

Provenances: Real, Fake, and Questionable

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Abstract: Provenance, the ownership history of an artifact or work of art, has become one of the primary mechanisms for determining the legal status and authenticity of a cultural object. Professional associations, including museum organizations, have adopted the “1970 standard” as a means to prevent the acquisition of an ancient object from promoting the looting of archaeological sites, which is driven by the economic gains realized through the international market. The Association of Art Museum Directors (AAMD), one of the museum world’s most influential professional organizations, requires its members to list the ancient artworks and artifacts that they have acquired after 2008 that do not conform to the 1970 standard in an online object registry. The study presented here of the AAMD’s Object Registry for New Acquisitions of Archaeological Material and Works of Ancient Art analyzes the extent to which AAMD member museums do not comply with the 1970 standard and, perhaps of greater significance, the weaknesses in the provenance information on which they rely in acquiring such works. I argue that systematic recurrences of inadequate provenance certitude are symptomatic of the larger problem of methodology and standards of evidence in claiming documented provenance. A museum’s acceptance of possibly unverifiable provenance documentation and, therefore, its acquisition of an object that may have been recently looted, in turn, impose a negative externality on society through the loss of information about our past caused by the looting of archaeological sites.

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INTRODUCTION TO THE 1970 STANDARD

In 2013, I published an article that addressed the meaning of the “1970 standard” as a voluntary guideline adopted by many professional associations, including those involving academics, field archaeologists, and museums.¹ The 1970 standard derives from the 1970 United Nations Educational, Scientific and Cultural Organization’s Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention).² However, the Convention only takes on legal significance for a particular country once that country ratifies it and, in many cases, enacts implementing legislation. Thus, the date of 1970, by itself, bears no legal significance. The 1970 standard is a voluntary guideline or policy that, generally speaking, refers to archaeological artifacts (antiquities) that are not documented as being outside of their country of modern discovery (also referred to as the “country of origin”) before 1970 or are not documented as having been legally exported from their country of modern discovery after 1970.

The acquisition of a previously unknown and likely looted archaeological object provides financial incentive for the looting of archaeological sites and the illegal movement of such objects, possibly in tandem with other illegal goods, from their country of origin, through the international market, and then to a destination market.³ Looting imposes negative externalities on society through the loss of knowledge that can only be gained through the scientific recovery of artifacts, with their associated context, from archaeological sites.⁴ The purpose of the 1970 standard is to put sufficient time between any initial looting and the object’s acquisition so that the acquisition is not incentivizing further looting.

While the date of 1970 has no legal significance, it is sometimes viewed as a proxy for legality and authenticity. Yet it is insufficient for both purposes. The date of 1970 does not establish the legality of an object because of variations in applicable laws, their dates of enactment, particularly of national vesting laws, and the varying dates in ratification and methods of implementation of the 1970 UNESCO Convention.⁵ The date of 1970 also does not establish the authenticity of a work because artifacts were undoubtedly forged before that date. Elizabeth Marlowe rightly criticizes the emphasis on the date of 1970 and suggests that, in order to establish authenticity, focus, instead, should be on the question of whether an

¹Gerstenblith 2013a.

²14 November 1970, 823 UNTS 231.

³Morag Kersel identifies three stages consisting of the initial looting of archaeological artifacts, their movement through the country of origin and across borders, and their eventual consumption by dealers and collectors. Kersel 2007, 83. Peter Campbell identifies four stages for an object: stolen, transported, laundered, and purchased, which correspond to looter, early stage intermediary, late stage intermediary, and collector. Campbell 2013, 116.

⁴See Gerstenblith 2007, 169–74.

⁵Gerstenblith 2013b, 152–66; 2017.

object has a definitive, known find-spot, while acknowledging that the date of 1970 is useful from a market perspective and in the effort to reduce looting of archaeological sites.⁶ Neil Brodie goes a step further and suggests that, while one might posit that a provenance to 1970 would increase market value, thereby incentivizing the use of provenance data, the date of 1970 has relatively little effect on the market value of an antiquity.⁷

Nonetheless, if an artifact has a documented history dating back to 1970, its looting (if it was looted) occurred at least 50 years ago, and its current acquisition is less likely to contribute a direct financial incentive to the contemporary looting of archaeological sites. Because the looting of archaeological sites is driven by the potential for economic gain, reducing market demand for objects that have recently appeared also reduces the incentive to loot sites. Thus, the use of the 1970 standard reduces the losses to our understanding of the past caused by such destructive activity. Particularly in a study of museum collecting practices, the continued use of the 1970 date as establishing a benchmark of some degree of legitimacy seems justified.

PROVENANCE

Definitions and Terms

The term “provenance” has a complex history and no generally accepted meaning, even within the archaeological community. In the art historical world, the term “provenance” typically indicates the history of the ownership of a work of art. The ideal provenance would trace that ownership history back to the hands of the artist to establish the twin principles of authenticity and legality, both of which are crucial to the functioning of the art market and to achieving a full and accurate understanding of the art historical record.⁸ However, the concept of the ownership history of a work of art, when applied to an archaeological artifact, is more complex because what is intended is not the history of ownership of an object back to its creation but, rather, the history of ownership and disposition of an object from the time of its “removal ... from its context of archaeological recovery.”⁹

While the terms “provenance” and “provenience” have in the past been considered interchangeable, some scholars have used *provenience* to refer to the history of archaeological objects, while *provenance* refers to the history of ownership of

⁶Marlowe 2016, 218–19. Claire Lyons, in turn, criticizes Marlowe’s approach as possibly leading to rejection of objects for which, with sufficient research, a find-spot may be identified. Lyons 2016, 250–51; see also Joyce 2013, 41, stating that “[t]hings with long histories in known collections often pass a test of authenticity more easily than those that emerged only recently.”

