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**Provenance and Other Contemporary Challenges  
for Global Cultural Heritage.**

**A Conversation with Emanuele Pellegrini\***

*Provenance* e altre sfide contemporanee  
per il patrimonio culturale globale.

Conversazione con Emanuele Pellegrini

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## Provenance and Other Contemporary Challenges for Global Cultural Heritage

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*‘Circulation’ of artworks and cultural goods is the core of the monographic section of our fourth issue. Exploiting the complexity of this topic through its multiple frames and dimensions (domestic or transnational, financial, inter-generational, licit or illicit., public or private) has been the main aim of the thematic focus outlined for our contributors. From the perspective of cultural heritage, public interest layers (national but also global ones) intertwine with private rights (those of collectors, owners and their heirs, foundations, companies etc.) and the plurality of the relevant legal frameworks, thus interacting at various levels. These legal frameworks are unavoidably pushed into dialogue with art history and archaeology. Yet, a proper dialogue needs well-matched language codes and synchronized interactions.*

*The need for a closer communication between different epistemologies and professional profiles in the field of art and cultural heritage circulation appears evident and strikingly important to avoid fatal mistakes and actual damages. On the one hand, we have legal experts seeking certainty and responsibilities and bound by rules and forms. On the other, ‘art and culture’ experts, who analyze and evaluate objects and artists, qualify and expertly assess provenance and authenticity, originals and fakes, by means of careful and thorough analysis. Not rarely, languages, techniques, timeframes and drivers of law and of art, and culture professionals do not meet. As an outcome, issues of ‘interference’ may turn into legal disputes, where players are manifold as well as the involved spectra of normativity and sets of rules that come into play.*

*When dealing with the illicit trafficking of cultural heritage, with artworks and artefacts looted as spoils of war, or plundered by colonial powers during decades of dominion, these issues grow more and more critical. The range of implications gets wide and asks for interaction and dialogue across fields and disciplinary boundaries. After all, ‘cultural heritage’ itself «has to do with*

*meaning-giving» and, taking into consideration that when, in processes of meaning-giving, «objects and cultural expressions are labeled ‘heritage’, conservation measures might be taken to save them for future generations»<sup>1</sup>. The tight links between law and this process are patent. If «heritage has to do with selecting and neglecting (hi)stories that give meaning to objects and traditions»<sup>2</sup>, then discursive practice cannot be neglected also when the legal discourse, both at a domestic or at a supranational level, comes to the fore.*

*As it has been clearly pointed out, such a concept as ‘civilization’ «was a main concept and colonialism an integral part of the international legal system» and this «Eurocentric concept of civilization has so far been an ignored catalyst for the international development of cultural heritage norms», leading to an international legal system of cultural heritage which «partly still reflects its colonial roots. The current restitution discussions are an outcome of this ongoing problematic legal constellation»<sup>3</sup>.*

*As a matter of fact, restitution and repatriation themes – that are a sort of ‘trend-topic’ in cultural heritage discussion over last years – display many of these zones of interference-interaction, where art and cultural heritage, history, identity, narratives, legal frameworks, and politics are knotted and impact international relations and balances. Cases in which the (forced, unconsented or fraudulent) domestic or international circulation of artworks and archaeological goods is tangled with memory, identity, and their violation, are recent and resounding. Morgantina’s Eupolemos Silver claimed by Italy, for instance, or Elgin marbles, disputed between the U.K. and Greece, or Benin bronzes asked to be returned by UK, Germany and other European countries, not to mention the disputes concerning Egyptian cultural heritage spread all over the world. Ownership and provenance issues, international ius commune and diplomacy, musealization and proper valorization, international*

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<sup>1</sup> Wagenaar, Pieter, Jeroen Rodenberg (eds.) (2018), *Cultural Contestation: Heritage, Identity and the Role of Government*, Cham, Palgrave MacMillan, pp. 2-3.

<sup>2</sup> *Ibidem*.

<sup>3</sup> Spitra, Sebastian M. (2020), *Civilisation, Protection, Restitution: A Critical History of International Cultural Heritage Law in the 19th and 20th Century*, in «Journal of the History of International Law/Revue d’histoire du droit international», 22, pp. 329-354.

