

ART LOVERS OF THE WORLD, UNITE!

The triumph of hypocrisy

Last year, in a media blitz, Italy's culture minister Francesco Rutelli boasted "to be at the forefront of the battle to fight looted antiquities" (NY Times 1/19/08). And in a flurry of articles, newspapers hailed the return of 68 antiquity pieces as the "Victory" of Italy against American museums. If victory there is, it is the victory of hypocrisy; for if Italy was really sincere in its proclamations, it would start at home and return the Horses of San Marco and the treasures that Venetians looted from Constantinople, still marked by the blood of thousands of innocent fellow Christians who were ignominiously massacred. But when the issue is evoked, Italy sheds away its moralistic anti-loot approach to assume, instead, a legalistic stand by which the San Marco loot is protected by a statute of limitation. If one invokes moral principles, one cannot put a time limit on it. So, which approach is correct: moralistic or legalistic? For sure the latter, if untainted by the former. The problem though is that the legal basis is, more and more, affected by an *uninformed* moralistic concern for the preservation of "cultural properties." A point in case is the recent judgment of the Court of Appeal of London, in a suit brought by the government of Iran against the Barakat gallery, which had offered on its website items that Iran claims to have been illegally exported.

Claiming antiquities to be stolen goods!

To pursue its case in an English court, Iran labeled the Barakat items as stolen goods. To do so it had to claim ownership of the goods, which it did by taking the *position* that since none of them had been exported legally "the ownership of each such item remains with the government of the Islamic Republic of Iran." Cleary tentative in its formulation, the claim of blanket ownership of antiquities was rejected by Justice Gray in a well reasoned opinion. Brandishing the sword of righteousness, however, the Lord Justices of the Court of Appeal reversed: even though they concurred with Justice Gray that no article of Iranian law explicitly gave full ownership of antiquities to its government, they argued that the 1979 Iranian law, banning their excavation as well as their exportation, inferred *possessory* rights tantamount to ownership. Had their Lordships bothered to consult Iranian law, they would have seen that their legal construct falls flat on its face. Because article 47.4 of the Penalty section of the very 1979 law that they invoked, explicitly stated that a person attempting to export antiquities without authorization would be fined and jailed, but the goods "shall not be confiscated." So much so for the possessory rights of the Iranian government! But the more important question is: what pushed the Justices into such a hasty—in camera—decision that went against the spirit of UK law? Like the media, the Justices seem to have been stigmatized by the ill-defined label of "cultural properties," and mesmerized by ill-informed propaganda surrounding them. This propaganda postulates that:

1- A modern State is the lawful guardian of the cultural inheritance of the Land it governs!

By this argument, the Taliban had the right to destroy the Bamiyan Buddhas, the government of Turkey had the right to destroy Armenian cemeteries, and by extension, the Serbs had the right to proceed with ethnic cleansing in order to preserve their "cultural" integrity. Antiquities though, were produced at a time when no boundaries and passports existed, and goods and artisans moved from one empire to another. Some even emphasized their lack of attachment to the land by calling themselves "free masons." Not only boundaries have changed since ancient times, but also the inhabitants within them. And, newcomers often prefer to wipe out their rivals' past. In Iran, for instance, right after the Islamic Revolution, Ayatollah Kho-meini's hangman, Sadegh Khalkhali, mobilized an armada of bulldozers to level down Persepolis. If he couldn't, it was not because the Supreme Leader revoked his mission, but because local landowners stopped him. The truth is that Culture is the inheritance of mankind, and cultural objects belong to the civilized world as a whole. In a world where Turkicized states are reinventing a pan-Turkic past, and Hindu supremacists are rewriting history against all scientific data, to make the modern state the guardian of cultural objects is in many instances like throwing the lamb to the wolves.

2- The State has no financial interest in antiquities while dealers and private collectors are rapacious vultures!

Whether Italy charges 10 or 100 Euros as entry fee for its museums, it cannot claim financial disinterest. What's worst though, is its three-year-old ministerial decree banning photography—even without a flash—in state museums. To obtain a photo, one must buy reproductions offered by the state. Avaricious by design, this decree is also indicative of a profound incomprehension of art and culture—at the ministerial level: a photo is not a substitute for seeing the real work of art, but allows the viewer to establish a personal bond with it, often resulting in a desire to see more of it. To restrict museum goers to state-provided photos is to oblige them to look at works of art from the angle dictated by its own "politburo," and to discourage people from studying them on their own.

When Italy lends items to foreign exhibitions, every item is insured, often at a very high price. But, a work of art is—almost by definition—unique and irreplaceable. Why insure the irreplaceable if not for monetary considerations. More generally, museums, exhibitions and antique sites have become important economical factors in states' budgets and planning. To portray governments as benevolent guardians of cultural properties is to forget the economical realities of modern times. In this context, designating antique dealers as "tomb robbers" by governments is just an easy way to eliminate competition.

