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10

Failures and Consequences of Antiquities Antitrafficking Policy in Mesoamerica

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Is Cultural Property Policy Working?

Few countries have enacted legislation that provides blanket protection against the import of looted antiquities from other countries (Brodie and Renfrew 2005, 347), meaning that international conventions such as the 1970 UNESCO convention serve as the backbone of our global efforts to regulate the looting, trafficking, and sale of illicit antiquities. It has been more than four decades since the drafting of this convention, yet few practical evaluations of the successes or failures of this and other policy interventions within targeted local contexts have been made.

What is the on-the-ground result of policy interventions into the looting and trafficking of cultural objects? How do we measure success and failure? Are there unforeseen consequences to our regulation decisions? These are some of the most important questions to ask about our past and present attempt to disrupt the global illicit trade in antiquities, and they are among the most difficult to answer.

While reviews of the UNESCO convention have been conducted, they tend to be inward looking. They discuss the convention itself and rarely focus on the on-the-ground effects of the legislation. Success is marked in number of objects returned or through the number of countries that have signed the convention, rather than in the number of criminals caught or number of archaeological sites effectively protected.

For example, Prott's 2011 evaluation of the UNESCO convention considers success to be that so many countries signed on, that some museums ac-

cepted it, that it has encouraged training workshops, that it has inspired other conventions, and that some countries have changed their law to match the convention's wording (Prott 2011, 3). However commendable many of these successes are, none relate directly to the reduction of the looting and trafficking of antiquities, the disruption of trafficking networks, or the demonstrable protection of cultural sites. Prott's evaluation of the weaknesses of the convention are more telling: the drafting is clumsy, it does not mesh well with local and civil law, it is not retrospective, and nothing compels states that sign it to do anything at all (Prott 2011, 4–5). Even these measures of weakness are inward focused and do not address the practicalities of preventing looting and disrupting antiquities trafficking.

To accurately assess the effects of regulation on the illicit trafficking of antiquities, we must seek information from all points in the trafficking chain: source, transit, and market. We must look at the whole picture. By assessing just one aspect of the trade, we risk crediting policy measures for the effects of something else. A shift in market tastes, improved on-the-ground policing, or depletion of antiquities supply might cause a reduction in antiquities seizures or looting that could mistakenly be assigned to successful policy. Furthermore, if we do not evaluate the effects of policy on the ground, we also risk neglecting to fully assess unforeseen consequences of our policy decisions. Policy that is effective at disrupting the market might actually inspire more or different looting at supply.

In this chapter I will assess the effects of policy decisions intended to regulate the flow of looted Maya antiquities into the United States since the 1970 UNESCO convention. Emerging from this assessment is a picture of effective regulation, unforeseen consequences, and a subsequent failure to properly respond. A 1972 U.S. law effectively reduced the incidence of theft of Maya sculpture, but it encouraged the growth of a market for looted Maya vases and other small, portable objects. Further policy decisions based on the discourse of the UNESCO convention were not effective in reducing the looting and trafficking of these objects.

The results of a shift from policy focused on objects (object-specific regulation) to policy focused on country to country partnerships (country-specific regulation) can be seen on the ground, on the market, and in what little evidence we have for illicit antiquities transit in the Maya region. Our policy interventions to prevent the looting, trafficking, and sale of cultural objects may not be working and we must reassess them.

The Market for the Maya

The ancient Maya occupied large parts of Mexico, Guatemala, Belize, Honduras, and El Salvador from about 2000 BC up to the Spanish Conquest. Especially during the Classic period (approximately AD 250–900), their iconography and artistic execution excelled. Maya art first drew the attention of the adventurers of the nineteenth century, then the archaeologists of the early twentieth century. By the middle of the twentieth century, the Maya were "discovered" by the art market as well, with devastating consequences.

