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**“Duplicates and the Antiquities Market”**

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**The Development of the Proposal<sup>1</sup>**

For more than 60 years, academics, field archaeologists, journalists and state authorities have discussed the idea that countries of origin should offer ‘duplicate’ antiquities or multiple copies to the market, for a variety of reasons. Some of the participants in the debate are echoing the desire of the market which generally promotes the idea that antiquities certified by countries of origin should be made available for sale.

Journalist Karl E. Meyer, in his 1973 book *The Plundered Past*, refers to the possible legal sale of antiquities which are the findings of state archaeological excavations and are classified as duplicates. Meyer suggests that the sale of these duplicates could take place in order to satisfy “at least the collecting appetites of those with a moderate income, with the money used to support excavations.” Although Meyer implies that such proposals have been made several times before 1973 (without ever having been applied in practice) and refers (Meyer 1973:186) to a relevant attempt in Mexico “a few years ago,” the author does not support this information with specifics. As we will see, Kersel and Kletter (2006) uncover evidence that the Israeli state in principle enabled the sale of duplicates in the 1950s. I find it a strong possibility that this is what Meyer had in mind.

In 1982 Paul Bator, Professor of Law at Harvard University and University of Chicago Law School, published “An Essay on the International Trade in Art,” in which he suggests four categories of cultural objects/antiquities that should not be exported for sale from their countries of origin, while the rest “should be freely exportable.” Although Bator remains pessimistic that “so long as there is a world market for beautiful archaeological objects, a substantial amount of looting will persist no matter what regulatory system is installed” (Bator 1982:325), he suggests that “art-rich countries should help to satisfy the foreign market (and aid the cause of preservation) by actively encouraging the export of ‘duplicates’ and other already-excavated objects that cannot or will not be adequately conserved at home (366).”

Four years later, John Henry Merryman, Professor of Law in Stanford University, in his article “Two Ways of Thinking about Cultural Property,” described what he named as “cultural nationalism” and “cultural internationalism,” following Meyer’s references to nationalism (Meyer 1973:177; 180; 184). Merryman stated that a characteristic of cultural nationalism is “hoarding cultural objects” (1986: 847):

[cultural objects which are] more than adequately represented in domestic museums and collections

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and are merely warehoused, uncatalogued, un-inventoried and unavailable for display or for study by domestic or foreign scholars. Foreign museums that lack examples of such objects would willingly acquire, study and display (and conserve) them. Foreign dealers and collectors would gladly buy them. [...] In this way, the achievements of earlier cultures of the source nation could be exhibited to a wider audience, the interest of foreigners in seeing and studying such works (their “common cultural heritage”) could be accommodated, and the demand that is currently met through the illicit market could be partially satisfied by an open and licit trade in cultural property. [...] [source nations] fail to spread their culture, they fail to exploit such objects as a valuable resource for trade and they contribute to the cultural impoverishment of people in other parts of the world.

Merryman wonders if it would be better if the *huaqueros* (looters in Latin America) were “doing legally what was formerly illegal, supervised by professionals” and “if the income from cultural property sold abroad were available in the nation of origin to support the work of its archaeologists, anthropologists and other professionals, as well as the work of supervised *huaqueros*” (849). Although Merryman as a lawyer is against looting, he goes as far as to express extreme ideas usually expressed by looters: “Still, a blanket condemnation of those who participate in the traffic may be too easy: illegal excavations may reveal important works that would otherwise remain hidden; smuggling may save works that would otherwise be destroyed through covetous neglect” (848, fn. 59).

In 1995, Merryman, in an article entitled “A Licit International Trade in Cultural Objects,” suggests that “source nations can reduce the damage from clandestine excavations by employing more sophisticated domestic controls and feeding surplus archaeological objects to the licit market” (Merryman 1995:13). This is a practice that generates income for the state (30, 32), that could be used “for domestic archaeology and for the properly supervised exploration, excavation and preservation of its sites” (37) and “through the medium of the art and antiquities market, [to enable duplicates] to move to the collectors and museums that were most interested in acquiring and most capable of paying and caring for them, whether they were situated at home or abroad” (18). He goes on to discuss what he calls the “naked retentionism” of “source countries” (19), arguing that “most source nations fail to encourage the use of cultural property as a resource in international trade. For another, they often fail to exploit the use of “art as a good ambassador” (24). He suggests the sale of “surplus” antiquities through cooperation between “source countries” and the market, and he summarises his suggestions under the sub-title “Feeding a licit market.” Merryman thinks that duplicates “would appeal strongly to foreign museums, collectors and dealers,” that “a licit market [in ‘redundant objects’] would undermine the black market and reduce (though it might not totally eliminate) the demand for ‘bootleg’ antiquities” and that “the export of marketable surplus archaeological objects” would help to deal with the “illegal archaeological excavation problem” (36-38).

