

A Brief History of Looted Art and Archaeology

June 29, 2023

Fredrikson

Where Law and Business Meet®

Pierson v. Post, Sp. Ct. NY, 1805. Ownership.

PIERSON v. POST

Supreme Court of New York, 1805.

3 Caines 175.

This was an action of trespass on the case, commenced in a justice's court by the present defendant against the now plaintiff. The declaration stated that *Post*, being in possession of certain dogs and hounds under his command, did, "upon a certain wild

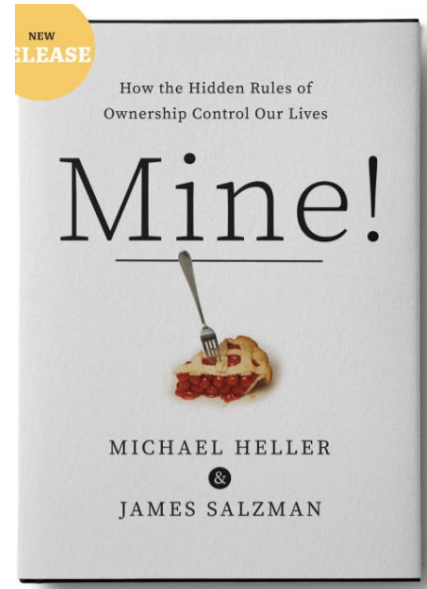
and uninhabited, unpossessed and waste land, called the beach, find and start one of those noxious beasts called a fox," and whilst there hunting, chasing and pursuing the same with his dogs and hounds, and when in view thereof, Pierson, well knowing the fox was so hunted and pursued, did, in the sight of Post, to prevent his catching the same, kill and carry it off. A verdict having been rendered for the plaintiff below, the defendant there sued out a certiorari, and now assigned for error, that the declaration and the matters therein contained were not sufficient in law to maintain an action.¹

TOMPKINS, J. delivered the opinion of the court. The

Common Claims to Ownership

- First in time. First to possess.
- Current possession.
- Purchase, trade.
- Labor.
- Family, inheritance, gift.
- Attachment. E.g., plant a tree on your land.
- Self-ownership; Own body and labor.

- “Ownership” is not monolithic.
 - What are the “bundle of rights” that accompany ownership in different contexts?



Introductions



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Fredrikson & Byron, P.A., June 2023



Vanessa Rousseau

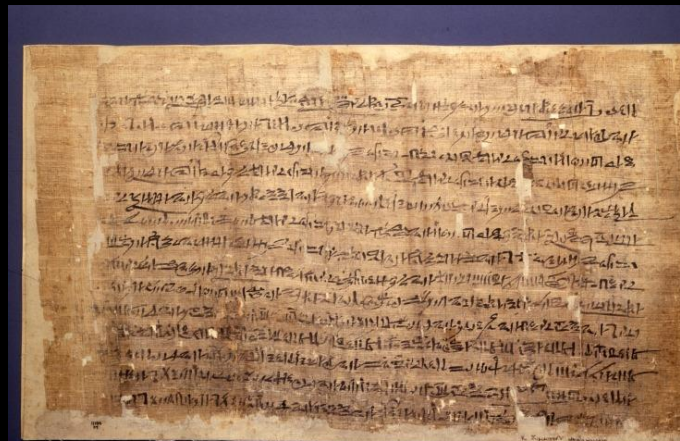
vrousseau.net

@varousseau

Archaeological Institute of
America, MN Society
aiamn.blogspot.com

Left: Papyrus Mayer B (Liverpool) c. 1118 BC.
- Includes the confession of a thief, describing a quarrel about the division of the spoils after thefts from the tomb of Rameses VI (KV 9 in the Valley of the Kings, above) and their eventual exposure by an eavesdropper.