⁷Brodie 2014.

⁸Feigenbaum and Reist 2012, 1–2. The authors point out that until recently provenance was considered a relatively unimportant aspect of a work of art in comparison with the milieu in which the work was created.

⁹Joyce 2012, 48.

works of (non-archaeological) fine art.¹⁰ However, within the field of archaeology, the terminology is becoming clearer and more definitive. The term “provenance” continues to refer to the history of ownership of an archaeological artifact from the time of its modern discovery. Provenience is defined as a specific location—the original find-spot of the object. Rosemary Joyce has defined these terms:

This distinction illuminates the reason these two concepts promote such different understandings: provenience is a fixed point, while provenance can be considered an itinerary that an object follows as it moves from hand to hand. Where the two concepts intersect is the place that the archaeological provenience singles out as the only important location in this itinerary, the find site.¹¹

Other scholars have advocated for different terms. David Gill rejects the term “provenance” with respect to archaeological material and suggests that the terms “collecting histories” and “archaeology” be used, respectively, for provenance and provenience as defined by Joyce.¹² Marlowe focuses more on the question of whether the find-spot of an object is known in order to establish conclusively whether it is authentic. She therefore uses the terms “grounded” and “ungrounded” to indicate whether an object can be traced back to its archaeological origin, regardless of its method of recovery from the ground.¹³ As used in this article, the term “provenance” will continue to indicate the history of ownership of a cultural object, including both works of fine art and archaeological artifacts.

Uses of Fake Provenance

Fake provenance is used to help authenticate a fake work of art.¹⁴ One spectacular example involved the collaboration between John Drewe and the artist forger John

¹⁰Joyce 2012, 49–51.

¹¹Joyce 2012, 48. Joyce further defines provenience in the archaeological context as “a three-dimensional location in space.” Joyce 2012, 49. Some scholars refer to an object’s “itinerary” as an object biography and see three “lives,” beginning with the creation of the object in antiquity, its function in antiquity until it is buried in the ground, and its modern history starting from its discovery in modern times to its eventual disposition with a museum or private collector. La Follette 2013, 44–45; 2017, 686; 2018, 76.

¹²Gill 2016, 237.

¹³Marlowe 2013, 4. Elizabeth Marlowe criticizes the use of the parallel terms “provenance” and “unprovenanced” because she asserts that the distinction between ownership history and find-spot is blurred (5).

¹⁴For examples of forgery scandals involving fine art, see Emine Saner, “John Myatt: A Story of Fame and Forgery,” *The Guardian*, 18 September 2011, G2, <http://www.guardian.co.uk/artanddesign/2011/sep/18/john-myatt-fame-forgery> (accessed 7 June 2019); Peter Landesman, “A 20th-Century Master Scam,” *New York Times Magazine*, 18 July 1999, 31–63, <http://www.nytimes.com/library/magazine/archive/19990718mag-art-forger.html> (accessed 7 June 2019); Catherine Hickley, “Art Forgery Trial Outcome Is ‘Scandal,’ German Dealers Say,” *Bloomberg*, 9 November 2011, <http://www.bloomberg.com/news/2011-11-09/art-forgery-trial-result-is-scandalous-german-dealers-association-says.html> (accessed 7 June 2019); Colin Moynihan, “Dealer in Art Fraud Scheme Avoids Prison,” *New York Times*, 31 January 2017, <https://www.nytimes.com/2017/01/31/arts/design/dealer-in-art-fraud-scheme-avoids-prison.html> (accessed 7 June 2019); *De Sole v. Knoedler Gallery, LLC*, 974 F. Supp. 2d 274 (SDNY 2013).

Myatt in the late 1980s, during which Drewe managed to insert information about fake paintings into existing catalogues and other archival records.¹⁵ In a more recent example, the forger Wolfgang Beltracchi made fake provenance documents to create a fictitious “old” collection. Beltracchi’s ruse involved forged authentication labels of the early twentieth-century German art dealer Alfred Flechtheim and staged photographs, purporting to be from the 1930s, of members of Beltracchi’s family impersonating ancestors posed with the forged art works.¹⁶ Schemes such as these not only introduce fake works into the *oeuvre* of an artist but also change the direct historical record for both the artist and others involved in the art world, such as museums, auction houses, galleries, and collectors.

The realm of archaeological artifacts is different in that fake provenance may be attached to authentic artifacts in order to make them appear “legal” or at least to provide a sufficient veneer of documentation history such that they appear acceptable on the art market and in museum collections.¹⁷ Fake documentation is used to enable the transport, import, and sale of illegal archaeological objects. Sometimes, the fake documentation refers directly to conjuring an “old” collection, as in the Beltracchi example, and sometimes the fake documentation consists explicitly of falsified legal documents, most typically the declarations used to import goods into a market country.

