



The Trade in Palestinian Antiquities

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The Tomb of the Shepherd of Moses in the Judean desert was recently excavated by looters and left as depicted here.

Photo credit: Adel Yahya/PACE

Today, a visitor to Jerusalem can visit a licensed dealer and lawfully purchase a piece of the past, courtesy of the legally-sanctioned (under prevailing Israeli legislation) trade in antiquities. This trade is fuelled by a supply of antiquities acquired via both licit and illicit channels.¹ Despite numerous studies² showing a direct relationship between the demand for archaeological material and the looting of archaeological sites, the current government of Palestine is also considering a legalized sale of antiquities.³ The origins of the legal sale of antiquities in Israel and Palestine can be traced back to the Ottoman occupation of the region, which encouraged the movement of artefacts from the hinterlands to the capital. The legal precedents for the trade are also a legacy of the Mandate period, during which the British Mandate government established both the legal and logistical framework for the current antiquities scheme in Israel and the proposed law in Palestine. Although historically entrenched, is the continued use of these legislative legacies the best mechanism for protecting

the cultural heritage of the region? In this paper, I consider the ramifications of cultural heritage law and practices which authorize a trade in antiquities—the historical antecedents, the current practice, and the future initiatives—theoretically aimed at protecting the past for future generations.

The establishment and implementation of laws is not without its tribulations, whether in the past or present. Archival evidence from the British Mandate period illustrates many of the problems and pitfalls associated with the execution and oversight of the managed trade in antiquities in Palestine during the Mandate. Many of the challenging elements of the trade discussed in the correspondence and records of the Mandate Department of Antiquities continue to plague the current licensed trade in antiquities in Israel; they portend similarly vexing issues of an ill-conceived law in Palestine. Through archival documentation and oral histories with the various participants in the legal trade in antiquities, this study considers the legal genesis of the existing and proposed antiquities laws in Israel and Palestine. Integral to an investigation of these laws is the question of ownership and control of the past, and the future sale of archaeological artefacts in the region.

Owning the Past?

Christian, Jewish, and Muslim pilgrims have long been enticed to the land of the Bible. As early as the second century CE, the first Christian pilgrims from various parts of the Roman Empire began to arrive in Palestine to recreate the lives of Jesus and the Apostles. The efforts of Helena, mother of the Emperor Constantine were among the first attempts to identify the sites of the Bible. Helena was not content to merely walk in the footsteps of Jesus, but wished to find the actual locations of Biblical events and to enshrine them for future pilgrims.⁴ With this began the era of Byzantine pilgrimage.⁵ The motivations of these early intrepid travellers extended beyond visiting sites, but for the first time the associated archaeological artefacts began to take on significance—they signified a place associated with the Bible and were to be venerated wherever their final resting place.

Bones of saints, garments and shrouds of New Testament figures and virtually every sort of relic associated with famous biblical personalities were dug up, bought, sold, and highly prized for their spiritual and healing power. By the end of the fourth century CE, the export or 'translation' of relics from the Holy Land had reached enormous proportions.⁶

Early pilgrims were encouraged by church officials to acquire relics, establishing the mechanisms for buying and selling sacred paraphernalia and creating an important source of revenue for the monastic and religious establishments in the Holy Land.



Hebron Cottage Industry. *Source: M. Kersel*

Pieces of the True Cross, Jesus' burial shroud, vials of Mary's milk, and body parts of the various saints were sold at the various religious institutions frequented by pilgrims. The value of these relics and the myriad conflicting claims to possession of identical relics led to an even greater emphasis on the objects themselves. A small cottage industry for the production of relics to meet market demand grew up in the areas surrounding the religious sites (Bethlehem, Hebron, and Jerusalem).⁷

The Muslim rulers of the seventh century CE onwards made no real objections to continued Christian pilgrimage to the area, until the destruction of the Church of the Holy Sepulchre in 1009 by the Fatimid Caliph al-Hakim. The ensuing Crusades were a battle for the ancient shrines and artefacts of the region; trade in relics and seasonal religious tours continued and acted as manifestations of economic and political connections between European cities and the trade networks of the region. Control over the various very lucrative religious sites became a central issue in many international struggles throughout the Middle Ages and Ottoman period.

The subsequent growth of antiquarianism in the eighteenth century gave rise to a new secular interest in the area. The once purely religious interest in the Holy Land began to give way to a more down-to-earth curiosity about its artefacts, monuments, plants, people, and ruins. Those on the Grand Tour collected to fill their cabinet of curiosities rather than expressly for religious reasons. Explorers avidly amassed samples of classical statuary, coins, and pottery. Academic understanding of the history of the region was for the first time independently expanded through the study of material artefacts. The interest in acquiring artefacts for scientific purposes, coupled with the continued demand for religious relics and icons fuelled the trade in antiquities, although the trade went unregulated and there were no governmental mechanisms in place to protect the cultural heritage of the region. Public awareness of artefacts

as commodities, consumer demand and perceived threats to the material past played integral roles in the development of the laws governing legal and illegal trade. Later legislative efforts of the Ottoman Empire and the subsequent British Mandate government in the area sought to rectify the depletion of relics and the attendant mining of archaeological sites to supply the ever-increasing demand.

