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The Emerging Norm of Voluntary Repatriations of Cultural Property: Case Studies in Nepal

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As the public's awareness of the histories of theft and smuggling that brought many cultural artifacts from their communities of origin to American collections has grown, attitudes toward the ethics of retaining these artifacts has also shifted. This presentation will first consider challenges posed by existing legal remedies available for source countries who seek to reclaim their heritage and then discuss the emerging practice of voluntary repatriations, which occur when the current owner of an artifact returns it to a source country or community even though legal authorities would likely not compel its surrender.

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Today, I will contrast legal repatriations of cultural property to what are sometimes called voluntary or ethical returns. I will argue that voluntary returns are better for both the holders and the recipients of cultural property when the goal is the preservation of living cultural heritage. To explain why I think this is so important, I will begin with an absence.

Last summer, I travelled to the village of Bungamati, Nepal, to visit the Prathampur Mahabihar, one of the oldest Buddhist monasteries in the Kathmandu Valley. My guide, the architect and heritage activist Anil Tuladhar, paused in front of a locked, empty room. The room once held two carved wooden sculptures representing deities who care for ill children. The sculptures were photographed in 1968 by a visiting Danish architect and were subsequently stolen. Their present location is unknown. Tuladhar printed the 1968 photograph and hung it next to the door as part of a larger project of marking Bungamati's missing cultural property.¹

I called these artifacts "sculptures" just now, but for many in Nepal, that's not the proper term. They are *devas*, Sanskrit for "god" or "deity."² *Devas* are images of deities, but not all images of deities are *devas*. If a contemporary artist makes a sculpture or painting for sale to the tourist market, that will be seen as an artwork both in Nepal and abroad. By contrast, *devas* are sacred artifacts, considered to be living manifestations of a deity. They are crafted following specific ritual practices, consecrated with ceremonies that invite the deities to inhabit the image, and are then cared for in perpetuity by their worshippers.

These ceremonies of care are called *pūja* (worship).³ In Nepal, where Hinduism and Buddhism are the main religions, many people begin their mornings by touching the forehead of a centuries-old *deva* in a shrine and then bringing their fingertips

¹ Awakened Bungamati, *Danish Group of Architects Expedition of Bungamati* (photograph), FACEBOOK, https://www.facebook.com/AwakenedBungamati/photos_by [https://perma.cc/2S2E-ATFQ] (last visited Apr. 13, 2025).

² In using this term, I am adopting the suggestion of the Nepali scholar Alisha Sijapati. See Alisha Sijapati, *Completing the Circle of Repatriation: Reintegration and Reinstallation of Kathmandu Valley's Devi-Devta* 7 (June 2023) (M.A. thesis, Central European University) (on file with author).

³ MARY SHEPHERD SLUSSER, *NEPAL MANDALA: A CULTURAL STUDY OF THE KATHMANDU VALLEY* 217 (1982) [hereinafter *NEPAL MANDALA*] (defining *pūja* as rituals during which "the images of the gods are treated as if they [are] animate beings").

to their own forehead to communicate the *deva*'s blessing.⁴ *Puja* can also involve offering perfumed powders, food, flowers, and lighted lamps to the *deva*, as well as undressing, bathing, and redressing it again.⁵ These actions care for the deity and invoke its divine force to care for the community in return.⁶

Some *devas* are kept in public temples or shrines, while others are installed in private chapels within multi-generational family homes.⁷ If a *deva* becomes unfit for worship, for example through breakage, it is laid to rest in a ritual procedure. There is no occasion for a *deva* to enter the stream of commerce to become an artwork.

The locked door at the Prathampur Mahabihar is covered in yellow and red fingerprints left by worshippers using the colored powders employed during *puja*. People continue to offer worship to these *devas* despite the fact that their sculptures have been stolen. If someday we find where these *devas* have come to rest in some museum or living room or dealer's showcase, the community who worships them will ask for them back—not because they want these specific pieces of wood, but because they want to have the opportunity to care for their gods once more and receive their care in return.

When an American museum discovers it possesses a *deva*, what does it do? In 2024, the *Richmond Times-Dispatch* ran a report on the nearly two hundred and fifty Nepali cultural objects that came to the Virginia Museum of Fine Arts through Mary Slusser, an American scholar who purchased a number of stolen *devas* in Nepal in the 1960s and 1970s.⁸ The museum has so far not returned any of these artifacts, because, as a museum spokesperson explained: “If it doesn’t belong to us, we don’t want it here” and “we have to have a claim” to begin the process of repatriation.⁹

But what type of claim is required? Several years ago, the organizing committee of a Nepali monastery sent the museum a

⁴ *How Is Puja Performed?*, SMITHSONIAN INST., <https://archive.asia.si.edu/pujaonline/puja/how.html> [https://perma.cc/Q3BQ-FRGV] (last visited Mar. 26, 2025).

⁵ *Id.*

⁶ NEPAL MANDALA, *supra* note 3.

⁷ *See id.* at 128, 217.

⁸ Luca Powell, *VMFA Possesses Priceless Art and Treasures from Nepal—and Officials from Himalayan Nation Want Them Back*, RICHMOND TIMES-DISPATCH, May 5, 2024, at A1.

⁹ *Id.* at A14.

letter explaining that the museum held a sacred painting stolen from the monastery. Slusser herself published a description of how she knew the painting had been stolen when she purchased it, since she had seen it under worship in the monastery just days before.¹⁰

The Virginia Museum of Fine Arts is not an outlier in its refusal to recognize a community of origin as the proper claimant for repatriation. Instead, I am pointing out this story as an example of the current attitude of most American museums, which usually refuse to act with regard to cultural property in their possession unless a claim is made by the state authorities of the country of origin—and often only if these foreign authorities have secured the cooperation of American authorities.

But in many situations, state authorities are not the ones looked to for any other decisions about the property in question. The same situation Professor Leslye Obiora described earlier today as happening in Nigeria is also true here.¹¹ The legal procedures of repatriation prioritize the State and ignore existing traditional authorities (such as, in the case of the painting, the monastery committee). The people who will bear the responsibility for ensuring the safety of the artifacts should they be returned are thus excluded from the repatriation process.

This exclusion might be excusable if the current process of making a claim were efficient or easy, but this is far from true. There simply is no single system to make claims against American museums. Rather, different legal repatriation regimes are used by an overlapping—and often conflicting—ecosystem of American authorities.

In 1970, the United Nations Educational, Scientific and Cultural Organization adopted the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export

¹⁰ See Mary Shepherd Slusser, *Conservation Notes on Some Nepalese Paintings*, ASIANART.COM (May 19, 2003), <https://www.asianart.com/articles/paubhas/index.html> [<https://perma.cc/2N6F-ZVBD>] (“Sold or stolen soon after the display . . . the painting was soon making the rounds . . . I was reluctant to purchase it for myself . . . but it cried out for preservation. Thus, for a diplomat who had gone on to another post still yearning for a Nepalese painting, I did purchase it . . .”).

¹¹ See Leslye A. Obiora, *How Can the Protection of Cultural Property Be Strengthened in Africa? Combining International Frameworks with Customary Traditions*, ANTIQUITIES COAL. THINK TANK (Apr. 8, 2025), <https://acthinktank.scholasticahq.com/article/133677-how-can-the-protection-of-cultural-property-be-strengthened-in-africa-combining-international-frameworks-with-customary-traditions> [<https://perma.cc/TNS7-Z6UR>].

and Transfer of Ownership of Cultural Property (1970 Convention).¹² The 1970 Convention's lofty, prefatory language describes its goal as stopping the looting and smuggling of cultural heritage through increased international cooperation in investigating, remedying, and preventing such destructive acts.¹³

Crucially, though, the Convention doesn't say exactly what its signatories need to do. The one key exception is Article 7, which requires signatories to ensure the return of a quite limited class of stolen objects—those that are documented in the inventories of museums, libraries, or similar institutions.¹⁴ If one member state finds they have one of those artifacts within its boundaries, it has to give it back to the requesting member state.¹⁵ Few such requests have occurred. Thieves usually find easier, less secure targets like archaeological areas instead of museums. And the recent discovery that not even the British Museum has a complete inventory of its collections shows just how common it is for museum artifacts to go missing without ever having been completely documented.¹⁶

The 1970 Convention generally leaves it up to member states to translate its other admirable goals into actual law. Member states have accordingly enacted a broad range of domestic legislation, ranging from strict bans on importing, exporting, or even owning cultural property to only slightly restricted regimes in many market countries, including the United States.¹⁷

¹² *About 1970 Convention*, UNESCO, <https://www.unesco.org/en/fight-illicit-trafficking/about> [<https://perma.cc/EYR6-GCJN>] (Mar. 5, 2025).

¹³ *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, UNESCO, <https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural> [<https://perma.cc/92B7-XVYZ>] (last visited Mar. 7, 2025) (including the full text of the 1970 Convention and listing its signatories).

¹⁴ See United Nations Educational, Scientific and Cultural Organization, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* art. VII, Nov. 14, 1970, 823 U.N.T.S. 231.

