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Amsterdam Court Issues Decision in the *Scythian Gold Case*

By: Alexandra Harrington

The Ukrainian conflict has embroiled many actors over the past several years. Recently, its reach has extended to the world of museums and antiquities in the form of the "Scythian Gold" case.[1] Decided by the Amsterdam District Administrative Court on December 14, 2016, the case addresses the issue of whether it is appropriate for artifacts that are on loan to museums outside their home state to be returned to their home states in times of civil war. Further, the case addresses the ability of sub -state entities to loan items of national heritage.

At issue in this case are 565 items of Scythian gold and other artifacts worth over $1,500,000, including jewellery, swords, helmets and chalices, that were originally housed at four separate state-administered museums – the Kerch Historical and Culture Preserve, the Central Museum of Tavrida, the Bakhchisaray History and Culture State Preserve, and the National Preserve of Tauric Chersonesos – throughout Crimea. After much negotiation between the Allard Pierson Museum at the University of Amsterdam and the four Crimean museums, an agreement was reached in 2012 to allow the collection to be shown jointly at the Allard Pierson Museum after which it would be returned to the individual museums. These negotiations were allegedly done without the involvement of the Ukrainian government and resulted in contracts that did not involve the Ukrainian government.

The collection was shown for several months in 2014 as "Crimea: Gold and Secrets from the Black Sea." In 2014, prior to the return of the collection from the Netherlands, Crimea – formerly part of Ukraine – was annexed by Russia. This threw open the question of state sovereignty over Crimea and the entities located in it, including the four museums.

At the conclusion of the scheduled exhibit period in May 2014, the Allard Pierson Museum was unable to determine the rightful state party to receive return of the artifacts. Further, there was some concern that returning the artefacts to Crimea would

result in the Russian Federation taking direct control of them. After attempts at negotiation, a suit was brought by Crimea and, ultimately, Ukraine. The Netherlands sought to join the action early in the proceedings, however the Amsterdam District Administrative Court denied this request, finding that the Netherlands had no standing in the matter.[2]

In the opinion of the Amsterdam District Administrative Court, the Allard Pierson Museum was required to return the artifacts in total to Ukraine rather than to Crimea. The opinion was based largely on the application of UNESCO rules and principles recognizing that sovereign states are the appropriate legal entities to have control over cultural heritage items.[3] The application of these rules at the time of the act of lending the artifacts meant that they belonged to Ukraine rather than to Crimea because they were items of Ukrainian national cultural heritage at the time they were lent and left the country. In recognition of the costs incurred by the Allard Pierson Museum for keeping custody of the artifacts during the litigation process, and during the pendency of anticipated future appeals, the Court awarded the Museum over $100,000 in compensation, although this has yet to be paid by any of the parties involved.

Since its issuance, the Amsterdam District Administrative Court's opinion has met with strong views on all sides. The Ukrainian government has welcomed the opinion, while Russian Federation officials have condemned it as a violation of "the principles of international exchanges between museums and the right of the people of Crimea to have access to their own cultural heritage."[4]

As the opinion was issued by a lower court in the Netherlands it is anticipated that appeals will be brought at several further stages before the pieces are returned. During the pendency of the appeals process, the artifacts are to remain in the Netherlands in the custody of the Allard Pierson Museum. Due to the complex issue of ownership between Ukraine, Crimea and, necessarily, the Russian Federation, it is anticipated that the artifacts will be the subject of further litigation should they return to Ukraine. These proceedings would determine the ownership interests of the state and Crimea and, ultimately, where the artifacts will be housed in the future.

