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FINDERS KEEPERS? THE REPATRIATION OF EGYPTIAN ART

*Aisha Y. Salem**

I.	INTRODUCTION	173
II.	VIEWS ON CULTURAL PROPERTY	174
	A. <i>Cultural Nationalism</i>	175
	B. <i>Cultural Internationalism</i>	176
	C. <i>Where Egypt's Cultural Property Belongs:</i>	
	<i>Competing Views</i>	177
	1. National Identity	178
	2. Ability to Preserve	178
	3. Environmental Damage	179
	4. Ties to Ancient Civilizations	180
III.	APPLICABLE INTERNATIONAL CONVENTIONS	180
	A. <i>The 1954 Hague Convention</i>	180
	B. <i>UNESCO 1970</i>	182
	C. <i>UNIDROIT 1995</i>	183
IV.	REPATRIATION	184
	A. <i>Repatriation: The Legal Issue</i>	184
	B. <i>Arguments For and Against Repatriation Generally</i>	185
	C. <i>Turkey's Success</i>	188
	D. <i>Egypt's Efforts, Failures, and Successes</i>	190
	E. <i>What Egypt Can Do: An Alternative Approach</i>	192
V.	CONCLUSION	193

I. INTRODUCTION

Ancient Egypt is an era in history that has drawn immense fascination for hundreds of years. Ancient Egyptians contributed much to modern-day civilization, including both mathematics and engineering. Perhaps the ancient Egyptians' most valuable contributions were the beautiful objects

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of art we have come to admire. Ancient Egyptian art has been adored and studied all over the world. However, many Egyptians would prefer for that art to be adored at home, in Egypt.

Most of the artifacts Egypt seeks to recover were taken from inside its borders during the late eighteenth and early nineteenth centuries. In fact, Europe's fascination and obsession with Egyptian culture began with the Napoleonic expedition in 1798.¹ This led to a race between the European powers, namely Britain and France, to acquire more antiquities than the other.² The Egyptian desert was stripped of hundreds of thousands of invaluable artifacts, including statues, jewelry, sarcophagi and the mummies inside them.³ One can only imagine what the infamous "mummy opening" parties that were so popular at the time must have been like. In cities like London and Paris, "the appetite for ancient Egyptian valuables and curiosities was so insatiable that museums were prepared to ship entire rooms, friezes and tombs from across the Mediterranean."⁴ Today there are entire museums across Europe dedicated exclusively to housing the Egyptian art and artifacts that were plundered years ago. But now Egypt wants them back.

This Article will examine the intriguing phenomenon of art repatriation. Part II will discuss the views on who should own a country's cultural property and why. Part III will cover the various international conventions on the subject and how (if at all) Egypt can use these conventions to its advantage. Finally, Part IV will advocate for the repatriation of Egypt's cultural property, successful repatriation efforts by other countries, whether repatriation is really a viable option for Egypt, and a possible alternative solution.

II. VIEWS ON CULTURAL PROPERTY

The term "cultural property" refers to objects that have "artistic, ethnographic, archaeological, or historical value."⁵ This definition covers a potentially endless amount of objects. For example, given the modern trend of defending just about anything as "art," a country could classify virtually any object as having artistic value, and thus classify nearly any

1. Josh Stuart, Note, *Is All "Pharaoh" in Love and War? The British Museum's Title to the Rosetta Stone and the Sphinx's Beard*, 52 KAN. L. REV. 667, 667 (2004).

2. *See id.*

3. *See id.* at 667-68.

4. *Id.* at 668-69.

5. John Henry Merryman, *Thinking about the Elgin Marbles*, 83 MICH. L. REV. 1881, 1888 (1985).

object as cultural property. Despite the broad definition of what cultural property actually is (and the ramifications of a country's ability to define just about anything as its own cultural property), this is not where the debate lies. Rather, the debate lies in what approach should be taken with respect to a country's ownership of its cultural property.

Some see the debate as a futile effort, arguing that the world's resources should be used to address more important issues. However, for countries such as Egypt and Turkey, it is an issue of critical importance. Their national pride is on the line, and for many people in Mediterranean society, pride is not compromised without a fight. It follows that for those involved in the debate of a country's ownership of its cultural property, emotions tend to run rather high.⁶ John Merryman, a leading art law scholar, contends that although "feeling is certainly important in discussing the proper disposition of cultural property . . . feeling alone is an unreliable guide to the resolution of important controversies."⁷ Merryman also argues that in order to discuss the issue of cultural property, it is essential to have a framework for that discussion, especially as repatriation becomes an increasingly significant issue in the world community.⁸ To that end, Merryman has developed two approaches to addressing the issue: "cultural nationalism" and "cultural internationalism."⁹

A. Cultural Nationalism

The concept of cultural nationalism is the idea that a nation's cultural property belongs within the borders of that nation because it was created in that nation, by its citizens for its citizens.¹⁰ This approach emphasizes national interests and national values.¹¹ As mentioned earlier, there is a great deal of pride involved in who should own a country's cultural property. The cultural nationalism argument supports this sense of national pride. There is also a correlation between a country's cultural property and its cultural definition.¹² "A people deprived of its artifacts is culturally impoverished."¹³

6. See, e.g., *id.* at 1882-83.

7. *Id.* at 1883.

8. See *id.* at 1894-95.

9. See *id.* at 1911-21.

10. See Merryman, *supra* note 5, at 1911-12.

11. *Id.* at 1912.

12. See *id.*

13. *Id.* at 1913.