In 1997, Patrick O’Keefe, Adjunct Professor at the Australian National University and an Honorary Professor at the University of Queensland, refers in his book *Trade in Antiquities: Reducing Destruction and Theft* to the issue of the open and legal sale of duplicates or multiple copies (O’Keefe 1997:66-75). O’Keefe doubts that the destruction of archaeological sites and looting in general will stop by the offer of duplicates in the market, an argument supported by examples from Peru and the United States (66-68). He doubts also whether collectors’ desire for unique objects would cease once duplicates are offered, or whether the collectors would prefer to acquire a certified (and so legitimate) antiquity rather than an unprovenanced one (68-69). O’Keefe refers to Merryman, dealers and archaeologist’s different positions on the issue, acknowledging pros of selling “duplicates” (e.g. the bad conditions of storage and conservation in many cases, lack of inventories or funding) and cons (e.g. the unity of the material for future, more advanced research). O’Keefe then suggests a controlled sale of duplicate material, under the supervision of experts filtered by international bodies such as UNESCO and with the participation of experienced members of the market (e.g. dealers and auction houses) who have bound themselves to observe the Code of Ethics already considered by the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or its Restitution in Case of Illicit Appropriation (69-75, following Merryman 1995:31-32). O’Keefe underlines that such a policy should hold for the institutions of all countries which hold great collections – not only the Mediterranean countries and those in South America (71-72), believing that “what

is necessary is a short-term means of satisfying demand so as to allow for other measures to operate to lessen or redirect demand in the long term;” he concludes by pointing out that “[sale of] material from [collections] would not last indefinitely” (75).

In the same year Avner Raban, an Israeli field archaeologist with almost 40 years of experience, partly in answer to antiquities collector Shlomo Moussaieff (Shanks 1996:22-35 and 62-65), publishes his article “Stop the Charade: It’s Time to Sell Artefacts,” referring to the great problem of storing all the excavated material and the lack of state funds for its subsequent publication. He suggests that Mediterranean countries should keep the legally excavated and published unique material as well as “individual samples” of antiquities of “‘local’ significance” (Raban 1997:43). Raban suggests that “Israel and other Mediterranean countries should now allow the sale of artefacts from legal archaeological excavations *after proper scientific publication*” (44). He argues that “the revenue from these sales can be used by the excavating institutions and the government to sponsor further research - and for paying *baksheesh* to workers for turning over special objects found by them on the dig, such as gems, jewelry, coins and seals” (45). In addition, Raban envisages a system that keeps a detailed record of all the artifacts belonging in the same group in order to make easier for the material to be revisited and examined after the objects’ dispersal. He states that the possibility of examination through new scientific techniques in future is not sufficient reason to maintain the unity of a group of objects; the same argument could well be used for multiplying the relevant material by keeping samples also from every stratigraphic layer for more advanced examination in the future. Raban’s opinion is that a policy of selling duplicates “should decrease the market for fakes” (45). He further opines that antiquities certified by the Israeli state are likely to be acquired by “pilgrims” for religious reasons at prices multiple times their actual monetary value, but that the measure, if passed, would not stop collectors pursuing unique objects (45).

In 2005 Neil Brodie, at the time director of the Illicit Antiquities Research Centre at the University of Cambridge, examining the effect that the possible sale of duplicate archaeological material originating from Greece and India would have in the international market, states (Brodie 2005:1062-1063):

[Cycladic figurines and Indian Natarajas] reaching the market were not chance finds. The Cycladic figurines had been dug out of graves, and the Indian Natarajas and other religious images and sculpture were often stolen private property. The release of surplus or duplicate material onto the market would not have helped in either case because the trade was driven by demand for what were considered high-quality pieces. The consumers wanted Cycladic figurines and Indian Natarajas or the like, and there were no available “duplicates” or acceptable substitutes that would have satisfied them. Indeed, it seems inevitable that while antiquities are collected as “art”, the demand for the exceptional piece - for the “masterpiece” - will persist. [...] In view of this philosophy, it seems naive to suggest that a regulation allowing a freer flow of what dealers call “less important material” would satisfy demand and, thus, ameliorate looting at source. The examples of Greece and India show that there would most likely still be a large demand for rare, or what are perceived to be, high-quality objects of a type that would not be released onto the market under any regime, and that the destruction of archaeological heritage would continue.