This case has significant value for the litigants and the concept of cultural heritage *per se*. While it is a novel case at – indeed, some have asserted that it is the first of its kind[5] – given the frequency of international exchanges of items of cultural heritage and many dimensions of international and intranational conflict, it the entirety of the proceedings will have profound impact on future litigation. ♦

[1]http://theartnewspaper.com/news/news/scythian-gold-should-return-to-ukraine-dutch-court-rules-/

[2]https://www.nytimes.com/2015/08/18/arts/international/artifacts-from-crimean-museums-are-held-hostage-by-politics.html

[3]http://www.telegraph.co.uk/news/2016/12/14/dutch-court-rules-ancient-gold-crimea-must-returned-ukraine/

[4] BBC

[5]https://www.nytimes.com/2015/08/18/arts/international/artifacts-from-crimean-museums-are-held-hostage-by-politics.html

Historic Condemnation of the Destruction of Cultural Heritage at the International Criminal Court: The Case of *Prosecutor v. Ahmad Al Faqi Al Mahdi*

By: Haley S. Anderson

"Justice did not tremble," reported French newspaper *Le Monde* on September 29, 2016, describing the conclusion of this historic case at the International Criminal Court (ICC).[1] *Prosecutor v. Al Mahdi* was replete with "firsts" for the Court: first prosecution for destruction of cultural heritage; first prosecution of an Islamic extremist; first case regarding Mali; first guilty plea.

Background

In April 2012, a local scholar joined the Islamic extremist groups Al Qaeda in the Islamic Magreb (AQIM) and the associated Ansar Dine, which had swept into Mali and its historic city of Timbuktu earlier that year. Based on his studies and beliefs, the groups' leaders called on the scholar, Mr. Al Mahdi, to lead their morality police. This force, "Hisbah," was tasked with the promotion of virtue and prevention of vice as interpreted under Sharia law by the extremist groups. In that capacity, Mr. Al Mahdi was instructed to destroy mausoleums built above the tombs of saints in Timbuktu, which have been hubs of prayer and pilgrimage for centuries, but which the extremist group leaders deemed idolatrous violations.

These mausoleums constituted recognized heritage of unique value to many groups: the local Timbuktu community, the citizens of Mali and Africa, and indeed all humanity. UNESCO confirmed such status in 1988, making the sixteen mausoleums and certain related mosques the first African additions to the World Heritage List.

The Hisbah under Mr. Al Mahdi razed the mausoleums in June 2012 with pickaxes, hoes, and other weapons. Although he had originally advised against the destruction, the scholar personally conducted field research for and strategized the systematic attack. He also provided public justification and a call to arms for such action, delivering a sermon that condemned building over graves as a violation of Sharia and the Islamic faith.

"Justice did not tremble"

Conduct of the Case

Mali's government referred the situation of AQIM and Ansar Dine to the Court the following month under Article 14 of the Rome Statute. The Court's Office of the Prosecutor (OTP), aided by numerous publicly available videos documenting the mausoleums' disassembly, brought charges in 2015 against Mr. Al Mahdi for the war crime of intentionally directing attacks against cultural heritage under the Statute's Article 8(2)(b)(ix). Many protested this decision, arguing it ignores other horrors committed on the defendant's watch, including mass rape and forced marriage.

Yet the prosecution focused solely on attacks against cultural heritage proceeded, with Mr. Al Mahdi pleading guilty in open court at the beginning of the trial held August 22-24, 2016. During this trial, the OTP presented three witnesses: a representative of the OTP's investigatory team who extensively interviewed the defendant, an expert on Mali's cultural heritage, and Francesco Bandarin, UNESCO's Assistant Director General for Culture. Defense counsel presented only written character witnesses and asked limited questions of the OTP investigator relating to Mr. Al Mahdi's cooperation with the inquiry, remorse for his actions, and original opposition to the destruction. Ultimately, the court sentenced Mr. Al Mahdi on September 27, 2016 to nine years in prison, comporting with the OTP's recommendation and falling far short of the maximum thirty years' sentence for this crime.

Impact

In spite of the case's triumphant list of "firsts," its potential to alter conduct regarding cultural heritage in armed conflict is

fraught. Counsel for the OTP, defense counsel, and indeed even the defendant himself[2] addressed the importance of deterring further attacks on cultural heritage through this case. Deterrence is particularly significant where cultural heritage is concerned because its destruction can never truly be repaired and it is well documented that cultural heritage is threatened around the globe. Yet deterrence in this area is especially problematic in the current international order.