¹⁵ *Id.*

¹⁶ See Max Kendix, *British Museum Broke the Law over Artefact Records*, THE TIMES (Aug. 11, 2024, 6:10 PM), <https://www.thetimes.com/uk/arts/article/british-museum-broke-law-over-missing-artefacts-6zsxk2nrp> [<https://perma.cc/2FAD-XEF9>]; see also *Cultural Property Crime Thrives Throughout Pandemic Says New INTERPOL Survey*, INTERPOL (Oct. 18, 2021), <https://www.interpol.int/en/News-and-Events/News/2021/Cultural-property-crime-thrives-throughout-pandemic-says-new-INTERPOL-survey> [<https://perma.cc/U9JL-VDDP>] (“[A]rchaeological and paleontological sites are by nature less protected and more exposed to illicit excavation.”).

¹⁷ See United Nations Educational, Scientific and Cultural Organization, *supra* note 14, at 238; see also Redazione, *Export of Cultural Property: A Comparative Analysis of the Laws of Eight Countries*, FINESTRE SULL'ARTE (Aug. 28, 2024),

The United States implemented this Convention in 1983 through the Convention on Cultural Property Implementation Act (CPIA).¹⁸ Under the CPIA, any 1970 Convention member state can request the imposition of restrictions on the import of their cultural property into the United States. Only a limited number of repatriations have occurred thanks to a CPIA bilateral agreement, since only a limited number of such agreements have been put into place and those that are enacted have no retroactive impact.¹⁹

Some of these gaps have, in theory, been filled with guidelines on acquiring and holding antiquities issued by the American Alliance of Museums (AAM) and the Association of Art Museum Directors.²⁰ Similar self-regulatory codes have been promulgated by dealers, scholarly associations, and other participants in the world of cultural heritage.

I will summarize the difficulties with such guidelines by looking at just one example. The AAM's guidelines, first issued in 2008, broadly warn museums that they should not acquire antiquities which the museum knows were illegally exported from their country of origin,²¹ but set a much narrower scope for the due diligence museums are supposed to do to ensure that this doesn't happen. Museums are instructed only to collect documentation to show that the artifact they are considering

<https://www.finestresullarte.info/en/news-focus/export-of-cultural-property-a-comparative-analysis-of-the-laws-of-eight-countries> [<https://perma.cc/9KEN-M35E>] (explaining that laws regulating the export of cultural property vary widely among countries, with those in the United States being far more flexible compared to the more restrictive legal regimes of Italy and Greece).

¹⁸ Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601–2613; see also Patty Gerstenblith, *For Better and for Worse: Evolving United States Policy on Cultural Property Litigation and Restitution*, 22 INT'L J. CULTURAL PROP. 357, 367 (2015); Karin Orenstein, *Risking Criminal Liability in Cultural Property Transactions*, 45 N.C. J. INT'L L. 527, 530–31 (2020).

¹⁹ See Convention on Cultural Property Implementation Act § 2606(a). Under such an agreement, the United States will temporarily prohibit the import of designated cultural property unless this material is accompanied by documentation showing legal export from the partner state. See *id.* If this documentation is not provided, the material is subject to seizure and forfeiture and will be offered by American authorities to the source country for repatriation. See § 2609(a).

²⁰ Erin L. Thompson, *Successes and Failures of Self-Regulatory Regimes Governing Museum Holdings of Nazi-Looted Art and Looted Antiques*, 37 COLUM. J.L. & ARTS 379, 379–80 (2014).

²¹ *Ethics, Standards, and Professional Practices: Archaeological Material and Ancient Art*, AM. ALL. OF MUSEUMS, <https://www.aam-us.org/programs/ethics-standards-and-professional-practices/archaeological-material-and-ancient-art/> [<https://perma.cc/BW84-XK7J>] (last visited Mar. 31, 2025).

acquiring had already left its country of origin before 1970 or was legally exported after 1970.²²

Many countries of origin enacted export restrictions long before 1970. Since the guidelines do not require museums to collect documentation on pre-1970 exports, this seems to allow museums to acquire antiquities which left their country of origin before 1970 without determining whether or not this export was legal, as long as the museum avoids any knowledge of illegal export. This is easily done in a secretive art market designed to conceal just such embarrassing knowledge.

Another difficulty with relying on such self-regulatory guidelines as these and other similar codes enacted by dealers, scholars, and other participants in the world of cultural heritage is their lack of accountability mechanisms. I can find little evidence of members of such associations being sanctioned or even reprimanded for violations. The reluctance of the governing bodies of these associations to point out violations is perhaps understandable, since doing so would make it clear just how little ability they have to remedy them.²³

Another limitation shared by the CPIA and the American museum guidelines is that they deal only with “antiquities.” This category is defined very differently depending on the context, but only rarely includes Nepali *devas*, which were made in the medieval period or later.²⁴ The same is true of many other artifacts important to other living cultures.²⁵

Another important problem with existing legal repatriation regimes is that they generally require authorities and acquirers to make decisions based not on the artifacts themselves, but on their accompanying paperwork.²⁶ The predictable result of

²² *Id.*

²³ When surveying sixty-seven AAM member museums to determine whether they complied with the Association’s supplementary guidelines intended to establish mechanisms for public accountability for antiquities acquisitions, Mackenzie Priest and I recently found that not a single one of the respondents complied with all the requirements. Erin L. Thompson & Mackenzie Priest, *The Lax Compliance of Museums with AAM Guidelines for Ancient Art*, HYPERALLERGIC (Mar. 28, 2021), <https://hyperallergic.com/631776/the-lax-compliance-of-museums-with-aam-guidelines-for-ancient-art/> [<https://perma.cc/R6TK-XDP3>].

²⁴ See *Definition of “In Antiquity,”* ASS’N OF ART MUSEUM DIRS., <https://aamd.org/object-registry/definition-of-in-antiquity> [<https://perma.cc/7D4U-Q9HZ>] (last visited Feb. 27, 2025).

²⁵ See *id.*

²⁶ See ASS’N OF ART MUSEUM DIRS., GUIDELINES ON THE ACQUISITION OF ARCHAEOLOGICAL MATERIAL AND ANCIENT ART 5–7 (2013),

making the sales of antiquities depend on the ability of the seller to produce the proper paperwork is the growth in forgeries of this paperwork.

For example, in 2019, the Metropolitan Museum returned a spectacular gilded coffin to Egypt only two years after its purchase when it was shown that the 1971 Egyptian export license provided by the sellers was a forgery.²⁷ The coffin was actually illicitly excavated during the turmoil of the Arab Spring in 2011 and smuggled out of the country.²⁸

The case came to the attention of authorities because of a viral photograph of Kim Kardashian posing next to the coffin in a matching gold dress during the Met Gala. One of the men who had dug up the coffin saw the photograph and realized that the middleman who had promised to pay him after the coffin was sold had lied.²⁹ One of the people to whom the disappointed looter complained turned out to be an informant for the Antiquities Trafficking Unit of the Manhattan District Attorney's (D.A.) Office.³⁰

The Antiquities Trafficking Unit is yet another route to repatriation. Under New York state law, the knowing possession of stolen property is a criminal offense.³¹ Under the Federal National Stolen Property Act (NSPA), it is a crime to transport or receive in interstate or foreign commerce any goods to the value of \$5,000 or more, knowing they were stolen.³² The definition of stolen "has been given an expansive scope" when applying this

<https://culturalpropertynews.org/wp-content/uploads/2017/11/AAMD-Guidelines-on-the-Acquisition-of-Archaeological-Material-and-Ancient-Art-rev.2013.pdf> [<https://perma.cc/K7FR-7SWW>]; AM. ALL. OF MUSEUMS, *supra* note 21; United Nations Educational, Scientific and Cultural Organization, *supra* note 14, at 241; U.S. IMMIGR. & CUSTOMS ENF'T, CULTURAL PROPERTY, ART, AND ANTIQUITIES INVESTIGATIONS HANDBOOK 3, 6 (2013), https://www.ice.gov/doclib/foia/policy/handbook_HSI_13-06_CPAI_Inv_11.08.2013.pdf [<https://perma.cc/DQ6J-4M4H>].

²⁷ *The Metropolitan Museum of Art Returns Coffin to Egypt*, METRO. MUSEUM OF ART (Feb. 15, 2019), <https://www.metmuseum.org/press-releases/metropolitan-museum-of-art-returns-coffin-to-egypt-2019-news> [<https://perma.cc/Z5DT-BKQC>].

²⁸ *Id.*

²⁹ Azadeh Moaveni, "The Ostrich Defence," *London Review of Books*, October 5, 2023; Amani Ibrahim, *Antiquities in Transit*, ARAB REPORTERS FOR INVESTIGATIVE JOURNALISM, March 12, 2025, <https://arij.net/investigations/antiquities-smuggling/en/> [<https://perma.cc/7QSS-PMDH>].

³⁰ *See id.*

³¹ *See* N.Y. PENAL LAW §§ 165.40–.54 (McKinney 2025). A person is guilty of this offense when he or she "wrongfully takes, obtains or withholds . . . property from an owner thereof." *Id.* § 155.05(1). An owner is "any person who has a right to possession . . . superior to that of the taker, obtainer or withholder." *Id.* § 155.00(5).

³² National Stolen Property Act, 18 U.S.C. §§ 2314–2315.