Based on the cultural nationalism paradigm, the contention is often made that the country of origin, once rich in artifacts, deserves to possess its cultural property to ensure that this “cultural impoverishment” is not perpetuated. Cultural nationalism plays a major role in the context of repatriation. In fact, “[c]ultural nationalism is the core of source countries’ repatriation claims.”¹⁴ The term “source country” generally refers to a country that has produced a high volume of valuable cultural property over the centuries. Under cultural nationalism, cultural property is nation-specific and should remain in (or be returned to) its country of origin.¹⁵ This idea also has historical credibility. “The principle that cultural property should be left in its country of origin dates back to the time of Alexander the Great.”¹⁶

B. Cultural Internationalism

On the opposite end of the spectrum from cultural nationalism rests cultural internationalism. Cultural internationalism supports the idea that “everyone has an interest in the preservation and enjoyment of all cultural property, wherever it is situated, from whatever cultural or geographic source.”¹⁷ This argument supports the idea that the country with the better resources to care for another country’s cultural property should own or have possession of that cultural property. According to Merryman, there are three considerations to take into account under the cultural internationalism theory.¹⁸

The first consideration is the preservation of cultural property.¹⁹ Merryman argues that not only is it important that the artifact itself be preserved, but that the records of civilization be preserved as well.²⁰ Supporters of the cultural internationalism theory argue that many source countries do not have the resources to properly preserve their artifacts.²¹ An examination of the famous Elgin Marbles and Greece’s battle for their

14. Dalia N. Osman, Note, *Occupiers’ Title to Cultural Property: Nineteenth-Century Removal Egyptian Artifacts*, 37 COLUM. J. TRANSNAT’L L. 969, 992 (1999).

15. *Id.*

16. *Id.* at 974.

17. Merryman, *supra* note 5, at 1916.

18. *See id.* at 1917-21.

19. *See id.* at 1917-18.

20. *Id.* at 1917; *see also* LEONARD D. DUBOFF ET AL., ART LAW CASES AND MATERIALS 117 (2004) (“The preservation of [cultural property] not only ensures society’s continued enjoyment of it, but also provides valuable insights into the development of humanity.”).

21. *See* Merryman, *supra* note 5, at 1920.

repatriation is a good example.²² “[L]ike most art-rich nations, Greece faces enormous problems of expense and cultural organization in order to protect, conserve, and display what it has.”²³

The second consideration is the integrity of the artifact or work of art.²⁴ This might mean returning a portion of an artifact to its original location so that it may be viewed in its original context. However, this is directly related to the aspect of preservation. Once again using the Elgin Marbles as an example, “the Marbles cannot be reinstalled on the Parthenon without exposing them to almost certain damage from the elements and the smog of Athens.”²⁵ Merryman suggests that when the preservation interests of an object are at odds with the integrity interests of the object, we should lean in favor of preservation.²⁶

The final consideration is that of the distribution of cultural property.²⁷ This consideration encompasses “a concern for an appropriate international distribution of the common cultural heritage, so that all of mankind has a reasonable opportunity for access to its own and other people’s cultural achievements.”²⁸ The argument under this consideration is that not as many world citizens would be able to see and experience a country’s cultural property if it were housed in its country of origin. The international community has an interest in the accessibility of cultural property to all people.²⁹ That interest is advanced by the distribution of cultural property, rather than its retention by one country.³⁰

C. Where Egypt’s Cultural Property Belongs: Competing Views

Taking the above theories into consideration, the question remains: Where does Egypt’s cultural property belong? Clearly under cultural nationalism, Egypt’s cultural property belongs in Egypt. Under cultural internationalism, Egypt’s cultural property should remain in the various international museums in which it is currently housed. Many valid

22. See DUBOFF ET AL., *supra* note 20, at 84. Lord Elgin of England ordered his agents to systematically remove the marbles of the Parthenon in Athens, Greece in 1779. *Id.* Elgin had planned to decorate his mansion with the marbles, but due to financial reasons, he was forced to sell the marbles to the British government. *Id.* Greece now advocates for the repatriation of the Parthenon (Elgin) Marbles. *See id.*

23. Merryman, *supra* note 5, at 1920.

24. *See id.* at 1918-19.

25. *Id.* at 1919.

26. *Id.*

27. *See id.* at 1919-21.

28. Merryman, *supra* note 5, at 1919.

29. *Id.* at 1920.

30. *Id.*

arguments exist as to why Egypt's cultural property should either be returned to Egypt or remain in its current location(s).

1. National Identity

One advocate for the repatriation of Egyptian artifacts to Egypt articulates the typical cultural nationalism view: "Egyptian artifacts should be returned to Egypt because they are Egyptian."³¹ Another cultural nationalism argument in favor of repatriation relates to the idea of national pride discussed above. "Egyptian artifacts stand for the ingenuity and creativity of the ancient Egyptians. . . . The historic importance of these antiquities is, without question, immense. . . . [and] [t]he universal admiration of Egyptian antiquities engenders reverence and pride which are instrumental to Egyptian self-development."³² The cultural nationalism argument strongly supports the idea that Egyptian cultural property should remain or be returned to Egypt, especially for the country's pride and feelings of self-worth.

Those opposed to repatriation of artifacts simply because they are Egyptian, argue that the cultural value of an artifact can be enjoyed without being returned to its country of origin.³³ They would also argue that because certain artifacts, like the Rosetta Stone at the British Museum, have been housed in foreign nations for so long, those foreign nations have just as much of a valid claim to possession of the artifacts as Egypt does. Merryman argues that "works in the British Museum have entered British culture, help define the British to themselves, inspire British arts, give Britons identity and community, civilize and enrich British life, and stimulate British scholarship."³⁴ Supporters of repatriation might find this argument a bit far-fetched, a mere attempt to justify continued possession of Egyptian cultural property by foreign nations.

