

5. THE CHANGING LEGAL LANDSCAPE FOR MIDDLE EASTERN ARCHAEOLOGY IN THE COLONIAL ERA, 1800-1930

MORAG M. KERSEL

JOUKOWSKY INSTITUTE FOR ARCHAEOLOGY AND THE ANCIENT WORLD,
BROWN UNIVERSITY

Ownership of antiquities has for millennia been a potent symbol conveying power and wealth, education, national pride, and ultimately, control of the past. During the nineteenth and early twentieth centuries, the gradual dissolution of the Ottoman Empire and the increasing interest of European powers in the Middle East led local and later colonial officials to develop laws to control excavation and exportation of antiquities. These laws reflect tensions between nations over ownership of the past. Were historical artifacts from the Middle East more meaningful to people who live in the region, or do they reflect a world historical tradition shared by all nations?

In the Middle East, these tensions increased in the aftermath of World War I, as Western scholars such as James Henry Breasted developed the idea that Western civilization truly began in the ancient Middle East, and as nationalist movements in the region increasingly asserted their own close connection to the historical traditions of their homeland. One manifestation of this rise in nationalism was the move by many nations to enact national ownership laws, which vested ownership of antiquities in a nation and created a set of rights that were recognized when antiquities were removed. These issues are if anything even more contentious today, as they continue to be debated in the global community of the twenty-first century. Thus the history of antiquities law in the Middle East is a history of attempts to control the past by owning its most tangible remains.

ANTIQUITIES LAW IN THE OTTOMAN EMPIRE

In response to increasing foreign interest in parts of the Middle East and the looting of archaeological material from the Ottoman Empire, an Ottoman Antiquities Law was passed in 1874 for the regulation of the movement of antiquities uncovered during archaeological excavations. This early antiquities law recognized the right to a division of artifacts (between landowners, the empire, and foreign archaeological teams), although the ownership of the cultural heritage was vested in the empire.

A subsequent Ottoman law passed in 1884 established national ownership over all artifacts in the Ottoman Empire and sought to regulate scientific access to antiquities and sites. Under the 1884 law, all artifacts discovered in excavations were the property of the Imperial Museum in Constantinople and were to be sent there until the Director of the Museum made decisions about the partition of the finds. This law, although viewed as a national ownership law, alternatively could be interpreted as legalized cultural imperialism – the Ottoman Empire preserving not only the archaeological legacy of its core but also appropriating material from its territories in the periphery. By controlling archaeological goods, the Ottomans effectively regulated European access to its heritage, access that had previously gone unchecked.

The Ottoman Antiquities Law of 1884 followed closely on the heels of several major European expropriations from the Turkish heartland, including that of the Pergamon Altar (now in Berlin). The 1884 law did not develop in response to local Turkish interest in cultural heritage, but rather as a measure to ensure that artifacts from the far-reaching Ottoman Empire remained within its boundaries. The primary drafter of this legislation, Osman Hamdi Bey, Director of the Imperial Museum, was concerned with filling the coffers of the museum with the splendors of the empire, sending a clear political message to the West, and potentially capitalizing on tourism to the area.

PIONEERS TO THE PAST

A national stake in the cultural heritage of the empire was established as Chapter I Article 3 of the 1884 law: “all types of antiquities extant or found, or appearing in the course of excavation automatically belong to the state and their removal or destruction is illegal.” The nationalization of cultural artifacts and heritage was a reaction to the imperialism of the eighteenth and nineteenth centuries when the subjects and citizens of Western empires ransacked the monuments of less well-developed nations. The combination of the declining Ottoman Empire and Western expansion was the major impetus behind the inclusion of a national ownership element in the law. Although cultural heritage was the property of the empire, local Turks could still buy, sell, and exchange artifacts within the territorial boundaries of the empire.

