will remain on loan to the museum until Jan. 15, 2010, when they are to be replaced by loans of treasures of equal value for a four-year period. The silver will be traded back and forth on a continuous rotating basis.

\textit{Id.} The January proposal differed from the final accord. See \textit{Hugh Eakin & Elisa betta Povoledo, Met Trustee Seen as Set For Talks With Italy}, \textit{N.Y. Times}, Feb. 22, 2006, at E1 [hereinafter Eakin & Povoledo, \textit{Met Trustee}] ("In the January draft, . . . Italian officials included a clause requiring the Met to hand over any documents and provenance information pertaining to works on loan to the museum that may have been excavated in Italy. But the museum balked at the provision. The clause was not reinstated . . .").

\footnote{185} \textit{Povoledo}, \textit{Italy and U.S. Sign Antiquities Accord, supra} note 173 (quoting pact between Met and Italy). "Announcing a 'new page of cooperation,' the Metropolitan Museum of Art and the Italian government signed a watershed accord on Tuesday [February 21, 2006] under which the Met will return 21 artifacts that Italy says were looted from archaeological sites within its borders." \textit{Id.} "[T]he agreement stipulates [the krater and silver] were acquired by the Museum in good faith—will be returned to Italy as expeditiously as possible." Press Release, Metropolitan Museum of Art, \textit{supra} note 76.

\footnote{186} See \textit{Povoledo}, \textit{Italy and U.S. Sign Antiquities Accord, supra} note 173 ("The pact, the first of its kind between Italy and a foreign museum, is being hailed as a model for settling antiquities disputes involving other Western arts institutions."); Eakin & Povoledo, \textit{Met Trustee, supra} note 184 ("Mr. Montebello [sic] seemed to be signaling a desire to resolve outstanding issues with Italy at a moment of good will between its government and the Met.").
3. **Princeton University Art Museum**

The Princeton museum has yet to negotiate with the Italian government; Medici's Polaroids, however, connect an item at the museum to Medici and to Italy.\(^{187}\) Additionally, the Italians have tracked antiquities to Princeton with evidence other than the Polaroids.\(^{188}\) The museum's website displays a vase similar to the one Hecht documented in his journal.\(^{189}\) "[A] psykter, a vase for cooling wine, that's listed in Hecht's indictment is one of some 50 items that originated with Medici . . . . 'The Princeton Art Museum has] many, many items whose provenance is [linked to] Medici . . . ."\(^{190}\) Princeton spokespeople strongly deny any wrongdoing.\(^{191}\)

4. **Museum of Fine Arts, Boston**

The Boston Museum houses twenty-two items listed in the charges against Hecht and Medici.\(^{192}\) Italy charged Hecht with handling and exporting a 2,500-year-old vase portraying images of young athletes, now on display in one of the Boston Museum's Greek Gallery.\(^{193}\) Another item attributed to Hecht housed in the Boston Museum is a statue of Sabina, wife of Roman Emperor Hadrian.\(^{194}\) Italian officials, however, claim the Polaroids actually link more than thirty unaccounted-for antiquities to the museum.\(^{195}\) After contacting Italian officials, the museum used the Polaroid pho-

\(^{187}\) See Felch and Frammolino, *Several Museums*, supra note 4 ("According to Italian court records, prosecutors have used a trove of captured Polaroid photographs to trace objects to . . . [the] Princeton University Art Museum . . . .").

\(^{188}\) See id. ("In his handwritten memoir, Hecht describes buying an ancient vase, painted with a banquet scene, from a man in Cerveteri, a well-known looting site north of Rome and later selling it to the university's museum, court records show.").

\(^{189}\) See id. ("The museum would not comment on whether the two are the same, nor identify the second vase.").

\(^{190}\) Silver, *Tomb-Robbing Trials*, supra note 6 (quoting Paolo Ferri, Rome prosecutor).

\(^{191}\) See id. ("A search of museum records finds no indication that we have acquired anything at all from Mr. Medici, either directly or indirectly . . . . The Italian authorities have requested information about the psykter, and we have provided it." (quoting Ruta Smithson, Princeton Museum’s spokeswoman)).

\(^{192}\) See Silver, *Rome Prosecutor*, supra note 162. ("The [Boston Museum] said [it] is asking the Italian government for information about the objects. While [the museum] says it has at least 116 items originating with Hecht, excluding coins, a search of the museum’s online database turns up nothing linked to Medici’s name.").


\(^{194}\) See Silver, *Rome Prosecutor*, supra note 162 (linking True and Hecht to Boston Museum of Fine Art, True identified statue in Polaroid).