In the nineteenth century few museums or individuals collected Maya antiquities. Although some Maya objects left Central America for the United States or Europe as ethnographic curios, Maya art, being entirely non-Western, did not appeal to the market. In a Europe and United States obsessed with the perceived, if mistaken, origins of European exceptionalism, there was no place for Maya imagery of the lords of the hours of the night, sky serpents, and jaguar babies. Furthermore, the Maya were largely unknown at this time. Many Maya cities were truly "lost": swallowed by the jungle and unknown to even the modern Indigenous people of the region. The writings of John Lloyd Stephens (1841, 1843) and the drawings of Frederick Catherwood in the 1840s exposed many Maya cities to the outside world, but archaeologists did not arrive until the end of the decade (Yates 2013). Nonspecialist and art market attention was far behind them.

That is not to say that there were no nineteenth-century Maya antiquities collections. There were, but they tended to be "local," the product of the hobbies of wealthy Mexicans or European expatriates who lived near Maya sites. These people skirted the line between collector and investigator, and for the most part their collections drifted into anthropological museums abroad.

With the growth of such artistic movements as Dadaism and Surrealism in the early 1900s, the art world's emphasis on "Classic" forms was replaced with an examination of form in general. The most popular artists of this period began to draw on the non-Western for inspiration: Africa, the Pacific, Asia, and Latin America. As the art market caught up, these non-Western traditions were lumped together under such racist and deplorable descriptors as "primitive," "native," and "tribal" art. These traditions are in no way related to each other, and such a collapsing of geography and function belittles the cultural meaning of the pieces (Brodie 2011, 410). By the 1950s several prominent and deep-pocketed collectors appeared, such as Nelson Rockefeller, whose

collection eventually became the Museum of Primitive Art which, in turn, became the core of the Metropolitan Museum of Art's non-Western collections, including Mesoamerica. There was suddenly a lot of money to be made off the Maya.

By the time the art market noticed the Maya, all the Maya countries had enacted legislation that claimed at least a degree of state ownership of ancient objects and banned the extraction and export of antiquities without a permit. Permits were only to be granted to credentialed archaeologists from well-known academic institutions. There was no fully legal way to buy Maya antiquities by the time collectors and museums in the United States became interested in them. Yet where there is demand, a supply is found. The end result was the widespread, destructive, and illegal looting of nearly every Maya site.

Stealing Stelae: Problem Recognized, Problem Solved?

Much of the mid-twentieth-century demand for Maya art in the United States was focused on sculptural items, particularly stone stelae. These massive pieces were erected throughout the Maya region during the Classic period and served important social, political, and ritual functions. Many portray lords in full regalia and/or long inscriptions which record significant events. Stelae are prominent at many sites, and because they often have clear dates carved on them, they were a focus of early archaeologists who wished to understand the temporal sequence of Maya sites. Hundreds of stelae were recorded in photos, drawings, casts, and writings in the first half of the twentieth century and became well known in academic circles (e.g., Morley 1937–38). Archaeologists rarely removed stelae from their original context largely because of their size. Little was done to protect them, as no one predicted widespread stelae looting: theft was thought to be unlikely.

Sadly, this was not the case. Starting in the 1950s but intensifying in the 1960s, demand grew among United States–based museums and collectors for Maya sculpture and thus ensued a period in which they were systematically looted (Coggins 1969, 94; 1998, 52; Robertson 1972, 147). Looters, sometimes directly employed by intermediaries or dealers, moved through the jungle locating stelae, hieroglyphic staircases, and stone ball-court markers. To ease transport, stelae either were broken into multiple pieces via toppling or through application of heat, or were thinned using saws (Coggins 1969, 94; Graham 1988, 123; Robertson 1972, 147; Sheets 1973, 317). These practices mutilated the sculptures, destroying the carved edges and sometimes shattering them into unrecognizable fragments. The pieces were then taken out of the jungle, trafficked into market countries such as the United States, and then purchased by collectors and museums (Robertson 1972, 151).