2. Ability to Preserve

One argument against repatriation is that Egypt does not have the expertise or money to properly preserve the artifacts it already has.³⁵ In addition to being badly warehoused, there is no inventory of the excess supply of artifacts Egypt has in its possession.³⁶ For example, guards in

31. Osman, *supra* note 14, at 992.

32. *Id.* at 981-82.

33. See Merryman, *supra* note 5, at 1913.

34. *Id.* at 1915.

35. See Osman, *supra* note 14, at 993.

36. *Id.*

Egypt who protect its 8,000 historical sites are paid as little as 30 pounds (US \$5.00) a month because the resources to pay them more do not exist.³⁷ Supporters of cultural internationalism believe that adequate preservation of cultural property is of the utmost importance,³⁸ and Egypt simply cannot ensure adequate preservation if the artifacts are returned. In fact, the British Museum touts that it holds “in trust for the nation and the world’ one of the finest collections of art and antiquities in existence.”³⁹

The cultural nationalism counter-argument is that spending more money does not necessarily mean the artifacts will receive better protection.⁴⁰ The “lack of resources” argument does not consider the impact of a country’s pride in its cultural property. “[A] nation’s attachment to and pride in its heritage is powerful, if not greater, motivation for preservation.”⁴¹ There is no doubt that Egypt has an immense sense of pride in its cultural property, and it is that pride that drives Egypt’s desire to reclaim its cultural property.

3. Environmental Damage

Another argument disfavoring repatriation is the idea that Egypt cannot adequately preserve its cultural property because of the extensive environmental damage numerous monuments and other antiquities have suffered over the years.⁴² In fact, some say that the pollution, development and excavation in Egypt over the last seventy years has caused more destruction to Egypt’s ruins than the gradual deterioration that has occurred over the last four thousand years.⁴³ Museums that currently house many Egyptian antiquities would argue that the cultural property is safer where it is than it would ever be in Egypt.

Egypt has made efforts in the last few years, however, to adopt preventative care for its monuments and other artifacts.⁴⁴ For example, certain high-risk sites in Egypt have been mapped and surveyed using lasers and computers, to ensure that they are not lost to the elements forever.⁴⁵ There is also a new salt extraction vacuum process, created by researchers at the University of Louisville, that would allow Egypt to

37. *Id.*

38. *Id.* at 994.

39. Shuart, *supra* note 1, at 671 (quoting The British Art Museum, *About Us*, at <http://www.thebritishmuseum.ac.uk/aboutus/about.html> (last visited Apr. 12, 2005)).

40. *See, e.g.*, Osman, *supra* note 14, at 994.

41. *Id.*

42. *See* DUBOFF ET AL., *supra* note 20, at 118.

43. *See, e.g., id.*

44. *See id.* at 120-21.

45. *Id.* at 121.

remove some of the harmful mineral deposits that are so destructive to its stone monuments.⁴⁶ As promising as these effort sound, cultural internationalism supporters would probably agree that they do not compare to the resources available to institutions such as the British Museum and the Metropolitan Museum of Art in preserving Egypt's cultural property.

4. Ties to Ancient Civilizations

An argument from a humanist perspective in favor of leaving Egyptian artifacts in foreign museums is that "many despoiled nations [including Egypt] are presently occupied by people with very few cultural ties to the ancient civilizations that created those nation's treasures."⁴⁷ It follows under this reasoning that Egyptians have no more of a claim to possess ancient Egyptian artifacts than the British, French, German or Americans. However, the counter-argument is that modern Egyptians are more closely related to ancient Egyptians than any other group of people in the world, even if they are not direct descendants of the ancient Egyptians. Therefore, modern Egyptians, not the people of foreign nations, should be the group in control of its cultural property.⁴⁸

Unfortunately, the question of where Egyptian cultural property belongs is not an easy one to answer, and there are valid arguments on both sides. The issue is inextricably tied to the notion of repatriation, which is discussed in Part IV of this Article. The next section, Part III, discusses the applicable international treaties and laws that impact Egypt's claim for repatriation.

III. APPLICABLE INTERNATIONAL CONVENTIONS

A. *The 1954 Hague Convention*

The 1954 Hague Convention (Hague 1954) was "the first universal convention to deal solely with the protection of cultural property."⁴⁹ Hague 1954 actually introduced the term "cultural property" to international jurisprudence, allowing for more expanded protections of different types

46. *Id.*

47. DUBOFF ET AL., *supra* note 20, at 99.

48. See Osman, *supra* note 14, at 980-81.

49. John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831, 836 (1986).

of property than previous conventions had afforded.⁵⁰ Perhaps more significant than this introduction of new terminology is that Hague 1954 provides a rationale for the international protection of cultural property.⁵¹ In other words, Hague 1954 is premised on the ideas of cultural internationalism discussed in Part II.