\(^{195}\) See Felch & Frammolino, *Several Museums*, supra note 4 (referencing more than one thousand photograph copies obtained by L.A. Times).
toographs to delve deeper into the objects’ provenances and signed an Italian accord in September of 2006 to return thirteen objects, including Sabina.  

5. Cleveland and Toledo Museums of Art

The Cleveland Museum also exhibits an item that Hecht is charged with handling and exporting: “a lekythos, or oil jar, painted with black figures.” In addition, by examining Medici’s Polaroids, the Italians discovered several fragments of roof ornaments, which Hecht told Getty officials came from Cerveteri. The ornaments are part of the same series as the lekythos, some of which also have ended up at the Cleveland Museum.

Court records also show “the Italians traced an ancient Greek water jar, or kalpis, with scenes of swimmers and dolphins, to the Toledo Museum of Art . . . .” Museum officials responded, “‘[i]t would be irresponsible for us to speculate whether the kalpis that’s in the photo is the same as the one in our collection’ . . . . [I]t takes ‘an extensive amount of time and a physical examination’ to make sure.” The Toledo museum says it has not yet been contacted by the Italian government.

196. See id. (“Based on the photos, it is possible those objects are in our collection . . . . We’re digging deeper into the provenance of these objects.” (quoting Dawn Griffin, spokeswoman for Boston Museum)). The Boston Museum decided “the balance of evidence presented by Italy ‘favored the return of the objects.’” Elisabetta Povoledo, Boston Art Museum Returns Works to Italy, N.Y. TIMES, Sept. 29, 2006, at E27 (quoting Malcolm Rogers, Boston Museum’s director and describing accord’s details).

197. See Silver, Tomb-Robbing Trials, supra note 6 (listing another museum allegedly in possession of stolen antiquities).

198. See Frammolino & Felch, Web of Deals, supra note 19 (noting Polaroid photographs’ significance).

199. See id. (describing ornament’s connection to Hecht and Medici). The authors describe:

When the Getty acquired [a roof ornament] from [New York collection] Fleischman with the rest of his collection in 1996, [it] had what appeared to be an unimpeachable pedigree: It had been part of two private collections exhibited at major museums and had been purchased by a reputable dealer from a marquee auction house.

But the Italians say they discovered Polaroids of the ornament in Medici’s warehouse, along with several others like it . . . .

[T]he catalog for the Fleischman collection also notes that two undocumented ornaments from the same series wound up at the Met and Cleveland Museum of Art.

Id.

200. Felch & Frammolino, Several Museums, supra note 4.

201. Id. (quoting Holly Taylor, Toledo museum spokeswoman).

202. See Silver, Rome Prosecutor, supra note 175 (noting Medici is charged with one item at Toledo museum).
IV. MUSEUMS’ OPTIONS

A. Ways Museums Could Escape Liability

First, museums could cooperate with countries of origin and institute policies decreasing chances of being found liable in the U.S. and abroad. The Met has led by example, transferring titles of objects with questionable provenances back to their countries of origin, and simultaneously asking those countries to loan the same or equivalent antiquities to the museum.\(^{203}\) Second, to ensure future acquisitions satisfy patrimony laws, museums should implement acquisition policies that require pedigree before purchase.\(^{204}\) Many museums have already done so, including the University of Pennsylvania, Harvard University, Field Museum of Natural History in Chicago, University of California Museum in Berkeley, Brooklyn Museum, Arizona State Museum, and Smithsonian Institution.\(^{205}\) Third, museums could settle with the country of origin or simply return an object to the country claiming ownership.\(^{206}\)

B. Measures U.S. Museums Should Take to Avoid Liability and Demonstrate a Stance Against Looted Antiquities

There exist several measures U.S. museums should take to avoid liability and take a stance against looting. First, to avoid litigation altogether, a museum should settle with a country of origin once presented with a preponderance of evidence that a previously-acquired antiquity is of questionable provenance. This approach is far more reasonable than the Met’s initial “incontrovertible proof” standard.\(^{207}\) Second, museums should attempt to arrange loan pro-

\(^{203}\) See Povoledo, Italy and U.S. Sign Antiquities Accord, supra note 173 (observing Met’s trade of Italian krater for long-term loans of other prestigious artifacts).

\(^{204}\) See McClain I, 545 F.2d 988, 996 n.14 (5th Cir. 1977) (noting leading museums have voluntary policies).

\(^{205}\) See id. (listing museums requiring antiquity be accompanied by pedigree).