Archaeologists returning to sites would find sculptures such as stelae badly damaged or missing altogether. United States–based sales catalogues contained sculptures from Maya sites that archaeologists had not even discovered yet (Robertson 1972, 147). Well-recorded Maya stelae would suddenly appear on display (thinner, and in multiple pieces) in major U.S. museums. Coggins (1969, 94) likened the Mayanists' experience of these appearances to the way a Classical archaeologist would feel if the local museum had suddenly and secretly purchased the Arch of Titus. Archaeological sites were not the only casualties of this looting. In 1971 Pedro Arturo Sierra, an assistant to archaeologist Ian Graham, was killed when the two came across men looting a stela at La Naya, Guatemala (Robertson 1972, 147). In 1971 Merle Greene Robertson and her research team were detained by men with submachine guns who were sawing stelae at Itsimté, Guatemala (Robertson 1972, 147). It was impossible for collectors and museums not to know that the stelae they purchased were looted: the fragments display saw marks, and many appear in situ in academic publications. They bought them anyway.

It is clear that the primary market for looted Maya sculpture was the United States (Gutchen 1983, 225), and that action within the United States was needed to stem the flow of stolen objects. In 1972, as a direct result of effective lobbying by archaeologists, the United States enacted Public Law No. 92–587 (Regulation of Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals) in an effort to prevent the movement of illicit Pre-Columbian antiquities into the United States. Under this law no ancient Mesoamerican sculpture, mural, or architectural item is allowed to enter the United States without an official permit from its country of origin. As none of the Maya countries issue such export permits for anything other than museum loans or scientific study, and certainly not for market purposes, this law prevents the import of these types of Maya objects into the United States for the purpose of sale. The law is "effectively enforced without creating a cumbersome and intrusive customs regime" (Bator 1982, 334).

The 1972 law is what I term "object-specific": the focus is not on the country of origin of the piece, rather on the piece itself; this is an important dis-

tinction. To risk simplifying a complex situation, ancient borders do not reflect modern borders (Yates 2015a, 2015b). Although, for example, Guatemala claims that all archaeological objects are property of the state, and although the United States, more or less, recognizes the sovereign right of Guatemala to do so, proving that a looted and trafficked Maya object from Guatemala is stolen property to the satisfaction of a U.S. court is nearly impossible. One barrier to doing so is proving that the piece left Guatemala after the date on which Guatemala claimed all antiquities as state property. Without, say, time-stamped photographs of the object in Guatemala after that date, how can one prove that an unprovenanced object left that country 10 years ago or 100 years ago? More challenging is proving that an antiquity is from Guatemala in the first place if archaeologists have not previously recorded it. Although regional styles exist among Maya pieces, it is almost impossible to state for a fact that a looted Maya object came from Guatemala and not from Belize or Mexico. In banning the import of any Maya sculpture that does not have an export permit, even when the country of origin is undetermined, these issues are avoided. The sculpture itself is contraband in the United States and, in theory, no specific country needs to prove that it is their property to prevent further trafficking and sale.

By most accounts, this law has been effective. While the law does not apply to markets for stelae beyond the United States, removing the primary market for these pieces was a significant achievement (Bator 1982, 333). Contemporary commentators detected an immediate drop in the appearance of Maya sculptures on the U.S. market and a reduction of stelae theft at Maya sites (Coggins 1976, 14; 1998, 53; Bator 1982, 334; Gutchen 1983). Museums and collectors could no longer publicly acquire Maya sculptures in the United States without serious backlash. Not only did demand plummet in response, so did supply. It appears that this law has served its intended purpose and effectively disrupted the looting of Maya sculpture and the trafficking of these objects into the United States. Unfortunately, the 1972 law has had an entirely unforeseen consequence on the ground in the Maya region.

Vase Looting: Devastating Response to Policy Decisions?

Maya ceramics range from plain utilitarian wares, the sort of pots used for everyday cooking, to elaborately decorated cylindrical tall-sided vases, often with painted scenes and writing. Although likely used in life, they are most often found in ritual deposits and tombs. These vases display a number of iconographic styles, some thought to be regional and others temporal. The distribution of different styles of Maya decorative pottery is poorly understood as a result of the intense looting of these objects.

