

# For U.S. Museums With Looted Art, the Indiana Jones Era Is Over

Prodded by law enforcement, and pushed by foreign governments, American museums are increasingly returning artifacts to countries of origin, but critics wonder at what cost.



By Graham Bowley

Dec. 13, 2022, 5:00 a.m. ET

10 MIN READ

For decades, there was a swashbuckling aspect to collecting by American museums. In the 1960s, for example, some museum curators embraced the chase for prized artifacts as if it were big game hunting.

Thomas Hoving, a Metropolitan Museum of Art curator who later became its director, took particular pride in his ability to outsmart rivals in the global pursuit of masterpieces. In one instance he recalled spiriting a Romanesque relief from a Florentine church out of Italy with the help of a dealer who, Hoving said, often stashed objects under a mattress in his station wagon.

“My collecting style was pure piracy,” he boasted, “and I got a reputation as a shark.”

Today many U.S. museums are facing a reckoning for their aggressive tactics of the past. Attitudes have shifted, the Indiana Jones era is over, and there is tremendous pressure on museums to return any looted works acquired during the days when collecting could be careless and trophies at times trumped scruples.

Though the tide turned more than a decade ago, the pace of repatriations has only accelerated in recent years. In just the last few months, museums across America have returned dozens of antiquities to the countries from which they were taken.

The J. Paul Getty Museum in Los Angeles returned three precious terra cotta figures to Italy. The Denver Art Museum shipped four antiquities back to Cambodia. The Smithsonian Institution returned 29 Benin bronzes to Nigeria. And the Manhattan district attorney’s office seized 27 looted artifacts from the Met, which are headed back to Italy and Egypt.

“I do have sympathy,” said Elizabeth Marlowe, director of the museum studies program at Colgate University, “for museum directors and curators who were trained under different ethical norms and now find themselves in a situation where they very publicly have to rethink the ethical norms they are operating under. That said, ‘It’s time to step up, gentlemen.’ It’s a different landscape.”

To Marlowe and others, the surge in museum repatriations is a just response to more than a century of treasure-hunting that they say took advantage of societies made vulnerable by poverty, war or political instability.

For some, though, the number of restitutions has become unsettling. Museums, like public libraries, have long enjoyed an exalted status as places that promote erudition by permanently preserving and displaying the significant objects that define human history and culture.

But now curators are regularly watching ancient works long on display head out the door in shipping crates. Collecting practices embraced for decades have been recast as villainous.

“We have moved the goal posts,” said Kate Fitz Gibbon, executive director of the think tank Committee for Cultural Policy.

Consider, for example, the mounting pressure on the British Museum to return the Elgin marbles that once graced the Parthenon. They were acquired at the dawn of the 19th century when the Ottoman Empire ruled Greece. The British view the sculptures and bas-reliefs as legitimately transferred by the Ottoman authorities. The Greeks argue that the Turks, as occupiers, lacked the moral authority to dispense with their history.

This fall Egyptian archaeologists renewed calls for the return of the Rosetta Stone by the British Museum, which has taken steps to distance itself from its colonialist past. Two years ago, the museum relocated a bust of its founder, Hans Sloane, a slaveholder, to a vitrine exploring Britain and slavery.

In America, critics of the surge in returns worry that museum collections built over time by scholars and imbued by a sense of context are being randomly depleted. Should U.S. audiences, they ask, be deprived access to iconic objects that they suggest belong, not to individual nations, but to humankind?

Leila A. Amineddoleh, an art and cultural heritage lawyer, has suggested that such thinking is outdated.

“Arguments against repatriation are sometimes supported by paternalistic and patronizing arguments,” she wrote, “asserting that western collectors and archaeologists ‘discovered’ these objects and have superior knowledge of them.”

Experts say a significant change in attitudes about collecting dates to 1970 when nations began ratifying a UNESCO treaty to stem the trade in illicit artifacts. Awareness of the problem expanded further 20 years ago when antiquities looting during the Iraq war made clear the scope of that black market.

More recently, foreign governments like Cambodia have shown a greater interest in claiming their national heritage — their tracking aided by the transparency afforded by the internet and online databases.

But most significantly, U.S. authorities, both local and federal, have made the return of looted cultural heritage more of a diplomatic and law enforcement priority. U.S. Homeland Security Investigations reports returning more than 20,000 items since 2007, largely seized from dealers and collectors, but also found in many of America’s most prestigious museums.