Act.³³ Using these state and federal laws about stolen property, the Manhattan D.A. has seized numerous examples of cultural artifacts and returned them to their national owners, including some stolen far before 1970.³⁴

The Manhattan D.A.'s Office has asserted jurisdiction over artifacts that are no longer in New York on the basis that they passed through the state.³⁵ This jurisdiction is broad, given New York City's status as a prominent art market, home of numerous collectors and museums, and first port of entry for many art shipments into the United States.³⁶ Few other American prosecutors share the Manhattan D.A.'s enthusiasm for repatriation cases, which means that an artifact with an exactly similar history might be seized in Manhattan but ignored in California.

Besides the Manhattan D.A.'s Office, I have worked on Nepali repatriation claims being handled by the Federal Bureau of Investigation's Art Crimes Team, Immigration and Customs Enforcement, and Homeland Security Investigations. Source countries must navigate a bewildering variety of authorities and processes even within a single country. (I highly appreciate the efforts made by these authorities, who often share my frustration about the tangle, especially when disputed interpretations of jurisdictional priority results in uncertainty about which team should lead the investigation.)

To explain the alternative I am envisioning to the frustrating inefficiencies of legal repatriation, I need to first give you an overview of how Nepali *devas* left their worshippers. For hundreds of years, few foreigners were permitted to enter Nepal.

³³ United States v. McClain, 545 F.2d 988, 995 (5th Cir. 1977).

³⁴ See, e.g., Graham Bowley, *The Role of New York's Lauded Looted Art Unit Is Challenged in Court*, N.Y. TIMES (Oct. 8, 2024), <https://www.nytimes.com/2024/10/08/arts/the-role-of-new-yorks-lauded-looted-art-unit-is-challenged-in-court.html> [<https://perma.cc/J98E-8S9Z>]; D.A. Bragg Announces Return of 30 Antiquities to the People of Mexico, MANHATTAN DIST. ATT'Y'S OFF. (Nov. 22, 2024), <https://manhattanda.org/d-a-bragg-announces-return-of-30-antiquities-to-the-people-of-mexico/> [<https://perma.cc/8XYR-QGBY>]; Eileen Kinsella, *Manhattan DA Returns 11th Nazi-Looted Egon Schiele Artwork to Grünbaum Heirs*, ARTNET (July 26, 2024), <https://news.artnet.com/art-world/11th-egon-schiele-drawing-return-grunbaum-heirs-2517095> [<https://perma.cc/36HN-89UB>].

³⁵ Jennifer Anglim Kreder, *The New Battleground of Museum Ethics and Holocaust Era Claims: Technicalities Trumping Justice or Responsible Stewardship for the Public Trust?*, 88 OR. L. REV. 37, 71 (2009); Bowley, *supra* note 34.

³⁶ See Cenedella v. Metro. Museum of Art, 348 F. Supp. 3d 346, 361 (S.D.N.Y. 2018); see also ART AND THE EMPIRE CITY: NEW YORK, 1825–1861, at x (Catherine Hoover Voorsanger & John K. Howat eds., 2000) (describing New York City as a “marketplace for art and a center for public exhibitions and private collecting”).

The country's borders opened only in the mid-1950s.³⁷ Soon, mountaineering expeditions were attempting Everest and other peaks,³⁸ while the Kathmandu Valley became a major stop on the "Hippie Trail" from Istanbul to India.³⁹ The growing fame of the Valley's heritage sites also attracted an older set of European and North American post-war travelers.⁴⁰

The *devas*, visible in public shrines across the Kathmandu Valley and particularly numerous in the historic centers of its towns, were increasingly of interest to Westerners drawn to "Eastern spirituality," culture, and aesthetics. Thousands of *devas* were accordingly stolen from the country's shrines, monasteries, and homes beginning in the 1960s in what Slusser, herself a participant, called an "accelerating wave of brazen looting of the sacred places of Nepal."⁴¹ In her diary from the period, Slusser noted: "I have gone quite mad sitting in the midst of this huge open-air museum that is Nepal with only the amount of money you want to part with the limit on what you can buy."⁴²

Another factor in the rapid rise in demand for Nepali artifacts in America was the 1964 exhibition at New York's Asia Society titled "The Art of Nepal."⁴³ It was the first time an American institution had borrowed artifacts directly from Nepal. The exhibition was hailed in reviews as the first revelation of Nepal's artistic treasures to American audiences.⁴⁴ One reviewer even insisted that Stella Kramrisch, the exhibition's curator, introduced not only Americans but Nepalis themselves to their

³⁷ Emiline Smith & Erin L. Thompson, *A Case Study of Academic Facilitation of the Global Illicit Trade in Cultural Objects: Mary Slusser in Nepal*, 30 INT'L J. CULTURAL PROP. 22, 30 (2023); see also Lhakpa Norbu Sherpa, *From the Other Side*, NEPALI TIMES (May 23, 2003), <https://archive.nepalitimes.com/news.php?id=3166> [<https://perma.cc/P24C-B9JP>].

³⁸ *Everest 1953: First Footsteps - Sir Edmund Hillary and Tenzing Norgay*, NAT'L GEOGRAPHIC (Mar. 3, 2013) <https://www.nationalgeographic.com/adventure/article/sir-edmund-hillary-tenzing-norgay-1953> [<https://perma.cc/8XZC-4SRD>].

³⁹ Mark Liechty, *Building the Road to Kathmandu: Notes on the History of Tourism in Nepal*, 25 HIMALAYA 19, 19–21 (2005).

⁴⁰ *Id.*

⁴¹ Mary Shepherd Slusser, *The Cultural Heritage of Nepal—Its Preservation* 1 (Dec. 5, 1969) (unpublished essay) (on file with the Rockefeller Archive Center).

⁴² Mary Shepherd Slusser, *Diary* 142 (1969) (unpublished diary); see also Mary Shepherd Slusser, *Mary Slusser: Remembrance of Things Past*, ASIANART.COM (Aug. 16, 2017), <https://www.asianart.com/articles/maryslusser/index.html> [<https://perma.cc/HDP9-RTZ4>] (Mary Shepherd Slusser diary excerpts).

⁴³ STELLA KRAMRISCH, *THE ART OF NEPAL* 8 (1964).

⁴⁴ See, e.g., *The Pieta and an Avalokiteshvara*, N.Y. TIMES, July 26, 1964, at 8, <https://www.nytimes.com/1964/07/26/archives/the-pieta-and-an-avalokiteshvara.html> [<https://perma.cc/JQX4-AEUN>].

own heritage, since until she visited while preparing the show, “they had no idea what was great art and what was not.”⁴⁵

The exhibition introduced individuals who would become major collectors and dealers to Nepal’s heritage and established a scholarly framework for interpreting, dating, and authenticating their purchases. As they began acquiring these artifacts, they paid little attention to the Nepali laws that protected them.

Nepali common law had long prohibited the theft of *devas*. In 1956, just after Nepal’s borders opened to visitors, King Mahendra regularized these protections by promulgating the Ancient Monuments Protection Act (Act) as one of his first pieces of legislation.⁴⁶ This Act clarified and regularized the role of the Nepali government in the protection of ancient monuments and *devas*, including any statue or image “of historical, archaeological, or artistic” interest.⁴⁷

The Act banned not only export but also internal movement of protected artifacts, stating that they “shall not be exported

⁴⁵ Art: *The Way to Nirvana*, TIME (May 1, 1964, 12:00 AM), <https://time.com/archive/6808602/art-the-way-to-nirvana/> [https://perma.cc/37NY-62SC] (“The first scholar to study [Nepal’s] art thoroughly was . . . Kramrisch . . . The Nepalese were truly grateful, for, until she came, they had no idea what was great art and what was not.”).

⁴⁶ See Donna Yates & Simon Mackenzie, *Heritage, Crisis, and Community Crime Prevention in Nepal*, 25 INT’L J. CULTURAL PROP. 203, 207, 210 (2018). That the framers of the Act knew such protections existed and did not need to be created by the Act is reflected in the fact that the bulk of the Act is instead concerned with creating a new power for the government not contemplated by existing common law: the power to acquire historic buildings when they were at risk from negligent or incapable private owners. Ancient Monuments Preservation Act 1956, § 4 (Act No. 12/2013) (Nepal). Still, these protections are based on preexisting common law. For example, the law provides for the offering of compensation to persons displaced by the government’s purchase of a building. See *id.* The 1854 *Mulukī Ain*, the previous codification of the common law, contains similar provisions for the giving of compensation for those who are removed from positions of care for *guthi* property for reasons of incapacity. RAJAN KHATIWODA ET AL., THE MULUKĪ AIN OF 1854: NEPAL’S FIRST LEGAL CODE 51–52 (2021) at 106.