It is difficult, perhaps even impossible, to definitively say that a looted Maya vase came from a specific archaeological site. We know from legitimate archaeological excavations that the Maya exchanged vessels over great distances and across modern borders. Even in an extreme case where a looted vase is inscribed with the name of a known Maya polity, there is no way to tell whether the vase was actually deposited at that location or whether it traveled in ancient times to a different polity. For a particularly strong example of this quandary, see Reents-Budet's (1994) discussion of the Buena Vista vase excavated at the site of Buena Vista (Belize) but bearing the emblem glyph of Naranjo (Guatemala).

Although widespread demand for Maya sculpture in the United States dried up after 1972, the public popularity of the Maya increased. Significant advances in the decipherment of Maya writing provided tantalizing new information that captivated public imagination (Coe 1992; Graham 1988; Schele and Friedel 1990) and the Maya were incorporated into the various popular New Age movements of the era (e.g., von Däniken 1968). Museums sought to increase their Maya holdings due to public interest, and collectors did not abandon the Maya. Again, where there is demand, a supply is found.

The 1972 law was strong, but it applied only to certain types of Maya objects: sculpture, architectural elements, and murals. This left smaller, portable Maya antiquities unprotected. Jade masks, incised shells, decorative vases, and other smaller items did not require a permit to enter the United States. As the market for stelae waned, the market for Maya vases boomed (Coggins 1976, 14; 1998, 53; Bator 1982, 334). Maya ceramics were not unpopular before 1972: Coggins (1969, 98), citing observations made by archaeologist E. Wyllys Andrews, notes the existence of vase looting bands in Campeche before the law went into effect. But after the 1972 law prevented the easy import of monuments, commentators note that Maya vases began appearing more frequently in sales catalogues at higher prices, and that looters began to focus their efforts on them.

Indeed, the influx of Maya vases post-1972 was not only visible in the U.S. market, it could also be seen on the ground. Stelae looting looks very different from vase looting. Although the mutilation of a stela for transport is up-

setting, in most cases only the stela and its associated deposits are damaged in the looting process, because stelae were usually placed in open plazas or platforms, near but not within buildings. Vases, however, tend to be found in tombs which, in turn, are found deep within Maya buildings. To loot a Maya vase, one must usually tunnel into a large ancient building (Coggins 1976, 15). Maya structures that have been looted for vases and other small items are trenched and pitted like Swiss cheese (Pendergast and Graham 1981, 16). Some have been completely bisected. Once looted in this manner, they can collapse in on themselves. At times, they have reportedly collapsed on looters.

Before the 1970s the looting of graves within temples had been done "casually and opportunistically" (Coggins 1998, 55). Following the 1972 law, archaeologists increasingly reported the existence of looting gangs targeting and tunneling into the structures at Maya sites. They also began to record the proliferation of looter trenches, digging conducted on a scale not previously seen. There is evidence that intermediaries directly funded large looting ventures that combed the Maya region for pottery (Sheets 1973, 318; Yates 2012). Locals in difficult financial situations could reasonably engage in pottery looting for side income; although trenching a temple is hard work, vases are extremely portable, unlike stelae, and do not require special equipment for removal or transport (Paredes Maury 1999). During this time, nearly every known Maya site was looted, as were countless unknown sites. At some sites, such as Ka'Kabish in Belize, every structure was partially destroyed by this wave of looting (Pendergast 1991, 89). The site continues to suffer from looting today, despite local attempts to guard the area (C. Tremain, pers. comm. 2017). Furthermore, around 75% of the building groups at the site of Ixtontón, Guatemala, had been cut by looters' trenches before 1985, when the site was first located by archaeologists (Laporte and Torres 1988, 53). At the site of Naranjo, Guatemala, Fialko (2005) has documented more than 270 tunnels and trenches.

Despite the success of the 1972 law at preventing the import of looted stelae into the United States, and despite the massive and detectable increase in vase looting, no object-specific legislation was enacted to prevent the movement of looted portable Maya antiquities. This is most likely because a different type of cultural property protection regime had been adopted: what I term country-specific regulation.