A well-known case involving Egyptian artifacts looted, stolen, and smuggled out of Egypt has similarities to the Beltracchi case, but, here, the objects were authentic, whereas the paintings in the Beltracchi case were themselves forgeries. A British conservator, Jonathan Tokeley-Parry, and a prominent New York antiquities dealer, Frederick Schultz, conspired to smuggle artifacts out of Egypt by disguising them as modern tourist trinkets. Tokeley-Parry established a fictitious old collection, dubbed the Thomas Alcock collection, purportedly assembled by a relative in the 1920s, and assigned several of the smuggled artifacts to this collection. In furtherance of this deception, Tokeley-Parry used old typewriters to create old labels and discolored them to “age” the labels.¹⁸ When Schultz offered the most significant of the pieces, a sculptural head of the Pharaoh Amenhotep III, the most powerful pharaoh of the Eighteenth Dynasty, to museums in the United States, he described the piece as “owned” by the heirs of Thomas Alcock, who collected Egyptian art in the 1920s, and that it had been in the possession of the heirs since that time.¹⁹

The 2017 acquisition for almost \$4 million by the Metropolitan Museum of Art of a gilded Egyptian sarcophagus, inscribed with the name of Nedjemankh,

¹⁵Salisbury and Sujo 2010.

¹⁶Julia Michalska, Charlotte Burns, and Emanno Rivetti, “True Scale of Alleged German Forgeries Revealed,” *The Art Newspaper*, December 2011, 55.

¹⁷For a summary of illegal aspects of the trade in antiquities, see Gerstenblith 2016.

¹⁸United States v. Schultz, 333 F.3d 393, 396 (2d Cir. 2003).

¹⁹Watson 2002, 25.

a high-ranking priest, involved fake documentation as well. The museum purchased the coffin from the Paris dealer Christophe Kunicki, who had given the museum a forged 1971 Egyptian export license for the coffin. In fact, the coffin had been looted from Egypt in 2011. It was featured in a special exhibit that opened in 2018. The exhibit closed once the sarcophagus was removed.²⁰ This case demonstrates that the problem of false documentation can occur with acquisitions that appear to comply with the 1970 standard as well as with those that patently do not, as the sarcophagus would have appeared to be a post-1970 acquisition with an export license from the country of origin.

Several cases demonstrate the use of false documentation directly related to the movement and importation of authentic, but illegal, artifacts into the United States. In one of the earlier cases involving modern cultural property, a gold phiale discovered in Sicily was imported into the United States through the use of false declarations as to the country of origin, which was stated to be Switzerland rather than Italy, and as to the value, which was declared to be \$250,000, although the dealer had purchased it for \$1.2 million. The bowl was forfeited and returned to Italy.²¹ In a more recent case, the Hobby Lobby Corporation forfeited to the US government 3,450 ancient cuneiform tablets and clay bullae acquired for its Museum of the Bible as well as an additional 144 cylinder seals and \$3 million.²² In this case, the import documents were false in order to evade the scrutiny of Customs officers in three ways: the archaeological artifacts, which were cuneiform tablets, were declared to be ceramic tiles; they were stated as originating in Turkey and Israel rather than their correct country of origin, which was Iraq; and their value was stated to be significantly lower than their purchase price.²³ The purchaser was given a variety of contradictory statements and an invoice concerning the artifacts' provenance, the identity of the seller, the country of origin, and the previous whereabouts of the artifacts, all of which stretched credulity but which the purchaser failed to verify and were, in fact, false.²⁴ Citing Iraq's ownership of archaeological artifacts dating back to 1936, as well as the false declarations, the US government forfeited these artifacts as being imported

²⁰Metropolitan Museum of Art, "The Metropolitan Museum of Art Returns Coffin to Egypt," press release, 15 February 2019, <https://www.metmuseum.org/press/news/2019/metropolitan-museum-of-art-returns-coffin-to-egypt> (accessed 6 June 2019); Colin Moynihan, "Met Museum to Return Prize Artifact Because It Was Stolen," *New York Times*, 15 February 2019, <https://www.nytimes.com/2019/02/15/arts/design/met-museum-stolen-coffin.html> (accessed 7 June 2019).

²¹United States v. An Antique Platter of Gold, known as a Gold Phiale Mesomphalos c. 400 B.C., 184 F.3d 131 (2d Cir. 1999).

²²United States v. Approximately Four Hundred Fifty (450) Cuneiform Tablets et al, CV17-3980 (EDNY 2016). The forfeiture of the \$3 million was in place of forfeiture of "dissipated" objects that were not in the possession of Hobby Lobby. Hobby Lobby stipulated to the facts alleged in the complaint as part of the settlement.

²³US v. 450 Cuneiform Tablets, paras 33–42.

²⁴US v. 450 Cuneiform Tablets, paras 25, 27.

contrary to law.²⁵ Another recent example involved an ancient mosaic that was falsely declared in regard to what it was, its value, and its country of origin. The documentation for the mosaic, which likely originated from the Idlib region of northwest Syria, included a notarized statement and a letter from a witness. While the witness had executed these documents, they did not refer to the mosaic that was illegally imported into the United States.²⁶

These examples demonstrate the use of false documentation for antiquities that make them appear to be on the market legally. But these examples should be a caution to a potential purchaser to increase the level of scrutiny given to any documentation of antiquities. We should recognize that there are likely many more cases of false documentation that never come to light because law enforcement resources for case investigation are limited. For this reason, ethical responsibility necessarily lies in part with US-based charitable and educational institutions; they must apply a rigorous level of scrutiny to the documentation accompanying the ancient objects that they acquire through gift, purchase, or loan.