*agreements and institutions are some of the triggering points of these and far more other 'cultural heritage affairs' in the new global perspective.*

*Given these opening considerations, Elisabetta Fusar Poli for LawArt opens the discussion with Emanuele Pellegrini, art historian and professor of Art History at the IMT Institute for Advanced Studies, Lucca (Italy).*

*LawArt: Restitution is a basic principle of international law, deeply rooted in ius commune long tradition, that nowadays has also become a fundamental tool of cultural heritage politics. Can we consider it, in a certain way, as a sort of disruptive weapon? I mean: is it effective in undermining the cultural heritage status quo, as consolidated in the Twentieth century?*

EP: First, let me clarify a very crucial point. There is not a single way of restituting art objects, not a single method, not a recipe of universal value. There may be shared practices at national and international level, but they cannot be applicable to each object or group of objects. International agreements on repatriation and restitution are necessary, but they may be useful in some cases and useless in others. Governments, cultural institutions and diplomats do rely on shared practices that change through decades. However, each single art object or each group of objects must be considered *per se*, with its own collecting history that may be reshaped thanks to new documents discovery and advancement in the field of cultural heritage studies. Indeed, repatriation and restitution issues are deeply intertwined with scientific research in the field of cultural heritage, on which any discussion on objects' history and destiny is based.

*LawArt: Your answer is neat and could be summarized in one statement: restitution is neither a necessary, nor a universal tool. The right to retain or the obligation to "give back" something that one holds or possesses, moreover, requires that someone else's ownership is preliminarily and carefully ascertained. An activity that can be easier for 'common' goods but can often be extremely arduous for goods belonging to cultural heritage because ownership is inextricably intertwined with history.*

EP: I do agree. Before starting any dispute about “restitution, yes or no”, a careful analysis of the history of the object itself is necessary. Any decision must rely on this accurate historical research based on philology and archival research, which should provide as much data as possible on ownership, including selling contracts, loans, dispossessions, thefts, etc. This kind of investigation is possible only thank to the expertise and skills of cultural heritage professionals. It may last months if not years, and unfortunately, it may not lead to a clear definition of an object past life. Moreover, new discoveries may take place even after a very long time and may change dramatically our knowledge on an object, a collector, or an institution history. Even if very accurate, this data collection could present some unsolved problems, grey zones, so to say, that do not allow a complete clarification on the whole collecting history. From the very moment when the object leaves the artist hand, the artist studio or workshop, it enters the “real world”, in what we can call the realm of art collecting. From this time on, the collecting history begins. This story may be made by changes of properties, transfers, musealization, gift, loans and so forth. All those events build what can be defined the object “ID”. On this ID, and only on this one, as it is investigated by cultural heritage experts, it is possible to foster any discussion on (possible) restitution or repatriation claims. Considering this collecting history in the present, that is considering the object in a retrospective manner, we do have what experts define the provenance. Today provenance has become almost an autonomous research field within cultural heritage domain.

*LawArt: I understand that the so-called “provenance” is a sort of diachronic artistic-legal due diligence on cultural goods, whose outcome is the historical and dynamic identity of goods themselves (the “ID” you are talking about). Given that, it seems to me that it therefore has a pivotal value in any discussion concerning cultural heritage issues generally speaking.*

EP: That’s absolutely right. Provenance has quickly gained more relevance in many research fields, from museology to art history and archaeology. Provenance proved to be essential to understand the history of the

object; and the knowledge of this history is fundamental to decide whether an object should-could be returned to a previous owner or not. Provenance helps in documenting the reasons why an object should-could be returned, or kept in a collection, or moved to another, for example, on a temporary basis. The relevance of provenance studies has changed not only experts' attitude towards collecting and art collections, but also of collectors, museum professionals, policy makers and rulers. Assessing objects provenance may remove doubts about the object original owners and helps in determining if an acquisition should be considered licit or illicit; it is extremely important especially in the museum world, today so interconnected and much readier to rediscuss the roots of its heritage. Lack of data in collecting history, for example, may suggest prudence in the acquisition, especially by public institutions, since the objects may have been stolen, illicit exported or imported, etc.