Under the 1884 law, all foreign excavators in the Ottoman Empire had to apply for permission to excavate and all antiquities recovered during excavation were to be transferred to the Imperial Museum in Constantinople (Chapter I Article 12). The Director of the Imperial Museum was to make all decisions concerning the disposition of artifacts and whether redundant material was available for export from within the borders of the empire. Once artifacts were determined to be non-essential to the cultural heritage of the Ottoman Empire, they were returned to the excavator and/or landowner for study, analysis, or sale. Excavators were only allowed to take casts and molds of the exceptional artifacts or, if the material was considered redundant or unnecessary for the museum collection, it could be exported. According to Shaw (*Possessors and Possessed*, p. 116), “efforts to control the apportionment of antiquities to the Imperial Museum and to foreign museums often depended on the latter’s interest in promoting Ottoman cultural aspirations,” thus using the preferential export of artifacts as indicators of power and influence in the political arena. The Ottoman government also deployed the artifacts as cultural capital in the form of bribes and gifts in order to forge political alliances and cultivate diplomatic relationships. At the end of the nineteenth century, the close relationship between the Sultan Abdulhamid II, Kaiser Wilhelm I of Prussia, and Emperor Franz Joseph I of Austria was enhanced by bypassing the law when it suited diplomatic goals, allowing the free movement of archaeological material for political goodwill (Shaw, *Possessors and Possessed*, p. 117).

In practice, 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 of the empire delayed excavation permits for almost a year. Excavators who previously had unregulated access to the finds from their forays into the field were extremely unhappy with the new provision that all finds had to be vetted by the Imperial Museum prior to study, analysis, and/or export.

In an effort to curb the loss of cultural heritage from the empire, Chapter I Article 8 of the 1884 law specifically stated that without the permission of the Imperial Museum the exportation of artifacts was prohibited. Many foreign archaeological missions and locals contravened the law almost immediately after its enactment, including the University of Chicago Expedition to Bismaya led by Edgar J. Banks (Wilson, *Bismaya*). An intricate smuggling network developed through the region. Public awareness of artifacts as commodities and consumer demand played integral roles in the legal and illegal movement of artifacts. Under the 1884 law artifacts accidentally recovered by a landowner entitled him to a share of the artifacts’ value. Thus the legislation imbued archaeological artifacts with an economic value that may not have previously existed. Those who recovered artifacts received financial compensation prescribed by law – the looter was rewarded. The general feeling among archaeologists was that the 1884 Ottoman Antiquities Law, sound in principle, practically gave free hand to the plunderers of ancient remains while at the same time placing serious impediments in the way of legitimate excavators. The Ottoman Antiquities Law of 1906 was passed to strengthen the 1884 law and to close many of the loopholes, but there was still much movement of material within the empire and disgruntled foreign excavators lamented a lack of access to their archaeological material. In the waning days of the empire these initial attempts at regulating the movement and distribution of the cultural heritage of the region formed the basis for much of the later and currently existing legislation in the region.

5. THE CHANGING LEGAL LANDSCAPE FOR MIDDLE EASTERN ARCHEOLOGY IN THE COLONIAL ERA, 1800-1930

EGYPT

Although Egypt was an Ottoman province it was difficult to rule from such a distance. As such it remained semi-autonomous, under the jurisdiction of a local khedive and often acted autonomously until it was conquered by Napoleon's troops in 1798. This resulted in the large-scale removal of various monumental Egyptian sculptures, which made their way to the British Museum and into the consciousness of the West. This led to an ongoing fascination with Egypt and the Middle East and to calls by Egyptian academics for the protection of Egyptian cultural heritage. Later acquisitions by the consul collectors, which included British Consul General Henry Salt and his French rival Bernardino Drovetti, did not go unnoticed by Egyptian scholars even though the removal of artifacts was undertaken with *firman*s (permission) issued by the local khedive (Jasanoff, *Edge of Empire*, p. 230).