APPLICATION OF THE 1970 STANDARD

Beginning in the early 1970s, professional associations such as the Archaeological Institute of America adopted policies that prohibit its journals and annual meeting from being the place of first publication or place of first announcement of archaeological materials that do not conform to the 1970 standard.²⁷ At about the same time, the Field Museum of Natural History in Chicago and the University of Pennsylvania Museum of Anthropology and Archaeology adopted acquisition policies that forbid the acquisition of artifacts that do not meet the 1970 standard.²⁸

However, it was not until 2008 that the two major museum organizations in the United States—the Association of Art Museum Directors (AAMD)²⁹ and the American Alliance of Museums (AAM)³⁰—adopted policies incorporating the 1970 standard. The AAMD's policy applies only to objects acquired after 2008 (when the

²⁵These artifacts were returned to Iraq in May 2018. They were identified by Eckart Frahm of Yale University as dating between 2100–1600 BCE and originating from Irisagrig, an as yet unidentified ancient site in Iraq. Bess Connolly Martell, "Yale Assyriologist Discovers Evidence of Lost City in Iraq," *Yale News*, 26 June 2018, <https://news.yale.edu/2018/06/26/yale-assyriologist-discovers-evidence-lost-city-iraq> (accessed 6 June 2019).

²⁶United States v. One Ancient Mosaic, Case 2:18-cv-04420-RGK-PLA (CD Cal. 2018).

²⁷Norman 2005, 135.

²⁸Field Museum of Natural History 1971, 232; Penn Museum 1980.

²⁹Association of Art Museum Directors (AAMD) 2008. The AAMD is composed of the directors of the approximately 200 largest museums in North America (therefore including Canada and Mexico), judged by their operating budgets, and a few smaller museums that are accepted by invitation.

³⁰American Alliance of Museums, "Standards Regarding Archaeological Material and Ancient Art," 2008, reprinted in Gerstenblith 2019, 950–51.

policy was adopted) and allows its member museums³¹ to deviate from the 1970 standard under fairly liberal circumstances. In cases where the museum's research does not establish that an object satisfies the 1970 standard, the museum may still acquire the object. The 2008 guidelines articulated two grounds for acquiring non-conforming objects: (1) where the museum, based on provenance research, could make an "informed judgment" that the object was exported from its country of origin before 1970 or exported legally after 1970 and (2) where "cumulative facts and circumstances," including prior displays and publications of the work, would allow the museum to make an "informed judgment" to acquire the work, consistent with the AAMD's Statement of Principles.³²

In 2013, the AAMD added two more exceptions: (1) where the work was acquired by gift or bequest and the work was on long-term loan to the museum before 2008, the donor had executed a written instrument prior to 2008 indicating an intent to donate or bequeath the work to the museum, or the museum had an expectation before 2008 that the work would be given by gift or bequest and that expectation was memorialized in some form and (2) where the museum had acquired a fractional interest in the work by gift, bequest, or purchase before 2008.³³ In cases where the museum decides to proceed with an acquisition, the AAMD's guidelines caution that "the museum must carefully balance the possible financial and reputational harm of taking such a step against the benefit of collecting, presenting, and preserving the work in trust for the educational benefit of present and future generations."³⁴ It is worth noting that the two considerations that the museum should balance in deciding whether to acquire a work both relate to the museum's own considerations, and the policy does not call on museums to examine the harm to the archaeological record, to the broader losses in our understanding of the past, or to the rights of the country of origin that the acquisition may affect.

The AAMD's policy applies only to works of art and archaeological objects created "in antiquity."³⁵ In a separate memorandum, dated 31 July 2015, the AAMD's Task Force on Archaeological Material and Ancient Art acknowledged the difficulty of defining what "in antiquity" means and of discerning the dividing line between antiquity and "a more modern era." While leaving it to each museum to adopt its own definitions, the task force undertook a survey of AAMD museums to

³¹The member of the AAMD is the museum director, as the organization's name makes clear, and not the museum itself. Nonetheless, for the sake of ease of reference, this article will use "museum member" to mean a museum whose director is a member of the AAMD.

³²AAMD 2013, Statement of Principles. These are broad ranging and include the statement of the 1970 standard, deploring illegal excavation, encouraging a licit market in antiquities and adherence to the highest standard of ethical collecting and due diligence.

³³AAMD 2013, Guidelines, section F, 3, 4.

³⁴AAMD 2008, Guidelines, section F.

³⁵Definitions of "archaeological material" and "ancient art," including the proviso of creation "in antiquity," were added in the 2013 Guidelines. AAMD 2013, Guidelines, section 2. Definitions.

provide guidance.³⁶ Nine cultures were identified for consideration, and the results of the survey indicated, briefly, the following dates for the end of antiquity: Greek and Roman art and Egyptian art (the end of the Roman period or beginning of the Byzantine period, circa 476, 527, or 641 CE (for Egypt)); ancient Near Eastern art (313, 622, 644, 651, or 700 CE); Chinese art (221 BCE, 220, 618, or 907 CE); Japanese art (710, 710, 645, or 1185 CE); Korean art (668, 676, or 918 CE); Indian (South Asian) art (320 CE); Southeast Asian art (circa 800, 500, 1462 CE as well as other dates); art of the Americas (time of European conquest, circa 1492–1550 CE). While these dates are generally tied to historical events, the event chosen to mark the end of “antiquity” varies considerably among museums.

The policy requires AAMD members to post on the AAMD’s Object Registry for New Acquisitions of Archaeological Material and Works of Ancient Art (Object Registry), which was created in 2008 when the policy was adopted, all acquisitions of archaeological objects and works of ancient art that do not conform to the 1970 standard.³⁷ In addition to the publication of an image, the museum is required to publish available provenance data, the exception utilized for failure to comply with the 1970 standard, and an explanation of how the acquisition fits the cited exception.

