

Culture in Court - The Saga of The Persepolis Tablets

A Case Study

by

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## ABSTRACT

This thesis explores the implications that the outcome of a certain U.S. lawsuit involving antiquities could have on practices and programs in the United States, related to cultural heritage and history. This paper examines the *Rubin et al* case, which sought to attach a collection of ancient Persian artifacts (known as The Persepolis Tablets) as a source of legal compensation.

Presented as a case study, and using primary and secondary research sources, this paper analyzes the *Rubin et al* lawsuit and the factors that led to its initiation, and seeks to determine how and why adverse consequences could result from its final ruling.

This thesis demonstrates that the final decision in the lawsuit could leave a negative impact on a number of practices related to cultural heritage in the United States, especially with regards to cultural and academic institutions such as museums and universities.

## DEDICATION

I humbly dedicate this work to my family:

My beloved mother, from whom I have inherited the love of history and culture, and whose selfless dedication and unwavering devotion is a constant source of admiration, awe and inspiration; my amazing sister and remarkable brother, who have been my first audience, and who have continuously supported and encouraged me in all aspects of my life, despite my occasional misgivings; my wonderful aunt (khaleh) who has always come to our aid especially during difficult times; and my precious nieces, who are the lights of my life, and in whose capable hands and compassionate hearts, as well as those of their generation, I believe, rests the promise of a bright and glorious future for the people of Iran, and all of mankind.

In loving memory of my beloved father, who held my hand as we ascended the stairs of the palatial compound at Persepolis all those years ago and told me about its extraordinary history and the significance of our cultural heritage, and who continues to be my luminous light of guidance from the heavens above.

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## INTRODUCTION

The U.S. court system is frequently employed to address a variety of lawsuits - from personal conflicts to multi-million dollar disputes. No one person, entity or organization has been exempt from this practice. Cultural institutions are certainly no exception, as they too have been subject to a number of lawsuits, mostly related to cultural patrimony and repatriation . In late 2006, I learned of an unusual lawsuit against a U.S. cultural institution that threatened the fate of a collection of ancient artifacts in its care. Never before had I heard of a collection of artifacts being targeted as a source of compensation for a plaintiff's claim. The unusual premise and nature of this case raised a number of questions in my mind as I wondered, "what does cultural heritage have to do with legal compensation?" With that in mind, I set out to search for answers and began by exploring the different descriptions associated with the concepts of "culture" and "heritage".

In looking for definitions of "culture", one comes across a broad spectrum of descriptions. In one form, "culture" can be defined as the collection of ideas, customs and social behavior attributed to a particular group of people or society. Another definition refers to a sense of artistic and intellectual development, and a "refinement of mind, taste, and manners."<sup>1</sup>By this definition, the arts and other forms of intellectual achievements are also considered as "culture."<sup>2</sup> In this light, the ways and customs of a specific group of people, can serve as tools for their intellectual and artistic enlightenment and development.

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<sup>1</sup> Source: the Oxford English Dictionary Online (<http://www.oed.com.ezproxy1.lib.asu.edu>).

<sup>2</sup> Ibid.



The Oxford English Dictionary defines "heritage" as something that is inherited based on one's birth right, as in "transmitted from ancestors."<sup>3</sup> Another definition points to that which is related to "the preservation of local and national features of historical, cultural, or scenic interest."<sup>4</sup>

In my view, "culture" and "heritage" can surpass national, ideological and political boundaries. One could even consider them to be universal concepts since they represent qualities and traits that are related to all people regardless of societal, class, gender or racial preferences. From an academic and scholarship point of view, studies related to culture and heritage fall into the category of "humanities", as issues associated with them are examined in fields of study closely related to society and human interaction. It is not often, however, that culture and heritage are directly linked to one particular branch of the social sciences - namely, political science. More importantly, rarely had these concepts been used in the same legal dispute.

What happens when cultural heritage is entangled in international politics and subjected to national litigation in a country other than its point of origin? What happens when cultural assets are not regarded for their inherent value, but as the potential source of compensation in a court of law? Is cultural heritage a "for sale" item? Is it a political asset? More importantly, can anyone (or any entity) place a monetary value on national heritage? These are some of the questions surrounding the case of the Persepolis Tablets, ancient Persian artifacts

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

that have withstood the test of time and conquests for over 2500 years, but are now facing an uncertain fate due to an anticipated U.S. court decision.

This paper seeks to examine the lawsuit involving the Persepolis Tablets and determine whether the final ruling could impact practices related to cultural exchange and interaction, as well as, affect the role and authority of cultural institutions in the United States in introducing and promoting cultural heritage. I will argue that the final ruling in this court case will impact practices involving cultural interaction and exchange. I will further argue that the outcome of the said lawsuit (referred to as *Rubin et al v. The Islamic Republic of Iran*) could impact various areas related to international relations, diplomacy, international law, as well as, cultural resource management.

This work is presented as a case study and is divided into five segments. The first chapter addresses the basic premise of the study, its scope, and bibliographical sources - both primary and secondary - employed in its analysis. Chapter two provides a brief account of the event (a terrorist act) that eventually led to the lawsuit, an overview of U.S.-Iran relations, and the history of the artifacts (The Persepolis Tablets) that are caught in the legal battle. The third chapter presents a review of the *Rubin et al* lawsuit and the parties to the suit, as well as, an overview of FSIA - the legislation that was used to bring the claim to court.<sup>5</sup> Chapter four examines the implications that could result from the final ruling in the case (which is still pending), based on the information thus far

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<sup>5</sup> Foreign Sovereign Immunities Act of 1976, Public L. No. 94-583, H.R. 11315, 28 USC §1605, 94th Congress(1976).

compiled. The concluding chapter offers a final review of the material presented and offers suggestions for future scholarship.

## Chapter 1

### SCOPE AND SOURCES

Throughout history, cultural exchange and interaction have enhanced people's understanding of each other and paved the way for better relations between nations, if not necessarily governments. For centuries, artifacts have served as cultural ambassadors and reminders of history and heritage of a people. In the early years of the twenty-first century, however, cultural heritage appears to have become subject to political tension and legal conflict. It is rather peculiar, perhaps, that in the new millennium, cultural heritage and politics may be set on a collision course - of all places, in the U.S. courts. The advent of a particular lawsuit has brought to light the complications of present-day political issues being linked to ancient cultural heritage.

Numerous court cases have involved cultural artifacts as the focus of a claim. In almost all of those instances the artifacts were subject to claims of repatriation - either pertaining to Native American groups (under the provisions of NAGPRA), or based on individual claims of ownership, predominantly related to Nazi-era lootings.<sup>6</sup> Yet, the lawsuit being addressed in this case study differs from its predecessors in a number of ways.

One of the major differences is that the cultural artifacts (known as the Persepolis Tablets) involved in this legal matter (*Rubin et al* lawsuit) were not the focus of a repatriation claim, rather were deemed as "attachment" for a possible

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<sup>6</sup> NAGPRA - Native American Graves Protection and Repatriation Act, Public L. No. 101-601; 25 U.S.C. §3001-3013(1990),"An Act To provide for the protection of Native American graves, and for other purposes . . ."

source of compensation. What also sets the case of the Persepolis Tablets apart is the fact that the collection was transferred to the United States with authorization and permission from the Iranian government and Iran's ruler at the time, Reza Shah Pahlavi. The importance of these tablets also lies in their value for scholarship and research, and is not based on their aesthetic or financial worth, as these artifacts are not valuable from a collector's standpoint. The separation of the group of tablets and fragments will seriously impede research efforts, as their value lies in their grouping.

I would contend that the case of the Persepolis Tablets is a matter of historical significance, and not of art. Phrases such as "artifacts" and "antiquities" can have various connotations, and at times are used interchangeably. One should realize, however, that "artifact" and "antiquities" do not necessarily denote art objects. In many instances, these phrases refer to objects of historical value. I believe that comparing the lawsuit involving the Persepolis Tablets solely to court cases related to artwork or art objects is short-sighted. The ramifications that could result from the final ruling on this case could have as serious an effect on historical research and scholarship as it would on the areas related to art. In my view, the historical value of these artifacts is also enhanced by the fact that they belong to a site (the Persepolis palace complex) that as of 1979, has been designated as a World Heritage site, by UNESCO.<sup>7</sup>This case study will demonstrate how such differences have distinguished this particular lawsuit from other legal cases pertaining to cultural objects.

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<sup>7</sup> United Nations Educational, Scientific and Cultural Organization.

The origins of the case study date back to 1997, and a terrorist attack in Jerusalem, Israel. On September 4, 1997, triple suicide bomb attacks in a crowded street in Jerusalem killed four bystanders and injured more than 180 people, among them five American tourists. The bombers had targeted Ben Yehuda Street, a "shady pedestrian thoroughfare in West Jerusalem, lined with boutiques and cafes, a popular area for Israelis and tourists."<sup>8</sup> According to newspaper reports, an off-shoot of the Qasam military wing of the Islamic Hamas movement, calling itself the Martyrs' Brigade for Freeing Prisoners claimed responsibility for the attack. This was the second attack in five weeks in Jerusalem for which Hamas had claimed responsibility.

The attack of July 30, 1997, had been more severe, leaving seventeen dead and scores of others injured.<sup>9</sup> Both attacks occurred close to the time of scheduled trips by U.S. officials involved in peace talks negotiations between the Israeli government and the Palestinian authority. The July attack nearly coincided with the visit of U.S. Special Envoy, Dennis Ross, and the September attack occurred shortly before the U.S. Secretary of State, Madeline Albright, was to travel to the region for continued talks between the two parties.<sup>10</sup> No one at the time could anticipate that the tragic events of September 4, 1997, would soon be tied to a collection of ancient Persian artifacts. Nearly a decade later, in 2006, artifacts known as the Persepolis Tablets would be subject to litigation efforts as possible

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<sup>8</sup> Serge Schmemmann, "180 Are Wounded – Triple Blast Resembles Explosions That Left 17 Dead In July," *The New York Times*, Sep.5, 1997, A1.