Legal Antecedents

The Ottoman Law of 1884

In response to increasing foreign interest in the area and the looting of archaeological material from the Empire,⁸ an early Ottoman Antiquities Law was passed in 1874 for the regulation of antiquities trafficking. This first antiquities law was primarily aimed at foreign nationals and was written as a protection mechanism. A later Ottoman law enacted in 1884 (1884 Law) established national patrimony (ownership)⁹ over all artefacts in the Ottoman Empire and sought to regulate scientific access to antiquities and sites (excavation permits were required). Under the law, all artefacts discovered during excavation were the property of the National Museum in Constantinople and were to be sent there until those in charge made decisions about the disposition of the finds. This law could be considered the first instance that archaeological material from the region was deemed important enough to pass legislation to ensure its safekeeping. Alternatively the law could be construed as legalized cultural imperialism¹⁰—motivated by the Ottoman Empire’s desire to appropriate material from its territories rather than for the preservation of the archaeological legacy of the region. By controlling archaeological goods and taxing the antiquities sales in the periphery, the government effectively regulated European access to heritage, access that had been previously unfettered.

Most of the provisions articulated in the 1884 Law seemed reasonable, but practical enforcement of this law was virtually impossible. The expanse of the empire was so great that the Ottoman government did not have enough officials to oversee and implement the various regulations of the 1884 Law and the inherent bureaucracy often delayed excavation permits for almost a year.¹¹ Foreign excavators who previously had unregulated access to the finds from their forays into the field were extremely dissatisfied with the new provision that all artefacts had to be vetted by the Imperial Museum in Constantinople prior to study and/or analysis.¹² In an effort to curb the loss of cultural heritage from the empire, Chapter I Article 8 of the 1884 Law specifically prohibited the exporting of artefacts without the permission of the Imperial Museum. Even with this provision, many foreign archaeological missions and locals transgressed the law almost immediately after its enactment.¹³ A complex smuggling network, which included Jordan, Lebanon, Palestine, and Syria, developed and continued through the Mandate period until today.

At the turn of the early 20th century the character of archaeological work in the region underwent a methodological revolution with the beginning of stratigraphic excavations at some of the most prominent tells in the region. Simultaneously, this period saw the decline and collapse of the Ottoman Empire and the rise of competition for territory by the various European nations with vested economic and political interests in the area. The region comprising modern Israel and Palestine was ceded to the British after World War I and in June 1922 the League of Nations passed *The Palestine Mandate of the League of Nations*. The Mandate for Palestine was an explicit document regarding Britain's responsibilities and powers of administration in Palestine including: "securing the establishment of the Jewish national home", and "safeguarding the civil and religious rights of all the inhabitants of Palestine".¹⁴ The British Mandate period, often referred to as the 'Golden Age of Archaeology'¹⁵, saw the establishment of an efficient, centralized colonial government and the improvement of transportation and communications throughout the region, as it became one of the most active centres of excavation and archaeological research in the world.

Mandate Legislation

The British Mandate is conventionally seen as a separate period in the general and legal history of Israel and Palestine. Prior to 1917, Palestine did not exist as a political or administrative unit but was simply part of the greater Ottoman territory. The League of Nations granted Mandate territories to the Western powers, which were to serve as trustees, usually for a limited period of time, with the eventual aim of establishing self-rule for the locals.¹⁶ As trustees, the Mandate authority was charged with oversight and protection of the cultural heritage of its territories. In one of its first actions, the British Mandate government promulgated an Antiquities Proclamation in 1918, which noted the importance of the region's cultural heritage. In July of 1920, the Mandate civil administration took over from the military and a Department of Antiquities (DOA) was established with the objective of overseeing archaeology in the region.

With the enactment of the Antiquities Proclamation of 1918, archaeology and specific archaeological sites took on a much more professional and bureaucratic legal status superseding any religious or magical significance previously imbued through centuries of pilgrimage. The British oversaw the establishment of the Palestine Archaeological Museum¹⁷—built to house the administration of the DOA, public galleries, the archives, a library, and to serve as a repository of the archaeological riches of the area.¹⁸

Archaeologist John Garstang was appointed as the Director of the Department of Antiquities for Palestine. As one of his first tasks as director, Garstang formulated an Antiquities Ordinance for Palestine (AO 1920). In a report of his activities to the Palestine Exploration Fund, Garstang¹⁹ stated that "the Antiquities Ordinance was based not only on the collective advice of archaeological and legal specialists, but embodied the results of experience in neighbouring countries." By using the 1884 Ottoman Law of Antiquities and the legislative efforts of the surrounding nations

as a springboard, and in consultation with archaeologists and government officials, Garstang established an antiquities ordinance vesting the ownership of moveable and immovable cultural heritage in the Civil Government of Palestine. The enactment of this ordinance ensured that the protection and oversight of cultural heritage in Palestine was carried out locally rather than from a colonial capital.

The primary goal of the AO 1920 was the protection of archaeological antiquities²⁰ and sites. The regulation of ongoing archaeological excavations was monitored by the Department of Antiquities, as was the sale of artefacts. In response to criticisms of the earlier 1884 Law by archaeologists and tourists regarding the lack of access to archaeological material, a provision was included for the sale of material deemed not required for the national repository—a decision to be made by the director of the DOA and its advisory board. The department was given permission by the High Commission to issue licenses for the trade in antiquities. In 1920, for the first time, a licensed trade in antiquities was regulated and overseen by a bureaucratic entity—the Department of Antiquities. Article 21 of *The Palestine Mandate of the League of Nations* of 1922 further cemented the right to scientific access for nationals and foreigners by insuring access to excavations and archaeological research for any member of the League of Nations. Scientific archaeological enquiry and the distribution of archaeological material took centre stage during the mandatory period, embodied in Antiquities Ordinance No. 51 of 1929.