⁴⁷ *Country Summary for Nepal*, INT’L FOUND. FOR ART RSCH., https://www.ifar.org/country_title.php?docid=1354212558 [https://perma.cc/MZ3X-69VF] (last visited Apr. 1, 2025); see also Ancient Monuments Preservation Act 1956, § 2(a) (Act No. 12/2013) (Nepal). The 1956 Act made very few changes in this existing common law besides decreasing penalties (previously, the theft of a *deva* could be punished with the death penalty) and adding to the scope of governmental authority to carry out searches and shops or warehouses suspected of participating in the black-market trade. See Ancient Monuments Preservation Act 1956, § 13(6) (authorizing relevant officials to obtain warrants to search a “shop or museum where the ancient monument or archaeological objects and ancient handicrafts are transacted or the shop or factory where the curio is transacted [or] produced, or the go-down, house or vehicle where such objects are stored” in order to “arrest and keep in custody person who is alleged to have committed the crime”—that is, who has sold or attempted to sell protected artifacts).

[outside] the kingdom of Nepal or transferred from one place to another [inside] the kingdom”⁴⁸ This might seem overly restrictive, but it reflects the religious and cultural reality that there is no reason for *devas* to leave the community of care of the worshippers who commissioned them—not even to move to another location within the country.

The Act did not establish national ownership for *devas* or protected monuments, which can be privately owned in Nepal. The *McClain/Schultz* doctrine has long made clear to American lawyers that an antiquity constitutes stolen property under New York law and the NSPA if it was exported contrary to a national patrimony law—in effect, if it was stolen from the country that owns it—but the violation of an export ban alone is not itself enough to render an artifact stolen property.⁴⁹ The importance of the *McClain* and *Schultz* cases should not mislead us into believing that the only way that an illegally exported cultural heritage object can constitute stolen property is if it was subject to a national ownership law.⁵⁰ An artifact will be considered stolen property in New York if it was stolen from an individual or joint owners in Nepal.⁵¹

⁴⁸ Ancient Monuments Preservation Act § 13(1). This section specifies that export restrictions only apply to those items “prescribed by His Majesty’s Government by a notification published in the Nepal Gazette.” *Id.* Section 2 of the Act lists categories of protected objects and the Act as a whole was published in the *Nepal Gazette* on November 12, 1956 (volume 6, no. 28). *See id.* § 2; *see also Table of Contents*, GOV’T OF NEPAL: DEPT’ OF PRINTING, http://rajpatra.dop.gov.np/welcome/list_by_type/1/2013 [<https://perma.cc/XKC7-KPFW>] (last visited Apr. 1, 2025) (listing the Ancient Monuments Preservation Act as one of the publications in the Number 2013 publication of the *Nepal Gazette*). The Act’s export restrictions were self-promulgating. The Act’s wording allowed the government to add to or clarify the listed categories, which it did for example in the *Nepal Gazette* on April 7, 1969. 18 NEPAL GAZETTE, no. 51, Apr. 7, 1969, https://media.unesco.org/sites/default/files/webform/mhm001/nepal_order_07_04_1969_eng_tof.pdf [<https://perma.cc/MG6Y-4PLY>].

⁴⁹ *United States v. McClain*, 545 F.2d 988, 1001–02 (5th Cir. 1977); *United States v. Schultz*, 333 F.3d 393, 404 (2d Cir. 2003).

⁵⁰ The *McClain* decision explicitly states its limited scope:

The question posed, then, is not whether the federal government will enforce a foreign nation’s export law, or whether property brought into this country in violation of another country’s exportation law is stolen property. The question is whether this country’s own statute, the NSPA, covers property of a very special kind—purportedly government owned, yet potentially capable of being privately possessed when acquired by purchase or discovery.

McClain, 545 F.2d at 996. *Schultz* is similarly limited: “The question, in other words, is whether an object is ‘stolen’ within the meaning of the NSPA if it is an antiquity which was found in Egypt after 1983 and retained by an individual (and, in this case, removed from Egypt) without the Egyptian government’s consent.” *Schultz*, 333 F.3d at 399.

⁵¹ The relevant law in 1967 was the Mulukī Ain, which states:

If any person, with *mala fide* intention, takes any immovable property by

Things leave their original owners for all sorts of reasons, including most pertinently, voluntary sale. Reasonably, then, an owner seeking to reclaim stolen property in an American court usually has to prove it was stolen. This prevents cases in which someone fraudulently tries to claim an object that they actually sold.

But *devas* cannot be sold. They can be privately owned, but it doesn't follow that their owners can buy and sell them as if they were mere art objects, because *devas* are jointly owned by families or associations known as *guthis*.⁵²

A *guthi*, as defined by Slusser, is “a common interest group with collective responsibilities and privileges.”⁵³ We American lawyers might understand it as a trust. Membership can be determined by locality (everybody who lives in this neighborhood) or common descent (everybody who shares a particular great-great-grandfather).⁵⁴ *Guthi* members might be bound together to produce a particular annual ritual, worship a particular deity, or maintain a particular monastery, shrine, or a communal water source, as well as care for the *devas* associated with these rituals and structures.⁵⁵

Nepali law has long held that the property belonging to *guthis* is inalienable.⁵⁶ Neither individual members nor even the entire existing membership of a *guthi* can sell or mortgage *guthi*

converting it into a moveable property or any other moveable property in which he or she has no right, without giving any notice or taking consent of its owner to take it away or consume by himself or herself, upon depriving the owner of such property of ownership, by any means, such an act shall be deemed to be the offence of theft.

Mulukī Ain 1963, c. 4, § 1 (Act No. 67/2019) (Nepal).

⁵² See, e.g., Salik Ram Subedi & Sudha Shrestha, *A Case of the Guthi System in Nepal: The Backbone of the Conservation and Management of the Cultural Heritage*, 4 CONSERVATION 216, 216–17 (2024).

⁵³ NEPAL MANDALA, *supra* note 3, at 218.

⁵⁴ *Id.* at 12.

⁵⁵ See *id.*

[T]he *gūthī* is a basic integrating factor of Newar society, whose primary function is to enable the individual Newar to fulfill his many socio-religious obligations through group action. Association is in some instances voluntary, in others compulsory, and in either case entails a balance of privilege and responsibility. Recruitment for and purposes of the *gūthī* are variable. In some, membership may be determined by common descent, and in others by locality. The *gūthī*'s purpose may be the collective responsibility for the funerals of its members, the worship of a particular deity, the upkeep of a given shrine, or one of a host of other obligations

Id.; see also MULUKĪ AIN OF 1854, *supra* note 62.

⁵⁶ See, e.g., Arturo Y. Consing, *The Economy of Nepal*, 10 IMF STAFF PAPERS 504, 507 (1963).

property, since this property is also meant to benefit future *guthi* members.⁵⁷ A *deva*, like any other *guthi* property, is inalienable because it is held in trust for these future members.

The Nepali writer and activist Kanak Mani Dixit summarizes: “Every piece of ancient religious statuary from [the] Kathmandu Valley that sits today in the West is stolen property.”⁵⁸ Legal repatriations require investigation of past events to uncover evidence of theft, like police reports, witness testimony, and crime scene photographs. All of this is beside the point in Nepal, where you can tell that a *deva* was stolen if it exists anywhere other than the place for which it was made.⁵⁹ Even if one or a number of *guthi* members received money for it, they were violating the law as well as their responsibilities to the trust by doing so. The ability of other members of the *guthi* to recover their property shouldn’t hinge on whether it can be proven exactly when and how it was taken.

The role of *guthis* returns us to the gap between legal repatriation and culture realities I previously mentioned. All the various legal regimes I have discussed designate the Nepali government as the proper entity to make claims and receive repatriated artifacts. But *devas* do not belong to the government.

Fortunately, this is a rather minor point in Nepal, whose government has shown itself willing to work with communities who are reclaiming their property.⁶⁰ But the designation of the central government as the only recipient of repatriations has far more worrisome implications in other countries, where the state refuses to release artifacts to minority groups, including some suffering cultural genocide committed by the state.⁶¹

⁵⁷ MULUKĪ AIN OF 1854, *supra* note 55, at 106 (later replaced by the Mulukī Ain of 1963). The same prohibition is stated in the 1963 Mulukī Ain. Mulukī Ain 1963, c. 7, § 3 (Act No. 67/2019) (Nepal). If the current members are not carrying out the mission of the endowment (for example, to maintain a temple), new members can take over the *guthi* in order to fulfill these obligations. MULUKĪ AIN OF 1854, *supra* note 62, at 104–05; *see also* Mulukī Ain 1963, §§ 6–7.

⁵⁸ Kanak Mani Dixit, *Gods in Exile*, HIMAL SOUTHASIAN, Oct. 1999, at 8, 8.

⁵⁹ *Id.* at 11 (explaining that such statues and artwork can also be found in an alternate location if the custodians, or *guthi*, agree to its relocation, sale, or donation, even if such departure from Nepal is illegal under Nepalese law).

⁶⁰ *See, e.g.*, Dr. Elke Selzer, *Returning Stolen Idols to the Community: A Challenge for Heritage Law*, BRITISH INST. OF INT’L & COMPAR. L. (July 13, 2022), <https://www.biiic.org/blog/42/returning-stolen-idols-to-the-community-a-challenge-for-heritage-law> [https://perma.cc/2LEM-8CER].

⁶¹ *See, e.g.*, Kelvin D. Collado, *A Step Back for Turkey, Two Steps Forward in the Repatriation Efforts of Its Cultural Property*, 5 CASE W. RES. J.L. TECH. & INTERNET 1, 17 (2014).