<sup>9</sup> Ibid.

<sup>10</sup> Serge Schmemmann, "Hamas Takes Responsibility – Peace Talks Are Threatened," *The New York Times*, Jul 13, 1997, A1.

means of compensation in a series of lawsuits on behalf of the American survivors of this particular bombing attack.

In reviewing *Rubin et al v. The Islamic Republic of Iran*, this paper explores the possible consequences that the outcome of this specific case could bear on several fields of study and practice. The goal here is to determine how, and to what extent, the final ruling might adversely affect various issues related to cultural exchange and interaction, and cultural resource management.

### Scope and Bibliography

The initial research for the study encompassed several areas and fields of practice in the humanities and social sciences including archaeology, history, art history, public history, foreign policy and political history, cultural resource management, and law. For my research, however, I decided to concentrate on the disciplines that directly influenced the case, and would in turn be affected by its final outcome. I began by looking for written material related to archaeology and the discovery of the artifacts in order to learn more about their significance. Research related to the artifacts and their history was another key source of information in obtaining a better understanding of their value for scholarship. Another area of interest for my research, was U.S. foreign policy, especially relations between the United States and Iran, which had an underlying effect on the lawsuit. A major feature of the court case - the use of certain provisions of a piece of U.S. legislation which afforded the plaintiffs' claim (namely, FSIA), also had to be examined. Finally, for my research, I wanted to look into the U.S. legal system, in whose hands currently rests the fate of the artifacts .

Very little scholarship is available on the *Rubin et al* case. However, bibliographical sources for background information in the fields that could be affected by this lawsuit are vast and varied. For my research, I had to rely on both primary and secondary sources. Information on the initial discovery of the artifacts, the events that led to the development of the *Rubin et al* lawsuit (namely the bomb attack in Jerusalem), and matters related to the actual court proceedings were obtained through primary sources. Secondary sources provided in-depth and detailed research material on the fields of study that would be affected, either directly or indirectly, by the *Rubin et al* lawsuit.

#### Primary Sources

Newspapers served as primary sources of public information pertaining to the discovery of the artifacts collectively known as the Persepolis Tablets. The discovery of the artifacts in the 1930s and their transfer from Iran to the United States received coverage in contemporary newspaper reports.

The most prominent representation appeared in *The New York Times*, dating back to January 27, 1931, with a report on rights being obtained for the archaeological expedition at Persepolis. Subsequent articles appeared in that publication throughout the duration of the excavation, providing updates on the progress of the project and information on the objects that were being discovered. Stories about the key figures involved in the expedition also appeared in that newspaper.<sup>11</sup>

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<sup>11</sup> "Gets Rights to Dig Under Persepolis," *The New York Times*, January 27, 1931,13.



Decades later, the story of the Persepolis Tablets resurfaced in *The New York Times*, as well as in other print media. This time, however, the reports focused on a lawsuit (*Rubin et al*) targeting the artifacts. In 2006, an article about the lawsuit involving the Persepolis Tablets appeared in the *Chicago Sun Times* (via Associated Press).<sup>12</sup> The story also was being followed by *Los Angeles Times* (July 13, 2006), *The New York Times* (July 18, 2006), and *Washington Post* (July 18, 2006).

The bomb attack on September 4, 1997, in Jerusalem, Israel, which was the impetus for the development of the *Rubin et al* lawsuit, also was featured in an article by the *New York Times*.<sup>13</sup> A couple of months earlier, the same publication had printed an article about a previous attack, in July 1997, for which the Hamas organization had taken responsibility.<sup>14</sup> These accounts provided a timeline in which the attacks occurred, and signified the frequency of such acts in a brief time span. The political atmosphere of the period was appropriately reflected in these reports as well.

I looked to other primary sources for information about the legislative and legal issues related to the *Rubin et al* lawsuit. Court documents and legal briefs submitted in relation to the suit were useful in providing a detailed view of the proceedings and the arguments presented in the case and subsequent reviews and

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<sup>12</sup> *Chicago Sun Times* and *Chicago Maroon*, the student newspaper of the University of Chicago, have been sources of continued coverage of the events relating to the artifacts and the ensuing lawsuit.

<sup>13</sup> Serge Schmemmann, "180 Are Wounded – Triple Blast Resembles Explosions That Left 17 Dead In July," *The New York Times*, Sep.5, 1997,A1.

<sup>14</sup> Serge Schmemmann, "Hamas Takes Responsibility – Peace Talks Are Threatened," *The New York Times*, Jul.13, 1997,A1.

decisions by the presiding judges. Testimony of the victims/plaintiffs was also recorded, revealing the extent of the injuries they had sustained. The accounts of their ordeal also served as a gauge for the court's decision in determining the amount of monetary compensation.<sup>15</sup>

Court documents for the *Rubin et al* lawsuit indicated that two groups of plaintiffs had filed suit against the Islamic Republic of Iran. The first group (the *Campuzano* plaintiffs) filed their lawsuit on September 9, 2000, and the second group (the *Rubin* plaintiffs) brought their suit to court on July 31, 2001.

According to court reports, "Because both cases arise out of the same terrorist bombing, the court consolidated the two cases for trial pursuant to Federal Rule of Civil Procedure 42(a)."<sup>16</sup> Other court cases involving FSIA and its exceptions have also reflected different angles and viewpoints being taken by plaintiffs in such matters. Some lawsuits involved foreign sovereigns as defendants, while others concerned individual U.S. citizens and companies, both as plaintiffs and defendants.<sup>17</sup>

In reference to official documents, public papers of President Gerald Ford proved particularly helpful, especially in regards to the circumstances which led to his decision to sign into law the Foreign Sovereign Immunity Act (FSIA) - the

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<sup>15</sup> *Rubin et al v. The Islamic Republic of Iran* (No.: 01-1655,14, 20).

<sup>16</sup> *Ibid.*

<sup>17</sup> For example, *Dole Food Co. et al v. Patrickson et al*; *Republic of Argentina v. Weltover, Inc.*

legislation which was used by the plaintiffs' lawyers in the *Rubin et al* lawsuit, in their claim to attach the artifacts, as a source of compensation.<sup>18</sup>

In his "Statement on Signing the Foreign Sovereign Immunities Act of 1976," dated October 22, 1976, President Ford stated:

". . . This legislation will enable American citizens and foreign governments alike to ascertain when a foreign state can be sued in our courts. In this modern world, where private citizens increasingly come into contact with foreign government activities, it is important to know when the courts are available to redress legal grievances. . . "<sup>19</sup>

The Foreign Sovereign Immunity Act of 1976, was approved on October 21, 1976, and as enacted, H.R. 11315, is referred to as Public Law 94-583 (90 Stat. 2891).<sup>20</sup> This legislation was amended twice, to include the "exception" provisions that were ultimately employed by the claimants in the *Rubin et al* lawsuit, namely "commercial activity" and "terrorism" exceptions.<sup>21</sup> The US Congressional Record and Index (94th Congress, 2d Session), provided information about the details of FSIA, its provisions and its scope of action, as well as, the debates in favor or against its enactment.

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<sup>18</sup> *Public Papers of the Presidents of the United States: Gerald R. Ford, 1974-1977*, 6vols. Washington, DC: Government Printing Office (1975-79). (Source: The American Presidency Project)([http://www.presidency.ucsb.edu/gerald\\_ford.php](http://www.presidency.ucsb.edu/gerald_ford.php) )(accessed 6/3/2011).

<sup>19</sup> *Public Papers of the Presidents of the United States: Gerald R. Ford, 1974-1977*, 6vols. Washington, DC: Government Printing Office,(1975-79), "Statement on Signing the Foreign Sovereign Immunities Act of 1976." (The American Presidency Project, accessed 6/3/2011, [http://www.presidency.ucsb.edu/gerald\\_ford.php](http://www.presidency.ucsb.edu/gerald_ford.php)).

<sup>20</sup> Ibid.

<sup>21</sup> Currently there are nine exceptions to FSIA, related to: 1)Waiver, 2)Commercial activity, 3)Expropriation, 4)Gifts/immovable property, 5)Tort, 6)Enforcement of arbitration award, 7)Terrorism, 8)Maritime liens, 9)Counterclaims.

Public papers of other U.S. presidents also offered interesting facts regarding the attitude of various U.S. administrations towards Iran, notably since the presidency of Woodrow Wilson. The growing interest in Iran, especially during post World War II administrations, provides a better understanding of the relations between the United States and Iran.<sup>22</sup>

### Secondary Sources

Research material on archaeology in the Near East ranges from scholarly journals and books to written accounts of expeditions and memoirs of experts in the field. Many of the earlier publications related to archaeology in Iran came from Britain due to the long history of British interest and presence in the region. While the British material provide considerable background information, they were not fully exhausted, as this study has focused on the presence of American archaeologists in Iran and their findings.

Publications about American archaeology in the Near and Middle East span more than a century, some dating back to the late 1890s. One of the premiere sources of information in this area is the *Journal of Near Eastern Studies*.<sup>23</sup> Within the pages of the numerous volumes of this publication, are detailed minutes from the meetings of interested groups as well as articles written by experts in the field. Other notable publications in this realm include *American Journal of Archaeology*, *Journal of the American Oriental Society* (dating back to

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<sup>22</sup> Beginning with Franklin D. Roosevelt and ending with Jimmy Carter.