<http://www.liverpoolmuseums.org.uk/wml/collections/antiquities/ancient-egypt/item-295408.aspx>



Below:
(a statue of) the god
Marduk is abducted
from Babylon by
the Assyrians,
c. 750 BCE



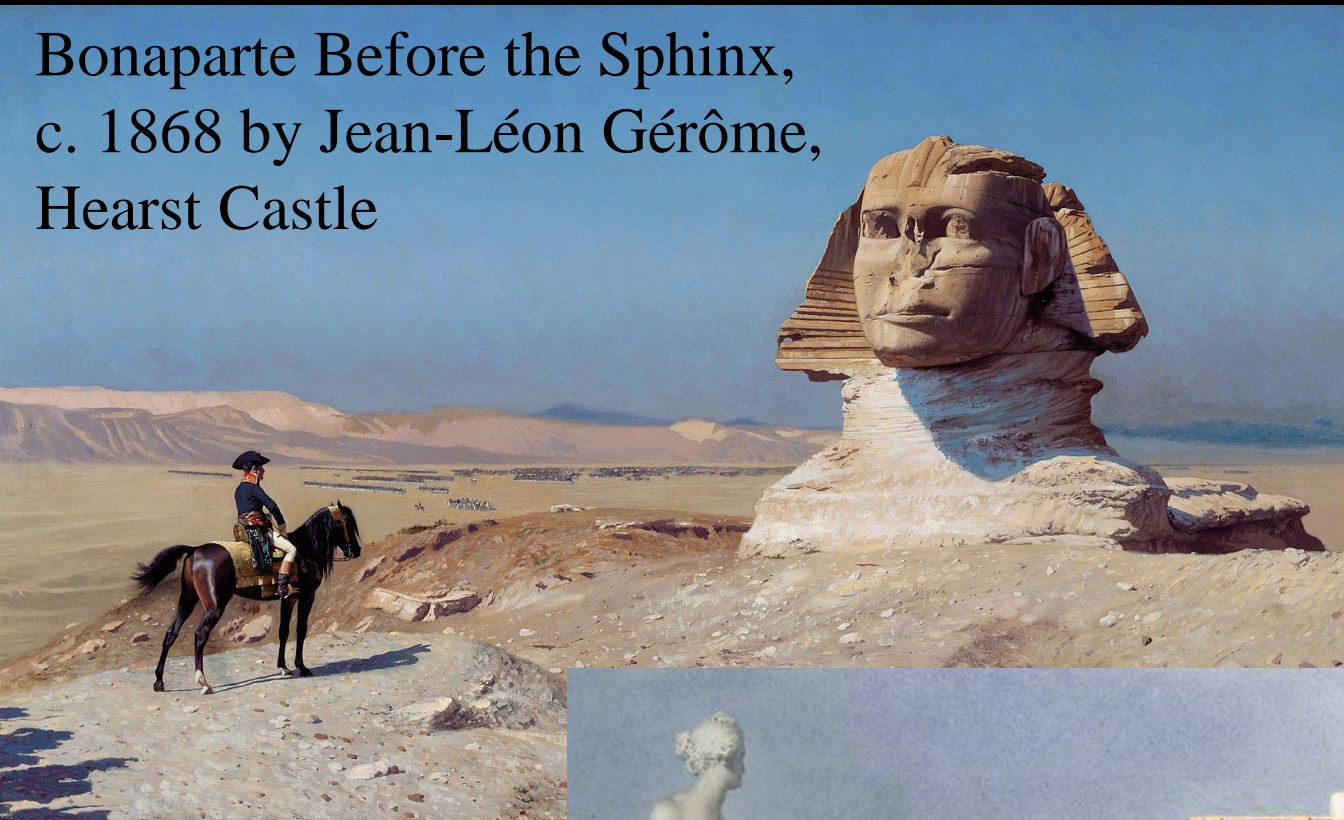
Above: Assyrian Soldiers take war booty and
prisoners from the captured city of Lachish,
Judea, c. 700 BCE, Palace of Sennacherib
(now British Museum)



Arch of Roman Emperor Titus in Rome, c. 81 CE: triumphal procession featuring spoils of the war in Judea



Bonaparte Before the Sphinx,
c. 1868 by Jean-Léon Gérôme,
Hearst Castle



*The entrance into
Paris of the works
destined for the
Musée Napoléon
on a Sèvres vase*





Arc de Triomphe,
Paris, 1806-1836

*The entrance into
Paris of the works
destined for the
Musée Napoléon
on a Sèvres vase*

Arch of
Titus, Rome,
c. 81 CE



The final depth of Pit X, excavated during the last season at Ur



Below: Agatha Christie with husband Max Mallowan and Leonard Woolley at Ur, southern Iraq, in 1931. Christie's *Death in Mesopotamia* was based on this trip.