In 1929, Antiquities Ordinance No. 51 (AO 1929) was enacted by the High Commissioner for Palestine; AO 1929 now forms the basis for all current domestic legislation concerning protection of cultural property in Israel and Palestine.²¹ Under this ordinance, the definition of buying and selling of artefacts is clearly spelled out starting with a basic definition of “to deal”: “‘To deal’ in antiquities means to engage in the business of buying and selling antiquities for the purpose of trade; and a ‘dealer’ is a person who is so engaged in that business.”²² Specific guidelines for obtaining licenses to deal in and export antiquities are outlined in the ordinance and in the accompanying Antiquities Rules of 1930 (AR 1930). Article 4 regulated matters of licensing, including: application procedures, duration of the license and criteria for obtaining a license; duties of the DOA in oversight of the process; and the requirement that each dealer inform potential buyers of the need to acquire an export permit. With the establishment of these provisions and guidelines the previously unregulated activity of selling artefacts was legislated. Palestinian and Jewish families who had been in the antiquities business for decades now had to apply for official permission, pay for a license, submit to inspections by the DOA and provide a detailed list of their inventory and sales. Many of these requirements for the sale of antiquities are enforced in the current trade in Israel. This system was/is not without its detractors.

After the Mandate

In the post-WWII period, after continued internal revolts in Palestine, the British withdrew from the region and turned over the question of Palestine to the United Nations. The United Nations partition plan of 29 November, 1947 divided Palestine into Arab and Jewish states, with Jerusalem under international rule. Although the Jewish community in Palestine acceded to the UN plan, Arab populations of Palestine and neighbouring Arab states were disinclined to accept. In May of 1948, the state of Israel was declared, eventually encompassing the territory granted to the Jews under the Partition Plan and a substantial portion of that allotted to the Palestinians. Full-scale war broke out between Israel and the surrounding Arab nations. By the end of the war, about three-quarters of a million Palestinians had been expelled, or had fled, from their homes, villages and towns. In the aftermath of the war, the Gaza Strip came under the control of Egypt and the area known as the West Bank and part of Jerusalem were administered by the nascent Hashemite Kingdom of Jordan. This partition of the region resulted in three legislative efforts governing the protection of the cultural heritage, albeit all based on the AO 1929.

In the period immediately following Israeli statehood and the 1948 Arab-Israeli War, the AO of 1929 remained the primary cultural heritage legislation governing the Gaza Strip, the West Bank, and Israel. In the early days of statehood, Israel kept in place most of the legislation enacted during the Mandate period. This reverence for the status quo did not necessarily mean that Israel valued the British legal system, but Israeli leaders wished to ensure a continuous legal framework to aid in nation building. In the early days of the state, many of the deserted Palestinian villages were destroyed—the empty villages were seen as a ‘silent reminder’ of a displaced population.²³ The razing of these communities also impacted archaeological sites and encouraged looting of the surrounding areas.²⁴ Reports of military looting of archaeological sites and museums at places like Megiddo and Caesarea led to the establishment of an Antiquities Unit in July of 1948, charged with oversight of the archaeological heritage of the region.²⁵

The Law and Administration Ordinance (No. 1 of 5708-1948) of Israel reaffirmed the AO of 1929 as the legislation covering cultural heritage protection. In the Gaza Strip, the AO 1929 remained in force as it did under Jordanian oversight in the West Bank. In all three areas, the trade in antiquities remained illegal unless the dealer obtained a license from the respective department of antiquities. Similarly the export of any antiquity was also prohibited without the approval of the director of the department of antiquities in each of the three areas.

In the West Bank, the various provisions and regulations in the AO 1929 remained in place until 1966 when Jordan repealed the ordinance, replacing it with the Jordanian Temporary Law no. 51 on Antiquities 1966. This statute, which formed the basis

for the fifth draft on Palestinian Cultural Heritage Legislation 2003 currently under review, is very similar to the AO 1929. The 1966 law declares that antiquities are considered the property of the state. Provisions for the export of and dealing in antiquities are almost identical to the AO 1929, although the fines and penalties for criminal offenses are substantially increased.

Since 1967, the West Bank and the Gaza Strip have been subject to an occupying military government, with military commanders in each area empowered with administrative, governmental, and legislative powers. These powers were executed through a series of Military Orders, two of which directly affected cultural heritage. In 1973, the Israeli occupation authorities in the Gaza Strip introduced Military Order No. 462 (1973). The order forbids the sale or transfer of any antiquity to a person who does not reside in the Gaza Strip, without permission from the director of the DOA. Permission might be granted with respect to a class of objects (Article 1); the order also created a new criminal offense for anyone violating this provision. As they were instructed under the AO 1929, dealers in antiquities are required to keep a register of the items in each shop, and failure to comply results in a financial penalty.

In 1986, the Israeli occupying forces introduced another military order (No. 1166), this one concerning antiquities in the West Bank. This order amended the Jordanian Temporary Law No. 51 on Antiquities of 1966 and authorized the Israeli antiquities staff officer for the West Bank to exercise most of the regulations contained in the Jordanian law. In order to export any antiquities from the region (i.e., the West Bank) permission must be granted by the antiquities staff officer (Military Order No. 1166, 1986: Article 7).