In the early years of the Object Registry, relatively few objects were posted. As of 2012, the Object Registry had approximately 580 objects, but most of the posted objects were accounted for by the Walters Art Museum’s acquisition of a single large private collection—that of John Bourne. Some five years later, as of the end of 2017, the Object Registry had grown to include over 1,000 objects, likely as the result of the loosening of the guidelines in 2013 and an enforcement mechanism adopted by the AAMD, along with the 2013 amendments, explicitly requiring that its members post non-conforming acquisitions on the Object Registry.³⁸

With the slow growth in the numbers of objects on the Object Registry in its first several years, it was possible to hope that museums would use the exceptions to the 1970 standard relatively rarely, that general compliance would be high, and that non-conforming objects would substantially comply with the 1970 standard and would have some degree of pre-1970 provenance documentation. As of 2012, an insufficient number of artifacts had been posted on the AAMD’s website to draw any general conclusions. At the time, I queried whether the exceptions to the 1970 standard were a minor loophole through which a small number of objects that substantially complied with the 1970 standard would pass or whether it would

³⁶The memorandum can be found at <https://aamd.org/sites/default/files/document/Antiquity%20Definitions%20Memo.pdf> (accessed 6 June 2019).

³⁷AAMD 2013, section H. Section G requires the publication of all acquisitions of ancient art and archaeological objects, but such publication does not seem to be consistent or comprehensive among museums. The Object Registry may be found at <https://aamd.org/object-registry/new-acquisitions-of-archaeological-material-and-works-of-ancient-art/browse> (accessed 6 June 2019).

³⁸AAMD 2013, 9.

become a significant opening through which many objects would be ushered into museum collections.³⁹ In addition, it is impossible to determine the full extent of compliance because the data as to what objects a museum turns away and how many conforming objects the museums acquire are not public, at least not in a consistent and accessible manner.

But with the considerable increase in numbers of objects placed on the Object Registry, it now seems possible to conclude that many museums, with some exceptions, are interpreting the exceptions to the 1970 standard quite liberally and that, for the most part, they are not engaging in a process of provenance documentation scrutiny that would allow them to formulate “an informed judgment” that the object complies with the 1970 standard. As Laetitia La Follette has noted, “[m]ost museums still tend to emphasize the first life (the moment of creation), which leads them to treat all antiquities the same, be they scientifically excavated or undocumented. Yet, an object’s second and third lives are just as important (and often more gripping), because they tell the stories of its use in antiquity and of the value assigned to the work in modern times.”⁴⁰

As of early 2018, 28 museums had posted acquisitions on the Object Registry. The museum with the largest number of non-conforming objects was still the Walters Art Museum with 358 objects. Several academic museums, including the Herbert F. Johnson Museum of Art at Cornell University (244 objects), the Iris and Gerald B. Cantor Center for the Visual Arts at Stanford University (66), and the Colby College Museum of Art (42), account for a significant number of the objects on the Object Registry as well. Other museums with a significant number of objects include the Boston Museum of Fine Art (49), the Metropolitan Museum of Art (75), the Virginia Museum of Fine Arts (33), the Saint Louis Art Museum (59), and the Denver Art Museum (25).

Compliance with acquisition guidelines is only as good as the quality of the provenance documentation upon which an acquisition depends. While the field of provenance research with respect to art works looted during the Holocaust has developed in recent years with funding, publications, Internet resources, and workshops to train provenance researchers, provenance research methodology with respect to archaeological artifacts has not seen comparable development. As Jane Levine, Worldwide Compliance Counsel at Sotheby’s, has commented,

[a] credible and documented provenance, or ownership history, stands as a kind of buffer zone at the intersection between an antiquities market that could function legally and legitimately, and the dirty and largely illegal business of site looting. ... Higher provenance standards reduce the chances that law-abiding and legitimate institutions, collectors and vendors contribute to the cycle of looting and destruction of archaeological sites. ... A higher standard of care in due diligence research provides

³⁹Gerstenblith 2013a, 368.

⁴⁰La Follette 2018, 76.

the best mechanism to distinguish between objects that are legal to sell ... and objects that are the products of recent and ongoing looting and destruction of sites.⁴¹

Levine further questions whether the market has arrived “at an accepted consensus surrounding the *type* of documentation and the nature of the evidence that buyers and sellers will accept as proof of ownership history.”⁴² It is this question that prompted the following study of the quality of documentation offered by museums rather than simply its longevity.

This suggests that the true extent of compliance should not be evaluated simply by the numbers of non-conforming objects. Rather, an accurate understanding of the extent of museum compliance depends on an evaluation of how close to the 1970 standard the acquisitions come, what the bases are for the museum to utilize the exceptions to the 1970 standard, the gap in time between the different types of provenance documentation, and, perhaps most important, the quality of the provenance information that museums are using in determining whether to proceed with an acquisition that does not meet the 1970 standard.

METHODOLOGY

The AAMD’s Object Registry provides a wealth of publicly available information about acquisitions over the past 10 years.⁴³ Yet this author is aware of only one other study of the AAMD’s Object Registry; however, that study focuses on different aspects of the registry information.⁴⁴ In fact, the Object Registry has been discussed in remarkably few scholarly publications.⁴⁵ This study is structured around the following research question: for any given object in the registry, is there a gap between the earliest stated date substantiated by any provenance information and the earliest stated date substantiated by objectively verifiable provenance information and, if so, how long is the gap? The purpose is to evaluate the type and quality of provenance information on which AAMD museums rely in determining whether a particular acquisition meets the 1970 standard. My study is the first to provide statistics from the information presented on the Object Registry. The first step was to create an analytic database of all 1,071 objects listed in the Object Registry as of November 2017.⁴⁶ My data fields replicate those listed on the

⁴¹Levine 2009, 221.

⁴²Levine 2009, 229 (emphasis in original).