The language of Hague 1954 is considered by some to be “a charter for cultural internationalism.”⁵² For example, the Preamble contains the following clauses:

Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;

Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection⁵³

This language clearly supports the idea that we, as world citizens, have the right and obligation to protect cultural property, regardless of its origin. The reason this language is so significant is that it is the first time anything like it has appeared in any major piece of international legislation.⁵⁴

The purpose of Hague 1954 is “to prevent the destruction, theft, pillage and vandalism of cultural property during periods of armed conflict and military occupation.”⁵⁵ Although it is a noble aim, and certainly has relevant applications in other contexts, Hague 1954 has no real legal implications for Egypt in its attempts to have its cultural property repatriated. The main reason for this lack of applicability (other than the fact that it applies only to wartime) is that Hague 1954 is not retroactive.⁵⁶ This means that the protections of Hague 1954 apply only to cultural

50. See Ian M. Goldrich, Comment, *Balancing the Need for Repatriation of Illegally Removed Cultural Property with the Interests of Bona Fide Purchasers: Applying the UNIDROIT Convention to the Case of the Gold Phiale*, 23 *FORDHAM INT’L L.J.* 118, 133 (1999).

51. Merryman, *supra* note 49, at 836.

52. See, e.g., *id.* at 837.

53. Convention on the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, May 14, 1954, 249 U.N.T.S. 240, pmbl., available at http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited Apr. 12, 2005).

54. See Merryman, *supra* note 5, at 1916.

55. Shuart, *supra* note 1, at 715.

56. See, e.g., *id.* at 716.

property taken from Egypt after 1954. Unfortunately for Egypt, much of its most valued cultural property was removed from its borders well before 1954.⁵⁷ It is important, therefore, to look to the next international treaty on the subject.

B. UNESCO 1970

In 1970, the U.N. Educational, Scientific and Cultural Organization (UNESCO) promulgated the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO 1970).⁵⁸ The goal of UNESCO 1970 is to ensure national retention of cultural property⁵⁹ and deals specifically with restitution of cultural objects.⁶⁰ While Hague 1954 supports cultural internationalism, UNESCO 1970 supports cultural nationalism.⁶¹ The preamble of UNESCO 1970 includes the following language: "Considering that cultural property constitutes one of the basic elements of civilization and national culture, . . . its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting . . ." ⁶² This language plainly indicates that the ideas behind UNESCO 1970 are rooted in cultural nationalism.

UNESCO 1970 is slightly more applicable to Egypt than Hague 1954. The most obvious reason for this is that

[t]he premises of the repatriation movement are a logical extension of those that underlie UNESCO 1970: cultural property belongs in the source country; works that now reside abroad in museums and collections are wrongfully there (the result of plunder, removal by colonial powers, theft, illegal export or exploitation) and should be "repatriated."⁶³

In addition, Egypt, like so many other source countries, "would like importing nations to deny entry to, seize, and return illegally exported

57. See *id.* at 667.

58. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 232, 10 I.L.M. 289, pmbl. [hereinafter UNESCO 1970], available at http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited Apr. 12, 2005).

59. See Merryman, *supra* note 49, at 844.

60. See Shuart, *supra* note 1, at 713.

61. See Merryman, *supra* note 49, at 842.

62. UNESCO 1970, *supra* note 58, pmbl.

63. Merryman, *supra* note 49, at 845.

objects. [UNESCO 1970] is one vehicle of this effort.”⁶⁴ Another reason UNESCO 1970 is more beneficial to Egypt than Hague 1954 is that UNESCO 1970 has helped shape public opinion in favor of protecting a country’s cultural property.⁶⁵

Unfortunately though, like Hague 1954, UNESCO 1970 is non-retroactive and thus does not apply to objects that were illegally exported from a country before that country’s ratification of the convention.⁶⁶ As mentioned earlier, much of the cultural property Egypt wishes to repatriate left the country long before 1970. Another criticism is that “[d]espite its noble aims, UNESCO 1970 is ‘widely regarded as futile’ due to such problems as the vagueness of its language and its lack of uniform structure.”⁶⁷

C. UNIDROIT 1995

The most recent international convention concerning the protection of cultural property is the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT 1995).⁶⁸ The implications of UNIDROIT 1995 are quite similar to those of UNESCO 1970. For example, like UNESCO 1970, UNIDROIT 1995 is based on the premise of cultural nationalism and repatriation.⁶⁹ UNIDROIT 1995 provides for the return of stolen or illegally exported cultural property to the rightful claimant, regardless of whether the person or country in possession of the cultural property is a bona fide purchaser.⁷⁰ However, bona fide purchasers are not completely without recourse: UNIDROIT 1995 “balances compulsory repatriation with financial compensation for bona fide purchasers.”⁷¹

However, this international convention also has no applicability to Egypt for the same reason that Hague 1954 and UNESCO 1970 do not. “Although the UNIDROIT Convention would provide the impetus for

64. Merryman, *supra* note 5, at 1892.

65. See DUBOFF ET AL., *supra* note 20, at 115.

66. See, e.g., Shuart, *supra* note 1, at 713-14.

67. *Id.* at 714 (quoting Jennifer N. Lehman, Note, *The Continued Struggle with Stolen Cultural Property: The Hague Convention, the UNESCO Convention and the UNIDROIT Draft Convention*, 14 ARIZ. J. INT’L & COMP. L. 527, 541-42 (1997)).

68. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, available at <http://www.unidroit.org/English/conventions/1995culturalproperty/1995culturalproperty-e.htm> (last visited Apr. 6, 2005).

69. See *id.* pmbl. (“[T]his Convention is intended to facilitate the restitution and return of cultural objects. . . .”); Goldrich, *supra* note 50, at 163.