An interesting element in each of these military orders (nos. 462 and 1166) covers the export of antiquities, which now requires a permit from the occupying authority. Previous legislation in the Gaza Strip and the West Bank (AO 1929) required that an export permit be obtained for each individual artefact, rather than a blanket export license as is required under the new military orders. This effectively weakens the laws. The provisions of these military orders thus may actually facilitate the movement of archaeological material across the borders for eventual sale in the legal market in Israel. Recent reports indicate that the ease of movement of archaeological material from the West Bank into the legal market in Israel in the late 1980s/early 1990s allowed for some dealers to ‘legally’ replenish their dwindling stock.²⁶

Legislation in Israel

After years of discussion and wrangling, an Israeli antiquities law was finally enacted in 1978 (AL 1978). An examination of the IAA archives uncovered correspondence concerning the drafting of legislation and the long process of negotiation in order to arrive at an antiquities law that satisfied most of the actors in the antiquities network.²⁷

During the development of the national law, archaeology in Israel metamorphosed into a national hobby and a tool for enhancing social solidarity, with networks for establishing national sentiment and allegiance. Israel finds its roots in the tangible remains of the past. Archaeological focus shifted from questions of chronology and typology to a larger inquiry into trade relations, social complexity, and the political structure of past societies. Emphasis was on scientific endeavours seeking to add to the global discussions of archaeological method and theory.²⁸ New arrivals to the nascent state all wanted to dig up a piece of their heritage in order to connect with their ancestors. The demand for antiquities was burgeoning. Simultaneously, avid collectors like Teddy Kollek and Moshe Dayan were in positions of political power, acting on behalf of the dealing and collecting communities to ensure that the traditional enterprise of dealing in antiquities would be allowed to continue, and in fact, be sanctioned by the government through new heritage legislation.

The AL 1978 has been considered both progressive and regressive. It has been noted that during the 1970s when it was enacted, the AL 1978 legislation was considered forward-thinking, particularly its requirement of full scientific publication for archaeological excavations.²⁹ Contrary to the progressive understandings of the law, however, the AL 1978 creates a paradoxical situation whereby excavation without a permit is banned, but provisions for a trade in archaeological material acquired prior to the enactment of the AL 1978 make Israel what has been referred to as a “collector’s paradise”.³⁰ In conjunction with military orders no. 462 and no. 1166, which potentially encourage the movement (with approval of the civil administrator) of material from Palestine, this ironic situation ensures the perpetuation of the market in antiquities—there is a seemingly unending supply.

In 1989, Israel passed another antiquities law, which established the IAA and articulated the various bodies associated with archaeological site protection (Antiquities Authority Law 5749-1989) or AL 1989. The preamble of the law states: “The Law of the Israel Antiquities Authority states that the IAA is the organization responsible for all the antiquities of the country, including the underwater finds. The IAA is authorized to excavate, preserve, conserve and administrate antiquities when necessary.” Chapter four, sections 25-26, establish inspectors and give them the right to conduct searches of suspected offences against the AL 1978. Out of this provision for inspectors developed the anti-theft unit, whose purpose is to oversee the licensing of private antiquities dealers. The anti-theft unit ensures that licensed export is permitted in accordance with conditions of the law and its regulations. This unit of the IAA is responsible for inspecting commerce in antiquities.

In 2002, amendments were made to the AL 1978, which included some new directives for dealers in antiquities. Added to AL 1978 were the statements:

Chapter 4 Section 20

Presumption of Knowledge

20A: An antiquities dealer shall not acquire an antiquity except from one of the following: (1) An antiquities dealer; (2) A person who holds authorization from the Director in accordance with the regulations of paragraph 25, unless that person is not obliged to provide notification in accordance with the regulations of this law.³¹

This is meant to ensure that, unless traders who routinely supply the antiquities dealers in Jerusalem's Old City are licensed dealers, their transactions are entirely illegal. Amendments were also made to the export of antiquities which theoretically close the loophole of exporting material from Palestine:

Chapter 4 Section 20

Restrictions on export of antiquities

22A. (a) A person may not bring into Israel an antiquity from the region unless he has received approval to do so from the Director and in accordance with the conditions of the permission; this permit can be personal or general and only if the general permit is publicized in Reshumot³².

(b) In this paragraph, "region" means each of the following: Judea and Samaria³³ and the Gaza Strip.³⁴

And yet recent accounts detail the complex networks of trade involved in selling illegally-acquired items as legitimate artefacts in the legal marketplace. Artefacts routinely arrive from Palestine, Jordan, Israel and elsewhere, enter a process of laundering, and then are sold as 'legally' exported from licensed dealers in Israel.³⁵ The Israeli legal venue that allows the sale of illegally-excavated artefacts provides an impetus for looting. Artefacts, many from the West Bank and Gaza, routinely make their way into the legitimate marketplace through a system of laundering and reuse of inventory numbers. Dealers are not required to provide export permits for the goods they sell; the onus is on the purchaser to request one and if none is requested then there is no real record of the sale (an export license is issued by the Israel Antiquities Authority after the item has been verified as part of a registered dealer's inventory). The inventory number for the sold item can then be reassigned to a similar recently-looted item, thus laundering the artefact. Palestine has not yet enacted heritage legislation prohibiting the movement of archaeological material across its borders, so artefacts are entering the legal market in Israel at an alarming rate.³⁶

Palestinian Legislation

Following the Palestinian-Israeli agreement in 1993, Jericho and the Gaza Strip were placed under the control of the Palestinian Authority (PA); subsequently in 1994 and