⁴³Additional information may be available to a museum that is not publicly disclosed on the AAMD’s Object Registry.

⁴⁴Mescher 2018.

⁴⁵One of the few is a mention of one object by Laetitia La Follette, who criticizes the provenance information presented on the AAMD’s Object Registry as providing “minimal” information that “often involves hearsay (‘reported to have been in a private collection’) over documents and the justification for acquisition is usually that it fills a gap in the museum’s holdings.” La Follette 2017, 674.

⁴⁶In the second and third date data fields, the value of one object is zero so these categories include 1,070 objects.

Registry: object; culture; material; museum; acquisition number; date of acquisition; method of acquisition (purchase or donation by gift or bequest); the AAMD exception cited to justify the acquisition; the names of any prior owners; dealers, galleries, and auction houses mentioned in the provenance information; the date of intermediate transactions; the location of intermediate transactions; and further explanation given by the museum for the acquisition. Much of this information is not applied to the present analysis but may be useful for future related studies (for example, which dealers most often serve as the intermediaries for objects from a particular country of origin and what are the intermediate countries through which an object passes before it is acquired by an institution in the United States).

However, the essence of this study is to evaluate the quality of the provenance information relied upon by a museum. Levine offers a hierarchy of types of provenance documentation that may substantiate compliance with the 1970 standard. The highest level of documentation consists of “[r]eliable, credible written invoices showing the historical chronology of the transfers of the object, or published proof of exhibition in books or catalogues.”⁴⁷ While acknowledging that this highest quality form of documentation is not always available for antiquities, Levine suggests that provenance research should be conducted much like an investigative inquiry: whether other contemporaneously created documents, such as insurance records, letters, or family photographs, are available and whether lower quality evidence, such as verbal accounts, are acceptable. She also points out that the authenticity of some forms of evidence, particularly verbal accounts, should be judged against the backdrop factors of reliability, potential financial gain, and the availability of objective corroborating evidence.⁴⁸ Therefore, three data fields that reflect Levine’s hierarchy of provenance documentation quality were used to record the length of the provenance information. These fields reflect the quality of the provenance information. The definitions used in the creation of this part of the database were:

- provenance (for this purpose) is defined as the history of the ownership of an object;
- earliest date given for provenance is the earliest date mentioned for each object for any purpose;
- earliest possibly objectively verifiable provenance is the earliest date given with some substantiation but not based on a publicly accessible source (this documentation would be available only from the consignor or similar source and would be difficult for a disinterested party to evaluate or verify);
- earliest objectively verifiable provenance means the earliest date given for a publicly available source that could be checked (these include auction house catalogues, dealer publications, museum exhibitions, and other publications

⁴⁷Levine 2009, 229.

⁴⁸Levine 2009, 231–32.

produced by third parties—that is, people or entities with no vested interest in the marketability of the object. Many of the publications included in the registry are publications of similar types of objects and not a publication of the object itself. Such publications are not considered an objectively verifiable provenance).

The first date field is the earliest date mentioned in the provenance history. The second date field is the earliest date mentioned for which objectively verifiable provenance information may be available but which is not publicly accessible. Examples of documentation that may be verifiable but cannot be independently checked include private letters, sale invoices, insurance records, and verbal and written accounts from the collector. It cannot be determined from examining the Object Registry whether such evidence actually exists, whether it is authentic, or what information it conveys. The museum may have such documentation in its possession or the museum may believe the offered statements to be accurate without the museum having such evidence directly available to it or without undertaking the necessary investigation to determine whether the evidence is authentic. The category of objectively verifiable documentation consists of published auction house and dealer catalogues, public exhibitions, and scholarly publications of the object. The third date field is the earliest date for which independent, objectively verifiable information is available and that an independent observer can check. While dealers and auction houses are not disinterested third parties, the date of the publication is used but not any provenance information given in the publication, unless it is otherwise objectively verifiable.

This definition of the third category of provenance documentation sets a high bar. Museums may feel that some of the types of evidence placed in the second category are worthy of deference equal to the types of evidence in the third category. Nonetheless, this study posits that a museum's reliance on non-objectively verifiable documentation, which could be forged or the information contained untrue, demonstrates a gap between what museums may choose to believe and what they objectively should believe. A few examples of how an object is classified for the purpose of this study, chosen randomly or based on the work of other scholars, are useful to explain the methodology.

Head of Antinoos

The Head of Antinoos was acquired by the Metropolitan Museum of Art in 2010. The provenance information states: "Purchased in London in the middle of 1984 from a private collector, now deceased, by Jean-Louis Domercq, Gallerie du Sycomore, Paris. Purchased by Morris Pinto, Paris, in the spring of 1988 from Domercq. Sold at auction by Sotheby's New York on June 23, 1989, lot 185. Acquired by Mr. Jonathan Kagan, New York, from Michael Ward, New York, in 1995."

The earliest mentioned provenance date is 1984. The earliest objectively verifiable date is 1989, based on publication in the Sotheby's catalogue.⁴⁹

Three Gilt Silver Bowls

Three silver bowls acquired by the Metropolitan Museum in New York have similar provenance histories: “[By 2001, with Ariadne Galleries, New York and London]; 2001, purchased by Mary and Michael Jaharis from Ariadne Galleries, New York; 2001–2015, collection of Mary and Michael Jaharis, New York; acquired in 2015, gift of Mary and Michael Jaharis in honor of Thomas P. Campbell.” The earliest provenance date mentioned is 2001. The earliest objectively verifiable date is 2014, when the bowls were publicly exhibited at the Metropolitan Museum while on loan from the collector.⁵⁰

Bourne Collection

The Bourne collection, which was acquired by the Walters Art Museum in 2009, accounts for close to one-third of the objects on the AAMD's Object Registry and, therefore, has the potential to skew the results. Most of the Bourne collection is listed with an earliest provenance date in the 1990s, which is given as the date when Bourne acquired the objects (some have no known date when Bourne acquired the objects).⁵¹ The information on the AAMD's website states that the museum acquired the Bourne collection in 2009, utilizing the exception based on pre-2008

⁴⁹Sotheby's New York Antiquities Auction, 23 June 1989, lot 185. AAMD, “Object Information: Head of Antinoos,” <https://aamd.org/object-registry/new-acquisitions-of-archaeological-material-and-works-of-ancient-art/996> (accessed 6 June 2019).