3- The State is a better guardian of cultural properties!

It is simply not true, because most states are either too poor to afford the conservation of cultural properties or are unwilling to foot the bill for it. In St Petersburg, where the average salary of curators holding a PhD is less than \$200, an employee of the Hermitage robbed items from the vault to make ends meet. More catastrophic is the case of the National Museum of Iran where a staff member simply melted the foundation plaque of Persepolis—a most important historic document—for the mere price of its gold! Countries which doggedly pursue the return of "their cultural properties" from abroad never show the same zeal at home. Turkey, for instance, recovered after a six year battle the Lydian Horde from the Metropolitan Museum only to lose some of its most important pieces as soon it took custody of them. In 1990, I reported to the Consul of Turkey, the possible theft of a Koran from one of its mosques. A year later, when I enquired about the affair, I was told that it was too "hot" to be pursued, and I should forget about it. It took two more years of investigation by a courageous Turkish reporter, to whom I had given my documents, to partially uncover the plot. The government of Turkey though, never divulged what really had happened. As for Italy, one has to venture into the Bargello museum of Florence to see how some of its cherished "cultural properties" are exhibited: the bulbs in the rooms of the upper floor are mostly burned, and there is no light to see whatsoever. I sympathize with the assessment of Pietro Casasanta, whom Italy is designating as a tomb robber, and who exclaimed in court: "If it weren't for tomb robbers, people wouldn't be seeing vases in museums" (NY Times 1/18/08). In truth, if it weren't for their sojourn in American museums, the 68 returned items basking under the bright lights of the Quirinale, would have been probably imprisoned in the darkness of a Bargello-type museum, with an entrance fee and no photography allowed, whereas in America they could be viewed and photographed for free.

4- "Cultural properties" need special restitution laws in the international context!

I wonder why? The relevant issue here is: why is Italy always seeking the return of "cultural properties" and France is not, even though the latter's interest in its past is no less than the other? The answer is simple: France is willing to pay the right price for it, and Italy is not. In France, works of art and antiquities are sold free of constraints in auctions, and if the government deems an item to be culturally important, it exercises a preemption in the auction room, thereby freeing the bidder from any further financial obligation. An item not preempted on the spot can leave the country with no further restrictions. By contrast, a successful bidder in Italy has to pay the full price only to find that export license is never going to be granted. Thus, foreign bidders don't buy in Italy, and items on

the Italian market never reflect their true international value. I ask those who think that Italy has a right to protect its cultural patrimony in this way: how would you feel if your city put restrictions on your property first, depressed its value, and then bought it on the cheap? Moreover, suppose a Jewish family had saved through all the vicissitudes of Fascist and Nazi persecutions an important manuscript; why should Italy have an inalienable right to restrict its exportation? If Italy really wants to buy it, it must be prepared to pay the right price in the same way France does.

The fact is, if a "cultural property" comes from a monument or land that belongs to the government of Italy, it can pursue its return as a *stolen good* in any other country, because all civilized countries have a law to that effect. If it comes from a land that belongs to a private person, it is for the landowner to ask for its restitution. There is simply no need for further international laws or agreements in this respect.

5- Buried items automatically become cultural properties!

In the crusade to preserve "cultural properties," a strong emphasis has been put on buried items, and by extension to underwater objects. Turkey for instance has laid claim on the contents of a shipwreck off the coast of Bodrum. As it happens, this was a ship carrying commercial goods from the Danube to Egypt. The Turks themselves cannot bring up its cargo but rely on the benevolent services of the Texas A&M University. What's more, the wreck is beyond the internationally recognized 12 miles limit, but within the 50-200 miles coastal waters that Turkey claims as its own. Why should this cargo be considered a cultural property of Turkey?

The celebrated Euphronios krater, recently returned by the Met to Italy, is another example of an unwarranted fixation on buried items. The krater was supposedly taken from an Etruscan tomb. The Etruscans, who came from Anatolia and settled in Italy, seemed to have kept a liking for objects from their former neighbors, the Greeks. The Euphronios krater was in fact produced in Athens and imported to the land later named Italy. US Customs, like any other customs, requires for imported goods a certificate of origin, i.e., where the item was fabricated not where it came from last. Therefore, by US law, the Euphronios krater is of Greek origin, and cannot be considered Italian property. By getting buried, an item cannot acquire a new certificate of origin. *The Met should have never returned the krater.*

6- Archeology cannot be a private affair!