The following year, Brodie in another article, discussing the indiscriminate demand for licit and illicit antiquities in the international trade, adds reasons against the sale of duplicate material: “unfortunately, there are many objections to this solution: stockpiles of objects might not exist, duplicates would not appeal to collectors, excavations do not routinely recover saleable objects, the release of legitimate material would further commercialize the market and act to increase rather than assuage demand, and more besides. These objections have never been confronted” (Brodie 2006: 61-62).

The same year, Morag Kersel and Raz Kletter used their archaeological research experience in Israel to argue against the scheme considered in 2003 by the Israel Antiquities Authority on the sale of sherds to “fix budgetary problems and solve storage crises” (318). Kersel and Kletter state that “those who support a legal trade in cultural material are primarily collectors, dealers, and market nations” (Kersel and Kletter 2006:318). They remind us that during the 30-year British rule in Palestine (December 1917 – 1948), the 1920 and 1929 *Antiquities Ordinances* were created, which included a provision ‘for the sale of material deemed “not

required for the national repository” (319). Kersel and Kletter, through painstaking archival research, reveal that a sale of “duplicate antiquities” was theoretically issued in Israel during the 1950’s, though it appears that not a single antiquity was ever sold (325):

The aims of this plan were not solely to make money, but also to provide public access to antiquities of the state [...] In contrast, the recent IAA proposal to sell sherds is primarily about money - aiming to alleviate budgetary cutbacks and cut storage expenses. This proposal may echo the general milieu of life in Israel in the last decade - a decade of ruthless capitalism and alarming social inequality. Antiquities and salvage excavations are increasingly perceived in terms of commodities and economic profit, instead of cultural objects that embody the heritage of all peoples. [...] The IDAM never sold a single sherd, despite having all of the necessary legislation and all of the obligatory approvals.

The authors wonder whether the 2003 proposal would cause IAA to “control the market or just become part of it” and explain clearly all the reasons that are proving this plan false (322-325).

In my opinion, the 1950’s case regarding the proposed sale of archaeological duplicates in Israel, that Kersel and Kletter revealed, could well have been the prompt for Meyer’s vague statement in 1973 about the origins of this proposal (Meyer 1973:186: “Though proposals of this kind have been repeatedly advanced, in most cases they have been doomed by nationalist passion”).

In 2007, Patty Gerstenblith, Professor of Law at DePaul University, in her article “Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past” evaluates observations previously made regarding the sale of duplicates. She doubts whether “buyers will prefer these [duplicates] over looted objects” (Gerstenblith 2007:184), observes (185) that “a managed market is not likely to deter the looting of sites,” and opines (185) that “the desire of high-end collectors and some museums to acquire the ‘museum quality’ pieces would not be satisfied through permitted sales.” In her view, based on Kersel’s unpublished PhD research, (Kersel 2006:55-58, 162-167) “examples of several nations that currently permit some form of a legal market or have done so in the past demonstrate that the looting of sites persists despite the availability of legally obtained artifacts on the market” (Gerstenblith 2007:185). For Gerstenblith, “the inescapable conclusion is that site looting is not deterred through a solution that encourages, rather than discourages, the market. Proposals that advocate less regulation of the market provide a veneer of respectability that encourages trading in artifacts that are likely to be the product of contemporary site looting” (187).

Recently, Morag Kersel has reminded us that “in 2003 Israel proposed a government-sponsored sale of ancient glass and pottery sherds.” The Israeli government stated that these efforts would “fix budgetary problems and solve the storage crisis,” but the idea was later abandoned (Kersel 2015:48). However, Kersel underlines the success of a scheme proposed in 1977 by Nancy Lapp, the wife of a deceased archaeologist, whereby groups of objects from Bab adh-Dhra’ excavations were distributed to various institutions for the purposes of display and education (49-51). Kersel also promotes long-term loans and leasing of archaeological material over its sale, since this practice produce useful funds for the country of origin and the state does not relinquish ownership of the material (49). For Kersel, these are intriguing solutions to the problem of limited storage and the crisis in curatorship (53).

### **Categorization and Evaluation of Reasons**

Categorization and further analysis of the reasons given in support of the sale of such antiquities and the different suggestions regarding the way that the potential income could be invested, may lead to useful observations.