In 1835 Muhammad Ali, then Ottoman khedive of Egypt, issued an ordinance forbidding the export of antiquities, establishing an Egyptian Antiquities Service, and proposing the establishment of a national museum. One of the first of its kind, the ordinance laid the blame for the despoliation of the country squarely on the West, at the same time citing contemporaneous European legislative efforts setting a precedent for protections against the movement of antiquities (Reid, *Whose Pharaohs?*, p. 93). In 1834 Greece had enacted a national antiquities law that protected against the illegal export of archaeological material from Greece without the permission of the Greek government. But Egypt was not in Europe and was the target of European domination, which included the appropriation of archaeological artifacts for European institutions. Various diplomats to Egypt viewed the ordinance as an attempt to monopolize the past – an Egyptian attempt to control the nation's history, which some argued was the history of the world. The West was besotted with Egyptian artifacts and the demand for such items encouraged foreign missions to scorn the export ban (Reid, *Whose Pharaohs?*, p. 57).

Artifacts could still move freely around the Ottoman Empire, often making their way outside the empire through the porous border and with the aid of diplomatic cover. The Egyptian governor frequently used artifacts as cultural capital, viewing them as bargaining chips to be exchanged for European diplomatic and technical support (Reid, *Whose Pharaohs?*, p. 54). They were also used as gifts for the sultan in Istanbul, once again acting as material ambassadors, engendering goodwill. In 1882, after increasing instability at the end of the nineteenth century, Britain invaded the region to protect their interests in the area. Increasing curiosity in archaeological excavations and Egyptomania may also have played a role in Britain's desire to control the region.

As early as 1880, Egypt enacted a national ownership statute, a decree from Khedive Mohamed Tewfik, which clearly stated, "all the monuments and objects of antiquity, recognized as such the Regulation governing the matter, shall be declared the property of the Public Domain of the State."

In 1912, Egyptian Law of Antiquities No. 14 was passed clearly as a result of the earlier Ottoman efforts as well as the 1880 Egyptian Antiquities Decree. A national ownership law, Article 1, vested the title to both excavated antiquities and those yet to be discovered in the national government. The Minister of Public Works, placing antiquities in Egypt squarely in the sphere of the built environment, issued the permits. There was a provision outlining the division of finds, which were to be divided equally into two shares – one for the state and one for the excavator. The law expressly stated that the division was to be made by the Antiquities Service, but the excavator had the right to choose his portion (Article 11). It also provided for the acquisition of objects of national importance by the State, after fair compensation to the excavator. This law acknowledged the Western fascination for all things Egyptian.

Article 13 of the 1912 law outlined a provision for the licensed sale of antiquities. With the authorization of the Antiquities Service, merchants were granted permission to buy and sell antiquities. Artifacts could then be exported with the proper permits. The entire process was under the oversight of the Minister of Public Works, thereby ensuring that only select pieces left Egypt. It was under this law that Breasted (in 1925) acquired the Senenmut statue for the Field Museum: "I convinced the dealer that the statue could be shown to the Museum in Cairo and legal arrangements made for its export without a risk of it being seized by the government ... the Government official in charge of the Department of Antiquities hesitated some time before permitting its export, but to make a long story short, I now have the piece in my possession and all arrangements for its legal export have been made" (*JHB to Mr. Stanley Field, President of the Board of Trustees, Field Museum, April 4, 1925*).