\(^{206}\) See, e.g., U.S. Museum Returns Stolen Artworks to Italy, supra note 166 (listing antiquities Getty returned to Italy); see also Pope, supra note 4 (observing Met’s return of 225-piece Lydian Hoard to Turkey after Met saw Turkey’s claim against Boston Museum of Fine Art’s “Weary Heracles” play out); Povoledo, Italy and U.S. Sign Antiquities Accord, supra note 175 (listing terms of Met’s agreement with Italy to return Euphranios krater and receive long-term loans of other antiquities); Talat Halman, First Minister of Culture, Turkey, Keynote Speech at Imperialism, Art and Restitution Conference in St. Louis Missouri: From Global Pillage to Pillars of Collaboration (Mar. 25, 2004) (on file with author) (recounting Dumbarton Oaks Museum’s agreement to return Sion Treasure to Turkey that included such terms as its restoration, further exhibition, and publication).

\(^{207}\) Compare Hugh Eakin & Elisabetta Povoledo, Met’s Fears on Looted Antiquities Are Not New, N.Y. TIMES, Feb. 20, 2006, at E1 (observing Met’s change in policy, requiring Italians to provide “a preponderance of the evidence” before Met will
grams with countries of origin and display the items as belonging to the country of origin. After exhibiting the items, museums might then exchange them for other items.208 Third, museums ought to help support excavation efforts within countries of origin by sponsoring authorized digs and simultaneously thwarting looters’ efforts.209 Fourth, with respect to formal museum policy, museum directors should close the loophole in the AAMD guidelines, which do not prohibit buying objects from the world’s unknown or unoffi-
cial archaeological sites.210 Finally, museums ought to reject the “smuggling for preservation” mode of operation whereby museums “buy artifacts of questionable origin, as long as there [is] no proof that they had been illegally excavated and imported” because “[t]hey believe[ ] such pieces [are] better off in museum display cases, available for experts to study and the public to appreciate, than locked away in private collections.”211

V. CONCLUSION: COUNTRIES OF ORIGIN AND THE U.S.
CONTINUE TO PLAY THE GAME

Countries of origin could prevent the exportation of antiquities by using one of several methods. Countries asking for the return of their antiquities could potentially be required to return antiquities of other nations.212 First, to prevent quandaries like this

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208. See, e.g., Williams, supra note 2 (recounting details of Met’s agreement with Italy to return twenty-one antiquities in exchange for “long-term loans . . . of objects of ‘equivalent beauty and importance’”) (internal citation omitted).

209. See Povoledo, Italy and U.S. Sign Antiquities Accord, supra note 173 (noting Met’s agreement with Italy allows Met “to conduct authorized excavations at its own expense in Italy, the fruits of which would be lent to the Met ‘for the time necessary for their study and restoration’” (quoting Met-Italy agreement)).

210. See Felch & Frammolino, Several Museums, supra note 4 (noting critics say AAMD left open what some call “a major loophole, allowing museums to continue purchasing undocumented antiquities ‘because of their rarity, importance, and aesthetic merit’”); see also Silver, Tomb-Robbing Trials, supra note 6 (contrasting organization’s restriction on buying objects stolen from official archaeological sites).

211. Felch & Frammolino, Several Museums, supra note 4; see also Scandal Rocks Getty Museum, supra note 167 (“We know it’s stolen . . . . Are we willing to buy stolen property for some higher aim?” (quoting Harold Williams, former chief executive of Getty Trust, and referring to Aphrodite statue sold to Getty by Symes); Silver, Tomb-Robbing Trials, supra note 6 (citing George Ortiz, Swiss collector) (describing theory as “[a]ntiquities are simply art that happens to be underground and should be dug up and spread worldwide to save them from threats such as Afghanistan’s Taliban”).

212. See Reynolds, This Could Be Monumental, supra note 4 (comparing Ethiopia’s request that Italy return Obelisk of Axum, while Eritrea requests objects taken before Eritrea won independence from Ethiopia); Hershel Shanks, Plunder Road:
from happening, countries of origin should undertake national efforts such as declaring national ownership of anything in the ground and posting guards at known burial sites. Second, in an effort to stem the tide of illegal exportation, countries of origin ought to enact stringent export restrictions and catalogue all antiquities in a national antiquity registry. Third, governments can also employ an antiquity tracking police force, like Italy's Carabinieri. Fourth, and perhaps most effectively, governments should utilize public relations campaigns to foster opposition against museums that possess antiquities of questionable provenances.