1995, the PA was given jurisdiction over areas of the West Bank. Under the Oslo II Agreement there is to be a phased transfer of responsibility for archaeology from Israel's Civil Administration to PA. Although not strictly part of internal domestic law, these agreements have serious implications for the protection of cultural heritage and the administration of archaeological sites. Under the terms of the handover, control of archaeology is limited to areas under the territorial jurisdiction of Palestine (areas A and B, approximately 40 percent of the land), meaning that Israel still maintains control of the administration of cultural heritage in some areas of Palestine. Under Article 2(3) of the Oslo II Agreement, the PA is obligated to prevent damage and to safeguard sites. The Palestinian Authority must also ensure free access to archaeological sites, which are regarded as holy or which hold special archaeological value (Article 2(7)). No such reciprocal provision is expected of the Civil Administration and in some cases Palestinians are denied access to those sites in Palestine under Israeli jurisdiction.³⁷ However, both sides are to undertake steps to prevent theft from archaeological sites and to enforce prohibitions on illegal trading to prevent the movement of material from the West Bank and the Gaza Strip to Israel and abroad (Oslo II Agreement Section 5.2). Furthering this goal, in 1996, Palestine banned the legal trade in antiquities in the areas under their jurisdiction, effectively putting dealers in Bethlehem, Hebron, Jericho, and the Gaza Strip out of business.

Established in the early days of the Oslo II Agreement, the Palestinian DOA inherited the various legislative efforts (AO 1929, Temporary Law No. 51 on Antiquities of Jordan, and Israeli military orders No. 462 and No. 1166) aimed at cultural heritage protection. In an effort to combat any deficiencies,³⁸ loopholes and contradictions in these laws, the Palestinian DOA has drafted legislation (5th Draft Cultural and Natural Heritage Law 2003) that "takes into consideration the scientific, legal and conceptual development of archaeology to the present time."³⁹ Although strengthening some aspects of cultural heritage protection, the draft legislation is somewhat vague on issues of national patrimony and the legal trade in antiquities.

For example, Article 3, under Objectives of the Draft Law, states: "This law aims at enhancing and ensuring the protection of Cultural and Natural Heritage in Palestine which belongs to the Palestinian people, in full respect of *private ownership*" [emphasis mine]. This article is vastly different from the AL 1978, which states: "2. (a) Where an antiquity is discovered or found in Israel after the coming into force of this Law, it shall within boundaries fixed by the Director become the property of the *State*" [emphasis mine] (AL 1978 Chapter 2 Section 2(a)). This leads to the question of whether the new cultural heritage law in Palestine is a national patrimony law.⁴⁰ Later Articles (7 and 8) covering private ownership, exportation, and the trade in antiquities indicate that the private sale and ownership of cultural heritage is permitted but with the permission of the Palestinian government, although there appear to be some contradictions within the text.

Later in the draft under Section IV Article 10, a set of articles prohibit the permanent export of local heritage, the alienation of archaeological objects that cannot be ‘freely traded’, and sets conditions for the disposition (sale) of local heritage, including annual authorization. Section IV, Article 19(3) is the most relevant to the question of whether Palestine is considering a legal sale in antiquities. It reads: “The Commission shall put in place a trade authorization system in local cultural Heritage specifying the requirements, procedures, authorization fees, eligible persons, and establishing the registers of cultural Heritage authorized for trade.”

During the course of my research, I was repeatedly told by archaeologists, government employees, lawyers and heritage practitioners that Palestine was considering a legal trade in antiquities. The sale of artefacts and relics has been a way of life for many Palestinian families for centuries, many of whom moved their businesses to the Old City after the Palestinian Authority banned the legal sale of artefacts in 1996. Of those dealers registered by the IAA, 57 percent are Palestinian. Both Israeli and Palestinian dealers told me that some of their most regular clientele are wealthy Palestinians (either in the region or in the Diaspora). The impetus to establish a legally-sanctioned sale of antiquities comes from both the business and private communities in Palestine.⁴¹ The drafters of the legislation are convinced that the new law with the provision to trade in antiquities will ensure greater protection of the cultural heritage of Palestine. Added to this is the thriving legal market in Israel, which is, in part, fed with looted artefacts from Palestine⁴² and the potential for increased tourism as normalcy returns to the region.

With the implementation of the AL 1978, the legally-sanctioned sale of antiquities (from existing pre-1798 collections and inventory) became a bureaucratic entity. Section IV, Article 10(3) of the draft legislation of the Palestinian Authority leaves the prospect of a legal sale open to interpretation and future implementation. The entire enterprise of a legal sale still bears the imprimatur of the landmark AO of 1929—the legacy of the British Mandate period and the forces of tourism and consumer demand. The distribution of archaeological material in the region is a long-enshrined practice in the area and has become intertwined with national identity in both Israel and Palestine. This enterprise, while a long-entrenched activity, is not without its detractors and logistical problems of oversight and illegalities, evidenced in both archival records and current ethnographic accounts.

Issues with the Trade: Archival and Ethnographic Evidence

Archival evidence from the period indicates that for the period 1 April, 1930 to 31 March, 1931, there were 23 licensed dealers from cities and towns throughout Palestine (Acre, Gaza, Haifa, Hebron, Jaffa, Jerusalem, Nazareth, Safad, Tiberias),

with over half located in Jerusalem (52 percent).⁴³ In 2003-2004, there were 60 dealers licensed by the Israel Antiquities Authority, most of whom (75 percent) are located in Jerusalem's old city.