70. Goldrich, *supra* note 50, at 163.

71. *Id.*

repatriation of cultural objects . . . its provisions only apply prospectively.”⁷² In other words, UNIDROIT 1995 provides for the repatriation of stolen or illegally exported cultural property from the effective date of signing. This non-retroactivity makes UNIDROIT 1995 practically useless to Egypt in the recovery of its cultural property. Besides, it is “well documented that neither UNESCO 1970 nor UNIDROIT 1995 was ever intended to unlock the imperial trophy cases.”⁷³ Moreover, this discussion is likely a moot point since Egypt is not a signatory to UNIDROIT 1995.⁷⁴

IV. REPATRIATION

So where does Egypt go from here? We have learned that there is no single way to approach the issue of where Egypt’s cultural property belongs. The international conventions on the subject are not very helpful. It is fairly evident that Egypt wishes (once again) to become the custodian of the cultural property currently housed in foreign museums. The problem lies in how to accomplish that task. This section explores Egypt’s available options in its crusade for repatriation by examining the legal issue of repatriation itself, by examining the arguments for and against repatriation generally, by looking to the successes of the Republic of Turkey in its repatriation efforts for guidance, and by outlining Egypt’s current efforts of repatriation of specific items of cultural property.

A. *Repatriation: The Legal Issue*

As discussed above, repatriation is an area of the law that is highly emotionally charged. One scholar stated that “repatriation is perhaps the most intractable and contentious part of the bitter art wars.”⁷⁵ But why is it such a contentious debate? Perhaps it is so contentious because the battle is not really about the physical artifacts themselves; the battle is about a culture’s emotional attachment to those artifacts.⁷⁶ “It is the psychological and emotional connection to things, rather than their ownership, that is at the heart of cultural property concerns. . . . [R]epatriation claims ultimately

72. Marilyn E. Phelan, *The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects Confirms a Separate Property Status for Cultural Treasures*, 5 VILL. SPORTS & ENT. L.J. 31, 37 (1998).

73. Shuart, *supra* note 1, at 717.

74. *See id.* at 715.

75. Daniel Shapiro, *Repatriation: A Modest Proposal*, 31 N.Y.U. J. INT’L L. & POL. 95 (1998).

76. *Id.* at 100.

come down to emotions and beliefs — not things.”⁷⁷ This is especially true when considering the fact that many source nations, including Egypt, were at one time colonies of the very countries that now possess the disputed cultural property. “[A]cquiring another’s cultural heritage can be thought of as inherently insulting and potentially capable of destroying a people’s continued existence.”⁷⁸ This relates directly back to the feelings of pride that many nations, especially Egypt, have towards their cultural property. The idea that another country that once occupied its land has ancient cultural property the people of Egypt believe rightfully belongs in Egypt is a blow to national pride.

Based on these views of why the topic repatriation is so contentious, some scholars question whether the traditional concepts of property law are actually the most effective and appropriate way to approach this area of the law.⁷⁹ In fact, some argue that issues of repatriation are more like the legal concepts in personal injury law than property law.⁸⁰ The question is not necessarily which country *owns* the cultural property; the question is to which country does the cultural property *belong*.⁸¹ This idea is analogous to the concept in personal injury law that our reputation and privacy “belong” to us.⁸² Therefore, one could argue that a repatriation claim is more like a tort claim, and should not be governed by the traditional notions of property law.

B. *Arguments For and Against Repatriation Generally*

Regardless of why the topic of repatriation is so emotionally charged, the fact remains that there are people who support the repatriation of cultural property to its country of origin and people who do not. There are valid points on both sides of the argument, which makes the debate that much more difficult to resolve, especially if there is to be a resolution at any point in the near future. Many of the arguments for and against repatriation are discussed in Part II of this Note regarding cultural nationalism and cultural internationalism. Using Egypt as an example, arguments for the repatriation of cultural property include the classic “it is Egyptian, so it belongs in Egypt.”⁸³ Repatriation helps dispel the cultural

77. *Id.* at 100, 105.

78. *Id.* at 97.

79. *See id.* at 99-100.

80. *See, e.g.,* Shapiro, *supra* note 75, at 99.

81. *Id.*

82. *Id.*

83. *Cf. Merryman, supra* note 5, at 1911.

impoverishment that usually exists in source nations, including Egypt.⁸⁴ Egypt's cultural property is essential to the Egyptians' sense of self-worth.⁸⁵ Repatriation is an integral part of re-establishing the integrity of a work of art or cultural property.⁸⁶ Finally, modern Egyptians are the group most closely related to the ancient Egyptians, so they should be the custodians of ancient artifacts.⁸⁷

Another cultural nationalism argument in favor of repatriation stems from the fact that only a few museums around the world house the majority of the discovered Egyptian antiquities. "The prospect of a world in which all major artworks are concentrated in a few nations, with the rest culturally impoverished as a result, is unpleasant to contemplate."⁸⁸ Many argue that not only is this monopoly on Egyptian cultural property an unpleasant idea to contemplate, but also an unacceptable one. For example, critics of the British Museum argue that its status "as a primary custodian of world heritage was attained at the expense of the peoples whose cultural treasures were raided in stockpiling its collections."⁸⁹ The fact that Egypt does not have possession of some of its most valued pieces of cultural property in its own museums is more than many Egyptians (and others) can bear.