The 1970 UNESCO convention was ratified by the United States in 1972

and implemented in 1983. In general, the convention is focused on the rights, responsibilities, and jurisdictions of the states party to it. It promotes state-to-state cooperation for the return of looted and stolen cultural property but offers limited suggestions for state-to-state cooperation for the prevention of trafficking. Some countries that have implemented the convention have done so in a manner that requires the development of bilateral and multilateral agreements, with the United States as a prominent example. Under U.S. implementation, a country that is a signatory to the convention notifies the United States that they have a looting problem, provides proof that the United States is a major receiver of these artifacts, and requests import restrictions on a list of artifact types. After a lengthy process the United States and the requesting country sign a Memorandum of Understanding (MOU) that promises that the United States will restrict the import of the listed types of antiquities for a period of five years (renewable) while requesting country attempts to stabilize the situation on the ground.

These MOUs are country-specific: the objects stopped at the U.S. border must be shown to have come from a country that shares a cultural property agreement with the United States. Only Maya vases from countries that have a cultural property MOU require a valid export permit to be allowed into the United States. Vases from countries that do not have an MOU with the United States do not require an export permit.

In theory, a vase with an undetermined country of origin may be able to slip through. As previously discussed, it is impossible to say for certain from which modern country a looted Maya vase came, there is always doubt, and it is possible that traffickers and dealers use this to their advantage (see Gilgan 2001). There were certainly opportunities to cast such doubt on the origins of looted Maya vases. Although at the time of writing all Maya countries have a cultural property MOU with the United States, they did not all obtain MOUs at once. Belize, a major source of Maya vases, was only able to obtain an MOU with the United States in 2013.

Following implementation of these country-specific regulations, no reduction in the appearance of Maya vases on the United States market is observable (Gilgan 2001, 80). By many accounts, major vase looting operations continued in the Maya region well into the 2000s. Pendergast (1991, 89) even documented an increase in the looting of Maya sites for vases in the late 1980s and early 1990s, 20 years after the passing of the 1972 monuments law and 10 years after the U.S. implementation of the UNESCO convention. It should be said that

there appears to have been a significant decline in vase looting in recent years; yet this does not seem to be the result of effective regulation. Instead, trafficking of other regional commodities, particularly narcotics, lumber, and other forest products, has become a more lucrative focus of time and energy (Yates 2014, 2015a, 2015b) and it is possible most Maya sites have been gutted, the resource largely exhausted.

Success of Object-Specific and Failure of Country-Specific Regulation

In this case it seems clear that object-specific regulation worked and country-specific regulation did not. Banning the import of all Maya stelae lacking permits into the United States, regardless of country of origin, has drastically reduced the number of looted stelae that enter the country and also the number of stelae that are looted in the first place. Restricting the import of Maya vases based on country of origin and existence of a cultural property MOU does not seem to have reduced the number of looted vases entering the United States, nor has it reduced the incidence of site looting. Yet the model on which our current international regulatory regime is based is mostly country-specific.

Under many regulatory regimes, the person in possession of an object is assumed to be that object's owner unless someone can prove otherwise to the satisfaction of the law. Object-specific regulation considers antiquities to be a particular class of property that rests outside this usual assumption about possession and ownership. By simply adding another criterion before ownership can be assumed (an export permit), object-specific regulation acknowledges the significant potential for illegality in the movement of antiquities. This burden of producing a valid export permit should be negligible for a rightful owner but almost insurmountable for a trafficker.

Other types of objects are treated this way under existing international regulation. The most relevant example to this discussion is the extensive list of flora and fauna whose movement across borders is banned by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). There are no circumstances under which various types of orchids, rhino horns, elephant tusks, and other protected natural goods can move from one signatory country to another without a permit. Permits are granted only for scientific and educational purposes and, even then, after considerable work on the part of the person seeking to export the material. The underlying assumption of this object-specific ban on the movement of natural objects is that biodiversity and extinction are global issues, not country-specific issues, and thus require global regulation. To ban the import of elephant tusks from one country but not those from another, the thinking goes, would do little to prevent the poaching of elephants. It also might encourage poachers to launder their tusks through countries with weaker regulatory regimes. These are exactly the type of consequences seen in the trafficking of antiquities with country-specific regulation in place.