⁵⁰See AAMD, “Object Information: Gilt Silver Phiale Mesomphalos,” <https://aamd.org/object-registry/new-acquisitions-of-archaeological-material-and-works-of-ancient-art/2848> (accessed 6 June 2019); AAMD, “Object Information: Gilt Silver Kylix,” <https://aamd.org/object-registry/new-acquisitions-of-archaeological-material-and-works-of-ancient-art/2846> (accessed 6 June 2019); AAMD, “Object Information: Gilt Silver Kylix,” <https://aamd.org/object-registry/new-acquisitions-of-archaeological-material-and-works-of-ancient-art/2847> (accessed 6 June 2019). In the field for “Section of the AAMD Guidelines relied upon for the exception to 1970,” the museum states: “Cumulative facts and circumstances.” In this case (and others), there is nothing in the provenance information to indicate that these objects were outside of their country of origin before 2001, at the earliest, a full 30 years after the 1970 date.

⁵¹See, for example, AAMD, “Object Information: Pregnant Female Figure,” <https://aamd.org/object-registry/new-acquisitions-of-archaeological-material-and-works-of-ancient-art/385> (accessed 6 June 2019). Many of the Bourne collection objects were acquired from Ron Messick, whose gallery held the Bitti altar piece that had been stolen from Peru and smuggled into the United States, although it weighed more than 800 pounds and was 12 feet tall. “Stolen Colonial Altarpiece Located in New Mexico and Returned to Peru,” *US Immigration and Customs Enforcement Cultural Property, Art and Antiquities Investigations*, 12 December 2011, <https://www.ice.gov/factsheets/cultural-artifacts> (accessed 6 June 2019); “Colonial Artwork Stolen in 2002 Returned to Peru,” *Washington Times*, 26 July 2005, <https://www.washingtontimes.com/news/2005/jul/26/20050726-113114-5091r/> (accessed 6 June 2019).

communications with the donor. The Walters Art Museum's information dates these communications to 2005, but without any publicly accessible verification. The objects were first published in 2012.

The case of the Bourne collection merits further scrutiny. While the entry on the AAMD's website states that the exception for this non-conforming acquisition was based on conversations with the donor before 2008, there are two significant problems with this assertion. First, the exception was not adopted until 2013, although the acquisition was made in 2009. This rewriting of history demonstrates that the museum apparently relied on none of the exceptions to the 1970 standard permitted at the time of the acquisition. Second, and likely more serious, a discrepancy has been pointed out by Neil Brodie who noticed that Gary Vikan, the director of the Walters at the time of the acquisition, stated in his memoir that the Bourne collection was first brought to his attention in late 2008 in either November or December of that year. Therefore, the claim on the Object Registry that communications with the donor existed since 2005 (thereby bringing the acquisition within the parameters of the 2013 amendments) also does not seem accurate.⁵² This may be a cautionary tale not only about the provenance documentation relied on by museums but also about the reliability of statements posted on the Object Registry.

RESULTS

The preliminary nature of this study and of the conclusions drawn here must be emphasized. The author acknowledges that there may be differing interpretations as to how the provenance information is classified, and there are possibilities for further refinement of the data and for posing further research questions not addressed here. This analysis raises questions as to the types of provenance documentation that AAMD museums rely on in deciding whether to acquire archaeological artifacts that do not conform to their own stated policy based on the 1970 standard. The exact extent of this non-compliance is difficult to determine without museums systematically making public all of their acquisitions and the provenance documentation on which they rely.

Figures 1, 2, and 3 illustrate the distribution of provenance information among the three categories of types of provenance documentation. Only 235 (approximately 22 percent) of the objects posted on the Object Registry have a provenance date (based on documentation of any type) that predates 1970, even though the guidelines call for museums to have reached an informed judgment that the objects they acquire were outside of their country of origin before 1970. For the other 78 percent of the objects, a museum would have no indication that the object was outside of its country of origin before 1970. In total, 98 objects have an earliest

⁵²Neil Brodie, "The Bourne Acquisition," *Market of Mass Destruction*, 5 March 2018, <http://www.marketmassdestruction.com/the-bourne-acquisition/> (accessed 6 June 2019); Vikan 2016, 269–70. I want to thank Neil Brodie for bringing his blog entry and the Vikan statement to my attention.

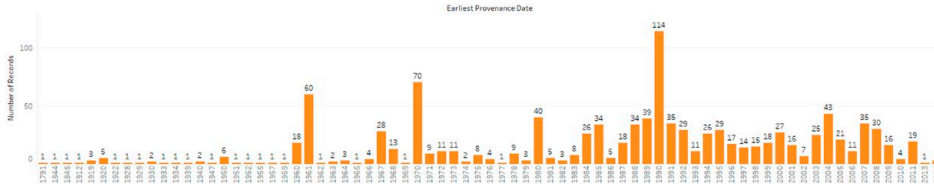


FIGURE 1. Earliest provenance date, 1791–2014.