PIONEERS TO THE PAST

POST-WORLD WAR I LAW

With the demise of the Ottoman Empire, newly independent areas including Palestine and Iraq began to enact their own forms of national legislation, beginning in both cases with efforts by colonial officials to draft antiquities laws and build national museums, and furthered by local nationalists. In order to maintain a sense of normalcy and to continue legal oversight, these newly formed independent states often adopted similar laws, especially when they were deemed reasonable (Chatterjee, *The Nation and Its Fragments*). Typically, countries did not act in isolation when attempting to protect their pasts, but rather learned from each other's successes and failures, with the common goal of retaining their cultural heritage as a signifier of a rich past and a bright future. In this case, the Egyptians looked to Greece and Turkey; Iran and Iraq took note of the rampant export of monumental Egyptian sculpture and architectural items and based their legislation on Egyptian efforts. Middle Eastern antiquities laws often possessed common elements: most instituted a system of partage, whereby archaeological material was divided between the excavator, the state, and the landowner. This system of dividing the spoils attempted to ensure that the finest elements and representations of a nation's cultural heritage remained within its boundaries. Early laws established repositories for the various artifacts in the form of national museums. In some instances this required a separate law, but these repositories were intended to coincide with the partage system, so that there would be no accusations of a country's inability to care for these manifestations of their heritage. A department of antiquities was also created as the mechanism to oversee both the national museum and to enforce the facets of these laws. There was an ideological divide as to whether these agencies were located within the Ministry of Education or the Ministry of Public Works, each signifying a different importance for archaeological artifacts – as educational tools in building a national identity or as part of the built environment to be preserved and protected. Most of the early ordinances and laws regulated the exportation of antiquities outside their territorial boundaries. Many of these initial legal proscriptions continued and can be found in the current legislative efforts of these nations.

PALESTINE

On December 9, 1917, in the final stages of World War I, Jerusalem (then under Ottoman rule) surrendered to the British forces commanded by General Allenby. This act marked the end of four centuries of Ottoman domination and the beginning of thirty years of British rule in Palestine. Using the 1884 Ottoman law as a springboard, the British authorities charged with cultural heritage protection in the region promulgated the 1918 Antiquities Proclamation, which noted the importance of cultural heritage. In July 1920, the Mandate civil administration took over from the military, and archaeologist John Garstang was appointed as the Director of the Department of Antiquities for Palestine. In a report of his activities to the Palestine Exploration Fund, Garstang ("Eighteen Months Work," p. 58) stated, "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." Garstang established an Antiquities Ordinance for Mandate Palestine vesting the ownership of moveable and immovable cultural heritage in the Civil Government of Palestine (that is, the local indigenous government rather than the foreign occupiers). Vesting national ownership of cultural material of the state in the civil government and not the occupiers was a departure from examples of earlier antiquities law, which gave those in charge (the Ottomans) the power to make decisions over the disposition of the cultural heritage of the region. The enactment of this ordinance established a Department of Antiquities and an archaeological advisory board (comprised of representatives of the various foreign archaeological schools in the area), ensuring that the protection and oversight of the cultural heritage in Palestine was carried out locally rather than from an imperial capital. In reviewing the legislative developments of an ordinance to protect archaeological heritage in Palestine it seems that without the direction and impetus of the Mandate government, specifically the guidance of John Garstang, such laws would not have been achievable by the divided local population.

The primary goal of the ordinance was the protection of archaeological antiquities and sites. The regulation of ongoing archaeological excavations was monitored by the Department of Antiquities, as was the sale of artifacts. In response to criticisms of the earlier 1884 law by archaeologists and tourists regarding the lack of access

5. THE CHANGING LEGAL LANDSCAPE FOR MIDDLE EASTERN ARCHEOLOGY IN THE COLONIAL ERA, 1800-1930

to archaeological material, a provision was included for the sale of material deemed unnecessary for the national repository, a decision made by the Director of Antiquities and the Board of Advisors. The Department was given permission by the High Commission to issue licenses for the trade in antiquities. In 1920, for the first time in Palestine, 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 ensuring access to excavations and archaeological research for any member of the League of Nations. Scientific archaeological enquiry and the distribution of archaeological material took center stage during the Mandate period, embodied in Antiquities Ordinance No. 51 of 1929.