First, jurisdiction over such cases at international tribunals is highly contingent. As readers are no doubt aware, the ICC can hear cases in only limited circumstances. Moreover, alternatives to the ICC are few. While there have been successful prosecutions of individuals for these crimes in other fora, including the International Criminal Tribunal for the Former Yugoslavia,[3] such courts do not and may never exist for many conflict arenas. This leaves only domestic prosecutorial solutions, which pose unique obstacles and lack the expressive force of international condemnation. Thus, many of the gravest attacks on cultural heritage, such as those in Iraq and Syria, lie beyond any court's grasp, limiting the opportunities to set a precedent.

Second, at least one interpretation of extremists' actions suggests they destroy cultural heritage as a means to destroy populations' current societal constructions, including modern concepts of humanity. In such instances, foreseeable international condemnation may serve as motivation rather than deterrent.

Where conduct and law are at such loggerheads, with law further undermined by problematic enforcement, humanity will almost certainly endure ongoing attacks. Having recognized this, the question now is how we, as members of the international community, intend to respond. ♦

[1] Aymeric Janier, *Mausolées de Tombouctou: le jugement historique de la CPI*, Le Monde (Sept. 29, 2016, 8:52 AM), http://www.lemonde.fr/afrique/article/2016/09/29/mausolees-de-tombouctou-le-jugement-historique-de-la-cpi_5005207_3212.html (translation by author).

[2] In his statement pleading guilty, Mr. Al Mahdi implored others not to participate in "the same acts [he] got involved in because they are not going to lead to any good for humanity." Transcript of Aug. 22, 2016 at 9, Prosecutor v. Al Mahdi, Case No. ICC-01/12-01/15 (Mr Al Mahdi speaking through interpretation).

[3] *See* Prosecutor v. Strugar, Case No. IT-01-42-AR72, Judgment (Jan. 31, 2005); Prosecutor v. Jokic, Case No. IT-01-42/1-S, Judgment (Mar. 18, 2004).

It's Not My Painting — *Fletcher et al. v. Doig*

By: Charles Palmer

Robert Fletcher had a painting on his living room wall for many years. The painting was an acrylic on linen eerie desert scene with a pond. It was signed "1976 Peter Doige". Fletcher had purchased the painting in 1975 or 1976 from a prison parolee he had supervised at the Thunder Bay Correctional Center in Canada. A friend of Fletcher's told him that the painting might be by Peter Doig (Without the "e"), a prominent figurative painter, and very valuable.

Doig was born in Scotland in 1959, moving with his family to Trinidad and then to Canada. He went to London to attend various art schools, graduating from the Chelsea School of Art in 1990. In 2002, he moved to Trinidad where he now maintains his studio. Doig is well known for landscapes. These paintings are frequently based upon photographs he finds and often portray snowy scenes from his Canadian childhood. Doig's 2007 painting, "White Canoe", sold for $11.3 million at Sotheby's and his 2013 painting, "The Architect's Home in the Ravine" sold for $12 million in London.

Fletcher contacted the Bartlow Gallery in Chicago. Peter Bartlow, the owner, thought the Fletcher painting looked like a Doig painting. They sent a photograph of the painting to a Sotheby's expert who agreed. The next step was to contact the artist.

Peter Doig said the Fletcher painting was a "nice painting" but "not by me".[1] Fletcher and Bartlow were shocked, and brought suit against Doig in federal court for tortious interference with their prospective economic advantage. They asked for damages and a declaratory judgment that their painting was, in fact, painted by Doig.