“There has been a broad agreement for decades that objects that were stolen in violation of law should be returned, but what has changed is the amount of time and focus spent on this kind of crime and the political will to pursue it,” said Donna Yates, associate professor, criminal law and criminology at Maastricht University in the Netherlands.

## A Coffin and a Kardashian

The dealer seemed to have the correct paperwork. The laws of Egypt appeared to countenance its sale. So it was with considerable enthusiasm in 2017 that the Metropolitan Museum of Art paid nearly \$4 million for a gold-plated coffin dating back to the 1st century B.C. It had been created to bury Nefertiti, a high-ranking priest of the ram-headed god Heryshef of Herakleopolis.

Then, during the 2018 Met Gala, Kim Kardashian posed next to it, sheathed in a gold dress that shimmered like the coffin itself.

Her image circled the globe and was spotted by the Jordanian smuggler who had taken the coffin and tipped the high priest’s mummy into the Nile. He complained to another smuggler that he had never been paid for his efforts. As it turned out, his confidante was an informant for the Manhattan district attorney’s office.

The investigators found the export license had been forged. The coffin had not, as the permit stated, left Egypt in 1971. It had been illegally excavated in 2011, smuggled to Dubai, then Germany and Paris. When the coffin arrived at the Met, one of the high priest’s finger bones was still attached inside, according to investigators.

Only two years after buying the coffin, the Met agreed to return it to Egypt.

“After we learned that the museum was a victim of fraud,” the Met’s president, Daniel H. Weiss, said, “and unwittingly participated in the illegal trade of antiquities, we worked with the DA’s office for its return to Egypt.”

## Returned Under Pressure

Museums do show a heightened sensitivity to the integrity of their collections and have returned illicit objects based on their own research. But experts say most museum repatriations of recent years have been sparked by government claims or U.S. law enforcement efforts.

“There is a sense that the U.S. should not be the repository of the world’s stolen property,” said Stefan D. Cassella, a former federal prosecutor.

The office of Manhattan District Attorney Alvin Bragg has a dedicated unit that focuses on restitution. Since 2011, the office says it has recovered nearly 4,500 antiquities from collectors and dealers and, in several cases, from museums.

Last summer, the unit served a search warrant on the Getty regarding the three major terra cotta, “Orpheus and the Sirens” — mainstays of the museum’s collection. It cited the New York State penal code, in particular a section that prohibits the possession of stolen property and is typically used in more prosaic settings to recover things like stolen cars.

Matthew Bogdanos, the assistant district attorney who leads the unit, said it had overwhelming evidence. “The Getty gulped,” Bogdanos recalled, “and said, ‘Yes, you are right, it’s stolen,’ and returned it.”

In fact, the Getty decided, based on its own and independent research, to return additional items to Italy.

“Getty has been conducting vigorous provenance research for years and we return items based on evidence of illegal excavation,” said Lisa Lapin, a Getty spokesperson.

“I do give them credit,” Bogdanos said of museums that cooperate. “But I don’t think anyone should think we walk in the door, and it’s, ‘Glad you are here.’ That does not happen.”

## The Impact of a Treaty

Experts say the 1970 UNESCO convention helped redefine acceptable behavior when it came to antiquities. Nations pledged to cooperate and follow best practices to curb the import of stolen items.

Though the treaty governed the conduct of nations, not institutions, museums began to set guidelines that aligned in spirit with its principles. Many agreed, for example, not to acquire an artifact without clear, documented evidence that it had left its country of origin before 1970, or had been legally exported after 1970.

“It has reset the range of acceptable behavior,” said Nicholas M. O’Donnell, a lawyer who specializes in art matters.

Still, the ethos of collecting hardly changed overnight.

“When I first entered the world of curators, it was the Wild West, ‘1970’ notwithstanding,” said Gary Vikan, who was a curator in the 1980s and later became director of the Walters Art Museum in Baltimore. “Curators and museum directors wanted to get important works. You wanted to be the one that gets that icon, that sculpture, that bronze.”

While the 1970 cutoff date reduces the risk of acquiring a stolen object, it does not inoculate museums from claims. Countries can, and do, make demands for objects acquired earlier based on their own national ownership laws that define when an artifact became state property, and thus illegal to be exported without an official license. Italy, for example, has had one on the books since 1909.

U.S. investigators often cite such ownership laws when pressing museums to return items that left that country after such a law was in place. To succeed, they must show that the law was clear and unambiguous, that the archaeological artifact is truly from that country and that it was still there when the law was enacted.