An international public relations campaign is already mounting against the U.S. because the U.S. has not taken all available precautions to prevent the import of antiquities of questionable provenances. Unlike property claims from Holocaust victims,

Whose Past Is It?, WASH. POST, June 9, 1991, at D5 (comparing Turkey's request for return of Sion Treasure and Lydian Treasure, while simultaneously possessing Siloam Inscription that was excavated from Jerusalem by looters).

213. For a further discussion of national patrimony laws, see supra notes 136-41 and accompanying text. Declaring national ownership better ensures the CPIA will apply to countries' of origin claims. See United States v. Schultz, 333 F.3d 393, 408 (2d Cir. 2003) (listing elements of CPIA regarding U.S. ability to establish import restrictions on antiquities). The Second Circuit provides:

The CPIA provides a mechanism for the American government to establish import restrictions on "cultural property" at the request of another signatory nation and after a determination by the President that (1) "the cultural patrimony of [the requesting nation] is in jeopardy from the pilferage of archaeological or ethnological materials of [that nation]," (2) the requesting nation "has taken measures . . . to protect its cultural patrimony," (3) the import restrictions are necessary and would be effective in dealing with the problem, and (4) the restrictions are in the "general interest of the international community."

Id. (construing 19 U.S.C. § 2602(a)(1)-(D) (2003)).

214. See Silver, Tomb-Robbing Trials, supra note 6 (noting Egypt is posting more guards at temples and tombs and has armed police patrol on camels).

215. See, e.g., McClain II, 593 F.2d 658, 664 (5th Cir. 1979) (detailing Mexico's efforts to protect cultural objects, such as requiring export permits, maintaining registration documents on objects, and labeling each object with Archaeological Registry indicia).

216. See Felch, An Italian Offer, supra note 18 (discussing further Carabinieri).

217. See, e.g., Povoledo, Italy and U.S. Sign Antiquities Accord, supra note 173 (noting Italian prosecutor's opinion of Getty's repatriated items as embarrassing for museum to keep).

218. See Import Restrictions Imposed on Archaeological Material Originating in Italy and Representing the Pre-Classical, Classical and Imperial Roman Periods, 66 Fed. Reg. 7,399 (Jan. 23, 2001) (to be codified at 19 C.F.R. § 12.104(g) (2001)) (as amended by 71 Fed. Reg. 3000-01) ("U.S. shares in the international concern for the need to protect endangered cultural property."). In 2001, the U.S. added Italy to the list from whom importation of articles is restricted unless accompanied by an export certificate issued by the Italian government, or there must be verifiable documentation that the exportation occurred before January 19, 2001 in accor-
the U.S. does not pursue museums that delay in responding to claims for the repatriation of antiquities.\textsuperscript{219} Due to the prevalence of authenticating at auction houses, the U.S. could regulate or require auction houses to catalogue items that they authenticate, as well as establish "codes of due diligence."\textsuperscript{220} Also, the U.S. should sign, ratify, and put into force either the UNIDROIT Convention\textsuperscript{221} or the Hague Convention.\textsuperscript{222}

The lack of U.S. action begs the question: will public opinion and/or penal liability ever motivate the U.S. to overcome the costs of implementing restrictions necessary to stop the flow of looted antiquities into the United States? "If the world's top dealers, collectors, universities and museums provide collaboration and a ready market, there will be little incentive for the latter-day tomb raiders to stop."\textsuperscript{223} This is not the sort of international trade the United States should support through passivity.

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dance with the party States' laws. See id. Those requirements, however, are the extent of import restrictions. Nonetheless, according to the Department of State, "the [bilateral agreement between the U.S. and Italy] has been especially helpful in enriching American cultural life through research, educational programs and loans between Italian and American institutions." \textit{United States Extends Agreement Protecting Italy's Archaeological Materials Representing the Pre-Classical, Classical and Imperial Roman Periods, Cong. Q., Jan. 19, 2006}. The U.S. does not have many bilateral agreements in place that impose even the most minimal requirements of importation restrictions. See \textit{Chart of Current and Expired Import Restrictions}, http://exchanges.state.gov/culprop/chart.html (last visited Feb. 28, 2006) (chronicling status of different agreements with various countries).

\textsuperscript{219} See Felch & Frammolino, \textit{Several Museums}, supra note 4 ("[E]ven as museums acted quickly on claims from Holocaust victims, they often dug in their heels with countries bringing patrimony claims for the return of antiquities . . . .").


\textsuperscript{221} For a further discussion of the 1995 UNIDROIT Convention, see supra notes 134-35 and accompanying text.

\textsuperscript{222} For a further discussion of the Hague Convention, see supra notes 182-33 and accompanying text.

\textsuperscript{223} Silver, \textit{Tomb-Robbing Trials}, supra note 6.