But archeology was born out of the passion of daring visionaries who, using private financing, ventured into distant lands, from Mesopotamia to Egypt, in a quest to uncover mankind's past. Howard Carter—of Toutankhamon fame—was one, but not the only one. In fact, all important antiquity collections of major museums had been dug out by private individuals at a time when the concept of a museum was a foreign one to most non-Western countries.

7- Every country longs to keep its antique objects!

The idea of preserving antique objects in museums is a European concept not shared by many. Even though Iranians have always cherished their past, their natural inclination was to discard old items for the sake of the new. Carpet for instance, was a prized item for every Iranian household, rich or poor. Yet not one 16th or 17th century carpet has survived in Iran. An old carpet had to be replaced as soon as one could afford it. Europeans on the other hand, collected the old ones, many as fragments.

When an archeologist digs a site, every item it uncovers may provide valuable information on past cultures: a brick may offer a clue to construction techniques, a shard may confirm theories on ceramic making, and a vase may be indicative of decorative sophistication. Because of the information they provide, they are all "cultural" properties. Yet, many are discarded on site. So the question is what makes a cultural property museum worthy. Esthetic beauty and historical relevance are certainly worthy factors, but I dare say that at the end of the day, the factor that overwhelms all the others is the monetary value. A point in case is the Barakat items now claimed by Iran to have come from the "Jiroft" site. By the avow of Iran's own expert, village people from the Jiroft area had been digging their lands and finding this type of items, for more than two years, with full knowledge of the authorities. These items are of a type dubbed "intercultural style" by Philipp Kohl in 1979, specimens of which have been discovered from Mesopotamia to Central Asia. For the past 40 years, these specimens have regularly appeared on the art market without an eyebrow being lifted by the Iranian government. What suddenly attracted its attention was the high price (a quarter million Euros) that one such an item fetched at a Paris auction. Suddenly, the Iranian government, in concert with some archeologists, cried foul. As for the Quirinale items, chances are that if the Getty or the Met had not paid high prices for them, Italy would have never pursued their return with such zeal.

8- Private excavations must be banned!

The very first antiquity law of Iran, promulgated in 1930 under the first Pahlavi king of Iran, Reza Shah, allowed for private excavations under government license. Although a nationalist, he was a pragmatist and thus devised an equitable system for the grant of excavation licenses and the division of the finds between the government and the private operator. The system worked and wonderful items were discovered, and much information was collected before his inept son succumbed to the anti-colonial and Marxist rhetoric prevailing at the Unesco. The unholy alliance of mediocre archeologists and mediocre bureaucrats trying to protect their turfs succeeded in banning private excavations. Their main argument was that much information is lost when "tomb robbers" dig. Yet no one ever evaluated how much information is lost by archeologists themselves for, like any other tomb digger,

they only bring back the prized items and discard the rest.

More importantly, the sum total of the information lost by all the tomb robbers of the world, pales in comparison to what was lost when thousands of archeological sites disappeared behind dams and irrigation projects, from Egypt to China. To protect their turfs, archeologists and government officials preferred to have these sites buried and lost forever, rather than to allow private entities unearth them, as they are doing nowadays with much success in open seas.

9- Information must be controlled!

More often than not, officially excavated items land into museums where they are buried once more, along thousands of other items that overwhelmed curators are unable or unwilling to share with outsiders. Why unearth them if they are to be buried again in museum basements?

In the name of preserving information, but in reality to protect their turfs, archeologists have even instituted an omerta rule: unexcavated items must not be published, no matter what valuable information they may provide. And when a colleague of theirs, published a book to discredit unexcavated items with false data and wrong methodology, not one dared to denounce him (see the letter on O.W. Muscarella on my website). And not one had the integrity to bemoan publicly the melting of the gold foundation plaque of Persepolis, lest their unholy alliance with government officials be weakened.

Myopic policies can only lead to the stifling of research and the endorsement of myopic views on art and culture.

So I say:

To British lawmakers: The erroneous judgment of the Court of Appeal is a serious blow to the free flow of cultural knowledge, and an invitation to chaos; it needs to be rectified.

To the Government of Greece: The Lords of the Court of Appeal have provided you with a window of opportunity to legally claim back the Elgin marbles (although I strongly believe that they belong to the British Museum and should remain there). Go for it.

To the Government of Turkey: Put the anti-loot pretense of the Italian government to task, and demand the restitution of the San Marco horses and loot.

To the Met and the Getty: Put away the self imposed restraint on provenance. When you acquire an item, you exhibit it, you publish it, you restore and preserve it, and you provide the means for much needed comparative studies. Because you render such a precious service to world culture, you need to fight in court against any attempt to restrict your acquisition capabilities.

To the Art Lovers of the World: Boycott any governmental museum that does not allow photography, starting with Italy.