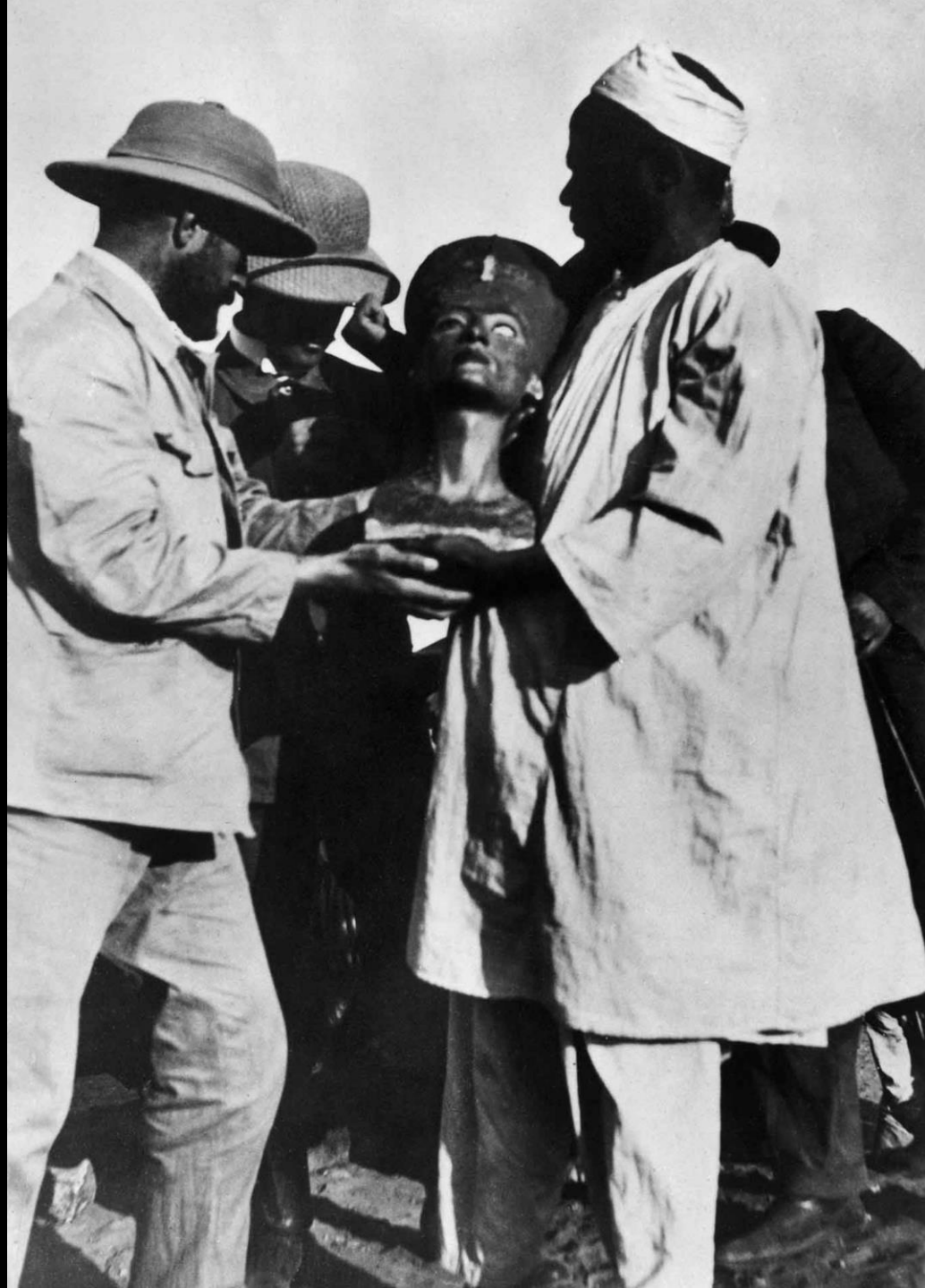




Installation of Assyrian lamassu, Metropolitan Museum of Art



Bust of Nefertiti now in Berlin after **partage** (disputed since 1925)