Archival evidence depicts the conscientious nature of the Department of Antiquities in carrying out inspections of the various dealers. In a letter dated 10 April, 1930 to the director from the Inspector of Antiquities, he states:

*In accordance with your instructions, I have inspected all dealers' shops in my district and withdrawn all invalid licenses. Have also inspected all of the dealers' stock and registers and [sic] would make observations regarding registers as follows: Haj Abd el Hamid al-Afghany keeps his register in fairly good order, giving in most cases the provenance and names of the vendors. Mr. Attulah et Tarazy from Gaza, although giving provenance ignores in most cases the vendors. Faidi Eff. Silchy does not use names in his register at all and his dealings in antiquities being thus obscure.*⁴⁴

Recently, when asked to comment on the permitting process, dealers (regardless of their background—Israeli or Palestinian) were unanimous in their disdain for the current licensing scheme. “They [the IAA] make us jump through a bunch of hoops (the register, the inventory, and the shop inspections) because they want to show us who is boss and who has the gun, and who is in charge” (Dealer 20). “They [the IAA] have it in for me and make my life a living hell, always coming in when I have clients and asking to see the register, denying me export permits, all for no reason” (Dealer 14). “Everyone knows that the register system is just a system of falsified records. By everyone, I mean all of the dealers and the anti-theft unit” (Dealer 8 but corroborated by Dealers 21, 27, and 30-32). “I have a license in my window dated to 2001 [it was 2003 when I visited] no one has ever said anything and I am not changing it until the inspector makes me” (Dealer 28). Interviewed dealers outline the disjunction between the renewal of the license, the backlog of processing at the IAA, and the opening of antiquities shops in the Old City. “I try to capitalise on the Christmas rush of tourists. If I have to shut because the IAA hasn't renewed my license I can lose valuable revenue. I stay open, even if I haven't received the official license, I know it will be months before an inspector checks and by that time I will have my license. It works every year and I know that everyone does it. If everyone else were open why would you close?”⁴⁵

When asked about the efficacy of the unit in the task of protecting the archaeological sites on the region, one respondent replied “the theft unit is like using an aspirin to treat cancer. It may provide immediate relief (and even that is doubtful) but not long term sustainable protection” (Government Employee 2). Most of those familiar with the work of the unit agreed that it is impossible for them to meet their directive due to chronic understaffing and lack of financial resources.

The archives of the IAA also contain information about the screening, regulation of, and movement of archaeological material in Lebanon, Syria, and Transjordan. Correspondence between June of 1935 and March of 1942 follows the escapades of Mr. Alexander Rosh (alias ‘Holovtchiner’), a government officer in the Palestinian Department of Immigration and Statistics who was in the habit of vacationing yearly in either Egypt or Syria. As Mr. Rosh was an employee of the Mandate government, his baggage would not be searched as a matter of courtesy. In a letter from a licensed dealer in antiquities named T. H. Kalemkarian on 22 June, 1935 to R. W. Hamilton, the acting director of the Department of Antiquities, he outlines how Mr. Rosh on various occasion approached him with antiquities from Egypt. Ensuing correspondence between the DOA and the *Service des Antiquities* in Cairo acknowledges that Mr. Rosh did indeed export antiquities from Egypt, with permission, but as an unlicensed dealer in Palestine he was in breach of Section 10 of the Antiquities Ordinance of 1929.⁴⁶ Nothing further occurs until a series of letters from 1941-1942 indicate that Mr. Rosh has moved his operation to Syria. A letter from Hamilton to the Deputy Inspector-General of the Criminal Investigation Department states:

*One of my inspectors was informed recently by an antiquities dealer in Beirut that Mr. A. Rosh of the Department of Immigration is still trading in antiquities between Syria, Palestine and Egypt, without always obtaining the licenses that are required by each of those countries. Mr. Rosh is not a licensed dealer.*⁴⁷

By March of 1942, the Palestine Criminal Investigation Department had collected letters between Mr. Rosh and a dealer in Beirut, which confirmed Mr. Rosh’s guilt. There is also correspondence documenting the DOA’s triumph in successfully putting an end to Mr. Rosh’s illegal activities.⁴⁸

A number of letters (IAA Archives ATQ 20) from between 1928-1947 indicate the DOA was heavily involved in monitoring the movement of illegal antiquities from Syria to Palestine. The final piece of correspondence between the Palestine Police and the Department of Antiquities indicates that some suspects had been identified:

*I refer to your letter dated 29 September, 1947, regarding the illicit importation of antiquities from Syria. 2. Mohamed Abdul Rahman Saleh is a native of Silat-Ed-Dahr village in the Jenin Sub-District but resides with his son Imrawah in Suk El Carmel, Jaffa. It is known that Mohamed makes frequent visits to Syria. 3. I am informed that Mohamed, together with Abdul Majid Haj Mohamed and Diad Kassem of Silat-Ed-Dahr village, are implicated in the smuggling of ancient coins from Syria into Palestine when these articles are in demand for use as adornments by Bedouin and Fellahin women.*⁴⁹

Until the very end of the Mandate government, the importance of protecting cultural heritage is demonstrated by on-going investigations into reports of illegal antiquities smuggling. These thriving smuggling networks established during the Ottoman and Mandate periods continue to operate in the present, according to recent oral histories.