Authenticity of works of art is a continuing, vexing problem. Picasso denied painting Erotic Scene" even though the Metropolitan Museum of Art still believes he did.[2] Gilbert Stuart denied painting the portrait of General Washington that hangs in the White House even though the White House believes he did.[3] But Robert Fletcher had reason to believe the painting hanging on his wall was by Peter Doig. Fletcher testified that he remembered meeting Peter Doig at Lakehead University in Canada, and then again in the Thunder Bay Correctional Center where Fletcher was a guard and Doig was an inmate. Fletcher further claimed that he supervised Doig as his parole officer, and finally that he helped Doig obtain employment through the Seafarers' Union. Although Fletcher had not seen Doig in many years, he found videos of him on YouTube and testified that he recognized Doig's manner and features. Finally, he noted that the painting was signed "Peter Doige" and portrayed a haunting landscape, similar to many Peter Doig paintings. Quite a coincidence if not true. But then, as Judge Feinerman said, "the plot thickened".[4]

Doig's counsel found Marilyn Doige Bovard, the sister of Peter Doige who had died in 2012. Bovard testified that this Peter Doige (properly spelled with an "e") attended Lakehead University, served a jail sen-

tence at Thunder Bay Correctional Center, and attended painting classes at Thunder Bay. Bovard further said that she had some of her brother's paintings, one of which was an acrylic painting of a desert.

At the trial Fletcher and Bartlow offered one expert witness on the issue of the painting's provenance, Peter Bartlow. Bartlow admitted that as owner of the plaintiff gallery he had a 25% interest in the outcome of the case, but the Court rejected Doig's attempt to disqualify Bartlow for that reason. Bartlow presented a unique method of analysis. He superimposed a transparency of a known Doig painting over the painting in question. By moving the transparency, viewers were able to compare the line and form of a known Doig painting with the painting in question. Bartlow has posted this superimposing analysis on YouTube.[5] On cross-examination, Doig's attorney uncharitably demonstrated a match of the disputed painting with the Mona Lisa.[6] Doig also offered letters from Doig's mother establishing that Doig was in Toronto acting in *Romeo and Juliet* at the time the disputed painting was produced, and could not have met Fletcher.

After an eight-day bench trial, the Judge Feinerman ruled the disputed painting was not done by the defendant, Peter Doig. In a case involving sophisticated and creative testimony concerning methods of painting, the Judge said he found Doig's mother's letters to be especially convincing, "unimpeachable" in fact.[7] The plaintiffs appealed to the Seventh Circuit, and as of the time of this writing the parties are litigating before Judge Feinerman over whether sanctions are appropriate against plaintiffs and their counsel.

This case was unusual because it got to trial at all, despite Doig having denied any connection with Fletcher's painting. ♦

[1] Graham Browley, "You Didn't Paint This? Prove It", *New York Times*, July 7, 2016.

[2] Ibid

[3] Ibid

[4] Fletcher and Bartlow Galleries v Doig et al 13 C 3270 (N.D. Ill., July 21, 2016)pp 3&4.

[5] Easy to Miss, but Hard to Deny, New Evidence published July 14, 2016 People & Blogs, YouTube and Taking Doig Apart I published February 24, 2016 People & Blogs YouTube.

[6] Deanna Isaacson, "In a Bizarre Trial, a Judge Rules in Favor of a Famous Artist, Peter Doig", August 24, 2016, *www.chicagoreader.com*

[7] Ben Guarino, "A $10 Million Painting Just Became Worthless Thanks to the Court Decision, Morning Mix", *The Washington Post*, August 24, 2016.

Art and Cultural Heritage — Modern Laws in India

By: Krrishan Singhania & Nirali Shah

"India is the cradle of the human race, the birthplace of human speech, the mother of history, the grandmother of legend and the great grandmother of tradition"

– Mark Twain

Constitution of India

The Constitution of India provides for the preservation of our rich heritage and its cultural heterogeneity. There are special provisions made in the Indian Constitution to protect the diverse religious beliefs and cultural mix of India. For example, Article 29 vests in a citizen of India a right to conserve his or her own distinct language, religion and culture. Article 49 reiterates the importance attached to the protection of monuments and objects of national interest. Article 51A (f), Part IVA of the Constitution, in its most direct reference to culture figures, enumerates the fundamental duties of citizens to value and preserve India's heritage.

The Supreme Court of India has, time and again, addressed the momentousness of Indian heritage and a need to preserve the same.