Right: presentation at the find site, 1912

Gertrude Bell, founder of the Iraq Museum, with King Faisal of Iraq, 1920s





Mural depicting Saddam Hussein in the guise of an ancient Assyrian king (surrounded by modern weaponry)



2-17 • ASSURNASIRPAL II KILLING LIONS
From the palace complex of Assurnasirpal II, Kalhu (present-day Nimrud, Iraq). c. 875–860 BCE.
Alabaster, height approx. 39" (99.1 cm). British Museum, London.



Thomas Jefferson's “excavations” of Native American Mounds at Monticello





2017 poster for a
white supremacist
group

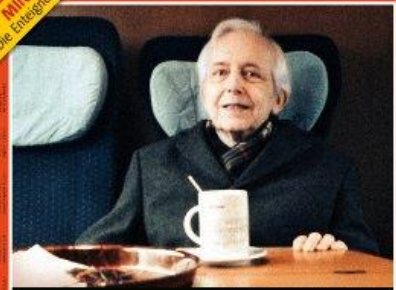
Hitler with the Discobolus, a Roman copy in
marble of the bronze original by Myron, from
Classical Greece c. 450 BCE

https://news.artnet.com/art-world/identity-881747?utm_content=buffer48853&utm_medium=social+post&utm_source=facebook.com&utm_campaign=socialmedia

evropa-posters-art-symbolism-

881747?utm_content=buffer48853&utm_medium=social+post&utm_source=facebook.com&utm_campaign=socialmedia





Gespräche mit einem Phantom
Cornelius Gurlitt über das Geheimnis seiner Bilder



Cornelius Gurlitt after the discovery of 1,406 looted artworks in his Munich apt.



Hitler, accompanied by Goebbels, examines art at the Degenerate Art Depot in Berlin.

(National Archives and Records Administration, College Park, MD)



A crew transports the Greek Winged Victory of Samothrace from the Louvre Museum in Paris during WWII.