Reasons to sell:

A) Satisfy/feed the market (Meyer 1973, Bator 1982, Merryman 1986, Merryman 1995, O’Keefe 1997)

- B) Satisfy the interest of foreigners (Merryman 1986)
- C) Objects as cultural ambassadors (Merryman 1986, Merryman 1995)/provide public access to antiquities of the state (IAA, in Kersel and Kletter 2006)
- D) Reduce the damage from clandestine excavations/demand for illicit antiquities/undermine the black market (Merryman 1995)
- E) Decrease the market for fakes (Raban 1997)

Income from such sales would:

- A) Support excavations/the work of archaeologists, anthropologists and other professionals (Meyer 1973, Merryman 1986, Merryman 1995, Raban 1997)
- B) Preserve objects/sites (Bator 1982)
- C) Further research/publication of the excavated material (Raban 1997)
- D) Reward workers/supervised *huaqueros* on the dig who turn over special objects (Raban 1997, Merryman 1986, Giuliana Luna in Merryman 1995:36 and fn. 104)
- E) alleviate budgetary cutbacks and cut storage expenses (IAA, in Kersel and Kletter 2006)

Regarding the first category (reasons to sell), three professors of law and a knowledgeable journalist promote the satisfaction/feeding of the market (reason “A”). This seems quite surprising, given that the worldwide thriving of illicit excavations was referred to in their own publications. Bator clearly stated in 1982 that “the point is that the satisfaction of the market for illegally exported objects has created a *business* that depends on and encourages practices which are frequently destructive – a business that rewards people who are willing to engage in those practices” (Bator 1982:359). Since the last of these publications (O’Keefe 1997), new and more specific knowledge has become available regarding the structure and the scale of looting as an organized crime on an international level, including the involvement of the most well-known museums, private collectors, auction houses, dealers, galleries, as well as middlemen and looters during the same period that this proposal was repeatedly put forward (see e.g. Watson and Todeschini 2006, 2007; Silver 2009; Felch and Frammolino 2011; Tsirogiannis 2013a). Although the satisfaction/feeding of the market as a solution for the long-term (Meyer 1973, Bator 1982, Merryman 1986, Merryman 1995) or short-term (O’Keefe 1997) was offered as a way to fight looting, it seems – more strikingly with the knowledge now available - that what was suggested was to feed the beast in order to stop it.

Foreign interest in the market countries (reason “B,” suggested only by Merryman) has always been catered for by museum loan exhibitions which were the result of international cultural cooperation between market and countries of origin. After the repatriation of hundreds of ancient masterpieces, mainly to Italy but also to Greece, all looted after 1970 (the date of the relevant UNESCO Convention), loan exhibitions are being continually organized in the market countries, as part of agreements between the countries of origin and the museums that returned the looted material. Many of these museums have officially and publicly committed not to acquire any antiquity that is not accompanied by all the legal documentation required. Most of them have already changed their acquisition policies to comply with the 1970 UNESCO cut-off date. Therefore, foreign interest now has many more opportunities to be further satisfied. There is no need to risk the expansion of an open, international market whose most “reputable” members traded in illicit antiquities - and continue to do so (Tsirogiannis 2013a).

Another suggestion supported by Merryman was the idea that sold duplicates would serve as “cultural ambassadors” in foreign (market) countries (reason “C”), a reason also used in a slightly altered way by the IAA to sell antiquities (Kersel and Kletter 2006:325: “provide public access to antiquities of the state”). An ambassador is the diplomatic representative sent willingly by one state to another state. However, state and private collections outside countries of origin are already full of unwillingly sent - but “legal” (pre-1970) – “cultural ambassadors” of higher cultural, historical, archaeological, aesthetic and financial value than the duplicates which are suggested for sale, while material of the same kind and value as the duplicates has been appearing for over a century in the shelves and catalogues of all the galleries and auction houses internationally. The fact that in most cases this material is not accompanied by legal export permission from the country of origin did not stop many of the uninformed public or those indifferent to the legal requirements

from acquiring these objects. It appears, therefore, that there is no real buyers' demand for these countries to disperse their archaeological material into the market.

One might think, however, that reason "D" (supported by Merryman again), the goal of reducing the damage from clandestine excavations and/or undermining the black market in illicit antiquities, would be sufficient for duplicates to become available in the market. Several academics have presented reasons for the continuance of looting due to the demand for masterpieces regardless of the potential availability of duplicates (O'Keefe, Brodie, Gerstenblith, Kersel, Kletter; also Bator 1982:325), reasons which have 'never been confronted' (Brodie 2006:62). I agree with Brodie that "excavations do not routinely recover saleable objects" (62), and I would also add that looting, among desirable objects, will continue to generate ordinary ones as well, which will continue to be offered to the market countries, in excess of the equivalent material that is already available there. Recent research demonstrates that the antiquities market is a single grey entity (e.g. Mackenzie and Davis 2014:723), not two separate markets, one clean and open, and another black and concealed. Therefore, it is ironic and insulting that a grey market is to be further supported by the countries of origin who are still suffering from this illicit activity.