Such dilemmas would be better solved by voluntary returns, which could take the form of cooperative negotiations between what I consider to be the artifact's communities of use. These could include museum scholars and visitors, the *guthi* or representatives of a family or other relevant communities or origin, and even relevant users who live outside the borders of the state currently controlling the territory in which a cultural artifact was originally made.

To illustrate the possibilities of such voluntary repatriations, I will describe some of the recent history of repatriations to Nepal. I first became involved in these claims when I heard the American artist Joy Lynn Davis talk about a *deva* showing Narayana (an avatar of Vishnu) and his consort Lakshmi sharing a single body, half male and half female.⁶² The *deva* had been stolen in 1984 from a shrine in Patan, a town in the Kathmandu Valley.⁶³

In 1989, the painter and art historian Lain Singh Bangdel described this theft and included a pre-theft photograph in his book *Stolen Images of Nepal*, which he wrote in an effort to protect those *devas* still in place and lay the groundwork for someday reclaiming the lost.⁶⁴

When writing an article about these thefts, Dixit discovered that the Lakshmi-Narayana had been auctioned at Sotheby's in New York in 1990, but he couldn't discover where it had gone from there.⁶⁵ During a residency in Nepal, Davis became interested in the thefts and tried to think of new ways to locate the missing artifacts. She conducted oral history interviews to record community memories, created an online database of stolen artifacts, and began painting photorealistic scenes of symbolic returns, working from historical photographs and her observation of empty sites to envision what the *devas* would look like if they came home.⁶⁶

⁶² See Valentina Di Liscia, *How a Tweet Led to the FBI's Return of a Looted Nepalese Sculpture*, HYPERALLERGIC (Mar. 9, 2021), <https://hyperallergic.com/627854/return-of-looted-nepal-statue-dallas-museum/> [<https://perma.cc/2HSV-34LL>].

⁶³ See Sahina Shrestha, *US Support to Restore Stolen Nepal Gods*, NEPALI TIMES (Mar. 5, 2021), <https://nepalitimes.com/news/us-support-to-restore-stolen-nepal-gods> [<https://perma.cc/8DFB-4FKS>].

⁶⁴ LAIN SINGH BANGDEL, *STOLEN IMAGES OF NEPAL* 246 (1989).

⁶⁵ Dixit, *supra* note 58, at 9.

⁶⁶ Joy Lynn Davis, *Remembering the Lost*, SOUNDCLOUD, at 11:10 (Sept. 20, 2016), <https://soundcloud.com/rangjung-yeshe-institute/joy-lynn-davis-remembering-the-lost> [<https://perma.cc/MB5L-EPC4>].

With one pectoral muscle and one breast, the Lakshmi-Narayana *deva* is unmistakable—so unmistakable that Davis immediately recognized an image that popped up during one of her periodic online searches for sculptures of Nepal. A blogger had posted snapshots from an opening at the Dallas Museum of Art. There, in the blurry background, was the Lakshmi-Narayana.⁶⁷

The statue had been purchased by David Owsley, a prominent collector of antiquities and long-time patron of the Dallas Museum of Art.⁶⁸ It first appeared in public in late 1993, during a special exhibition put on to display Owsley's collections.⁶⁹ In 2003, Owsley pledged to leave his collection of South Asian art to the museum.⁷⁰ The majority of his intended gifts went on display in newly opened galleries, which he also paid for.⁷¹ Since the intended gifts, including the Lakshmi-Narayana, didn't yet belong to the museum, they were not included in the museum's online catalog. The only way to realize the *deva* was in Dallas was to visit the gallery or read a 2013 museum publication.⁷²

Around a month after news broke about the history of the Lakshmi-Narayana in a *Hyperallergic* article, the museum removed the piece from display, and negotiations for its return began.⁷³ The museum called in the Federal Bureau of Investigation's Art Crime Team, whose agents collected evidence, including the dimensions of the hole in the base, which still stood in the shrine, to verify that it matched the tenon sticking out of the bottom of the sculpture.⁷⁴ After additional delays due to the

⁶⁷ *Id.* at 39:40.

⁶⁸ Erin L. Thompson, *Stolen Deities Resurface in a Dallas Museum*, HYPERALLERGIC (Jan. 24, 2020), <https://hyperallergic.com/530848/stolen-deities-resurface-in-a-dallas-museum/> [https://perma.cc/H69A-EGX8] (discussing Owsley).

⁶⁹ The exhibition was titled "East Meets West: Sculpture from the David T. Owsley Collection." See Nair, *supra* note 68.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See Davis, *supra* note 66, at 40:50. The sculpture was included in ANNE BROMBERG, *THE ARTS OF INDIA, SOUTHEAST ASIA, AND THE HIMALAYAS AT THE DALLAS MUSEUM OF ART 232* (2013).

⁷³ It was removed from view in December 2019, approximately one month after I pointed out the theft on X (formerly Twitter), and the museum replied that it would look into the matter. See Erin L. Thompson (@artcrimeprof), X (Nov. 19, 2019, 9:01 AM), <https://x.com/artcrimeprof/status/1196835820809920513> [https://perma.cc/QX6S-XRKR]; see also Dallas Museum of Art (@DallasMuseumArt), X (Nov. 20, 2019, 9:57 AM), <https://x.com/DallasMuseumArt/status/1197212359003197441> [https://perma.cc/LNN4-37DE].

⁷⁴ See Nair, *supra* note 68.

COVID-19 pandemic, the museum surrendered the *deva* to the FBI agents in March 2021.⁷⁵

Sotheby's has said it cannot recover the records that would show the provenance information provided by the seller of the statue.⁷⁶ Perhaps there was fake paperwork purporting to show a legal ownership history. Perhaps as is still common on the antiquities market, there was simply no paperwork at all.

After it was shipped back to Nepal, the Lakshmi-Narayana went into temporary storage in a museum in Patan while its fate was debated.⁷⁷ During the long process of repatriation, Dixit and other heritage activists had formed a group called the Nepal Heritage Recovery Campaign (Campaign).⁷⁸ A handful of other *devas* had been repatriated to Nepal over the years, but they had gone straight into the National Gallery.⁷⁹ The Campaign had a different goal: returning *devas* to the communities and their places of worship.⁸⁰

The complications in this case were that the *deva* had crossed an ocean and that one of its hands had broken off (most likely during the theft, since Bangdel's photograph shows it undamaged).⁸¹ Normally, this type of long voyage and breakage would cause worshippers to think that the deity had permanently left a statue.⁸² But the Campaign persuaded the community that, as one of them put it, the god hadn't gotten an American passport during its years abroad.⁸³

⁷⁵ *Id.*

⁷⁶ Zachary Small, *Dallas Museum of Art to Return Sacred Statue to Nepal*, N.Y. TIMES (Mar. 4, 2021), <https://www.nytimes.com/2021/03/04/arts/design/dallas-museum-nepali-structure-returned.html> [https://perma.cc/RX99-8VAS].

⁷⁷ Erin L. Thompson, *Returned to Nepal by the FBI, a Sculpture Becomes a God Again*, HYPERALLERGIC (Dec. 17, 2021), <https://hyperallergic.com/700760/returned-to-nepal-by-the-fbi-a-sculpture-becomes-a-god-again/> [https://perma.cc/FKM7-MUT3].

⁷⁸ See Team, NEPAL HERITAGE RECOVERY CAMPAIGN, <https://nepalheritagerecoverycampaign.org/team/> [https://perma.cc/T67U-8U9M] (last visited May 21, 2025).

⁷⁹ See Swosti Rajbhandari Kayastha, *On the Repatriation of Nepal's Lost Art*, ECS NEPAL (Mar. 2019), <http://ecs.com.np/heritage/on-the-repatriation-of-nepals-lost-art> [https://perma.cc/4K5G-8AXK].

⁸⁰ See Repatriation, NEPAL HERITAGE RECOVERY CAMPAIGN, https://nepalheritagerecoverycampaign.org/object_category/repatriation/ [https://perma.cc/X9UB-4W5M] (last visited May 21, 2025).

⁸¹ See *id.*; see also BANGDEL, *supra* note 64; Di Liscia, *supra* note 62; Thompson, *supra* note 77.

⁸² Thompson, *supra* note 77.

⁸³ See *id.*

The Campaign also coordinated the renovation of the Lakshmi-Narayana's shrine, a freestanding room topped with a stack of tiled roofs ending in snub-nosed curved beams. A CCTV system was installed to prevent another theft.⁸⁴ A replacement image of Lakshmi-Narayan that the community had commissioned to worship after the theft was moved to the side, and the sculpture's original base, which had split in two when it was stolen, was repaired.⁸⁵

On December 4, 2021, a day chosen for its auspiciousness,⁸⁶ Lakshmi-Narayan was loaded into a palanquin carried on long bamboo poles. Led by musicians playing drums and cymbals, the procession and chanting bearers circled the shrine three times. The palanquin was set down next to a priest who had been preparing for hours, drawing diagrams in colored powders and arranging ritual utensils and offerings outside the temple door. He conducted a *puja* ceremony to ask Lakshmi-Narayan to reinhabit its statue and forgive the community for failing to protect it from theft. (I don't think the community was to blame, but I won't argue with a priest.)