When questioned about the origin of the material for sale in shops, many dealers corroborated the documents in the archival material. The complex smuggling networks established in Jordan, Lebanon, Israel, Palestine, and Syria are still in use. Artefacts are crossing the borders in diplomatic pouches and UN trucks and aid vehicles (Archaeologist 37 and government employee 43). Dealers (1, 2, 32, 46, 57, and 68) and looters (12, 15) in Israel, Palestine and Jordan confirmed that diplomats purchasing archaeological material often stated that “they had no need for an export license or any other type of legal document as the material was going home in a pouch.”⁵⁰ Just as Mr. Rosh used his position within the Mandate government to move archaeological material with ease, so do diplomats posted today in Israel, Jordan and Palestine.

The examination of the British Mandate DOA archival material provides some record of the day-to-day management of the trade, the illegal and legal elements of the trade, the monitoring of regional and international movement of archaeological material, and use of diplomatic status to facilitate that movement. These characteristics outlined in the archival records act as harbingers of potential problems, drawbacks and successes associated with the legal marketplace. Theoretically, this evidence would have been (and still is) available to the drafters of the relevant cultural heritage protection legislation in Israel and Palestine and may have aided in determining which articles of AO 1929 and AR 1930 to retain and which to omit from future legislative efforts. Additionally, the archival evidence sets the stage for substantiated problems with the legal market, illuminating the weaknesses in the legislative legacies that are carried on until today in the laws of Israel, Jordan and Palestine. Interviews conducted with the various stakeholders in the trade in antiquities (archaeologists, collectors, dealers, government employees, looters, and tourists) in Jordan, Israel and Palestine confirm that many of the flaws in the licensed trade cited in the archival material exist today.

Who Owns the Past? Should There be a Trade?

The demand for archaeological artefacts from Palestine has existed for centuries. In order to meet that demand, a flourishing trade in relics was established and maintained. Historical precedence, legislative legacies and current governmental efforts would suggest that the majority of the region’s inhabitants supported and still do support a legal trade in antiquities, but is this really the case?

In interviews conducted as part of my recent study of the looting of archaeological sites and the trade in antiquities in the region, less than half the respondents support a legal trade. And that faction consisted primarily of dealers and collectors—the same interest groups in Israel that were influential during the drafting of the 1978 Antiquities Law and whom are involved in the draft legislation in Palestine. Some supporters proffered the ‘art as ambassador’ position, arguing that by “allowing people to collect increases our general knowledge, which may in turn lead to greater financial support of archaeological endeavours in the region” (Dealer 1). Other dealers argued “If people want to buy a reminder of their trip to the Holy Land, then we should supply it to them and in turn we can make a living” (Dealer 13). “If I didn’t sell this material people would still loot archaeological sites and someone else would come along and get a license and sell the stuff to a tourist from America” (Dealer 29). So, who owns the past? According to the archival material and recent interviews, the answer is the State. And, it was and is the duty of the state to protect the cultural heritage for the future.

While the legislative legacies of the region are historically deep-rooted, the jury is still out on how best to protect artefacts and archaeological sites that are threatened as a result of the unbridled demand for relics from the region. Through an examination of archival materials, recent oral histories, and an historical analysis of the legal precedents in the region, it is not difficult to see why a legal trade exists despite evidence indicating a direct link to the looting of archaeological sites. As Palestine prepares to implement a new set of laws, now is the time to reflect on the historical motives and current initiatives in the hope that legislative legacies and the status quo will not dictate the protection of cultural heritage. Instead a thoughtful examination of what is best for the cultural legacy of Palestine will prevail.

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Endnotes

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² Hollowell, "Moral Arguments on Subsistence Digging," in *The Ethics of Archaeology*, eds. C. Scarre and G. Scarre (Cambridge University Press, 2002) 69-96; Kersel, "From the Ground to the Buyer: A Market Analysis of the Illicit Trade in Antiquities," *Archaeology, Cultural Heritage and the Trade in Antiquities*, eds. N. Brodie, M.M. Kersel, C. Luke and K. Walker Tubb (Gainesville FL: University Press of Florida, 2006) 188-205; Kersel, *License to Sell: The Legal Trade of Antiquities in Israel*, Ph.D. thesis, Department of Archaeology, the University of Cambridge, 2006; Smith, "Looting and the Politics of Archaeological Knowledge in Northern Peru," *Ethnos* 70, 149-170.

³ 5th Draft Cultural and Natural Heritage Law of Palestine, 2003.

⁴ Silberman, "Power, Politics and the Past: The Social Construction of Antiquity in the Holy Land," *The Archaeology of Society in the Holy Land*, ed. T.E. Levy, 9-23.

⁵ Here I am using Feige's (Feige "Identity, Ritual, and Pilgrimage: The Meetings of the Israeli Exploration Society," *Divergent Jewish Cultures: Israel and America*, eds. D. Dash Moore and S. Ilan Troen, Yale University Press, 2005, 97-106) definition of pilgrimage – a journey leaving the political and social centre of life in order to visit a symbolic and religious center located on the geographical periphery.

⁶ Silberman, 11.

⁷ In an interesting parallel, modern cottage industries producing artefacts for the antiquities market through both looting and modern manufacture of replicas, exists in these centers at present. See figure 1 for an image of a contemporary archaeological replica manufacturer in Hebron.

⁸ This law was enacted shortly after the Pergamum Altar was expropriated (Marchand, *Down From Olympus. Archaeology and Philhellenism in Germany 1750-1970* (Princeton University Press, 1996)).