<sup>23</sup> Published by the University of Chicago Press. Founded in 1884 as *Hebraica*, the journal was renamed twice over the course of the following century, each name change reflecting the growth and expansion of the fields covered by the publication. In 1895 it became the *American Journal of Semitic Languages and Literatures*, and in 1942 it received its present designation, the *Journal of Near Eastern Studies*. (source: JSTOR)

the mid-1800s), *Journal of the Economic and Social History of the Orient*, and *The Journal of Hellenic Studies*.

For my research, one of the best sources of information on American archaeology in Iran was a companion volume to the book series *A Survey of Persian Art*, published in 1996, in memoriam to Arthur Upham Pope and his wife, Phyllis Ackerman.<sup>24</sup> Pope and Ackerman were pioneers in the study of the arts of Asia. Their primary interest in Persian art and culture led them to establish the American Institute for Persian Art and Archaeology in New York City in 1928, which evolved into the Asia Institute with its pioneering School for Asiatic Studies.<sup>25</sup>

*Surveyors of Persian Art - a Documentary Biography of Arthur Upham Pope & Phyllis Ackerman* concentrates on the efforts of Pope regarding the study of Persian Art, and chronicles his contributions towards the establishment of American archaeology in Iran.<sup>26</sup> Excerpts from letters shared between Pope and his colleagues, as well as, correspondence among those involved in efforts to bring American archaeologists to Iran, proved quite valuable for my research.<sup>27</sup> The material found in this publication points to the role that Arthur Pope played

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<sup>24</sup> Jay Gluck and Noel Siver, editors, *Surveyors of Persian Art - a Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, (SoPA, ASHIYA, JAPAN, 1996, Distributed by Mazda Publishers, Costa Mesa, CA).

<sup>25</sup> *Ibid*, xv.

<sup>26</sup> *Ibid*, 12.

<sup>27</sup> *Ibid*, xviii-xx.

in the passage of the antiquities law in Iran in 1930.<sup>28</sup> The material published in *Surveyors of Persian Art - a Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, also reveals an acute sense of rivalry among American cultural organizations and archaeologists in trying to secure the rights for expeditions in Iran, particularly at Persepolis.<sup>29</sup>

Another book, *Yeki Bud, Yeki Nabud - Essays on the Archaeology of Iran in Honor of William M. Sumner*, published in 2003, can serve as a valued source for tracing the efforts of American archaeologists in Iran after WWII, particularly during the 1960s and 1970s.<sup>30</sup> Contributions of the late William Sumner to American archaeology in Iran are lauded by his friends, colleagues, and former students in a collection of essays emphasizing Sumner's approach towards concentrating on "methodological aspects of analysis of survey data," as well as, "focusing on two of the main geographical areas studied by archaeologists in Iran: the southwest and the northwest."<sup>31</sup>

Three chapters (essays) in this volume directly address the site of Persepolis, the Elamite Tablets, and Cuneiform Inscriptions found at Persepolis.

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<sup>28</sup> Letter from Wallace Murray, chief, Division of Near Eastern Affairs, Department of State, to Horace Jayne, 3 January 1931, in *Surveyors of Persian Art - a Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, edited by Gluck and Siver, 222.

<sup>29</sup> Gluck and Siver, editors, *Surveyors of Persian Art - a Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, 225.

<sup>30</sup> These efforts came to a halt in 1979 due to the Islamic Revolution in Iran.

<sup>31</sup> Naomi F. Miller and Kamyar Abdi, editors, *Yeki Bud, Yeki Nabud - Essays on the Archaeology of Iran in Honor of William M. Sumner* (the Cotsen Institute of Archaeology, University of California, Los Angeles, published in association with The American Institute of Iranian Studies and The University of Pennsylvania Museum of Archaeology and Anthropology, 2003), back cover.

First, in "The Persepolis Area in the Achaemenid Period-Some Reconsiderations," Remy Boucharlat discusses the study of the areas surrounding (and including) Persepolis in reference to the Achaemenid occupation of the region.<sup>32</sup>

In the second article, "Context and Content of the Persepolis Inscriptions-The Interchange of XPb and XPd," Michael Kozuh presents a study of three different types of cuneiform inscriptions found at Persepolis, and their decipherment by various scholars dating back to 1778. Kozuh points out the differences between earlier decipherments and interpretations of the languages used in the inscriptions and later works, noting that the early conclusions in determining the languages of the inscriptions were not accurate.<sup>33</sup>

Finally, there is the article titled "Three Stray Elamite Tablets from Malyan," by Matthew W. Stolper, currently the chief researcher in charge of the Persepolis Tablets Project at the Oriental Institute. This particular piece, in some ways, seemed to be related to my research.<sup>34</sup> Stolper discusses the tale of three Elamite administrative tablets believed to have originated from Malyan. In 1987, these tablets were offered for sale in the United States. Their contents and seal impressions gave a strong indication that they came from Malyan. Stolper contends that in fact, these tablets belonged to the same ancient group as the texts excavated in level IV of the EDD building (Middle Elamite building) and

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<sup>32</sup> Ibid,261.

<sup>33</sup> Ibid,266.

<sup>34</sup> Miller and Abdi, editors, *Yeki Bud, Yeki Nabud - Essays on the Archaeology of Iran in Honor of William M. Sumner*,201.

published by Stolper (1984b). They were acquired and donated to the University Museum to be held in trust.<sup>35</sup>

The essays presented in the twenty-eight chapters of *Yeki Bud, Yeki Nabud - Essays on the Archaeology of Iran in Honor of William M. Sumner*, provide expert views of the efforts related to archaeology in Iran, particularly southwestern Iran. Although the bulk of the material is suitable for professional archaeologists, the volume as a whole presents valuable information for other disciplines and practices whose expertise and scholarship so often overlaps and intersects with archaeology, especially in the Near East.

Since their discovery in the 1930s, the Persepolis Tablets had become a favorite subject for a number of scholarly periodicals. Such publications provided further information about, and subsequent research associated with the artifacts, including journal entries and newsletters related to archaeology and Middle Eastern studies. In its July 1931 edition, the *Bulletin of the American Institute for Persian Art and Archaeology* noted that, ". . . Dr. James H. Breasted, member of the Institute's Board of Directors, has announced that the Oriental Institute of the University of Chicago will undertake the restoration of the ruins of Persepolis and that this site has been granted for the purpose. . . "<sup>36</sup>

Erich F. Schmidt, Richard T. Hallock, and George G. Cameron, of the Oriental Institute at the University of Chicago, were involved in the study of the

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<sup>35</sup> Ibid.

<sup>36</sup> "Bulletin of the American Institute for Persian Art and Archaeology," vol.1, no.1,6, in *Surveyors of Persian Art - a Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, edited by Gluck and Siver, 227.



Persepolis Tablets and deciphering the written language of the artifacts. An expert in aerial photography and reconnaissance, Dr. Erich F. Schmidt who replaced Ernst Herzfeld as the director of the Oriental Institute expedition to Persepolis, wrote an account of his scouting endeavors over the rough western mountains of Iran in his search for guidelines for a projected overland expedition. His reports were published in the June 1938, edition of the *Bulletin of the American Institute for Persian Art and Archaeology*, under the title "The Second Holmes Expedition to Luristan."<sup>37</sup>

Due to their affiliation with the Oriental Institute at the University of Chicago, works by Erich F. Schmidt, Richard T. Hallock, and George G. Cameron, have generally been published by the Oriental Institute and the University of Chicago Press. Reviews of their articles have also appeared in a number of publications, particularly *American Journal of Archaeology*, *Journal of Near Eastern Studies* and *The Journal of Hellenic Studies*.<sup>38</sup>

In his article, "A New Look at the Persepolis Treasury Tablets," published in the *Journal of Near Eastern Studies*, Richard T. Hallock examined a number of the Persepolis treasury tablets (forty-five in total) that were written in Elamite language, by using the expertise and knowledge he had gained in studying the fortification tablets. Based on his research, Hallock maintained that, "All of the treasury texts deal with the payment of silver, in lieu of foodstuffs, to various

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<sup>37</sup>Gluck and Siver, editors, *Surveyors of Persian Art - a Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*,236.

<sup>38</sup> For further references, see bibliography.

work groups. There are two types of text: letters and memorandum texts. Most of them name the person responsible for the apportionments to the workers."<sup>39</sup> In Hallock's own words, the result of his study "enhanced my opinion of Cameron's original work."<sup>40</sup>

In his article, Hallock also made reference to George G. Cameron's book, *Persepolis Treasury Tablets*, that was published in 1948 by the Oriental Institute.<sup>41</sup> In 1965, Cameron published a follow-up report to his previous work, aptly titled, "New Tablets from the Persepolis Treasury,"<sup>42</sup> wherein he stated,

"... When, consequently, my *Persepolis Treasury Tablets* appeared in 1948, I was definitely under the impression that I had seen and copied all those treasury documents from which any kind of useful or additional information could be derived-whether the tablets were at Persepolis, in Teheran, or in Chicago. This, it appears, was an erroneous conclusion. Although full records are not obtainable at Teheran, it appears that through some oversight I was not given access to all treasury documents forwarded to the Museum by the Oriental Institute excavators. It is also possible that subsequent excavations by Iranian authorities have brought to light a few additional documents."<sup>43</sup>

These articles illustrate the continuous efforts by scholars to study the Persepolis Tablets, and that these artifacts became a constant source of new discoveries by the experts.

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<sup>39</sup> Richard T. Hallock, "A New Look at the Persepolis Treasury Tablets," *Journal of Near Eastern Studies*, vol. 19, no.2 ( April 1960):90.

<sup>40</sup> Ibid.

<sup>41</sup> George G. Cameron, *Persepolis Treasury Tablets*, (Chicago, Oriental Institute Publications, The University of Chicago Press,1948), xviii + 214.