Post-Independence

After Independence, the protection of India's cultural heritage fell under the legislative jurisdiction of both the Central and state governments. By virtue of this, the Central Government of India has enacted two important statutory legislations, namely, The Ancient Monuments and Archaeological sites and remains Act, 1958 and The Antiquities and Art Treasures Act, 1972.

The Ancient Monuments and Archaeological sites and remains Act, 1958 provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations, and for the protection of sculptures, carvings and other like objects. A 'National Monument Authority' amendment was recently passed in 2010, granting the Central Government authority to grade and classify protected monuments and areas.

The Antiquities and Art Treasures Act, 1972 provides for the export trade in antiquities and art treasures, the prevention of smuggling of and fraudulent dealings in antiquities, the compulsory acquisition of antiquities and art treasures for their preservation in public places, and certain other connected matters. The objective of the law was to prevent smuggling and ensure that Indian antiques remained within the country. Given practical complexities, "antiques" in India became non-existent after the Act was passed, and the Government of India is in the process of drafting a new and effective Antiquities Law.

There are also a number of state laws directed at the protection of monuments, artifacts and antiquities, etc.[1]

Judicial Activism – A pioneer in Cultural Protection

The judiciary, to fulfill its constitutional obligations, has always been proactive in issuing appropriate orders, directions and writs against those who cause harm to the art and cultural heritage of India. This is evident from a plethora of cases decided by the Apex Court of the Country.

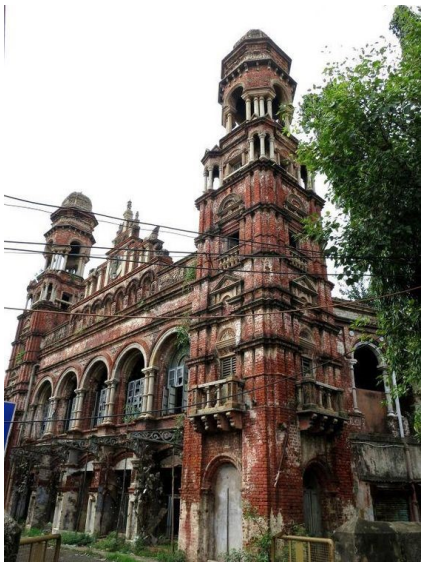
The Taj Trapezium Case

The Taj Mahal in Agra is one of the Seven Wonders of the World, declared a UNESCO World Heritage Site in 1983 and is a global tourist attraction. But there was a time when the monument started developing a yellowish tinge owing to increased levels of acidic rains caused by industries generating harmful pollutants in the area. To prevent further degradation of the Monument, Mr. M.C. Mehta, an attorney in the Supreme Court of India and active environmentalist, filed a Public Interest Litigation in 1984, addressing the adverse effects of the industries and vehicles in the vicinity of the Taj Mahal. He sought directions to be given to the relevant authorities to take immediate steps to stop air pollution in the area and save The Taj.

The Court ordered all the factories using hazardous gasses switch to natural gas, failing which the court ordered closure of such factories. The employees were guaranteed a 1 year shifting grant and the same job in the company after the shift was complete. This case accepted two important principles, the "*Precautionary principle*" and the "*Polluter pays principle*", which have since become part of the law of the land.

There are many non-profit organizations working relentlessly to protect and preserve India's heritage. The Indian National Trust for Architectural and Cultural Heritage (INTACH) was established in 1984 to protect and conserve India's natural and cultural heritage. INTACH has prevented the demolition of various ancient structures and has been building awareness of the need for protection and conservation of heritage structures.

The Bharat Building Demolition Case



In this case, the court laid down a well timed expression that, *"Preservation of heritage buildings is a manifestation of our cultural heritage.*"

The Bharat Insurance building is a heritage building in Chennai, India. Built in 1897, he building is an example of the Indo-Saracenic architecture, a hybrid of Muslim design with Indian materials.

Once a lively commercial center, it started deteriorating due to poor maintenance. The ownership changed hands several times before it came under possession of the Life Insurance Corporation of India (LIC) in 1956. In 1998, tenants were asked to vacate the premises due to weakness in the structure, and LIC planned to demolish the building in 2006.