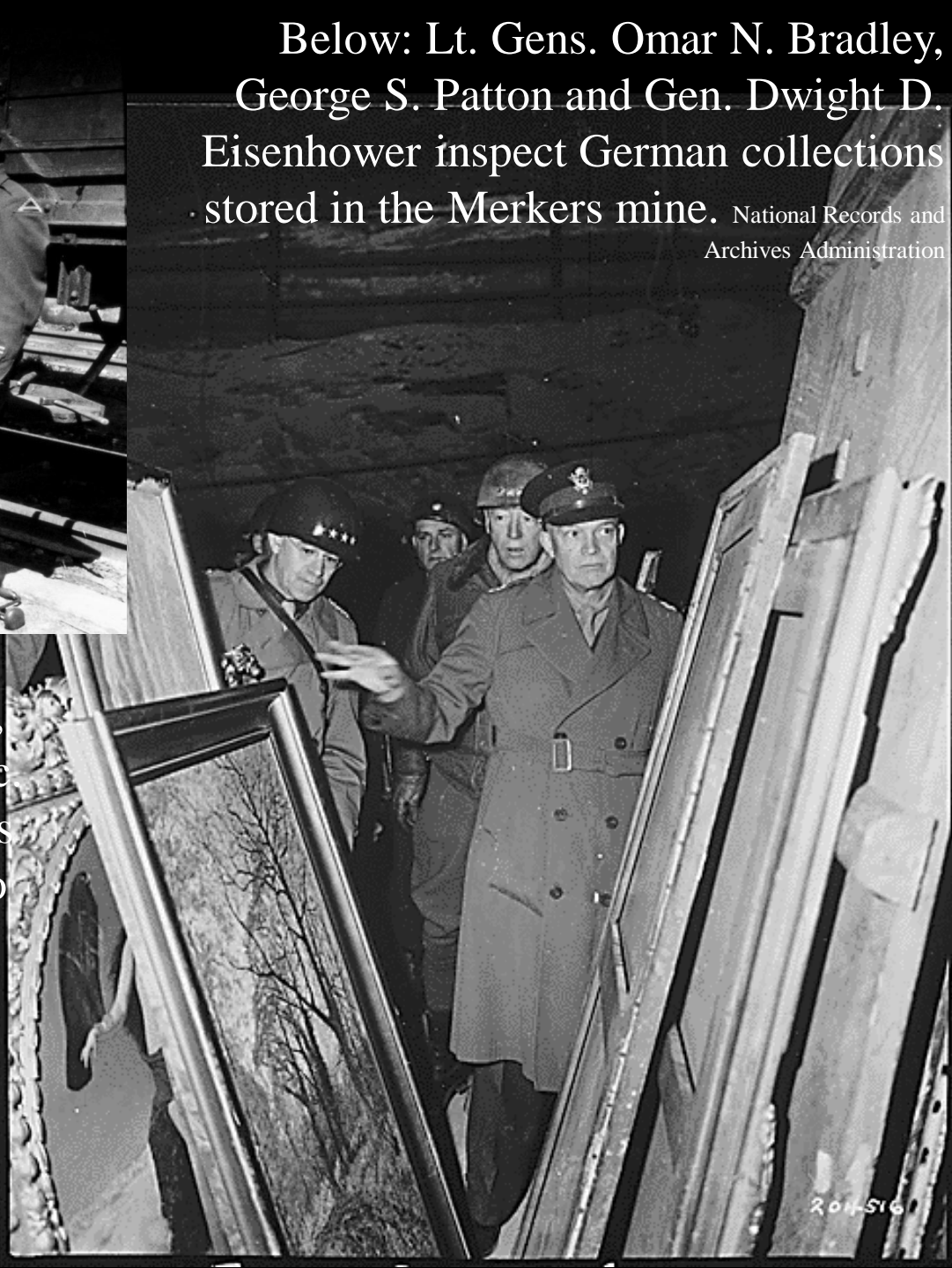
Monuments Men Foundation;
www.smithsonianmag.com/smithsonian-institution/qa-how-to-save-the-arts-in-times-of-war-5506188/#HigOmotB6Av22vob.99

Below: Lt. Gens. Omar N. Bradley, George S. Patton and Gen. Dwight D. Eisenhower inspect German collections stored in the Merkers mine. National Records and Archives Administration



Above: Monuments Man Lt. Albright, Polish Liaison Officer Maj. Estreicher, Monuments Man Capt. Lesley, and Pfc Espinosa, pose with Leonard da Vinci's *Lady with an Ermine* upon its return to Poland in April 1946

1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (2008)





U.S. Army soldiers secure the Iraqi Museum in Baghdad, Tuesday, Nov 11, 2003. [AP]

Beheaded statues

Getty; https://oi-archive.uchicago.edu/OI/IRAQ/dbfiles/farchakh/museum_photos.htm#iraqmuseumbaghdad2003_a



Museum Deputy Director Mushin Hasan in the looted museum. Getty images



Marine Col. Matthew Bogdanos holds part of the 5,000-year-old sacred Vase of Warka, one of the most valuable artifacts of the Iraqi National Museum that was stolen during looting and later returned in June 2003.

http://www.nbcnews.com/id/23698122/ns/world_news-mideast_n_africa/t/antiquities-help-finance-insurgents-expert-says/#.WdwPdUdrzjA

Cylinder seals and Uruk head after recovery in 2003 after theft from the Baghdad museum





Cori Wegener, Director,
Smithsonian Cultural
Rescue Initiative

Broken statues after Baghdad museum looting, 2003

(courtesy of Cori Wegener)

- 15,000+ objects looted
- 4,000 of those returned during amnesty
- 17,000 objects not from the museum returned
- To date, 8,000 objects are still missing





An Islamic State militant participates in the destruction of ancient ruins near the city of Nimrud, Iraq, in a video released by the Islamic State.