<sup>42</sup> George G. Cameron and I. Gershevitch, "New Tablets from the Persepolis Treasury," *Journal of Near Eastern Studies*, vol. 24, No. 3, Erich F. Schmidt Memorial Issue. Part One, (Jul.1965):167.

<sup>43</sup> Ibid.

Among works by other scholars relating to the Persepolis Tablets, one can name "Storehouses and Systems at Persepolis: Evidence from the Persepolis Fortification Tablets," by G. G. Aperghis, that was published in the *Journal of Economic and Social History of the Orient*.<sup>44</sup> Another article was written by Mark B. Garrison in the January 1996 edition of the *Journal of Near Eastern Studies*, entitled "A Persepolis Fortification Seal on the Tablet MDP 11 308 (Louvre Sb 13078)."<sup>45</sup> These articles addressed certain issues related to the artifacts that could be useful to experts in archaeology, though not necessarily for other researchers. The information was technical from my viewpoint, and their mention here is merely to illustrate the breadth of research that has been conducted in reference to the Persepolis Tablets.

The latest and most current information on the study of the Persepolis Tablets is generally found in the publications of the Oriental Institute at the University of Chicago. A closer review of all published material, including the most recent findings by the researchers at the Oriental Institute, point to the fact that the historical significance of the Persepolis Tablets is greater than initial assessments had predicted. These publications also reinforce the experts' opinion that targeting the objects as a source of legal compensation would not be a sound choice.

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<sup>44</sup>G.G. Aperghis, "Storehouses and Systems at Persepolis: Evidence from the Persepolis Fortification Tablets," *Journal of the Economic and Social History of the Orient*, vol. 42, no. 2. (1999).

<sup>45</sup> Mark B. Garrison, "A Persepolis Fortification Seal on the Tablet MDP 11 308 (Louvre Sb 13078)," *Journal of Near Eastern Studies*, vol. 55, no.1,(Jan..1996).

In the study of ancient Iran (Persia), one of the most notable American scholars is Richard N. Frye, professor emeritus at Harvard University. Published works by professor Frye serve as valuable reference material for students of Near Eastern Studies, particularly those interested in the history of Iran prior to the Arab conquest(seventh century A.D.). The earliest work of Richard Frye, that I could find, was published in 1953, simply entitled *Iran*. Introduced as "the best introduction to Iran available today," this publication provides a brief and general (though not necessarily accurate) overview of Iran.<sup>46</sup> Much of the material presented seems out-of-date, yet the information about ancient Iran, and the geography of the country and its people could be a good starting point for researchers and laymen alike. The appendix included statistical information from the time of the book's publication, which can be useful for comparative studies.

In 1956, Frye wrote a review in the *American Journal of Archaeology*, of a work by George Cameron entitled "Persepolis Treasury Tablets."<sup>47</sup> In his praise of this publication, Frye stated, ". . . the ten preceding chapters, on the economic, religious and historical significance of the tablets, on the chronology and other matters, are perhaps of greater interest and value to the reader who is not particularly concerned with Elamite. The entire book is a model of meticulous work and careful method . . ." <sup>48</sup>

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<sup>46</sup> Richard N. Frye, *Iran* (Henry Holt and Company, Inc.,1953),back cover.

<sup>47</sup> Richard N. Frye, Review of "The Persepolis Treasury Tablets," *American Journal of Archaeology*, vol.60, no.2.(Apr. 1956):192.

<sup>48</sup> *Ibid.*

Published in 1963, another work by Richard Frye, *The Heritage of Persia*, presents a cultural and historical view of Iran, and pays special attention to pre-Islamic Iran, especially the Achaemenid empire. In the introduction, Frye maintains, "The present books falls into the category of "scientific-popular", to use current Russian terminology. This means that a general subject is presented for students and the public but that the treatment is based on the latest scholarly work in the various fields covered in the book."<sup>49</sup> In 1975, *The Golden Age of Persia - The Arabs in the East*, another work by Frye was published. This volume concentrates on the history of Iran after the Arab conquest, and the subsequent rise of future Persian dynasties. This publication also points to the numerous contributions of Iran and Iranians to what is widely known as Islamic culture.<sup>50</sup>

A more expansive and detailed study of ancient Iran was published by Richard Frye in 1984, under the title *The History of Ancient Iran*.<sup>51</sup> According to Frye, this publication is "the continuity in the history of western Iran from the earliest times to the Arab conquest, and in certain respects even down to the present."<sup>52</sup> Chapter five in this book is devoted to the Achaemenid empire, and

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<sup>49</sup> Richard N. Frye, *The Heritage of Persia* (Cleveland and New York, The World Publishing Company, 1963), xv.

<sup>50</sup> Richard N. Frye, *The Golden Age of Persia - The Arabs in the East* (New York, Barnes & Noble Books - a division of Harper & Row Publishers, 1975), 150-174.

<sup>51</sup> Richard N. Frye, *The History of Ancient Iran* (Munich, Germany, C. H. Beck'sche Verlagsbuchhandlung, 1984).

<sup>52</sup> *Ibid*, ix.

should provide ample information for those interested in learning more about the period in which the Persepolis Tablets were created.<sup>53</sup>

In order to better understand *Rubin et al v. Islamic Republic of Iran*, factors relating to its initiation and further development also required examination. The violent act (a terrorist bomb attack) upon which the lawsuit was based, could itself be a topic requiring extensive research. So could the rise of terrorism in the twentieth century. In recent years, greater focus has been placed on the emergence of terrorist groups, especially in the Middle East. Many scholars in different fields have provided research and analysis in this regard. The effects of terrorist acts on the lives of ordinary people as well as the world at large would also be significant, as a major contributor to the emergence of lawsuits launched against state-sponsored terrorism. For this paper, however, an in-depth review of terrorism in the Middle East was not deemed necessary, as it was not within the scope of this study .

Rulings in a number of other court cases had an effect on the arguments presented in the *Rubin et al* case. Such written accounts could be of particular use to legal scholars. A few lawsuits involving the Iranian government were related to artwork and antiquities. In those claims, repatriation of cultural artifacts was the principal issue. My research, however, revealed that the *Rubin et al* lawsuit was the only legal case wherein artifacts were subject to attachment as a source of compensation.

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<sup>53</sup> Ibid,87-135.

The advent of state-sponsored terrorism and the role of the government of the Islamic Republic of Iran in this regard was also a major factor in the lawsuit involving the Persepolis Tablets. Since its inception in 1979, the Islamic Republic of Iran has become a topic of scholarship, especially in light of its increasing posturing as a regional power. In recent years, a wider range of scholarly work has emerged in reference to the Islamic Revolution of 1979 in Iran, and its effect on the Middle East, as well as the world. Documents recently released from the files of the intelligence agencies in the United States, Britain, the former Soviet Union, and East Germany have made possible the introduction of new literature and scholarship on foreign policy decisions by western powers regarding the turmoil in Iran in the late 1970s and the overthrow of the Pahlavi regime. In recent years, more works by Iranian scholars in addressing this topic have also been published in English.<sup>54</sup>

Relations between the United States and Iran was also an important aspect of the lawsuit and in turn, this case study. In my research I found that scholarship about U.S.-Iran relations tends to be focused on the second half of the twentieth century. The majority of the publications address the U.S. presence in Iran since World War II. The most notable topic of research, other than the Islamic revolution of 1979, concerned the events of the summer of 1953, which led to a brief departure of Mohammad Reza Shah Pahlavi, and later resulted in the

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<sup>54</sup> For example, see works by Bahram Choubine, Daryoush Homayoon, Abbas Milani, Houshang Nahavandi, Amir Taheri, and Ardeshir Zahedi.

deposition of Dr. Mohammad Mossadegh, the prime minister at the time.<sup>55</sup> Debate about the circumstances and the outcome of this turmoil still continues among Iranian scholars and experts, as well as that country's ordinary citizens.<sup>56</sup> The impact of such events on the opinion of the Iranian people towards the U.S. government would, in later years, become a point of contention between the two governments. In reviewing the literature on this topic, one has to take care in finding works that address both sides of the argument, as many of such publications appear to be strongly biased in one direction or the other. For my research, these publications provided other reference sources, though not precisely the information I was looking for.

A number of scholarly publications have addressed topics related to art and legal issues. Such works are particularly valuable as they present a close association with the issues being discussed in the case being depicted herein. The majority of these works are presented as collections of essays, or articles in scholarly journals related to art and the law.

One of the most notable authorities in research and scholarship of legal issues surrounding art and cultural property is John Henry Merryman. In one of his most referenced articles, "Two Ways of Thinking about Cultural Property," published in *The American Journal of International Law*, Merryman presents two models of approach towards cultural property. One approach represents the attitude embodied in the Convention for the Protection of Cultural Property in the

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<sup>55</sup> The probable role of the CIA in these events has, in fact, been a major issue of contention and debate among generations of Iranians.



Event of Armed conflict of May 14, 1954 (hereinafter "The Hague Convention" or "Hague 1954"), which culminated a development in the international law of war that began in the mid-nineteenth century.<sup>57</sup> This method views cultural property as "components of a common human culture, whatever their places of origin or present location, independent of property rights or national jurisdiction."<sup>58</sup> According to Merryman,

"Another way is as part of a national cultural heritage. This gives nations a special interest, implies the attribution of national character to objects, independently of their location or ownership, and legitimizes national export controls and demands for the "repatriation" of cultural property; the world divides itself into source nations and market nations."<sup>59</sup>

Merryman defines source nations as those where "supply of desirable cultural property exceeds the internal demand (i.e. Egypt, Greece, Mexico, and India)."<sup>60</sup> On the other hand, market nations are countries in which "demand exceeds the supply (i.e. France, Germany, Japan, the Scandinavian nations, Switzerland and the United States)."<sup>61</sup> Demand from market nations encourages export from source nations. However, a nation can be both a source nation and market nation.