Many of the antiquities identified as looted in the post-1970 period and repatriated recently to Italy and Greece have proved to have been sold with forged collecting histories (e.g. the marble statue of a boy at the Virginia Museum of Fine Arts, having first passed through the hands of the now convicted dealer Gianfranco Becchina; see Tsirogiannis 2013b). In the same period, fakes have been unsuccessfully offered - by the same dealers that traded looted antiquities - or sold, accompanied by forged collecting histories and fake documentation too (e.g. the Getty Kouros sold by Becchina to the Getty Museum; see Felch and Frammolino 2011). As there is no evidence to suggest that the offer of duplicate antiquities by a country of origin would decrease the traffic of looted objects, equally there is no evidence to show that the availability of duplicate material would decrease the market for fakes (reason "E").

Regarding the second category (Income), four of the reasons ("A", "B," and "C" and "E") are, of course, noble goals on which both sides of the debate should agree. However, the argument would not even exist if only a minimal percentage of the funds spent annually on the acquisition of antiquities which lack legal documentation and collecting history and seen as investments were spent on donations to serve the preservation, publication and storage of legally and scientifically excavated material. Wealthy collectors of illicit antiquities offer tens of millions of dollars for the construction of new galleries named after them in institutions housing illicit antiquities (e.g. Shelby White, the Fleischmans, the Steinhardts). Such amounts would fund, for example, a whole country's storage needs for legally excavated material under a scheme bearing the name of the donor, a legacy much more preferable than to be associated for ever with the financial support of institutions involved in acquisition of illicit antiquities.

Reason "D," however, is a more complex issue. Raban's suggestion of rewarding "workers for turning over special objects found by them on the dig" is somewhat ambiguous. "Turning over" by itself might mean "uncovering," such that the *baksheesh* is simply a tip for doing the job well, as is the practice in eastern countries for decades. But "turning over special objects found by them on the dig" implies that on some digs workmen were keeping valuable small objects of precious material "such as gems, jewelry, coins and seals." If this were true, the issue is disturbing and Raban's suggestion of dealing with it is similar to the suggestion to satisfy/feed the market by offering more (duplicate) antiquities, instead of punishing the workmen. Archaeologists should not get involved in any kind of illegal activity. Raban's suggestion that the state of Israel should sell archaeological duplicates in order to legalize the practice of *baksheesh* is in direct opposition to his archaeological professionalism and the excellent work he has done for more than 4 decades.

Likewise, Merryman's double suggestion regarding supervised *huaqueros* both offers the opportunity to archaeologists and countries of origin to benefit from ex-looters' undeniable experience, and appears to give a second chance to criminals. However, it is rare for someone to step forward admitting that he is a looter, taking responsibility for criminal offences he committed and abolishing the dream of getting rich from making an amazing discovery. Therefore, it is difficult to see how Merryman's idea could materialize except by passing a law that ex-looters could be hired legally as workers. In that case, as criminologists know very

well, there are people who would claim anything, even in order to get a job. Farmers with excellent skills in stratigraphy may pass undetected as ex-looters, while, realistically, the real *huaqueros* may be unaffected.

### Conclusion

Who is going to acquire duplicates? Museums' basements in market countries are full of antiquities, both masterpieces and duplicates that have never or rarely have been exhibited. For example, the Getty Museum, maintains a "collection of approximately 44,000 Greek, Roman, and Etruscan antiquities. Over 1,200 works are on view in 23 galleries" (Getty website). Private collectors, especially the wealthiest of them, are looking only for exceptional objects, while "reputable" dealers and auction houses are offering the best quality objects they can lay their hands on.

One potential group of buyers of duplicates would be small provincial museums, or universities that want to put together a representative collection for educational reasons, if they do not have already an antiquities collection acquired in a dubious way. More probable buyers of such material are tourists wanting a souvenir (see Raban 1997:45 above, on the "pilgrims"), or even schools, again for educational reasons. Most schools – mainly state- in need of such teaching tools could not afford even the lower prices for such duplicate material which would make a positive monetary difference to the countries of origin. Meanwhile, duplicates with dodgy collecting histories have already flooded the international market, and supply of duplicate material is exceeding demand. We know that the public does not distinguish between properly documented antiquities and unprovenanced material, due to lack of knowledge about the legality of the objects. Therefore, it seems that the illicit market, especially for exceptional objects, will continue undisrupted, even if documented duplicates with the approval of the country of origin were available for sale. And the discovery of duplicates will continue from both archaeologists and looters.



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