[asiasociety.org/blog/asia/can-world-save-antiquities-under-terrorist-threat/#RTp8MEoUY1C5BKwa.99](https://www.asiasociety.org/blog/asia/can-world-save-antiquities-under-terrorist-threat/#RTp8MEoUY1C5BKwa.99)



Coffin of Nedjemankh, Egyptian, c. 100 BCE

- purchased by the Metropolitan Museum of Art in July 2017 for 3.5 million euros
- Provenance docs indicate export from Egypt in 1971 with a licence granted by the "Antiquities Organization / Egyptian Museum, Cairo."
- 1983 Egyptian Antiquities Protection Law
- 2011 "Arab Spring" uprising in Egypt
- 2019 investigation by the NY DA office leads to repatriation



Kim Kardashian & Nedjemankh



Col. Matthew Bogdanos
in Iraq and in New York



Below: A monument of the city founder Duke de Richelieu covered with sand bags for protection, March 2022, in central Odessa.

<https://www.reuters.com/world/fearing-russian-shelling-ukrainians-try-shield-their-heritage-2022-03-10/>



Above: Uber has taken conservators to hundreds of museums and offsite storage locations throughout Ukraine.

Courtesy of the National Research and Restoration Center



Ukrainian cultural property targeted for destruction:
Mariupol's Museum of Local Lore which burned down
after a shelling by Russian-backed separatists. Photograph: AP;

<https://www.theguardian.com/artanddesign/2022/may/27/ukraine-russia-looting-museums>



Ukrainian cultural property targeted for appropriation/assimilation:

- Christian icons
- Ukrainian-Russian artists

Icon looted from an Orthodox church in Enerhodar



'Elbrus' by Arkhyp Kuindzhi
(1900), who was born in modern

Mariupol <https://european-resilience.org/analytics/looting-stealing-destroying-how-russia-weaponized-art-theft>

EMERGENCY RED LIST OF CULTURE

Documents, manuscripts, books

13th – 19th century AD

Manuscripts and miniatures, rare books, incunabula and early printed books; on paper or parchment; woodcut, gilding, engraving; handwritten and printed; in Arabic, Cyrillic, Greek, Hebrew or Latin script. Some books are also the first printed works of the new Ukrainian literature written in the popular language.

Manuscripts, miniatures and rare books

1. Orsha Gospel Book, language: Church Slavonic in Belarusian or Ukrainian variant, 142 folios, parchment, Orsha, 13th c. AD, 4", 19.4 x 26.4 cm. © NBUV
2. Aeneid, Ivan Kotliarevskiy, language: Ukrainian, 8", 1798, 20 x 13 cm. © NBUV
3. Pinkas of the Talmud Torah, Religious School in Kopychintsy, language: Hebrew, 8 folios, 1873-1889, 37 x 24 cm. © NBUV



Early printed books



4. First complete printed edition of the Bible in Church Slavonic language, paper, printing, woodcuts, leather binding, Ostroh, 1581, 2", 32 x 20 x 10 cm. © Museum of Book and Printing of Ukraine
5. Pateryk ili Otechnik Pecherskyi [Kyiv–Pecherskyi Pateryk], language: Church Slavonic, first edition, paper, engraving, printing, woodcuts, leather binding, Pechersk Monastery, Kyiv, 1661, 2", 28.5 x 17.5 x 6 cm. © Museum of Book and Printing of Ukraine
6. Theological text, manuscript on paper, Bakhchisaray, Crimea, 18th c. AD, 22 x 17 cm. © Liviv Museum of the History of Religion
7. The Altar Gospel, Pechersk printing house, silver, wood, paper, embossing, gilding, printing, engraving, 1707 (metal covers, 1658), 41 x 26 x 8 cm. © National Preserve "Kyiv-Pechersk Lavra"

Icons

Icons featuring figures (religious inspired art) painted on canvas or wood; oil and/or tempera; gilding and/or silvering.