There are also international conventions that support the idea of repatriation, including UNESCO 1970 and UNIDROIT 1995. However, there is a growing political trend for voluntary repatriation by western nations, despite whatever legal (albeit somewhat ineffectual) obligations they may have.⁹⁰ Merryman notes that "[p]olitically, there is increasing activity within UNESCO . . . to encourage the voluntary repatriation of cultural property, independently of any legal obligation to do so."⁹¹ Much of the political motivation behind voluntary repatriation is to avoid negative publicity. Some museums and collectors have sought "to avoid embarrassment' by voluntarily repatriating cultural property whose origin has been questioned."⁹² Perhaps one of the reasons institutions are becoming more sensitive to the issue is because the public is becoming

84. *See id.* at 1912-13.

85. *See Osman, supra* note 14, at 981-82.

86. *See Merryman, supra* note 5, at 1918.

87. *See Osman, supra* note 14, at 980-81.

88. Merryman, *supra* note 5, at 1920.

89. Shuart, *supra* note 1, at 671.

90. *See Merryman, supra* note 5, at 1893.

91. *Id.*

92. Nancy C. Wilkie, *Public Opinion Regarding Cultural Property Policy*, 19 CARDOZO ARTS & ENT. L.J. 97, 102 (2001) (quoting Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 377, 404 (1995)).

more and more aware of cultural property issues.⁹³ There is also evidence that public opinion on this topic has more clout than we know; according to Merryman, “[p]ublic and private sensitivity to the desire of Third World nations for the return of artifacts has led to a number of often unpublicized cases of voluntary repatriation.”⁹⁴

However, for every argument for the repatriation of cultural property, there is an argument against it. Arguments against repatriation include the idea that every world citizen has an interest in a country’s cultural property, so it should be in a place with more accessibility.⁹⁵ The nations that currently house disputed artifacts are better equipped and have the resources necessary to preserve these valuable pieces of cultural property.⁹⁶ Cultural property does not need to be in its country of origin to be enjoyed or fully appreciated.⁹⁷ Source nations often endure environmental conditions that are extremely harmful to their cultural property.⁹⁸ Finally, the modern people of many source nations are not tied to the ancient civilizations that produced much of the cultural property in dispute.⁹⁹

Opponents of repatriation often cite what they believe are the inevitable ramifications of such an endeavor. Daniel Shapiro, an attorney and president of the International Cultural Property Society, sums up the argument:

If the claim for the return of cultural property is accepted in principle, then the world’s culture could be balkanized and numerous collections in each nation’s museums could be the subject of possible repatriation. . . . Honoring repatriation claims can further the emphasis on cultural exclusivity, reinforce nationalism, and support hostility to ethnic and other forms of cultural differentiation. In effect, acceding to repatriation can further the forces that lead to political and cultural conflict.¹⁰⁰

93. *See id.* at 102-03. In a recent study by the Archaeological Institute of America, ninety percent of those surveyed “felt there should be laws to prevent the general public from importing artifacts from a country that does not want those artifacts exported.” *Id.* at 98. Although this does not relate directly to the repatriation of ancient artifacts already in museums worldwide, it goes to prove that there is a concern among the public for the well-being of source nations and its cultural property.

94. Merryman, *supra* note 5, at 1894.

95. *See id.* at 1916.

96. *See id.* at 1919-21.

97. *See id.* at 1913.

98. *See* DUBOFF ET AL., *supra* note 20, at 118.

99. *See id.* at 99.

100. Shapiro, *supra* note 75, at 103.

In other words, one act of repatriation could open the proverbial floodgates, potentially leaving the world's leading art institutions barren. One successful act of repatriation could lead to an endless amount of claims, requiring the expenditure of large amounts of time and money for something that no one has a clear response for or has yet been able to resolve.¹⁰¹

In October 2002, the International Group of Organizers of Large-Scale Exhibitions, a group made up of the directors of over forty of the world's leading museums, met to discuss the issue of repatriation of ancient cultural property.¹⁰² Those in attendance included directors of the British Museum, the Berlin Museum, the Prado in Madrid, and the Metropolitan Museum of Art in New York.¹⁰³ In December 2002, amid the growing demands from countries like Egypt for the return of its cultural objects, the group issued a declaration essentially stating that it disagreed with the idea of repatriation altogether.¹⁰⁴ The group gave several reasons for its declaration. Their main argument is that it is critical for international museums to assert their roles as institutions for the betterment of humanity.¹⁰⁵ Neil MacGregor, director of the British Museum, added, "If all museums were to send back items acquired abroad, the essential nature of [the museums'] great collections would disappear and we would all be the poorer for it."¹⁰⁶ With such powerful international institutions on the opposing side of repatriation, the future success of source nations such as Egypt in their efforts to recover cultural property does not seem promising.

C. Turkey's Success

Despite what may seem like a dismal future for source nations in their efforts for repatriation, some countries have been quite successful in recovering significant pieces of cultural property. The Republic of Turkey is one of those nations. Perhaps one of the most famous cases of cultural property repatriation is that of Turkey and its Lydian Hoard. In the 1960s, local villagers raided ancient Turkish tombs that contained valuable treasures of King Croesus of Lydia.¹⁰⁷ Mysteriously, in 1984, many of the

101. *Id.*

102. *See Shifting the Blame*, FORBES.COM, Jan. 21, 2003, at http://www.forbes.com/2003/01/21/cx_0121hot_print.html (last visited Apr. 6, 2005).

103. Nick Fielding, *Museums Unite Against Return of Imperial 'Loot'*, SUNDAY TIMES (London), Dec. 8, 2002, at 19.

104. *See id.*

105. *See id.*

106. *Id.* (quoting Neil MacGregor).