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<sup>57</sup> John Henry Merryman, "Two Ways of Thinking About Cultural Property," *The American Journal of International Law*, vol.80(1986), 831-853.

<sup>58</sup> Merryman, "Two Ways of Thinking About Cultural Property":831.

<sup>59</sup> *Ibid*, 832.

<sup>60</sup> *Ibid*.

<sup>61</sup> *Ibid*.

For example, the huge demand for Native American cultural property can make the United States a source nation as well as a leading market nation.<sup>62</sup>

According to Merryman, most source nations are strong opponents of the export of cultural objects.<sup>63</sup> Merryman contends, "Almost every national government (the United States and Switzerland are the principal exceptions) treats cultural objects within its jurisdiction as parts of a "national cultural heritage."<sup>64</sup> In Merryman's view, national laws place limitations on export, and international agreements tend to support such trade restrictions. An example of such measures is the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and transfer of Ownership of Cultural Property of November 14, 1970, (hereinafter "UNESCO 1970") which Merryman refers to as "the keystone of a network of national and international attempts to deal with the "illicit" international traffic in smuggled and/or stolen cultural objects."<sup>65</sup>

Three major requirements are contained within the 1970 Convention. First, the Convention requires its "State Parties" to take preventive measures, for example, conduct inventories, create export certificates, monitor trade, impose various forms of sanctions, and develop educational campaigns. Second, the Convention requires that restitution provisions be put in place with reference to the recovery and return of cultural property that has been imported after the

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Merryman, "Two Ways of Thinking About Cultural Property":832-833.

countries in dispute have signed onto the Convention. Finally, the 1970 Convention presents a framework of international cooperation and looks to strengthen this alliance among its members/parties in regards to the protection of cultural property against looting.<sup>66</sup>

In his article, Merryman addressed issues that would provide a better understanding of the position of source nations regarding their cultural property. For example, Merryman's view can be traced through the case of the Persepolis Tablets being presented herein, in the initial reluctance by the government of Iran towards allowing the transfer of the artifacts to the United States for further study.

Another notable authority in the field of material culture and museum studies is Susan Pearce. Her expertise in these areas is reflected in a number of published works, most of which are presented as essay collections, with Pearce acting as the editor. Some of the scholars mentioned in this case study have also referenced the writings of Susan Pearce. Most of the works edited by Pearce focus on Britain and its cultural institutions, particularly art museums, with emphasis on collection, curatorship, and audiences. However, the topics discussed in Pearce's publications can be informative to others as well. Pearce and her colleagues concentrated on the role of objects and material culture in our perception and preservation of the past. For my case study, works by Merryman and Pearce proved beneficial in providing a better view of the issues facing cultural institutions.

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<sup>66</sup> <http://portal.unesco.org/en> (accessed 6/3/2011).

In *Experiencing Material Culture in the Western World*, Susan Pearce and her co-editor, Elaine Heumann Gurian, have suggested that "objects remain our alter egos, embedded in a closed system of reference in which the things that touch us most closely- objects, food, body/sex- are used to describe each other. In doing so, they create both collective cultural and individual identities."<sup>67</sup> In her foreward to the volume, entitled "Words and Things," Susan Pearce noted that great attempts have been made in trying to explain the relationship between words and things, language and the material world.<sup>68</sup> Pearce contends that these efforts "have added enormously to our understanding of what words and things are, and how at the level of ideas they probably meet."<sup>69</sup> She further asserts that they "do not seem to offer scope for understanding material culture as it is lived, or how the mental unity of words and things creates our lives day by day."<sup>70</sup> Pearce believes that "material culture is capable of touching a raw nerve of passionate interest."<sup>71</sup> She also states, "objects, like words and bodies, are not "themselves," but symbols of themselves, and through them we are continuously at the game of re-symbolizing ourselves."<sup>72</sup>

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<sup>67</sup> Susan M. Pearce and Elaine Heumann Gurian, series editors, *Experiencing Material Culture in the Western World* (London and Washington , Leicester University Press,1997), back cover.

<sup>68</sup> Ibid,1.

<sup>69</sup> Susan M. Pearce,"Words and Things," foreward in *Experiencing Material Culture in the Western World*, edited by Pearce and Heumann Gurian, 2.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid,10.

In one of the essays published in *Experiencing Material Culture in the Western World*, and titled "The Genealogy of Material Culture and Cultural Identity," author Sean Hides presents a discussion about material culture and cultural identity, and points to the importance of the relationship between objects and identity in archaeology and its related disciplines, particularly anthropology. Hides asserts that in archaeology context must be recreated from the objects themselves whereas in other disciplines, objects are interpreted in their social context. Hides argues that archaeological theorists and historians have seen the link between artifacts and identity as "an intrinsic property of social existence, upon which universal theoretical abstractions can be based."<sup>73</sup>

Another volume edited by Susan Pearce titled *Objects of Knowledge*, was published in 1990. In her essay for this volume, titled "Objects as Meaning; or Narrating the Past," Pearce referred to the "power of the real thing," which in her view, is regarded by museums to be the greatest strength enjoined upon a collection-holding institution.<sup>74</sup> Pearce pointed to the role of objects as one of several ways of narrating the past. In her opinion, material culture can also be viewed as part of a large range of communication possibilities used by a society to determine its individual nature.<sup>75</sup> Pearce referred to the role of objects as signs and symbols, drawing a distinction between the two roles. In her view, "objects

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<sup>73</sup> Sean Hides, "The Genealogy of Material Culture and Cultural Identity," in *Experiencing Material Culture in the Western World*, edited by Pearce and Heumann Gurian, 11.

<sup>74</sup> Susan M. Pearce, ed., *Objects of Knowledge* (London & Atlantic Highlands, The Athlone Press, 1990), 127.

<sup>75</sup> *Ibid.*, 128.

operate as a sign when they stand for the whole of which they are an intrinsic part," and "operate as a symbol when they are brought into an arbitrary association with elements to which they bear no intrinsic relationship, in which case the association is said to be metaphoric."<sup>76</sup>

In another publication edited by Susan Pearce, *Museum Studies in Material Culture*<sup>77</sup>, I found an article by Gaynor Kavanagh, entitled "Objects as Evidence, or Not?," to be of particular note for my research.<sup>78</sup> Kavanagh expresses his interest in "objects as evidence of people's history and cultural experience in the last two centuries," especially in studies related to material culture.<sup>79</sup> In his view, objects (or their absence) can be the physical indicators of ideological forces and social positions. The importance of the object is judged by what can be learned from its context, the ideas behind it and the forces that create change.<sup>80</sup> In Kavanagh's view, it is not the form and content of the source that is essential, but its location and relationships. The object is also a practical expression of the social and physical environment.<sup>81</sup> Kavanagh contends that "an object in its own right may be a signal or symbol, a trigger to emotion or memory. . . . The object in this sense behaves as a kind of visual shorthand which we may

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<sup>76</sup> Ibid,130-131.

<sup>77</sup> Susan M. Pearce, ed., *Museum Studies in Material Culture* (London, New York, Leicester University Press,1989).

<sup>78</sup> Gaynor Kavanagh, "Objects as Evidence, or Not?," in *Museum Studies in Material Culture*, edited by Susan M. Pearce,125-138.

<sup>79</sup> Ibid,126.

<sup>80</sup> Ibid,128.

<sup>81</sup> Ibid.

or may not be able to read, according to our level of experience."<sup>82</sup> An object's significance, therefore, is associated with "the meaning and currency of the things which it symbolizes."<sup>83</sup> The environment of the object's discovery can also influence the interpretation drawn from the object and any conclusions that may result there from.<sup>84</sup> The ideas presented by Kavanagh serve to support the argument against the sale and disbursement of the collection of the Persepolis Tablets.

In 2004, a research librarian named Louise Tsang, published *Legal Protection of Cultural Property: A Selective Resource Guide*.<sup>85</sup> This guide, which was updated in 2007, serves as a compilation of various sources of information and reference pertaining to cultural property. From websites to symposia, major treaties, bibliographies and journals related to cultural property law and art law, to international organizations, conferences and agencies working towards the protection of cultural property around the world, this reference guide is a valuable tool for researchers and students alike. According to Tsang, "the purpose of this guide is to direct the reader to important sources of information, both in print and electronic, concerning the protection of cultural property in wartime, international

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<sup>82</sup> Ibid,130.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Louise Tsang is a research librarian at Greenberg Traurig. Before moving to New York, Louise was a reference librarian at Georgetown University Law Library. Louise is also an EISIL content author.(source: <http://www.llrx.com/node/75>), accessed 7/15/2008

trade in cultural property, and the laws applicable to the illicit traffic of art and antiquities . . ."86

Also in 2004, two works relating to legal issues concerning cultural resources were released by Altamira Press, as part of a series called Heritage Resources Management Series, edited by Don Fowler, of the University of Nevada at Reno. One of the publications, *Legal Perspectives on Cultural Resources*, was edited by Jennifer R. Richman and Marion P. Forsyth, and includes interesting articles particularly in reference to repatriation issues.<sup>87</sup> The final article in the publication is entitled "Using the Courts to Enforce Repatriation Rights: A Case Study under NAGPRA," and written by Christopher A. Amato.<sup>88</sup> While the case of the Persepolis Tablets does not presently involve repatriation issues, this particular article and the case it presents were interesting due to the nature of the objects involved in the lawsuit - religious and funerary relics from a Native American sacred burial site, and the efforts of a nation (The Seneca Nations) to repatriate the objects to their rightful owners.