8. "Saint Nicholas with scenes from his life" (oil, tempera, gilding, silvering on gesso-grounded two-piece lime-wood panel, relief, carving), Slobozhanshchyna, 1680-1685 AD, 125 x 81 x 1.7 cm (frame: 144 x 119 x 19 cm). © NAMU
9. "Christ the Vigilant Eye, Christ is the Grape vine, John the Baptist", oil on canvas, Kyiv region, 1853, 58 x 120 cm. © NAMU
10. "Exaltation of the Holy Cross of the Lord, the Virgin and Child, St. Nicholas, Yuri the Dragon Fighter, Crucifixion", oil on wood, folk icon, Bulovyna region, late 19th c. AD, 57.2 x 97.5 cm. © National Center of Folk Culture - Ivan Honchar Museum

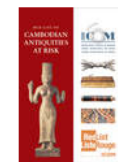
Red Lists Database



Afghanistan



Africa



Cambodia



Central America and Mexico



China



Colombia



Dominican Republic



Egypt



Haiti



Iraq



Iraq 2015



Latin America



Peru



Syria

Above: International Council of Museums (ICOM) Red List for Ukraine (sample page)



Case study: Scythian gold, c. 4th c. BCE

- Loaned by Ukrainian-controlled museums in Crimea prior to 2014 annexation by Russia
- currently stored at the Allard Pierson Museum, Amsterdam, pending Russian

appeal. <https://www.theartnewspaper.com/2021/10/27/crimean-gold-trove-must-return-to-ukraine-not-russia-dutch-court-rules>



Some relevant conventions

1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. This Convention establishes best practices for preventive measures, restitution provisions and a framework for international cooperation. It also sets 1970 as the “bright line” past which provenance must be proven.

1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Ratified by the U.S. in 2008. “This international convention regulates the conduct of nations during war and military occupation in order to assure the protection of cultural sites, monuments, and repositories, including museums, libraries, and archives.” <http://www.iraqmuseum.org/news/entry/us-ratifies-treaty-to-protect-cultural-property-in-time-of-war/>

2002 Rome Statute of the International Criminal Court makes it a war crime to deliberately attack historic monuments, among other structures, unless they are military objectives.

Some non-profits protecting cultural heritage



Smithsonian Cultural Rescue Initiative:
<https://culturalrescue.si.edu/>



Archaeological Institute of America's Nancy Wilkie Emergency Funds for Heritage Preservation:
<https://www.archaeological.org/wilkiefunds/>



U.S. Committee of the Blue Shield, dedicated to preventing the destruction, damage and theft of cultural property during armed conflict and natural disasters.
<https://uscbs.org/>

Object Registry



New Acquisitions of Archaeological Material and Works of Ancient Art

[Browse Objects](#) / [More Info](#)



Resolutions of Claims for Nazi-Era Cultural Assets

[Browse Objects](#) / [More Info](#)



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Safe Haven Objects

Safe Haven C

AAMD has issued Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis, to help safeguard irreplaceable works of art and archeological materials that are currently in danger of destruction. The Protocols provide a framework for museums to provide safe havens for works that are at risk because of violent conflict, terrorism, or natural disasters. Under the Protocols, owners/depositors whose works are at risk of damage or destruction can request safe haven at an AAMD member museum where the works will be held until they can be safely returned. All works deposited with AAMD member museums as safe havens will be treated as loans. To ensure transparency, AAMD member museums accepting such works will register them on this new section of

Indiana Jones Discovers That His Bid For Tenure Has Been Denied

by Andy Bryan <https://www.mcsweeneys.net/articles/back-from-yet-another-globetrotting-adventure-indiana-jones-checks-his-mail-and-discovers-that-his-bid-for-tenure-has-been-denied>

...the name “Indiana Jones” ...has appeared in governmental reports linking him to the Nazi Party, black-market antiquities dealers, underground cults, human sacrifice, Indian child slave labor, and the Chinese mafia. There are a plethora of international criminal charges against Dr. Jones, which include but are not limited to: bringing unregistered weapons into and out of the country; property damage; **desecration of national and historical landmarks**; impersonating officials; arson; grand theft (automobiles, motorcycles, aircraft, and watercraft in just a one week span last year); **excavating without a permit**; **countless antiquities violations**; public endangerment; voluntary and involuntary manslaughter; and, allegedly, murder.