107. Lawrence M. Kaye, *The Recovery of Stolen Cultural Property: A Practitioner's View—War Stories and Morality Tales*, 5 VILL. SPORTS & ENT. L.J. 5, 10-11 (1998).

missing artifacts appeared in an exhibition at the Metropolitan Museum of Art (the Met).¹⁰⁸ It was then that Turkey asserted a claim for the Hoard's return.¹⁰⁹

Turkey chose to sue the Met for the repatriation of its cultural property after the Met refused Turkey's demand for its return.¹¹⁰ The Met responded by filing a motion to dismiss on a statute of limitations technicality.¹¹¹ During the three years of litigation on this issue alone,¹¹² the people of Turkey may have had doubts as to whether they would ever see their nation's treasures again. However, the court denied the motion and the case was settled shortly thereafter in 1993.¹¹³ The Met agreed to return the Lydian Hoard to Turkey.¹¹⁴ Many believe that it was the threat of negative public reaction to the continued battle with Turkey that eventually led the Met to a settlement.¹¹⁵ Regardless of the motivation behind it, the return of the Lydian Hoard was a "monumental step in establishing the rights of all nations to protection of their artistic and cultural property."¹¹⁶

There are many reasons for Turkey's successful repatriation efforts. Lawrence M. Kaye, one of the attorneys for the Republic of Turkey in its case against the Met, credits the success to the Turkish government's persistence; the battle lasted for over twenty-five years.¹¹⁷ In addition to governmental support, a major reason for the success was that Turkey was able to "identify exactly from which tombs the Lydian Hoard was stolen."¹¹⁸ This may be a difficult task for other nations like Egypt. Most of the antiquities Egypt seeks to recover were removed from its borders over one hundred years ago.

Egypt will not be deterred, however. Turkey's success in recovering the Lydian Hoard has been an inspiration to Egypt and other source nations all over the world. The trend of making repatriation claims is gaining

108. *See id.* at 11.

109. *See id.*

110. *See generally Turkey's Lawsuit Against Metropolitan Museum of Art Ends with Return of Lydian Hoard Antiquities to Turkey*, PR NEWSWIRE, Sept. 22, 1993 [hereinafter *Turkey's Lawsuit*].

111. *See Republic of Turkey v. Metro. Museum of Art*, 762 F. Supp. 44, 46 (S.D.N.Y. 1990).

112. Kaye, *supra* note 107, at 11.

113. *See id.* at 11-12.

114. *Turkey's Lawsuit*, *supra* note 110.

115. *See Wilkie*, *supra* note 92, at 102.

116. *Turkey's Lawsuit*, *supra* note 110 (quoting Harry I. Rand, attorney for the Republic of Turkey).

117. *See id.*

118. Sharon Weightman, *Nation's Cultural Treasure Should Reside in that Land*, FLA. TIMES UNION, Aug. 18, 1996, at D-3.

momentum.¹¹⁹ Since source nations are encouraged by Turkey's successful repatriation claim against the Met, more and more of these art-rich source countries are laying claim to lost treasures in the museums and private collections of art-hungry nations.¹²⁰ We now turn to Egypt's recent efforts of repatriation and what Egypt can do to emulate Turkey, ensuring its own successes.

D. Egypt's Efforts, Failures, and Successes

In July 2003, Egypt launched a campaign for the return of antiquities from countries including the United States, Britain, and Germany, for an exhibition to celebrate the one hundredth birthday of Cairo's Egypt Museum.¹²¹ The campaign was (and is still) led by Dr. Zahi Hawass, the Secretary-General of Egypt's Supreme Council of Antiquities.¹²² Hawass has been a driving force in Egypt's repatriation efforts, and has stated that his goal is to recover "all the antiquities stolen from Egypt."¹²³ Most might think this a lofty and unrealistic goal. But it seems Hawass, who has been dubbed a "fierce crusader,"¹²⁴ will stop at nothing to recover the cultural property he believes to belong to Egypt and no one else. Perhaps at the top of Hawass' list for repatriation is the Rosetta Stone, which has been housed in the British Museum for over two hundred years.¹²⁵ Hawass has also made public demands for the return of a bust of Queen Nefertiti housed in Berlin and a statue of Queen Hatshepsut at the Met.¹²⁶

Realistically, for many reasons, the repatriation of these artifacts will probably never come to pass. Until now, "Egypt's success has been limited to recovering objects illicitly funneled into third-party nations on the international black market . . . and not those still locked in the trophy cases of its historic subjugators."¹²⁷ One reason Egypt is unlikely to be successful in the repatriation of these particular pieces is that all three of the implicated museums were parties to the international declaration stating that they simply would not consider returning such pieces.¹²⁸

119. See Michael J. Kelly, *Conflicting Trends in the Flourishing International Trade of Art and Antiquities: Restitutio in Integrum and Possessio Animo Ferundi/Lucrandi*, 14 DICK. J. INT'L L. 31, 54 (1995).

120. *Id.*

121. See DUBOFF ET AL., *supra* note 20, at 100.

122. See Shuart, *supra* note 1, at 669.

123. *Id.*

124. *Id.* at 683.

125. See *id.* at 669-70.

126. *Id.*

127. Shuart, *supra* note 1, at 670.

128. See *Shifting the Blame*, *supra* note 102.

Another reason is that each of these museums can establish provenance of its respective disputed object, even though Egypt might say that regardless of how the objects got to where they are today, the objects were stolen from Egypt to begin with and should be returned.