LawArt: *In other words, the 'ID' may not be identified...*

EP: Here we have another crucial point. In many cases we do not have clear answers about provenance. Sometimes it is not possible to identify all the passages that artworks made across centuries. Researchers keep working on the topic and answers may arrive months or years later from the immediate necessity to reply to a request of acquisition, relocation, or restitution. The timeframe of the research is not the same as that of the art dealers, lawyers, or policy makers. In any case, the increasing relevance of provenance research has had a very positive effect, because it has increased a brand-new awareness on objects ID among all the actors dealing with art collecting, both in private and public institutions.

LawArt: *Well, thanks to your clarifications we can now pick up restitution issues, and take some steps forward: if restitution is not the universally valid and always 'useful' answer in case of disputed cultural heritage, be it privately or publicly owned, we need alternatives: which ones?*

EP: To answer this question, I go back to my first answer. I will keep the attention on facts (i.e. historical data) and objects: it depends on each situation. There are some key points to be stressed. First: illicit exported and imported objects must be repatriated. However, in this case it is a matter of fighting illicit trafficking. Of course, it is quite easy to define what is illicit trafficking on the ground of an international regulation, or treaties that have been ratified in recent times. Even if not all the countries are aligned or ratified the agreements, cooperation among nations and growing awareness on provenance has at least created a common basis of discussion. Problems arise when we cannot prove if an object has been legally or illegally exported, because, just to mention a very general example, issues may concern nineteenth or even seventeenth century diplomacy and international relations. These are of course completely different from international relations and agreements in the present. It can happen, and this is why provenance research are so relevant. Scholars in the humanities are quite at ease with unsolved problems; as cultural heritage experts, we are perfectly aware that certain problems cannot be clarified due to lack of data or to possible contrasting interpretation of the same documents. This is the case of the Elgin marbles, with scholars still arguing if Lord Elgin was granted by the Ottoman empire administration with the permission to pick up or even remove marble pieces from the Parthenon or rather just to study the Acropolis buildings through drawings and measurements, possibly taking away only those broken pieces already fallen from the buildings and then lying in the Acropolis area. Given this very complicated scenario, the solution may be a compromise.

LawArt: *Compromise: maybe this word contains the further answers we seek. Compromise between restitution and retention, at first, even if it may sound nonsensical, from a strictly legal point of view. However, I think that a museum can play a relevant role of ‘mediator’ within this compromise, especially in a global perspective on cultural heritage. Do you agree? What role can be played by museums, in your opinion?*

EP: Museums can be mediators, but they can be the problem too. I will reply to your question with another question, very rarely considered when dealing with restitutions. What happens after the restitution? What is an object's destiny after it has been sent back to its "origin"? A museum is the place in which objects are decontextualized. Objects are very seldom made to be seen inside museums, not considering the incredible differences among museums in the world. At the same time, museum is the place where we can provide a better conservation of artworks that normally would pass through certain destruction. It is the case of the bronze doors of the Baptistry in Florence, recovered in the Museo dell'Opera del Duomo in Florence, or the Marco Aurelio, today hosted in the Musei Capitolini in Rome. Pollution and atmospheric agents would have certainly destroyed those unique masterpieces of Western art. In these cases, copies took the place of the originals, but I will not enter now in the very complex relationship between copies and original in museums and public spaces. Talking about removal and relocation, we may notice that in the mentioned cases art objects, even if decontextualized, have been moved within the same cities, just for few meters from their previous location, and that they do not change ownership. Indeed, one may think that restitution claims involve different countries or difficult heritage, but that is not how things are: restitutions may happen in the same country or even in the same city. Occasions for restitutions may be caused by the refurbishment of a museum which could decide to "set free" some of the art objects located in the storage, or driven by requests supported by local actors for political reason (i.e. consensus building). Italy is rich of masterpieces still requested from one museum to another and in these cases the objects would cross the borders of regions within the same nation. In other cases, decontextualization implies a radical change, shifting from one nation to another, to one owner to another ...