Investigators will also point to other violations of customs law, such as when smugglers mislabel an item on shipping forms. The Egyptian coffin seized from the Met, for example, was described as a “gypsum Wooden Box and lid” on documents presented to German officials, according to investigators.

The fact that a museum acquired an antiquity in good faith does not matter, even if the seller or donor was not aware an item was looted. Under U.S. law, one can never acquire good title to stolen property.

## Steps Forward by Museums

The Smithsonian Institution this year adopted an ethical returns policy that holds that issues of fairness could trump any legal title it might possess. Put forward as Exhibit A of its new seriousness was an announcement that it would return 29 Benin Bronzes to Nigeria.

The bronzes, which carry that name even though they were often made from brass, ivory or wood, are not being given back as a matter of law, but, experts say, as a matter of morality. The Kingdom of Benin, in what is now southern Nigeria, had no heritage law in place in 1897 when British soldiers seized thousands of them as trophies.

The bronzes have become a focal point for the repatriation debate. At least 50 American museums hold at least one Benin bronze and there are a total of roughly 1,100 in the U.S. So far, at least 10 museums have returned bronzes or are planning to.

Critics complain that, among other things, such returns take treasures that showcase a country’s artistic brilliance from an international capital like Washington, where they are much seen, and send them to remote, uncertain settings.

One organization, the Restitution Study Group, has sued to block the Smithsonian’s transfers. Deadria Farmer-Paellmann, executive director of the group, said her ancestors were traded as slaves from ports controlled by the Kingdom of Benin, where colonial-era rulers participated in the slave trade. She views the artifacts, some of which are said to have been created from the very metal that was exchanged for slaves, as part of her heritage and often took her daughter to see them at museums.

“If they go back, what then is left for us,” she said in an interview.

More debates of this sort are likely as museums grapple with increased scrutiny. Some have already chosen to respond with measures like the appointment in 2010 of Victoria Reed by the Museum of Fine Arts, Boston as its curator of provenance. Her job includes identifying looted objects in its collection.

She recently called attention to a new wall label for an ancient bracelet purchased by the museum in 2008. The label acknowledges that the museum no longer believes the account of the seller.

“We now believe the information is untrue, probably fabricated and used repeatedly by the seller to disguise instances of archaeological looting,” the panel says.

The Met and other museums have also entered into loan agreements that return ownership of artifacts to the country of origin but permit their continued display by the institution.

“Museums don’t need to OWN objects to share them with the public,” said Yates, of the University of Maastricht, in an email.

## Questioning Their Commitment

Some art world experts are not convinced that U.S. museums have fully embraced a new ethos of transparency and internal scrutiny.

They point to what they consider to be loopholes in the Association of Art Museum Directors guidelines on the acquisition of artifacts. The association, which serves as the industry’s ethical compass, discourages the acquisition of any object without a documented provenance before 1970, unless it has an official export permit. But the guidelines allow museums to accept such an artifact if they list it on an online registry where they report whatever provenance information they do have and a justification for taking it in.

To date, museums have posted 1,754 objects on the exception registry.

The association has spoken of how seriously it and its member organizations view the issues of looting and cultural heritage. But Patty Gerstenblith, the director of the Center for Art, Museum and Cultural Heritage Law at DePaul University, called the registry’s standard “very, very loose.” “It looks like a fig leaf,” she said.

Marlowe, the Colgate professor, said she too is skeptical that all museums are serious about scrutinizing their collections.

“The strategy museums have adopted is to pretend that these objects materialized out of nowhere,” she said. “But we are learning more and more they know exactly where these pieces came from and they are effectively lying in their labels.”

Vikan, the former museum director, said that while he fully endorses repatriation efforts, the cost for museums goes beyond the loss of artifacts already in a collection. Given their limited acquisition budgets, American museums have relied on donated antiquities and now donors who lack full paperwork can be reluctant to make gifts, and museums are reluctant to accept them.

But he does not worry that large museums, which typically display only a fraction of their holdings, will be significantly hurt by more robust repatriation efforts.

“If anyone tells me that sending the Elgin marbles back to Greece, that somehow the British Museum will be empty, it’s nonsense,” he said.

Bogdanos, the assistant district attorney, agreed.

"I don't want to denude New York of its extensive cultural treasures," he said. "I just want people to walk into museums, even other people's apartments, and see an antiquity and know, 'I bet you it's OK, it's legal, because here in New York they take that seriously.'" Alain Delaqu erie contributed research.