The counter-argument is that even though the means by which the museums acquired possession of the items might be questionable under today's standards, the museums must be held to the standard that existed at the time of the acquisitions.¹²⁹ Using this rule of intertemporal law, the museums arguably did nothing wrong at the time they acquired these disputed artifacts, and therefore have no obligation to return them to Egypt.¹³⁰ Needless to say, the reality that Egypt will likely never again own the Rosetta Stone, the bust of Queen Nefertiti or the statue of Queen Hatshepsut will certainly not stop Dr. Hawass from trying.

To his credit, Hawass has been responsible for many of Egypt's repatriation successes in recent years.¹³¹ In October 2003, the remains of Pharaoh Rameses I were officially repatriated to the Egyptian government by the Michael C. Carlos Museum at Emory University in Atlanta, Georgia.¹³² The Carlos Museum returned the mummy "because it was the right thing to do"¹³³ and to serve "as a reminder of the great cultural debt all the world owes to the Middle East and the common heritage we share."¹³⁴ No doubt Dr. Hawass would like to see this kind of generosity rub off on other museums within the United States and other countries around the world.

Another success for Egypt, although not a result of repatriation efforts, was the conviction of Frederick Schultz, an American antiquities dealer, in early 2002.¹³⁵ He was convicted under the National Stolen Property Act (NSPA) for conspiring to smuggle Egyptian antiquities into the United States from Egypt.¹³⁶ The Second Circuit endorsed Egypt's right to enforce public ownership of its cultural property by finding that the objects Schultz attempted to smuggle did belong to the Egyptian government, under an Egyptian patrimony law that establishes government ownership of all

129. See Shuart, *supra* note 1, at 690.

130. See *id.*

131. See *id.* at 669-70.

132. Mike Toner, *Emory Museum Sends Mummy Home to Egypt*, ATLANTA J.-CONST., Oct. 25, 2003, at 1D.

133. *Id.* (quoting Bonnie Speed, Carlos Museum Director).

134. *Id.* (quoting Peter Lacovara, Carlos Museum Curator).

135. See *United States v. Schultz*, 333 F.3d 393, 395 (2d Cir. 2003).

136. *Id.* (citing 18 U.S.C. § 2315 (2003)).

antiquities found in Egypt after 1983.¹³⁷ This finding by an American federal court should be encouraging news to Egypt.

E. *What Egypt Can Do: An Alternative Approach*

It is evident that since there has been no resolution to this issue using the standard methods of analysis, namely the dichotomy of cultural nationalism and cultural internationalism, an alternative approach is necessary. Egyptians, especially Dr. Hawass, are fiercely dedicated to the repatriation efforts. However, without the necessary resources, the reality is that fierce dedication can only take Egypt so far. Egypt simply cannot afford to spend twenty-five years, as Turkey did with its Lydian Hoard, fighting what many consider a losing battle. Unless one side to this global debate compromises its position in the very near future, the debate will continue to be hindered and Egypt will remain without some of its most valued pieces of cultural property.

In addition to Merryman's dual approach, there is a third angle referred to as the "reciprocal perspective."¹³⁸ This alternative advances the aims of both sides by creating agreements that transfer ownership back to Egypt, while at the same time vesting physical ownership in the museums that currently have possession of the cultural property.¹³⁹ By utilizing this approach, the need for repatriation claims could be eliminated altogether.¹⁴⁰

Open transactions, namely long-term loans, would allow museums to display pieces for longer periods of time and abate the desire for permanent ownership. . . . Such open transactions would also ensure that art and cultural heritage "really [do] circulate throughout the world" rather than remain in a few major institutions for indeterminate lengths of time.¹⁴¹

Although Egypt would probably prefer to have physical custody of its cultural property rather than allow it to remain in foreign museums, the

137. See Cynthia Ericson, Recent Development, *United States of America v. Frederick Schultz: The National Stolen Property Act Revives the Curse of the Pharaohs*, 12 TUL. J. INT'L & COMP. L. 509, 523 (2004).

138. See Nicole Bednarski, Comment, *Give Us Your Tired, Your Poor, Your Wretched Works of Art: American Museums Can Fix Them Up, Show Them, and Send Them Back With Help From the Arts Indemnity Act*, 11 VILL. SPORTS & ENT. L.F. 383, 399 (2004).

139. See *id.* at 401.

140. *Id.*

141. *Id.* at 400 (quoting Patty Gerstenblith, *The Public Interest in the Restitution of Cultural Objects*, 16 CONN. J. INT'L L. 197, 245 (2001)).

reciprocal perspective is an equitable balance between the wants and needs of both Egypt and international museums.

The key to this alternative is that parties on both sides of the battle must cooperate with one another. "Protecting cultural heritage requires international cooperation to preserve works of art for future generations."¹⁴² It is difficult to say whether parties on either side of the equation would be able to cooperate in such a way that would truly facilitate the goals of both sides. At present, given the contentiousness of the repatriation debate, cooperation does not seem likely. However, as in any other aspect of life, one must be willing to give a little in order to get what one wants.

V. CONCLUSION

Egypt has been an active participant in the so-called "art war" of repatriation for many years. To its credit, Egypt has had many successes in recovering various pieces of its cultural property. It helps that Egypt has such an avid proponent in Dr. Zahi Hawass. However, the current scheme will not make Egypt the exclusive protector of every Egyptian artifact that exists in the world. Neither is it fair that foreign museums are able to deny all potential possession rights to Egypt indefinitely. A compromise is urgently needed. If the two sides are ever able to come together to negotiate an acceptable strategy, Egypt's cultural property *and* the citizens of the world will be the better for it.

142. *Id.* at 409.