Finally, the Lakshmi-Narayana was put back into the shrine it was never meant to leave.⁸⁷ Garlands of flowers went back around its neck, and vermilion powder went on its forehead. Money and grains of rice were thrown around its feet. Worshipers lit butter lamps and rang bells hanging over its head to offer the gods the pleasures of light and sound.

Earlier in the day, the family whose members formed the *guthi* charged with caring for the shrine had placed a plastic shopping basket filled with objects wrapped in newspaper before the priest. The objects were copper ornaments made in the eighteenth century to fit over the statue and adorn it on special holidays. For decades, they had remained in storage. Now, finally, the god was home and dressed once more.

The reinstallation of the Lakshmi-Narayan became part of the global conversation about the ethics of collecting cultural heritage, with far-reaching effects. After learning about the cultural and religious importance of *devas*, some holders have returned them without requiring the involvement of legal

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

authorities. One example is a Buddha which had been donated to the Tibet House in New York City.⁸⁸ The Tibet House's director quickly moved to return the Buddha after the anonymous researcher known as "Lost Arts of Nepal"—who matches historical photographs to museum collections databases, auction listings, and images of private collections—posted a photograph of the Buddha in place before its theft.⁸⁹ In an indication of the sheer number of recent returns, the Buddha was able to hitch a ride with other repatriations being made by the Tibet House's Manhattan neighbor, the Rubin Museum.⁹⁰

Possibly the most striking change occurred in Nepal itself, where publicity about the Lakshmi-Narayan inspired a wave of similar requests for return and reinstallation. For example, Itum Baha, a Buddhist monastery in Kathmandu, reclaimed and reinstalled a fourteenth-century wooden carving of an apsara, a garland-bearing female spirit of the clouds and waters, which had adorned a window in the monastery until a thief ripped it out of the wall in 1999.⁹¹ Years later, the monastery's hopes of locating the sculpture were so low that Pragya Ratna Shakya, the secretary of the monastery's Conservation Society, commissioned a replica using a historical photograph of the artifact to fill the space.⁹²

But this same photograph allowed for the apsara's return after Lost Arts of Nepal spotted a match in the Rubin Museum's

⁸⁸ See Erin L. Thompson (@artcrimeprof), X (Dec. 21, 2021, 9:59 AM), <https://x.com/artcrimeprof/status/1473352406142496771?s=42> [<https://perma.cc/HLQ8-ZDDG>].

⁸⁹ Lost Arts of Nepal (@LostArtsOfNepal), X (Dec. 6, 2021, 5:35 PM), <https://x.com/lostartsofnepal/status/1468031325068087297> [<https://perma.cc/2ZZV-QXFP>]; Erin L. Thompson (@artcrimeprof), X (Dec. 21, 2021, 9:56 AM), <https://x.com/artcrimeprof/status/1473351788443189249> [<https://perma.cc/54BE-KG2E>].

⁹⁰ Thompson, *supra* note 89; Erin L. Thompson (@artcrimeprof), X (Mar. 1, 2022, 5:25 PM), <https://x.com/artcrimeprof/status/1498831832103723009?s=42> [<https://perma.cc/E4NX-DYCS>]; see also Bibek Bhandari, *Nepal's Stolen Gods Seek New Homes*, FOREIGN POL'Y (Nov. 12, 2023, 6:00 AM), <https://foreignpolicy.com/2023/11/12/nepal-stolen-artifacts-museums-religion-repatriation-heritage/> [<https://perma.cc/4PQT-DXX6>] ("In 2022, the Rubin Museum of Art in New York returned the artifact to Nepal as part of a wider effort in Western museums to trace and restore looted or illicitly acquired antiquities.").

⁹¹ *Itumbaha Museum Is Inaugurated in Kathmandu, Nepal*, RUBIN (July 29, 2023), <https://rubinmuseum.org/itumbaha-museum-is-inaugurated-in-kathmandu-nepal/> [<https://perma.cc/337W-PSFD>]; Zachary Small, *Rubin Museum to Return Nepalese Relics Thought to Have Been Stolen*, N.Y. TIMES (Jan. 10, 2022), <https://www.nytimes.com/2022/01/10/arts/design/rubin-museum-returning-nepalese-relics.html> [<https://perma.cc/7WU5-XZ2L>].

⁹² See Thompson, *supra* note 77.

collections database.⁹³ The apsara had been purchased by the Shelley and Donald Rubin Cultural Trust, established by the Rubin Museum's founders, in a private sale only four years after its theft.⁹⁴ The Rubin returned the carving in 2022, and it was reinstalled under the window in the following year.⁹⁵

Another return to the same monastery came from the Metropolitan Museum. Slusser began photographing Itum Baha's tenth-century wooden roof support struts in 1969.⁹⁶ They take the shape of *yakshis*, elemental fertility goddesses wearing stacks of bracelets and elaborate crowns, who raise their arms in protective gestures while balanced on smaller, contorted male figures.

Itum Baha once had a row of such protective *yakshis*, but they were stolen in 1972—a theft which caused the roof to collapse.⁹⁷ Using Slusser's pre-theft photographs, Lost Arts of Nepal located one of the *yakshis* in the Metropolitan Museum's online collection database. The museum had accepted her in 1991 as a donation, although she was never put on display.⁹⁸ After Lost Arts of Nepal made the match, Shakya spent nearly a month searching through the monastery's storerooms before he found the bottom portion of the strut—the male figure, which had broken off and been left behind during the theft.⁹⁹

When I visited the monastery in the summer of 2022, I measured and photographed the male figure and then sent the information to the relevant curator at the Metropolitan Museum. Since the monastery's organizing committee hadn't heard anything from the museum after Lost Arts of Nepal posted the match, I assumed that either the museum had not yet heard the information or was uncertain that its figure fit the broken base.

⁹³ Lost Arts of Nepal discovered this match in September 2021. Cassie Packard, *Two Nepalese Antiquities in the Rubin Museum Identified as Looted*, HYPERALLERGIC (Sept. 24, 2021), <https://hyperallergic.com/678768/two-nepalese-antiquities-in-the-rubin-museum-identified-as-looted/> [https://perma.cc/69NB-CNMX].

⁹⁴ Small, *supra* note 91.

⁹⁵ *Id.*; Ofelia Zurbia Betancourt, *Itumbaha Monastery in Kathmandu Has Inaugurated the Intumbaha Museum, the First of Its Kind in Nepal*, ARTDAILY, <https://artdaily.com/news/160009/Itumbaha-monastery-in-Kathmandu-has-inaugurated-the-Itumbaha-Museum—the-first-of-its-kind-in-Nepal> [https://perma.cc/7EJM-H374] (last visited Mar. 7, 2025).

⁹⁶ MARY SHEPHERD SLUSSER, *THE ANTIQUITY OF NEPALESE WOOD CARVING: A REASSESSMENT* 61–65 (2010).

⁹⁷ David Cornélius Andolfatto, *The Tunālas of Itum Bāhāh*, in *RESTORATION OF ITUMBĀHA* 142, 148 (2023).

⁹⁸ *Id.*

⁹⁹ Thompson, *supra* note 77.

But the curator replied that the museum was aware of the situation and intended to keep working with the Department of Archaeology rather than the monastery.

Since I failed to see why it was taking so long to complete what was essentially a two-piece puzzle, I wrote an article mentioning the strut for *Foreign Policy*.¹⁰⁰ In what I am certain was a mere coincidence, the museum notified Nepal that it would be repatriating its piece of the strut shortly after the publication of the article.¹⁰¹ The strut is now reinstalled (although it is no longer structural and has been placed in an interior courtyard where it can be better guarded).

Another repatriation from the Metropolitan was a *deva* of Vishnu, also made after Lost Arts of Nepal discovered a matching historical photograph.¹⁰² Today it stands in the National Museum, but this is temporary. The plan is to reinstall the piece on the small stupa in Bungamati from which it was stolen.

The Bungamati stupa is part of a complex with a public well. I know of at least three other repatriations of *devas* to *hitis* (public waterspouts). Many such medieval waterspouts are still carefully maintained by Nepali communities, who work together to keep the water channels clear and offer daily *puja* to the numerous *devas* who watch over these water sources.¹⁰³ Nearly always, these *devas* include a scene known as Uma Maheshvara—Shiva and his consort Parvati lounging in a paradisaical landscape as they give the gift of water to their worshipers.

Lost Arts of Nepal identified one such Uma Maheshvara, which had been stolen from a *hiti* in Patan in the 1980s, in the Brooklyn Museum of Art.¹⁰⁴ The Manhattan D.A.'s Office handed

¹⁰⁰ Erin L. Thompson, *It Doesn't Belong in a Museum*, FOREIGN POL'Y (Dec. 5, 2021, 7:00 AM), <https://foreignpolicy.com/2021/12/05/nepal-art-theft-sacred-yakshi/> [https://perma.cc/RVD7-KH9U].

¹⁰¹ See Angelica Villa, 'Priceless' Artifacts Returned to Nepal from Belgian Collector, ARTNEWS (Mar. 5, 2024, 1:43 PM), <https://www.artnews.com/art-news/news/artifacts-returned-nepal-belgian-collector-1234698930/> [https://perma.cc/T39P-XW93].