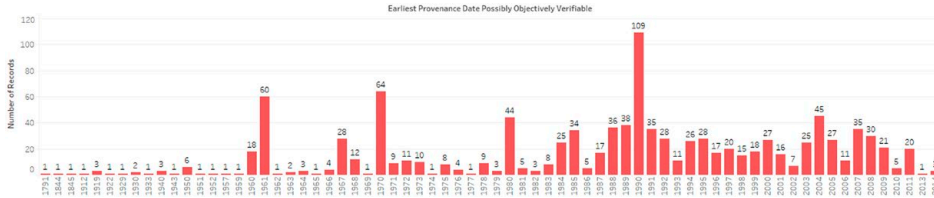
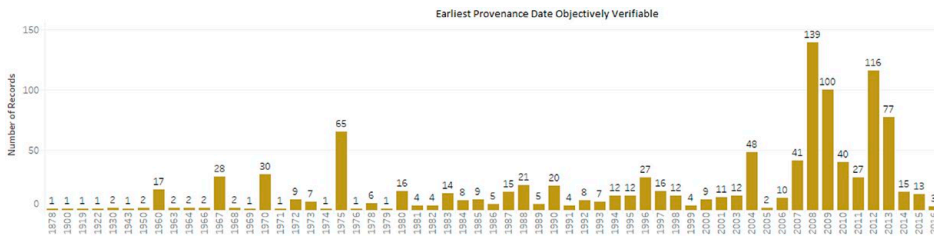


FIGURE 2. Earliest provenance date possibly objectively verifiable, 1791–2014.



of publication after acquisition counts as the first objectively verifiable provenance date, which would be 2008 or later. For 253 objects, the earliest provenance date is the same as the date of the museum's acquisition.

Most of the objects on the Object Registry were acquired by donation through gift or bequest (1,024) rather than purchased by the museum (47). In many cases, donated objects are first placed on loan with the museum, establishing an objectively verifiable provenance date for the objects. However, the AAMD's guidelines referring to antiquities do not subject loans to the 1970 standard and do not mention any level of scrutiny that should be applied to loans. Therefore, objects may be placed on loan with a museum from a private collector without any evidence of compliance with the 1970 standard and the fact of the exhibition then becomes the means of demonstrating compliance.

DISCUSSION AND PRELIMINARY CONCLUSIONS

One may posit that in the considerable majority of post-2008 non-complying acquisitions by AAMD member museums, the conclusion that the object in the museum's "informed judgment" was outside of its country of modern discovery before 1970 could not have been based on objectively verifiable provenance documentation. Further, in almost half of these acquisitions, the object does not have an objectively verifiable provenance that predates the adoption of the guidelines or predates the acquisition itself. This means that, at the time the museum acquired the object, the object was previously unknown or only minimally and questionably documented and that it might therefore be the product of recent site looting.

This evidence refutes the notion that the AAMD's adoption of the 1970 standard would stand as a bulwark between, on the one hand, the looting of an archaeological site and, on the other hand, museum acquisitions or acquisitions by collectors that would later be donated to museums. The mechanism of the Object Registry seems to permit acquisitions that do not substantially comply, or even come close to complying, with the 1970 standard. More discouraging is the conclusion that the mechanism of the Object Registry has not encouraged reliance on objectively verifiable forms of provenance documentation.

Cases in which provenance information has turned out to be forged or otherwise faked are numerous in the world of antiquities marketing and acquisitions. But, in most of these cases, the knowledge that the provenance information is not authentic typically comes to light as the result of chance and only many years after the object appears on the market. We therefore do not know the full extent of fake provenance information attached to antiquities that are in public or private collections or that are circulating on the market. The best response is therefore to increase the scrutiny given to the available provenance documentation and hold this documentation to a higher standard of verification before an acquisition is made, particularly by a public institution such as an AAMD member museum. Given that the large majority of the objects on the AAMD's Object Registry were

acquired by donation, the donor's purchase of these objects has been publicly subsidized through the deduction from taxable income afforded to a donor to a charitable institution.

My point is not only that the problem of provenance documentation can be calibrated by the size of the gap between a date based on reported, but unreliable, provenance documentation and the year 1970 or the gap between the earliest reported provenance date and the earliest objectively verifiable provenance date. More fundamentally, systematic recurrences of inadequate provenance certitude are also symptomatic of the larger problem of methodology and standards of evidence in claiming documented provenance. Stylized facts drawn from collecting histories and informal exchange accounts were once sufficient to construct an ownership history, but stylized facts can no longer substitute for objectively verified documentation. The stakes are too high in light of the intertwining of artifact looting and armed conflict in the Middle East.

We can easily anticipate that large quantities of artifacts looted from Syria during the civil war will appear on the market in future years. Many of these are likely to be categories of relatively ubiquitous, and difficult to trace, artifacts, such as cuneiform tablets and cylinder seals of the third and second millennia BCE and coins of the Hellenistic, Roman, Byzantine, and Islamic periods.⁵⁴ Our public institutions, dedicated to the advancement of education and science and subsidized by the American taxpaying public, need to be prepared so that they can avoid acquiring such artifacts, which are likely to be purchased first by private collectors and later donated. It becomes all the more important that museums rely exclusively on objectively verifiable provenance documentation so that they can avoid the pitfall of aiding the market in antiquities looted during the horrors of the armed conflict and terrorism that Syria and other countries in the Middle East and North Africa have known for the past several years.

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⁵⁴Brodie and Sabine 2018.

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