Within the same series of books, one will notice *Cultural Resource Laws & Practice - An Introductory Guide*, by Thomas F. King. Originally published in 1998 and updated in 2004, this volume is a valuable reference guide for laws relating to cultural resources in the United States, and most notably federal legislation pertaining to historic preservation. Not only does the publication

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<sup>86</sup> Louise Tsang, *Legal Protection of Cultural Property: A Selective Resource Guide*. (<http://www.llrx.com>, April 24, 2007).

<sup>87</sup> Jennifer R. Richman and Marion P. Forsyth, editors, *Legal Perspectives on Cultural Resources*, (Walnut Creek, Ca., Altamira Press - A Division of Rowman & Littlefield Publishers, Inc., 2004).

<sup>88</sup> Richman and Forsyth, editors, *Legal Perspectives on Cultural Resources* , 232-251.



present information about the legislation and laws concerning cultural resources, the book provides additional sources for reference and research in its bibliography of the works cited.

Among the more recent publications relating to cultural property and policy is *Who Owns the Past? Cultural Property, Cultural Policy, and the Law*, that was originally published in 2005.<sup>89</sup> Under the editorial direction of Kate Fitz Gibbon, this book is divided into four sections: 1)The Laws, 2)Collecting and Trade, 3)Art in Peril, 4)the Universal Museum. A chronology of cultural property legislation presented by Fitz Gibbon provides a brief and concise overview of important laws related to this field. Collaborators and contributors present essays in reference to the designated segments.

Each essay provides a set of ideas, viewpoints, and recommendations regarding cultural property. The essay themes are not limited to local or national cases, and thus present a broad view of the issues affecting cultural property around the world. This publication can serve as a valuable reference for anyone working in the area of cultural institutions. Two essays in this compilation referred to court cases involving antiquities, albeit with regards to trade in antiquities. In "The Trial of the Sevso Treasure - What a Nation Will Do in the Name of Its Heritage," authors Harvey Kurzweil, Leo V. Gagion, and Ludovic De Walden review a 1993 lawsuit that took place in New York City, as a "textbook

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<sup>89</sup> Kate Fitz Gibbon, editor, *Who Owns the Past? Cultural Policy, Cultural Property, and the Law* (New Brunswick, New Jersey, and London ,Rutgers University Press, in association with American Council for Cultural Policy, 2005).

example of the perils of the antiquities trade."<sup>90</sup> In her essay "The Elgin Marbles, a summary," Kate Fitz Gibbon provides another look at what is known as the "most famous and longest-running debate over cultural property in the world."<sup>91</sup>

Few other articles in scholarly publications have focused on art objects and legal issues associated with them.<sup>92</sup> In her article, "The Ownership of Cultural Property and Other Issues of Legitimacy," published in *The Journal of Arts Management*, Ann M. Galligan explores "how international, national, and state laws collide when dealing with the complex but nuanced legal issues surrounding the ownership of cultural property."<sup>93</sup> Galligan examines an article by Emily Winetz Goldsleger, titled "Contemplating Contradiction: A comparison of art restitution policies," that was also published in the same periodical.<sup>94</sup> In her work, Goldsleger describes the legal difficulties that exist in regards to handling art that was confiscated by the Nazis, and other contested works such as the classic case of the Parthenon Marbles.<sup>95</sup> Galligan points to Goldsleger's attempt to "compare and contrast policies surrounding these examples."<sup>96</sup> In Galligan's view, in her

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<sup>90</sup> Fitz Gibbon, editor, *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*, 83-93.

<sup>91</sup> Ibid, 109-119.

<sup>92</sup> At the time that my research was being conducted (2007-2009).

<sup>93</sup> Ann M. Galligan, "The Ownership of Cultural Property and Other Issues of Legitimacy," *The Journal of Arts Management, Law, and Society*, vol. 35, no.2(Summer 2005).

<sup>94</sup> Emily Winetz Goldsleger, "Contemplating Contradiction: A Comparison of Art Restitution Policies," *The Journal of Arts Management, Law, and Society*, vol. 35, no. 2(Summer 2005).

<sup>95</sup> Notably known as "The Elgin Marbles".

<sup>96</sup> Galligan, "The Ownership of Cultural Property and Other Issues of Legitimacy": 85.

article, Goldsleger "grapples with the thorny issue of whether artifacts removed from individuals, nations, civilizations, or cultural groups by force, theft, or occupation should be returned."<sup>97</sup>

In "History For Sale: The International Art Market and the Nation State," published in the *International Journal of Cultural Property*, Venus Bivar examines the case involving the personal collection of Andre Breton at d'hôtel Drouot in Paris, in her analysis of the role of the nation state in preserving collective memory.<sup>98</sup> Through describing the events related to the fate of the Breton collection, Bivar presents a topic that bore certain similarities to the case involving the Persepolis Tablets, particularly in regards to Bivar's depiction of the value of the Breton collection as "an integral part of French identity."<sup>99</sup> Bivar also questions the action (or inaction) of the French government in response to the possibility of the Breton collection being subject to an auction. Bivar asks, "If the collection was universally understood as critically important to the national heritage of France, why did the state allow it to go to auction?"<sup>100</sup> In her work, Bivar also refers to the writings of John Henry Merryman, which were published in another issue of *International Journal of Cultural Property*. Merryman

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<sup>97</sup> Ibid.

<sup>98</sup> Venus Bivar, "History For Sale: The International Art Market and the Nation State," *International Journal of Cultural Property*, vol.13(2006).

<sup>99</sup> Bivar, "History For Sale: The International Art Market and the Nation State": 260.

<sup>100</sup> Ibid.

contends that "cultural patrimony should not be limited to the confines of national borders but understood as the legacy of all humanity . . ." <sup>101</sup>

A handful of scholarly works have directly addressed the advent of lawsuits involving artwork, the United States and foreign nations. In her article "Economics of Antiquities Looting," <sup>102</sup> Lisa Borodkin takes a critical look at the policy of the United States as the only major art-purchasing nation that allows foreign nations to sue for antiquities without compensating the purchaser. <sup>103</sup>

While some authors focus on ownership rights regarding cultural artifacts, more recently a number of scholars have addressed the effects of cases using FSIA provisions to their advantage. A few have cited the lawsuit involving the Persepolis Tablets in their analysis. This is especially evident in the assessment of the advantages and shortcomings of FSIA as a legislative act and use or abuse of its provisions by U.S. lawyers and plaintiffs, particularly in demanding compensation from defendants - in many cases foreign sovereigns.

In her article, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act," published in the *International Journal of Cultural Property*, Charlene Caprio studies the effects of FSIA on cases involving artwork and individual rights. <sup>104</sup> Caprio reviews three lawsuits including the one involving

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<sup>101</sup> Ibid,278.

<sup>102</sup> Lisa J. Borodkin, "The Economics of Antiquities Looting and a Proposed Legal Alternative," *Columbia Law Review*, vol. 95, no. 2(March 1995),377-417.

<sup>103</sup> Borodkin, "The Economics of Antiquities Looting and a Proposed Legal Alternative": 390.

<sup>104</sup> Charlene A. Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act," *International Journal of Cultural Property*, vol.13(2006).

the Persepolis Tablets.<sup>105</sup> Caprio asserts that recent developments in U.S. case law have strengthened the power of private individuals to sue foreign sovereigns in U.S. courts over claims for artwork and cultural heritage property. According to Caprio, US Congress enacted the Immunity From Seizure Act (22 U.S.C. § 2459 - also known as IFSA), in efforts to "prevent organizations and institutions engaged in non-profit activities to import, on a temporary basis, works of art and objects of cultural significance from foreign countries for exhibit and display, without the risk of the seizure or attachment of the said objects by judicial process."<sup>106</sup> However, in three recent court cases, two concerning Nazi-looted artwork, and a third one involving ancient Persian artifacts that were loaned to an American university for study, individuals have invoked the FSIA (28 U.S.C. §1601 et seq.) to assert ownership rights over other nations' cultural property.<sup>107</sup>

One article that singularly addresses the lawsuit involving the Persepolis Tablets from a legal viewpoint, is "Rubin v. the Islamic Republic of Iran: A Struggle for Control of Persian Antiquities in America," published in *Harvard Law School Student Scholarship Series*.<sup>108</sup> Author James Wawrzyniak, Jr., points to the 1996 amendment to FSIA whereby a sovereign is stripped of immunity from suit in every case where "money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extra-judicial

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<sup>105</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":288.

<sup>106</sup> Ibid,285.

<sup>107</sup> Ibid.

<sup>108</sup> James Wawrzyniak, "Rubin v. The Islamic Republic of Iran: a Struggle for Control of Persian Antiquities in America," *Harvard Law School Student Scholarship Series*, no.17 (2007).

killing, aircraft sabotage, hostage taking, or the provision of material support or resources . . . for such an act" the defendant nation is designated a "state sponsor of terrorism", and the claimant is a "national of the United States."<sup>109</sup>

The author looks into the strategy of the plaintiffs' lawyers in asserting the terrorism exception in their argument to attach the Persian artifacts as part of their claim. In Wawrzyniak's view, the legal and factual issues presented by the *Rubin et al* litigation were "novel, interesting, and complex."<sup>110</sup> At the time of his article, the case had not reached a conclusion on the district court level. The author believed that once the final decisions were issued, the parties would undoubtedly continue their struggle for several more years in the federal courts of appeals.

My research revealed that aside from the scholarship addressing the legal aspects of the lawsuit involving the Persepolis Tablets, only a handful of cultural resource management professionals have made mention of this court case. With the exception of the Oriental Institute at the University of Chicago which is directly involved in this case, information or reviews were scarce, and came in the form of a couple of blog entries related to cultural resource management. The lack of academic research and scholarship on this topic strengthened my intent to present a case that could result in unforeseen issues with which many professionals in this field may have to contend, in a not-so-distant future.