IRAQ

During the Mandate period, the British government also received a mandate from the League of Nations to oversee the political development of what is now Iraq. The Mandate oversight was established to prepare for Iraq's impending independence, but with British interests in mind. An element of Britain's interests included a continuation of access to archaeological sites and artifacts. As part of the Ottoman Empire, the region of present-day Iraq had been subject to the antiquities laws of 1874 and 1884 and foreign archaeologists in Mesopotamia had been acting both within and outside the regulations (Bernhardsson, *Reclaiming a Plundered Past*). Prior to the Mandate period, artifacts from this region were considered international and moved without restriction to collections in the Middle East, Europe, and North America. Although not ratified, the Treaty of Peace with Turkey, commonly known as the Sèvres Treaty, became binding between Britain and Iraq under a 1922 treaty, which obliged Iraq to adopt the provisions in the Sèvres Treaty. Under these requirements excavations were subject to government approval. Also included were measures to protect foreign missions from discrimination. In light of the new provisions, which included assurances of partage, Iraqi scholars questioned the objectivity of the British government in drafting new antiquities legislation.

Formalized antiquities protection was in a state of limbo when Breasted visited in 1919–1920, but both the British and Iraqis were moving toward hybrid legislation, with Briton Gertrude Bell helping to formulate antiquities legislation for Iraq. The proposed legislation would still allow foreigners like Breasted to access sites and artifacts, but it also took into account Iraqi concerns. Resistance to Bell's drafts of antiquities legislation led to a confrontation with Sati' al-Husri, Director General of Education in Iraq (1921–1927) – as a result, archaeology in Iraq came under the purview of the Department of Education. Al-Husri's major disagreement was over a national ownership clause, and he could point to examples of national ownership antiquities laws in Greece, where everything went to the national museum. Bell argued that if all things belonged to the state, no foreign archaeologist would come to Iraq to excavate (Bernhardsson, *Reclaiming a Plundered Past*). This battle would continue even though Bell's antiquities law eventually passed in 1924.

The law contained many of the same provisions and characteristics mentioned previously, with one exception. Rather than the equal division of artifacts (partage) between the national museum and the excavator or landowner, Article 22 of the new law stated:

At the close of excavations, the Director shall choose such objects from among those found as are in his opinion needed for the scientific completeness of the Iraq Museum. After separating these objects, the Director will assign to the [excavator] such objects as will reward him adequately aiming as far as possible at giving such person a representative share of the whole result of excavations made by him.

The law left the division of finds to the discretion of the director of the Iraq Museum and attempted to ensure that the pieces of greatest importance remained in Iraq.

PIONEERS TO THE PAST

LEGAL CHRONOLOGY IN ANTIQUITIES LEGISLATION

1835	Antiquities Ordinance (Muhammad Ali) (Egypt)
1834	National Antiquities Law (Greece)
1874	Ottoman Antiquities Law
1880	Decree on the Prohibition of the Export of Antiquities (Egypt)
1884	Ottoman Antiquities Law
1906	Ottoman Antiquities Law
1912	Law of Antiquities No. 14 (Egypt)
1918	Antiquities Proclamation (Palestine Mandate)
1920	Treaty of Peace with Turkey (Sèvres Treaty)
1922	The Palestine Mandate of the League of Nations
1924	Antiquities Law (Gertrude Bell) (Iraq)
1929	Antiquities Ordinance No. 51 (Palestine)
1930	Antiquities Rules, February 1, 1930 (Palestine)
1934	Antiquities Ordinance (Palestine)
1936	Antiquities Law No. 59 (Iraq)
1948	Establishment of the State of Israel (reinstates the AO 1929) The Gaza Strip (governed by Egypt and the AO 1929) West Bank (governed by Jordan and the AO 1929)

The post-World War I period was a mix of old and new as antiquities legislation in the newly forming states struggled to encompass the desires of the nationalists and the foreign supporters of archaeology. This was the legislative quagmire in which Breasted would find himself when he next returned to the Middle East.

CONCLUSION

At the end of formal colonialism, national laws and cultures in the former colonies were not only modes of resistance, but were proof of colonialism's perpetual victory over the colonized. For many the fact that the Parthenon marbles or the bust of Nefertiti rest in Western institutions is a sign of the perpetuation of colonialism. Many today view the great museums of the world as testaments to imperialism and colonialism, while others see these universal museums as proof of the ingenuity of mankind – artifacts as effective ambassadors showcasing the wonders of other cultures.