*LawArt: Please, forgive me for interrupting you, but listening to these examples of conservation and musealization, I could not help but think of a few frustrating experiences. The repatriation of looted archaeological relics, for example, may not be considered a great success, if their destiny is to be moved from prestigious museums to be relocated (transplanted, we could say) in*



*small peripheral or nearly inaccessible museums, without adequate historical-critical apparatus, almost alien in what should have been their original context. What is the role of valorization in restitution processes?*

EP: What is peripheral? What is inaccessible? Restitution of art objects, in some cases relevant art objects, to what one might consider “nearly inaccessible museums” may help in solving some over-tourism issues. It could also improve the general knowledge of the complexity of the cultural heritage, which is made not only by important museums and rare masterpieces but rather by a far more complex scenario. Once again, it is very important to study each single case *per se*. Like objects, museums too have been created in very different historical, social, and cultural context with aims that are completely different from the missions of the museum in the present world. Indeed, many museums have a long history, history that became tradition. Some artworks are so interwoven with museum history and museum image that they can ultimately be considered as part of the institution itself. Artworks have been musealized since centuries, becoming part not only of the museum but also of the territory where the museum is located. It is not simply the question of being *pro* or *contra* restitution. It is much more question of analyzing the historical context, trying to find out possible solutions that do not necessary entail restitutions. This is the field of cultural diplomacy.

LawArt: *Cultural diplomacy leads me to consider that the “compromise” we are exploring as an alternative – if not often preventing – tool with respect to restitution, could help us in case of ‘dissonant’ or ‘uncomfortable’ heritage. Think of architectural monuments of colonialism or war or of past regimes and think of all the ‘negative’ kinds of answer to this problematic cultural heritage, such as iconoclastic practices or the so-called ‘cancel culture’.*

EP: Well, the basic instruments of cultural diplomacy are knowledge, critical analysis, scholars’ efforts to clarify as much as possible provenance history. And, most important of all, dialogue, and cooperation. Relying on accurate scientific analysis may prevent any excess that could

pollute a debate that on many occasions in the last years proved to be very harsh. These tools could also fight both iconoclastic practices, cancel culture, and any excess around memory and cultural heritage in case of ‘dissonant’ or ‘uncomfortable’ heritage. In my opinion, there are no permanent solutions, but there are different cases and possible solutions, more than one. Cultural diplomacy could and should play a primary role in the redefinition of objects destiny when a dispute around restitution arises. Cultural diplomacy could and should work to find out possible agreements between cultural institutions and between states. Moreover, the quality of the debate affects the reactions of the institutions and the cultural heritage world in general. For example, the debate on colonial heritage preserved in Western museums has fueled relevant research on colonial past, leading to a general reexamination of musealization practices. It has affected the way in which Western museums present their colonial heritage and, even more important, the way in which it is explained to the visitors. Explanation about violence, rape, destruction, in relation with objects on display may clarify the colonial past.

*LawArt: And this could be considered a cultural answer to problematic cultural heritage issues, in the perspective of ‘compromise’. One last question. Looted art, before reaching museums and art exhibitions often ends up on the (apparently) licit market. Even auction houses, fundamental intermediaries in the art market, have shown their sensitivity towards the matter and carry out appropriate due diligence, involving multidisciplinary profiles (historical-artistic as well as legal and fiscal), on the origins of the art objects. Moreover, art and culture experts are aware of the various legal systems involved which govern, sometimes in different ways, the law of property, possession, the effects of good faith etc. On the other hand, authenticity (original, fakes or copies?), attribution, and provenance are capital issues left to their knowledge and sensibility but heavily impacting legal assessments. Don’t you think that a better dialogue between the humanities and legal fields should be fostered? What kind of hitches do you detect? Are we talking about planets that can intersect their orbits and, if yes, at which point?*

EP: Of course, I do think that the dialogue is not only necessary, but fundamental both in the art market and in the acquisition practice. Precisely due to the fact that many important museums started to check the provenance of the objects in their collections, and some museums started restitution practices within an international agreement between governments (it is the case of Italy and the United States), a more careful analysis of the provenance of the objects in the art market is today not only required but has become current practice. Investigation methods and timeframes may not coincide. However, different expertise must work in strict cooperation. Only cooperation between cultural heritage experts and experts in other domains, such as legislation and international diplomacy, could lead to find possible solution to still unsolved problems. Eventually, dialogue and cooperation are always the right answers.