Like conservation of the natural world, the protection of cultural heritage is of global, not country-specific concern. If we accept that there exists a cultural heritage of humanity, which UNESCO certainly does, country-specific regulation of the movement of antiquities appears to fall far short of the mark. If all of humanity is the cultural inheritor of the glory of the ancient Maya, why should the prevention of the looting of Maya objects be left to the shifting political situations of the governments of just two countries? Why do those who wish to own antiquities privately get the benefit of very little doubt while the collective good of humanity is left to suffer in the equation? We must reassess both our priorities and our policy.

Policy Reassessment

To say that the model put forth by the 1970 UNESCO convention does not work is potentially devastating and certainly hyperbolic. The Convention is simply good at achieving some goals, and not good at achieving others. It is not particularly good at dealing with the actual trafficking of objects, the in-between space where cultural property moves from jurisdiction to jurisdiction, losing its demonstrable connection to source. Yet, at this international level, connection to source remains a core component of stopping smuggled objects at borders and effecting cultural property return.

For example, recent moves toward global restrictions on the movement of objects from Syria and Iraq such as UN Security Council Resolution 2199 (2015), retain all the assumptions, and thus all the limitations of country-specific regulation. The UNSCR assumes that it is possible to distinguish Iraqi and Syrian objects from those that originate in neighboring countries (it often is not). It also assumes that it is possible to distinguish antiquities looted during recent conflict from those that were looted beforehand (it almost always is not). Such regulation is expensive at best, though even with infinite resources,

the contextual information tying the piece to a specific country of origin is both unrecoverable and required to effect return. At worst, it is simply unenforceable. It is possible that country-specific regulation is now entrenched.

Yet hope is not lost. Although a CITES-style global object-specific ban on the movement of antiquities might be unrealistic, individual countries can enact object-specific legislation, and some market countries appear to be doing just that. In 2016, for example, Germany reformed its cultural property law, which now, among other things, prohibits "imports of unlawfully exported cultural property from other States and introduce[s] licensing procedures for cultural property to be exported from Germany" (Beauftragte der Bundesregierung für Kultur und Medien, 2016). A 2016 summary report of the Act distributed by Germany's Federal Government Commissioner for Culture and the Media states:

> The new Act stipulates that cultural property that was unlawfully exported from another States Party to the UNESCO 1970 Convention before the Convention entered into force in Germany, i.e. 2007, is considered to have been unlawfully imported into Germany if, upon import, no documents are presented that prove that the cultural property has been lawfully exported from the respective State.

Thus, cultural objects, no matter their origin, that do not have an export license are "considered to have been unlawfully removed" (Beauftragte der Bundesregierung für Kultur und Medien, 2016). This law appears to be object-specific and represents one of the first times a market country has enacted such policy on a large scale. At the time of writing, the effects of Germany's law remain to be seen.

However, the effects of the U.S. ban on the import of Maya stelae are clear. The 1972 law removed the primary location of demand from the trafficking chain and noticeably reduced stelae looting. Market countries that wish to stem the flow of illicit antiquities should consider requiring the presentation of a valid export permit in all cases of import and sale. While this places a burden on the market country, the cost of checking the existence of a permit is certainly less than either full investigations into suspected trafficking or lengthy legal cases of repatriation. Indeed, the 1972 law banning the import of stelae without permits has not caused a significant financial or logistical burden for the United States. The way forward is simple: no permit, no entry, no sale.

Policymakers and policy advisors must focus on artifacts, not countries of origin. Object-specific regulation is rare but potentially quite effective. Country-specific regulation is common but questionable. Our regulatory paradigm must shift if we hope to protect cultural property on the ground and prevent trafficking.

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