⁹ National cultural patrimony laws are those laws, which vest the protection and disposition of the tangible cultural legacy by proscribing the unauthorized excavation of archaeological sites, the export of antiquities, or both (Brodie, "Historical and Social Perspectives on the Regulation of the International Trade in Archaeological Objects: The Examples of Greece and India," *Vanderbilt Journal of Transnational Law*, 38, 1051-1066).

¹⁰ As defined by Edward Said (Said, *Culture and Imperialism* (New York: Vintage Books, 1995), cultural imperialism most clearly applies to the experiences of countries whose national treasures have been consistently looted over time, whose ancient terrain has been destroyed by amateurish and destructive excavations and whose history has been defined largely by foreigners. In this instance, the Ottoman Empire can be interpreted as the foreigner defining the history of its territories - Palestine.

¹¹ Gibson, "British Archaeological Institutions in Mandatory Palestine, 1917-1948," *Palestine Exploration Quarterly* 131, 115-143

¹² Bliss, *The Development of Palestine Exploration* (New York: Charles Scribner's Sons, 1906).

¹³ Shaw, *Possessors and Possessed. Museums, Archaeology, and the Visualization of History in the Late Ottoman Empire* (Berkeley: University of California Press, 2003).

¹⁴ *The Palestine Mandate of the League of Nations* 1922 preamble.

¹⁵ Silberman, "Power, Politics and the Past: The Social Construction of Antiquity in the Holy Land," *The Archaeology of Society in the Holy Land*, ed. T.E. Levy, 9-23.

¹⁶ Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: University of North Carolina Press, 2006).

¹⁷ Now commonly referred to as the Rockefeller Museum, the PAM (officially opened in 1938) was built through the generosity of John D. Rockefeller, Jr.

¹⁸ Cobbing and Tubb, "Before the Rockefeller: The First Palestine Museum in Jerusalem," *Tutela, Conservazione e Valorizzazione Del Patrimonio Culturale Della Palestina, Mediterraneo*, ed. F. Maniscalco, 2005, 69-79.

¹⁹ Garstang, "Eighteen Months Work of the Department of Antiquities for Palestine," July 1920-December 1921. *Palestine Exploration Fund Quarterly Statement*, April: 58.

²⁰ Defined in the antiquities ordinance as (a) any object, whether movable or immovable or a part of the soil, which has been constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency earlier than the year 1700 CE, together with any part thereof which has at a later date been added, reconstructed or restored; (b) human or animal remains of a date earlier than the year 600 CE, or (c) any building or construction of a date later than the year 1700 CE, which the Director may, by order, declare to be an antiquity (AO 1920, Part I, Article 2 (1)).

²¹ Oyediran, *Plunder, Destruction and Despoliation: An Analysis of Israel's Violations of the International Law of Cultural Property in the Occupied West Bank and Gaza Strip* (Ramallah, Palestine: Al-Haq, 1997).

²² AO 1929, Article 2(1)

²³ Kletter, *Just Past? The Making of Israeli Archaeology* (London: Equinox, 2006) 44.

²⁴ *Ibid.* 42-82.

²⁵ *Ibid.* 28-30.

²⁶ Dealers 3 and 17 as quoted in Kersel 2006b.

²⁷ Israel Antiquities Authority ATQ 16/37

²⁸ Gopher, Greenberg and Herzog 2002 *Archaeological Public Policy Public Policy in Israel. Perspectives and Practices*. D. Korn editor, 191-203. New York: Lexington Books.

²⁹ AL 1978 Chapter 3 Section 12; Gopher et al 2002

³⁰ Gopher et al 2002: 198.

³¹ Antiquities Authority Law Amendments 2002

³² The *Reshumot* is the federal register of Israeli Laws.

³³ The West Bank.

³⁴ Antiquities Authority Law Amendments 2002

³⁵ See Kersel 2006a.

³⁶ See Kersel 2006a.

³⁷ Incidents of this nature were reported in various interviews with archaeologists, government employees and local Palestinians.

³⁸ None of the previous legislation deals with ethnographic material and periods post-dating the 1700 CE benchmark date.

³⁹ Taha 2002 *Protection of Cultural Heritage in Palestine La Tutela Del Patrimonio Culturale in Caso Di Conflitto*. Edited by F. Maniscalco, 265-270.

⁴⁰ When I visited the Birzeit University Institute of Law, Ramallah, where many of the framers of the legislation are located, none was able to answer this question, stating that it was up to the government of Palestine to decide what heritage belongs to the state and what belongs to the private citizen.

⁴¹ Both interest groups (business and private collectors) are in agreement that the legal trade should fall under the administrative duties of Palestine DOA. Advocates for the legal trade in Palestine argue that banning the trade will send it underground.

⁴² See Kersel 2006b and Kersel 2007, "Transcending Borders: Objects on the Move," *Archaeologies – the Journal of the World Archaeological Congress* Volume 3(2): 81-98, for further discussion.

⁴³ IAA Archives ATQ 91

⁴⁴ Letter dated April 10, 1930: IAA Archives ATQ 91

⁴⁵ This statement was accompanied by the dealer giving me a look of lunacy. Anyone who does not open because they do not have a new license is crazy.

⁴⁶ Letter dated July 26, 1935: IAA Archives ATQ 91

⁴⁷ Letter dated November 7, 1941: IAA Archives ATQ 91

⁴⁸ IAA Archives ATQ 91

⁴⁹ Letter dated November 12, 1947: IAA Archives ATQ 3/20

⁵⁰ Diplomatic pouches can be large shipping containers, which receive diplomatic immunity from search and seizure.