The Madras High Court temporarily stayed the demolition after INTACH filed a Public Interest Litigation to preserve the building. LIC appealed to the Supreme Court which referred the matter back to the Madras High Court. The High Court issued a comprehensive order in 2009, asking the state government to submit a report on the building and also form a conservation committee to handle the protection of other heritage structures. The resulting heritage conservation committee reported to the High Court that the building should be preserved, reiterating its heritage value.

Meanwhile, LIC filed a petition with the Supreme Court in 2010, arguing that LIC should be allowed to redevelop the property in a manner that would resemble the old building in design. LIC also stated that the building had not been listed anywhere as a heritage structure, and proposed an eight-story complex in its place. Soon thereafter, the government made an announcement in October 2010 about finalizing a heritage bill.

The Supreme Court, in a landmark judgment in 2010, included the Bharat building in a list of 400-plus heritage structures that could not be demolished.

The artifacts and antiquities preserved and displayed at various centers and museums like Asiatic Society, National Library, Vishwabharti University, Victoria Memorial and other Indian Museums are National Assets which need safety, security, preservation, and maintenance. The Constitution of India also provides that every state is obligated to protect every monument or object of artistic or historic interest declared to be of national importance from spoliation, disfigurement, destruction, removal, disposal or export.

Narendra Modi, the Prime Minister of India, attended an event in 2016 in the United States of America, the purpose of which was the return of India's stolen cultural idols. The event marked the beginning of the process of returning more than 200 stolen cultural objects back to India. Mr. Modi thanked the U.S. President, Barack Obama, for making the decision to return the ancient treasures. Mr. Modi further added, "Both, governments and laws have become more alert on trafficking of cultural artefacts & are working to prevent it." "Technology," he said, "could help catch hold those indulging in illicit trafficking."

Conclusion

Protection of heritage sites will help the next generation learn and appreciate the rich culture and heritage of India. This is only possible when such sites are well maintained.

Many neo rich families have begun turning their personal antique collections into private museums and granting access to the general public. The Government of India should recognize this current trend for its efforts to increase awareness of and appreciation for the rich heritage of India. In a similar manner, the Government of India may encourage both foreigners and Indians to bring their inherited artifacts back to India to display in private museums for limited periods of time, to increase awareness amongst younger generations, as is being carried out in other parts of the world. There must also be stronger laws addressing private ownership and management of museums with historical significance.

As social and cultural change intensifies, greater demands are made to conserve heritage as a brake against unwanted change. To prevent the loss of artifacts, the Indian government is launching a National Mission on Monuments and Antiquities, tasked with documenting the antiquities and preparing a national database. The Mission will also mark the beginning of efforts to retrieve smuggled antiquities and promote public awareness and participation in the safeguarding of antiquarian wealth. A committee has also been set up to review museum security requirements for a future comprehensive security policy.

In the end, it is needless to mention that properties of heritage value are a nation's pride while any damage to such property is a nation's loss. ♦

[1] For example, see: The Tamil Nadu Ancient Monuments and Archeological Sites and Remains Act, 1966; The Hampi World Heritage Area Management Authority Act, 2002; The Rajasthan Monuments, Archeological sites and Antiquities Act, 1961; The Madhya Pradesh Ancient Monuments and Archeological Sites and Remains Act, 1964; The Victoria Memorial Act, 1903; The Salar Jung Museum Act, 1961; and The Jammu & Kashmir Heritage Conservation and Preservation Act, 2010.

Magna Carta's 800th Animates Cultural Heritage Law

By: Nicole D. Webster

The 800th anniversary of Magna Carta's sealing furnishes opportunity to consider the role of Magna Carta in current cultural heritage law debate. Society established upon the rule of law requires legal disputes to be resolved in a manner that applies the law uniformly. But, not in all cases has the axis of controversy occurred on acceptable grounds. Still in others, public policy informs. Challenges remain to determinations within our jurisprudential, cultural and diplomatic frameworks. Are we to incorporate certain arguments not grounded in black letter law into the cultural heritage repatriation sector? To what degree could such a courseprovide a challenge to fundamental tenets emanating from Magna Carta?