For a better understanding of the case, it is necessary to examine the events and circumstances that led to the initiation of the *Rubin et al* lawsuit, the

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<sup>109</sup> Wawrzyniak, "Rubin v. The Islamic Republic of Iran: a Struggle for Control of Persian Antiquities in America":4.

<sup>110</sup> Ibid,54.

relations between the United States and Iran, and perhaps most importantly, the history of the artifacts that are caught in the middle - namely the Persepolis Tablets. The next chapter provides a closer review of these elements, with an emphasis on the artifacts and their historical significance, a factor which may have been overlooked throughout the legal proceedings related to the lawsuit.

## Chapter 2

### TERROR, POLITICS AND CULTURAL HERITAGE

#### The Bomb Attack and its aftermath

Court papers related to the *Rubin et al* lawsuit provided a detailed report of the terrorist act that eventually led to the court case. On the afternoon of September 4, 1997, three suicide bombers arrived at the crowded Ben Yehuda Street in downtown Jerusalem, with "cases of powerful explosive bombs."<sup>111</sup> The bombs were packed with nails, screws, pieces of glass, and chemical poisons to cause maximum pain, suffering, and death.<sup>112</sup>

Five people were killed, and nearly two hundred were wounded in the attack, including the plaintiffs in the *Rubin et al* lawsuit. A Palestinian organization, Hamas (alleged to have been receiving financial support from the Islamic government of Iran), claimed responsibility for the bombing. Two Hamas operatives, Muaid Said Bilal (Bilal) and Omar Abde1 Rahman al-Zaban (Zaban), were arrested by the Israeli police for their participation in the bombing. An Israeli court subsequently convicted both men of multiple counts of murder, attempted murder, and membership in Hamas. Court reports indicated that Bilal, Zaban, and other members of their Hamas cell gave Israeli authorities a detailed account of the planning, funding and execution of the September 4,1997

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<sup>111</sup> *Rubin et al v. The Islamic Republic of Iran*, (No. 01-cv-01655,14,20),3.

<sup>112</sup> *Ibid.*



bombing.<sup>113</sup> No mention was made in the court documents of the fate of the third alleged bomber.

In 2001, two separate civil lawsuits were filed against the Islamic Republic of Iran, on behalf of American citizens injured in the September 4, 1997, bombing in Jerusalem. The lawsuits pointed to the role of the government of Iran as a state sponsor of terrorism and its support of Hamas. Two years later, in 2003, the two lawsuits were consolidated by Nancy Mayer Wittington, the clerk of the United States District Court for the District of Columbia, into a single case file, referred to thereafter as *Rubin et al v. The Islamic Republic of Iran*.<sup>114</sup>

Before we examine the *Rubin et al* lawsuit, an overview of the relations between the United States and Iran is necessary, in order to shed some light on the political atmosphere in which this case was brought to court. A brief account of the Persepolis Tablets, their discovery and subsequent journey to the United States (and the Oriental Institute at the University of Chicago), will also illustrate the significance of these fragile, yet resilient artifacts.

#### U.S.- Iran Relations

The relationship between the United States and Iran can at best be described as ambivalent. Much has been written about the diplomatic relations between the two nations in the second half of the twentieth century. However, earlier contact and relationship between the two countries may have played a

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<sup>113</sup> *Rubin et al v. The Islamic Republic of Iran*, (No. 01-cv-01655,14,20),4.

<sup>114</sup> *Ibid*.

greater role in the perception of Iranians towards the United States than has generally been thought.

The origins of diplomatic relations between Iran and the United States date back to the nineteenth century and the efforts of American missionaries in Asia. In 1830, two missionaries from the American Board of Commissioners for Foreign Missions left their post in Smyrna, Turkey, to investigate the potential for missionary activities in the Near East. Due to their favorable report regarding the possibility of converting Christian minorities in the area around Lake Urumiah (northwestern Iran) to Protestantism, Reverend Justin Perkins left the United States in 1833, to open the first mission in Iran.<sup>115</sup> In 1835, Rev. Perkins opened the Presbyterian Mission School in Urumiah (also known as Rezaieh). The Presbyterian Mission had established the American School for Boys in Tehran in 1873, accepting only Christian and Jewish students. By the 1880s, the school was open to Moslem students as well. In 1913, the school was expanded to include a high school, and in 1925, college-level programs were added to its curriculum.

In 1851, the first diplomatic contact between the two countries occurred. The American Minister Resident at Constantinople negotiated a treaty with his Persian counterpart, with an amendment to include a "most favored nation" clause for Iran. The Persian government took no further action and the treaty was void.<sup>116</sup> On December 13, 1856, a Treaty of Friendship and Commerce was

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<sup>115</sup> Benson Lee Grayson, *United States-Iranian Relation* (Washington, D.C., University Press of America, 1981), 3.

<sup>116</sup> Abraham Yeselson, *United States-Persian Diplomatic Relations: 1883-1921* (New Brunswick, NJ, Rutgers University Press, 1956), 21.

signed by the United States and Iran, in Constantinople (today's Istanbul, Turkey). A typical "most favored nation" agreement, the treaty provided for diplomatic and consular representation in addition to the commercial clause.<sup>117</sup> The treaty also granted the United States the privilege of "extraterritoriality," then common in treaties between western countries and other nations. Based on this concept, Iranian citizens involved in suits with non-Persians would be tried by the Consul or agent of the United States and any other related Consul, rather than by Persian authorities.<sup>118</sup> In March, 1857, the United States Senate ratified the treaty. It would be another twenty five years before an American legation was established in Tehran.<sup>119</sup>

New debates in the US Congress concerning Iran resumed in 1880, as a result of the Kurdish unrest in northwestern Iran and harassment of Christians in the region. On November 20, 1880, Representative Rufus R. Dawes (R-Ohio) asked the State Department to appeal to the Persian government for the protection of the lives of fourteen American missionaries in the Urumiah area, among them his own sister and brother-in-law. Since the United States had no representatives in Iran, the American Minister in London, James Russell Lowell, was instructed by the State Department to seek the assistance of the British government and its representatives in Iran to help protect the lives of the American missionaries.<sup>120</sup>

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<sup>117</sup> Ibid, 20.

<sup>118</sup> Grayson, *United States-Iranian Relation*, 9.

<sup>119</sup> Yeselson, *United States-Persian Diplomatic Relations: 1883-1921*, 23.

<sup>120</sup> Ibid, 25.

The missionaries' predicament and concern for their safety prompted the US Congress to take the initial steps, on February 13, 1882, to ensure their protection. On July 15, 1882, Representative Charles G. Williams, of Wisconsin, introduced House Resolution 6743 for establishing diplomatic relations with Iran. On August 7, 1882, President Chester A. Arthur signed the bill into law. Samuel G.W. Benjamin was appointed as the first *Charge d'Affaires* and Consul General of the United States in Tehran. Before leaving for Iran, Benjamin succeeded to the title Minister Resident and Consul General of the United States to Persia. The real reason for the appointment, however, was the protection of the lives of the American missionaries.<sup>121</sup> By 1884, the United States had also appointed a consul in Bushihr (southern Iran).<sup>122</sup>

Benjamin's assignment in Iran lasted two years, during which he made efforts on behalf of the missionaries. The State Department recalled Benjamin to Washington due to the undesirable impression he had made on other diplomats in Iran, especially in his suspicion of Russia and its activities in Iran. His departure from Tehran, on March 19, 1885, coincided with the return of a Democratic administration in the United States for the first time since the Civil War.<sup>123</sup> It would be a year before the next American Minister, F.H. Winston, would arrive in Iran as Benjamin's replacement. Winston resigned his post after only two months,

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<sup>121</sup> The legation was established in the same year as those in Siam and Korea.

<sup>122</sup> Yeselson, *United States-Persian Diplomatic Relations: 1883-1921*, 26.

<sup>123</sup> *Ibid.*, 30-31.

and was succeeded by E. Spencer Pratt, an Alabaman with extensive experience in railroad construction and cotton and sugar culture in the United States.

In an interview with Pratt in November, 1886, the Persian monarch, Nasir-u-Din Shah, indicated a keen interest in the involvement of American enterprise in developing the rich mineral and agricultural resources of Iran.<sup>124</sup> The Shah (king) also declared his readiness to grant extraordinary concessions to American capitalists coming to his country for the purpose of building railroads and canals, and opening mines and manufacturing concerns. In his five-year stay in Iran, Pratt attempted diligently, yet often unsuccessfully, to facilitate trade agreements between Iran and American businesses.

His zeal in this feat, however, usually caused the admonishment of the State Department. One of Pratt's ideas was to establish an Oriental institute in the United States in order for Americans to become more familiar with the region, and therefore facilitate trade between the two countries. He also conveyed the first request by Iran for the recruitment of American technicians, especially mining engineers and geologists.<sup>125</sup>

One of Pratt's greatest accomplishments was the establishment of the Persian delegation in Washington. The Persian representation arrived in Washington on October 5, 1888, in the person of Haji Hossein Gholy Khan, who bore the title of Envoy Extraordinary and Minister Plenipotentiary. At his first audience with President Cleveland, the Persian envoy presented what could be

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<sup>124</sup>Nasir-u-Din Shah of the Qajar dynasty.