...Moreover, no one on the committee can identify who or what instilled Dr. Jones with the belief that an archaeologist’s tool kit should consist solely of a bullwhip and a revolver.



“amateur archaeologist” Don Miller excavated/looted 42,000 objects, including remains from c. 500 humans, Which the FBI seized in 2014





U.S. v Ka-Nefer-Nefer

*No. 4:11CV504 HEA, 2012 WL 1094658, at *2 (E.D. Mo. Mar. 31, 2012), aff'd, 752 F.3d 737 (8th Cir. 2014)*

SAINT LOUIS ART MUSEUM

Mummy Mask of the Lady Ka-nefer-nefer



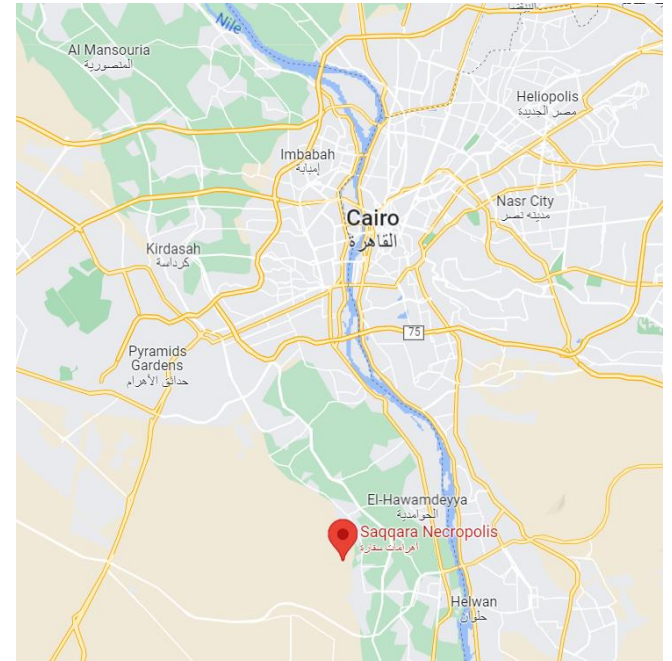
ONE FINE ARTS DRIVE, FOREST PARK, ST. LOUIS, MO 63110-1380
TELEPHONE: 314.721.0072

Codes of Ethics

- Association of Art Museum Directors (AAMD)
 - SLAM is a member
 - Museums should thoroughly research the ownership history of a work prior to the acquisition and make a strong effort to obtain all written records and documentation regarding its history
- International Council of Museums (ICOM)
 - SLAM is not a member
 - Museums should not acquire a work unless the provenance research confirms that the work was outside its country of discovery before 1970, which reflects the criteria in UNESCO's 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property







Trial Court



- “The Government cannot simply rest on its laurels and believe that it can initiate a civil forfeiture proceeding on the basis of one bold assertion that because something went missing from one party in 1973 and turned up with another party in 1998, it was therefore stolen and/or imported or exported illegally.”

Court of Appeals

- “The substantive issues underlying this litigation are of great significance, and not only to museums which responsibly seek to build their collections. The theft of cultural patrimony and its trade on the black market for stolen antiquities present concerns of international import...”
- “While this case turns on a procedural issue, courts are bound to recognize that the illicit sale of antiquities poses a continuing threat to the preservation of the world’s international cultural heritage. Museums and other participants in the international market for art and antiquities need to exercise caution and care in their dealings in order to protect this heritage and to understand that the United States might ultimately be able to recover such purchases.”



Citations



<https://www.slam.org/collection/objects/29655/>

Victoria A. Russell, *Don't Get SLAMmed into Nefer Nefer Land: Complaints in the Civil Forfeiture of Cultural Property*, 4 PACE. INTELL. PROP. SPORTS & ENT. L.F. 209 (2014).

<https://news.artnet.com/art-world/curse-of-the-mummys-mask-lifts-in-st-louis-68953>

<https://itsartlaw.org/2014/08/11/case-review-us-v-mask-of-ka-nefer-nefer-8th-cir/>

Questions?



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Thank you!

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