Magna Carta has been relied upon for many critical elements of constitutionalism, including concepts of due process and the rule of law. It serves as part inspiration for documents enshrining the recognition of rights elemental to all people—including the English Bill of Rights, the American Declaration of Independence, the U.S. Constitution and Bill of Rights, and the European Convention on Human Rights. Given this foundational reliance upon steadfastness in the law, how do we address repatriation assertions that are intrinsic, but technically only peripheral (based, for example, on morality or nationalism) to the baseline law?

Is there a resolution beyond sustaining heartrending requests made, followed by occasional comity, collaboration and alternative dispute resolution, but most often resulting in impasse, broadened demands and, finally, threats of possible sanctions? Do we consider incorporating the bases of these "tangential" petitions into the law, possibly through analysis of relevant factors (e.g., the item's level of intrinsic representation of the nation's or people group's heritage; whether the item is sacred or forms part of a belief or ritual; to what degree the item, culture or people group is rare or in danger of non-existence; or to what degree the acquisition – even if legal at the time – contravenes public policy)? Would such an approach facilitate the balance many seek between the rights of the creator(s) or nation of origin and the present possessor and aggregate public?

Where would such a potential sliding scale of factors be capped, in order to distinguish those items that would and would not qualify? Would qualifying categories include all cultural items taken within the loose or technical confines of the law of the time, just those of extraordinary cultural significance, objects whose economic value, in the context of a nation's relative poverty, could assist with rejuvenating a local economy and, thus, greatly improve the lives of thousands or millions? However, is this potential alternative a challenge to the principles of the supremacy and dependability of the law, as ensconced in Magna Carta and fervently crystallized in successive documents of legal moment to billions globally?

"No free [people] shall be taken, or imprisoned, or disseized, or outlawed, or in any way harmed—nor will we go upon or send upon [them]—save by the lawful judgment of [their] peers or by the law of the land. To none will we sell, to none deny or delay, right or justice."

In Magna Carta, we contemplate not only the rule of law, but also the protection of individual rights as against despotic government. In the preservation and development of cultural heritage rights, we further underscore these collective benefits, be they nationally- or globally-oriented.

There are other areas of the law, concerning offenses, which we do not allow to survive as they would if the law were applied as it "stood" at that previous time. These we allow to become obsolete or eradicated in favor of current policy even though new or evolved law could operate retroactively. The law in most nations whose underpinnings include due process and the rule of law does not countenance, to name just some abominations, genocide, apartheid, slavery, torture or unequal property ownership rights for genders and races. We know that results of many agreements, customs and laws exist today that were not technically illegal at the time of their making. In many instances, to those, we as a society in nations with a stable and fair legal process, have stated that fundamental rights, the priority of humaneness and other related values that drive a just legal system, nullify the former state of the law and its part in dictating those outcomes.

Though we would not liken the taking of culturally representative objects to such atrocities as slavery, genocide, apartheid and the heinous like, they are examples of present-day enlightenment prevailing over historical law. In the loss of a portion of a nation's or people's culture do we see any relevant nexuses of underlying principles? Would such a possibility as here contemplated suitably strengthen the capacity to achieve one of the goals of the cultural heritage community—to acknowledge and enhance the abilities of nations and cultural groups to enjoy and preserve their cultures, pass them on to future generations, and edify the rest of the world? Or, would such a concrete alteration fly in the face of Magna Carta and all that has grown from it over the centuries—over the days, weeks and years in which fellow beings have toiled to make lives for themselves and their loved ones with only the earthly assurance (faith, community and other potentially fortifying elements, for the instant, aside) of predictability in the law as their hope?

We can ask ourselves whether cultural heritage—human culture—is something so intrinsically material to the world populace so as to give such above-presented or other applicable factors stature in this area of the law. Or, does that tear too greatly at the tolerable strictures of our law-making? Nonetheless, even Magna Carta itself sprang forth from custom. ♦

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