¹⁰² Namrata Sharma et al., *In Search of Stolen Gods at the Met*, NEPALI TIMES, <https://nepalitimes.com/here-now/in-search-of-stolen-gods-at-the-met> [https://perma.cc/VLA6-MYEN]; see Angela Davic, *The Metropolitan Artifacts Linked to Looting and Trafficking*, THE COLLECTOR (Aug. 6, 2024), <https://www.thecollector.com/the-metropolitan-artifacts-linked-to-looting-and-trafficking/> [https://perma.cc/45P5-ZHX8].

¹⁰³ See Alok Siddhi Tuladhar, *Kathmandu's Ancient Water Spouts Still Functioning*, NEPALI TIMES (Mar. 15, 2022), <https://nepalitimes.com/here-now/kathmandu-s-ancient-water-spouts-still-functioning> [https://perma.cc/P59X-W9KR].

¹⁰⁴ Lost Arts of Nepal reported a match on April 5, 2023:

This Dated 709 Samvat (1588 CE) Stone Image of UMA MAHESWARA, Stolen

it over to Nepali authorities in December 2023.¹⁰⁵ In February 2024, the *deva* was reinstalled in a niche in a *falcha*—a shaded platform for community gatherings and the use of guests and travelers—next to the *hiti*.¹⁰⁶

When I went to see it a few months later, the *deva* was watching over a busy scene of neighbors filling water jugs. A member of the Nepal Heritage Recovery Campaign pointed out to me that the niche over the *hiti*'s main waterspout was still empty. It probably once contained another Uma Maheshvara image.

To the one side of the main waterspout stands an empty pedestal. Historic photographs show a Vishnu *deva* which is now in the Musée Guimet in Paris. Negotiations for its return are at a standstill, since Guimet curators made the impossible suggestion that they might consider returning this and another *deva* whose original site is also documented in historic photographs if Nepal gave them one of the star pieces of the National Museum, the oldest figural sculpture to have been found in the country.¹⁰⁷

Another Uma Maheshvara was given to the Denver Museum of Art in 1980 by a married pair of collectors who bought it in India in 1968.¹⁰⁸ Bangdel included this piece in *Stolen Images of Nepal*, recording that it had been stolen from a *hiti* in Patan in

in the 1980s From Kathmandu Valley, Has Been Located in the Collection of Brooklyn Museum . . . The Insitu Photograph Was Taken By Puspā Man Chitrakar in the 1980s. The Image Has Been Published By Art Scholar, Ulrich Von Schroeder in His Book, "Nepalese Stone Sculptures, Volume-1, Hindu, Plate No. 77B."

Lost Arts of Nepal, FACEBOOK (Apr. 5, 2023), <https://www.facebook.com/photo.php?fbid=524090406582399&set=pb>. [<https://perma.cc/XS9R-N496>].

¹⁰⁵ See *United States Hands Over Four Stolen Nepali Artefacts*, THE KATHMANDU POST (Dec. 5, 2023), <https://kathmandupost.com/national/2023/12/05/united-states-returns-four-nepali-artefacts> [<https://perma.cc/7L5M-V4MS>].

¹⁰⁶ The *deva* has been successfully reinstated at Hiti Falcha of Chyasaal Tole in Patan. Nasreen Sheikh (@nasreensheikh), INSTAGRAM (Feb. 16, 2024), https://www.instagram.com/_nasreensheikh/p/C3cLiWwPJ8t/?img [<https://perma.cc/Y3S4-4Z8P>]; see also Press Release, Brooklyn Museum, Stone Sculpture from the Brooklyn Museum's Collection Returning to Nepal, (Dec. 4, 2023), https://d1lfxha3ugu3d4.cloudfront.net/press/docs/CONFIDENTIAL_Brooklyn_Museum_Press_Release_NepalRetur_updated.pdf [<https://perma.cc/6253-QA8V>] ("The object was loaned to the Brooklyn Museum in 1987 by Ben and Roslyn Shepps, and gifted to the Museum by the Shepps in 1991.").

¹⁰⁷ See Lydia Epp Schmidt, *Stolen Statues Remain at Musée Guimet over a Decade After Discovery*, ARTNET (Apr. 22, 2014), <https://news.artnet.com/art-world/stolen-statues-remain-at-musee-guimet-over-a-decade-after-discovery-11363> [<https://perma.cc/L3P4-V7DY>].

¹⁰⁸ See Angela Ufheil, *Was This Statue in the Denver Art Museum's Collection Originally Stolen from Nepal?*, 5280 (Feb. 5, 2021), <https://www.5280.com/was-this-statue-in-the-denver-art-museums-collection-originally-stolen-from-nepal/> [<https://perma.cc/NF4V-GGZ5>].

the mid-1960s.¹⁰⁹ In 2019, a Nepali resident in America named Slok Gyawali noticed this match and emailed the Denver museum to ask what due diligence they had done before acquiring this piece.¹¹⁰ Several months later, the museum replied, saying that they knew about the Bangdel publication but that they were “unaware of any substantiated claims of theft of [the] piece” and thus they “continue[d] to have confidence in the propriety of the provenance of the piece.”¹¹¹

Gyawali concluded that there was no hope of bringing the Uma Maheshvara back home. When news of the successful Lakshmi-Narayan claim began to circulate, he got in touch with me and shared the correspondence with the museum. A local reporter then wrote a long piece on the *deva*, and soon—again, I’m sure entirely coincidentally—the museum sent it back to Nepal.¹¹² It is now back in its *hiti* and receives worship, although in what is currently all too common a solution to the problem of the rapaciousness of collectors’ desire, it is encased in iron bars.

Another Uma Maheshvara was stolen from yet another *hiti* in Patan and donated to the Metropolitan Museum in 1983. The museum proactively contacted Nepali authorities and arranged its 2018 return after its staff noticed that Bangdel had published it in *Stolen Images of Nepal*.¹¹³ The *deva* spent years in Nepal’s National Museum until, spurred by the example of the reinstallation of other *devas*, the *guthi* for the *hiti* requested its reinstallation.¹¹⁴ In February 2022, *guthi* leaders signed legal paperwork to assume the responsibility of care for the *deva* and then took it home.¹¹⁵

¹⁰⁹ BANGDEL, *supra* note 64, at 77.

¹¹⁰ Ufheil, *supra* note 108.

¹¹¹ *Id.*

¹¹² Embassy of Nepal, Washington, D.C. (@nepalembassyusa), X (Sept. 13, 2021, 3:11 PM), <https://x.com/nepalembassyusa/status/1437539486053900288> [<https://perma.cc/SS8W-CFYW>].

¹¹³ Sahina Shrestha, *Bringing Our Gods Home*, NEPALI TIMES (Apr. 6, 2018), <https://nepalitimes.com/here-now/bringing-our-gods-home> [<https://perma.cc/B6BU-D7XM>]; see also *Met Returns Two Stolen Artifacts to Nepal*, THE HIST. BLOG (Apr. 8, 2018), <https://www.thehistoryblog.com/archives/51135> [<https://perma.cc/X94D-BCGG>].

¹¹⁴ *Id.*

¹¹⁵ See Nasana Bajracharya, *Nepal Recovers Heritage Artefacts Lost over Time. Their Restoration Beyond Museums Involves Many Challenges*, ONLINEKHABAR (Apr. 18, 2022), <https://english.onlinekhabar.com/heritage-artefact-recovery-challenges.html> [<https://perma.cc/JU5E-RZS7>] (explaining that Nepal’s National Museum, which stores repatriated artwork, is “ready to help the locals retrieve the deities like in the case[] of Uma Maheshwar”).

Under [the] Ancient Monument Preservation Act (1956) and its 2015 amendment, there is a provision that if the heritage artefacts received under

Why have so many Uma Maheshvaras been returned to so many *hitis*? Not because communities wanted them more than other *devas* or because they are more important to religious and cultural practices than other *devas*, but simply because their theft happens to have produced more evidence of the type that satisfies American authorities. Since they are installed in the open, in spaces that anyone is free to visit and photograph, they were more likely to be photographed before their theft than other *devas* which might be more of a priority for repatriation to their communities.

Sometimes evidence does survive for less visible *devas*, such as the two gilded sixteenth-century masks of the deity Bhairav, a manifestation of Shiva, that were stolen from a family house in 1994.¹¹⁶ For centuries, they had appeared publicly only once a year during the Indra Jātrā, one of Nepal's most important festivals. The masks, a nearly identical pair, show a snarling Bhairav with golden skulls and snakes twining through his blood-red hair.¹¹⁷ A protective deity, Bhairav's fierceness is directed at the dangers facing his worshipers.¹¹⁸

One of the family members gave Lost Arts of Nepal an old snapshot of the masks, taken during preparations for a festival with the hopes that the researcher could track them down. Lost Arts of Nepal located the masks in Rubin Museum and the Dallas Museum of Art. The Manhattan D.A.'s Office later determined that the masks had been smuggled to Hong Kong and then sold at auction in New York.¹¹⁹ The museums surrendered

the Department of Archaeology are to be returned or reinstated, they need to be handed over to the owners or guthiyars (locals) given they have substantial proof along with the recommendation letter from their respective chief district officers or local government chiefs.

Id.

¹¹⁶ The gilded masks, *mukhundos*, were stolen from a home in Bhimeshwar, Dolakha, Nepal. Sanjog Manandhar, *Four Stolen Nepali Artefacts Returned from the United States*, THE KATHMANDU POST (Feb. 1, 2024, 9:59 AM), <https://kathmandupost.com/national/2024/01/31/four-stolen-nepali-artefacts-returned-from-united-states> [<https://perma.cc/JHB9-L2LR>] ("The *mukhundos* . . . were stolen from Bhimeshwar Municipality-2 of Dolakha on March 6, 1994."); D.A. Bragg *Announces Return of Four Antiquities to the People of Nepal*, MANHATTAN DIST. ATT'Y'S OFF. (Dec. 4, 2023), <https://manhattanda.org/d-a-bragg-announces-return-of-four-antiquities-to-the-people-of-nepal/> [<https://perma.cc/5TPL-YLZ6>].

¹¹⁷ Erin L. Thompson, *Mighty Shiva Was Never Meant to Live in Manhattan*, N.Y. TIMES (Feb. 4, 2024), <https://www.nytimes.com/2024/02/04/opinion/museums-artifacts-stolen.html> [<https://perma.cc/7A55-GF9Q>].

¹¹⁸ *The Power of Lord Bhairav: A Guide to Spiritual Awakening*, RUDRA INDIA (July 5, 2024), <https://rudraindia.org/lord-bhairav> [<https://perma.cc/R3B7-VHC5>].

¹¹⁹ See D.A. Bragg *Announces Return of Four Antiquities to the People of Nepal*, *supra* note 116.

the masks to the D.A.'s Office, which handed them over to Nepal in December 2023.¹²⁰

At the ceremony held in Kathmandu to welcome the masks, Yagya Kumar Pradhan, an elder of their family, was photographed holding the edge of one of them as tightly as the hand of a lost child. Propped up on a conference table at the Department of Archaeology, the masks were already surrounded with signs of worship, including offerings of flower petals and silk scarves.¹²¹ No longer were they merely artworks. They had once more become fierce community protectors.

The masks are highly important to their community, but they were repatriated not because of this importance but because a photograph happened to have been taken, kept, and given to the right researcher. But what about the other *devas* that were stolen without ever being photographed? Many of the Valley's smaller but still precious artworks were taken before cameras were in widespread use and scholars began their efforts to document Nepal's endangered heritage. Some *devas* were even deliberately hidden from view in an attempt to protect them from theft.¹²²

Other *devas* were hidden for cultural reasons. For example, several examples of Buddhist protective goddesses currently in American collections were made for shrines that were open only to initiates.¹²³ These *devas* were sculpted of unbaked clay to harness the ritual power of the earth. The material is both heavy and fragile, which means that they were probably sculpted in place within the shrine. The figures have supports projecting from their backs because they were once attached to the wall. As Slusser writes, "Once constructed and secured to the wall . . . the sculpture was meant to stay."¹²⁴ She concludes that "thieves must have unceremoniously ripped them" from their shrines.¹²⁵

¹²⁰ *Id.*

¹²¹ Yagya Kumar Pradhan is an elder of the Nakchhen Pradhan family. See Lost Arts of Nepal (@lost_artsofnepal), INSTAGRAM (Jan. 31, 2024), <https://www.instagram.com/p/C2wtV3KgAiN/> [https://perma.cc/Z9AT-F76U].

¹²² See Thompson, *supra* note 77.

¹²³ See Mary Shepherd Slusser, *Nepalese Unfired Clay Sculpture: A Case Study*, 32 ORIENTATIONS 71, 71–80 (2001); Mary Shepherd Slusser, *Dry-Lacquer or Clay? Preliminary Notes on a Neglected Nepalese Sculptural Medium*, 23 CONTRIBUTIONS TO NEPALESE STUD. 11, 11–33 (1996) [hereinafter *Neglected Nepalese Sculptural Medium*].

¹²⁴ *Neglected Nepalese Sculptural Medium*, *supra* note 123, at 17.

¹²⁵ *Id.*

The goddesses subsequently appeared in American museums and private collections in the 1980s and 1990s.¹²⁶

We don't need pre-theft photographs to tell that these *devas* were stolen. A glance at the pieces themselves, with their distinctive iconography and broken supports, should be enough to make clear they were taken from their worshipers and smuggled out of Nepal. There is no other story we can tell ourselves—no legal, ethical explanation for their path from secret shrine to foreign collection. This crucial evidence can't be collected because it has been hidden, concealed, or erased. Does this mean that we are unable to take action? Should foreign collections use the privilege of silence to retain these *devas*?

We do not know which family or *guthi* owned these *devas* before their theft. The Southern District of New York addressed a similar concern in a 1972 case, *United States v. Plott*.¹²⁷ There, the defendant was charged with violating the NSPA for transporting alligator skins from Georgia to New York.¹²⁸ The defense argued that the charge was inappropriate because the prosecutors had not proven who owned the stolen alligators.¹²⁹ They could have been privately owned pets, federal property taken from a national wildlife preserve, or state property subject to the statute that the defendant was charged with violating. The court rejected this attempted defense, holding that “the act of stealing is as much defined by the taker's intent to keep property to which he has no right as it is by esoteric questions of legal title [of] others.”¹³⁰ With *devas* as with alligators, the question of exactly whose property they were before their theft does not need to be resolved as long as they are clearly not the property of the defendant.

I will give one final example, a twelfth or thirteenth century Shiva *linga* carved with four faces, which was purchased from Sotheby's in 2000 and given to the Carlos Museum at Emory.¹³¹ Such *lingas* are important parts of ritual practice in Nepal, where worshippers anoint them with powders, flowers, and other offerings. Small traces of such powders still adhere to the Emory *linga*.

¹²⁶ *Id.* at 11.

¹²⁷ *United States v. Plott*, 345 F. Supp. 1229 (S.D.N.Y. 1972).

¹²⁸ *Id.* at 1231.

¹²⁹ *Id.*

¹³⁰ *Id.* at 1232.

¹³¹ *Shiva Linga with Four Faces*, EMORY UNIV.: MICHAEL C. CARLOS MUSEUM, <https://collections.carlos.emory.edu/objects/7137/shiva-linga-with-four-faces> [https://perma.cc/Bj86-6TVP] (last visited Apr. 2, 2025).

So far, no documentation of the rightful home of this *linga* has been found. Without this evidence, the legal route to repatriation is unavailable, even though the powder makes it clear that the *linga* was taken from worship. In the absence of information about its original community, it might be that the most relevant community of use for the *linga* consists of the Nepali expatriates or Hindu residents of Atlanta. An agreement might be reached where they could offer worship to it to transform it from a sculpture to a *deva* while remaining in the gallery.

Many such creative possible solutions to Americans' repatriation difficulties exist – if we are brave enough to find them.

The *devas* that made their way to American collections once brought together families and communities in Nepal. They once comforted people for the sorrows of their past and inspired them to hope for the future. Americans have crammed our museums full of other people's treasures without capturing any of their real value. I argue that the current holders of sacred artifacts should stop waiting for a claim from a designated authority to unleash their legal and ethical responsibilities.

We have already taken this decision when it comes to Nazi looted art. As Edward Able, then the President of the American Alliance of Museums, said in 2003, "Our goal is to assure our many publics that American museums are committed to only having in their collections objects to which they have clear legal title, untainted by controversy or illegal, unjust appropriation."¹³² This should also hold true for sacred artifacts taken from living cultures.

Victoria Reed, the head of provenance research for the Boston Museum of Fine Arts, has recently argued that, because museums are "public, educational institutions," it is reasonable to expect them "to go beyond the letter of the law" when repatriating cultural artifacts.¹³³ She points out that even after accumulating "a solid foundation of research" on which to base a decision of whether to repatriate, gaps in the ownership history of an artifact might remain, since "thieves rarely leave a paper trail."¹³⁴

¹³² Jacqueline Trescott, *Museums Launch Database to Find Nazi Stolen Art*, WASH. POST (Sept. 8, 2003), <https://www.washingtonpost.com/archive/lifestyle/2003/09/08/museums-launch-database-to-find-nazi-stolen-art/df4bb17e-83e0-4437-b29f-ac4a828b82c9/> [<https://perma.cc/9W6R-BUU7>].

¹³³ Victoria Reed, *The Art of Restitution at the Museum of Fine Arts, Boston*, AM. ALL. OF MUSEUMS (Nov. 1, 2023), <https://www.aam-us.org/2023/11/01/the-art-of-restitution-at-the-museum-of-fine-arts-boston/> [<https://perma.cc/K699-UMFM>].

¹³⁴ *Id.*

Instead of waiting to find “a ‘smoking gun’ showing precisely when and how a work of art was taken in order to access the [repatriation] claim,” Reed calls for museums to make “small leaps of faith” if the probability of theft under the circumstances is high, even if it cannot be definitively proven.¹³⁵ Such leaps of faith are very small indeed in cases related to Nepal and many other cultures where the pain of missing cultural artifacts continues.

¹³⁵ *Id.*