<sup>125</sup> Grayson, *United States-Iranian Relation*, 35.

considered one of the most colorful documents in American diplomatic history.<sup>126</sup>

In the document, the Persian government made a plea for American assistance in saving Iran from Britain and Russia. The Cleveland administration, however, maintained its foreign policy of non-involvement.<sup>127</sup>

The succession of American ministers to Iran continued into the twentieth century. The role of the ministers was mainly focused on the safety and protection of American missionaries. In 1906, a U.S. Consul was appointed in Tabriz to represent the interests of the United States, in great part due to increasing unrest in northwestern Iran where the American missionaries were stationed.<sup>128</sup> The isolationist policy of the United States and its non-involvement in Iran's disputes and troubles with Britain and Russia also remained the same, as the United States demonstrated little or no interest in the politics of the region.<sup>129</sup>

The murder of Reverend Benjamin W. Labaree, on March 8, 1904, by a group of Kurdish tribesmen, near Mount Ararat in northwestern Iran, reaffirmed the sense of concern for the safety of the missionaries. Some of the murder accomplices had fled across the border to Turkey, thus escalating tensions between that country and Iran. The United States government had also demanded a swift judgment for the murderer and others involved, as well as compensation

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<sup>126</sup> Due to the tone and language of the message and the ornate calligraphy and decorative elements used in the creation and presentation of the document.

<sup>127</sup> Grayson, *United States-Iranian Relation*, 41.

<sup>128</sup> *Ibid*, 44-45.

<sup>129</sup> The number of American missionaries and their families at this time was estimated at one hundred, of whom twenty percent were naturalized American citizens who had returned to their homeland.

for Reverend Labaree's widow. On August 5, 1907, a telegraph from U.S. Consul Doty warned that the lives of the missionaries were in danger, and that skirmishes along the Iran-Turkey border had escalated into an attack by Turkish troops and the Kurds on Urumiah. Though short-lived, the encounter created a diplomatic problem for the United States, as many in Iran associated the Turko-Persian incident with the American demand for justice in the Labaree affair. In a letter to the State Department, the Persian minister in Washington, D.C., Morteza Khan, directly blamed the United States for Iran's misfortunes.<sup>130</sup>

The State Department's concern for the safety of the American missionaries, however, did not extend to the naturalized Americans who also faced great danger. As the unrest grew and pleas for asylum and shelter increased, the American policy of non-involvement prevailed. The United States government also seemed disinterested in the safety of Americans who were involved in other significant events taking place in Iran, especially the popular democratic movement, known as the Constitutional Revolution, which was taking shape during the years 1905-1906. A Princeton graduate named Howard C. Baskerville, who had been employed as a teacher by the Presbyterian Mission in Tabriz, had become interested in, and subsequently joined the revolutionaries under the direction of Sattar Khan, one of the leaders of the movement.

Despite warnings from the U.S. Consul and his employers, Baskerville resigned from the school in order to support the cause of Iran's democratic revolution. A few days later, Baskerville was fatally wounded as he led a charge

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<sup>130</sup> Yeselson, *United States-Persian Diplomatic Relations: 1883-1921*, 77.

against a Royalist barricade. More than 3,000 people attended Baskerville's funeral in Iran, and his sacrifice temporarily elevated the prestige of Americans in Iran, though the United States government and the American missionaries in the area did not protest his death nor demanded any compensation for Baskerville's family.

The reaction of the United States government to this event served as a basis for future criticism by Iranians towards the western powers. The United States' approach toward the victory of the Constitutional Revolution of Iran in 1909, was also hardly consistent with the new dynamism in American foreign policy as expressed by President McKinley in his second inaugural address and later by President Theodore Roosevelt. The United States all but ignored Iran's democratic movement and its subsequent triumph.<sup>131</sup>

The government of Iran continued to seek assistance and support from the United States especially in the form of technical and personnel and financial advisors. In June 1910 the *Majlis* (the Iranian Parliament) agreed to seek a five-million-dollar loan from the United States at seven percent interest, and included a provision for a foreigner in the Ministry of Finance. The initial unfavorable view of the U.S. State Department towards this request was suddenly changed, as a letter from President William Howard Taft dated December 8, 1910, and addressed to the Secretary of State, Philander C. Knox, indicated that William

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<sup>131</sup> Ibid,100-101.



Morgan Shuster would be the perfect choice for helping the Persian government to reorganize its entire customs and revenue services.<sup>132</sup>

A lawyer, diplomat and financier, Shuster was considered to be "the one man in America best fitted to take hold of the finances of that distracted kingdom[Iran] and produce order out of chaos."<sup>133</sup> A well-seasoned professional, William Morgan Shuster had previously served as the Collector of Customs in Havana, Cuba (in 1899), and in Manila, Philippines (in 1901). He held the same title until his appointment in 1906, as Secretary of Public Instruction in the Philippines (by Taft, who was then Governor General of the Philippines). In 1909, Shuster had returned to the United States in order to practice law.<sup>134</sup>

The decision to send an American financial advisor to Iran was consistent with the cautiously aggressive "dollar diplomacy" introduced by Taft and Knox.<sup>135</sup> Morgan Shuster, his four assistants and their families sailed from New York on April 8, 1911, and arrived in Tehran on May 12 of that year, as part of a four-year contract granted by the Iranian Parliament. Before leaving for Iran, the U.S. State Department advised the Americans that they would now be in the employ of the Persian government, and that in no way would they be representing the United States.<sup>136</sup>

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<sup>132</sup> Ibid.

<sup>133</sup> Charles Willis Thompson, "How Russia Came to Make War on W. Morgan Shuster," *The New York Times*, November 26, 1911, SM3.

<sup>134</sup> Ibid.

<sup>135</sup> Yeselson, *United States-Persian Diplomatic Relations: 1883-1921*, 112.

<sup>136</sup> Ibid., 113.

During his stay in Iran, Shuster succeeded in centralizing the financial structure of the country, collecting taxes in a fair and efficient manner, and paying for the costs of government, including those incurred to repel an invasion by the deposed Shah, in addition to meeting Iran's foreign debts.<sup>137</sup> Morgan Shuster's service to Iran, however, was met with resistance from Russia and to some degree, Britain. Pressure and ultimatums from Russia finally resulted in a *coup d'état* against the Iranian parliament by a deposed cabinet on December 24, and the subsequent acceptance of Russian demands – among them the departure of Shuster. Morgan Shuster departed Iran on January 11, 1912, leaving a legacy of unselfish devotion to Iran's interest, for which he was held in high esteem by patriotic Persians.<sup>138</sup> The Shuster episode also somehow served as an impetus for a growing American public interest in Iran. For the first time for many Americans, Iran had assumed a certain level of importance in world affairs.<sup>139</sup>

The United States government's interest in Iran grew stronger during World War I as Britain, Russia and the Ottoman Empire did not heed Iran's declaration of neutrality. Russia and Britain had a long history of interest in Iran. Russia viewed Iran as its gateway to the open sea (through the Persian Gulf, and onto the Indian Ocean). Britain, on the other hand, had been leery of Russia's advancements southward, which was considered a threat to Britain's interest in India, and its access to East Asia. The discovery of oil in the area also added to

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<sup>137</sup> Mohammad-Ali Shah, of Qajar dynasty.

<sup>138</sup> Yeselson, *United States-Persian Diplomatic Relations: 1883-1921*, 114-115.

<sup>139</sup> *Ibid*, 128.

the interest of these two rivals, especially since the oil-rich regions of southern Iran and areas on the other side of the Persian Gulf had already been occupied by British forces and government agents. A treaty between Britain and Russia, called the Treaty of St. Petersburg (more commonly referred to as the Anglo-Russian Treaty of 1907) had divided Iran into three zones. The northern part of Iran came under the "protection" of Russia, and Britain took control of Iran's southern region, with a neutral zone (narrow at best) left in the middle.<sup>140</sup>

The onset of World War I brought a new sense of danger to Iran and its people. Due to its geopolitical importance, the country became a battleground for the warring Turkish, British and Russian forces, and as a consequence, suffered a great deal of political and economic hardship. In the face of the Bolshevik Revolution of 1917, Russia was forced to move its troops out of Iran, in order to deal with the crisis at home. The end of World War I also brought defeat to the Ottomans and Germans, thus providing Britain with the opportunity to occupy Iran, ignoring the country's continued declaration of sovereignty. At the end of World War I, and despite attempts by the Wilson administration to secure a position for Iran at the Paris Peace Conference (scheduled for January 1919), the country was denied a request for representation at the gathering, mainly due to Britain's opposition.<sup>141</sup>

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<sup>140</sup> Mamed Abbasov, "The Anglo-American Oil Controversy in Iran 1919-1924," *Journal of Azerbaijani Studies*, vol.1,no.4(1998),accessed 8/28/2011,<http://www.khazar.org/jas/text/politics.html/>.

<sup>141</sup> Ibid.

The defining factor for American interest in Iran was the discovery of oil. After the end of World War I, Britain and the United States emerged as "great powers". Military and economic advancement and expansion for both countries required the acquisition and use of an alternative to coal, as a source of fuel for transportation needs. As a result, a worldwide struggle for oil ensued. In 1919 the conflicting interests of the United States and Britain in their search for access to the most number of oil reserves in the world, brought Iran and its rich oil supplies to the attention of both countries.<sup>142</sup>

The 1919 Anglo-Persian Agreement, signed by the Iranian cabinet, though not ratified by the Iranian parliament, was met with U.S. opposition, especially by the anti-League (of Nations) senators.<sup>143</sup> The official decision to encourage American oil interests was made during the Wilson administration, and was continued by Charles Evans Hughes, U.S. Secretary of State in the Harding administration. In 1920, American companies became interested in Persian oil reserves. Their efforts centered on obtaining the rights to five northern provinces which, in 1916, had been granted to Mr. Koshtaria, a Russian of Georgian descent. Both Standard Oil and Sinclair Consolidated Oil Corporation sought to obtain concessions for oil explorations.

The French government also showed interest in the matter, and in September 1921, offered to arrange for a subsidy to the Persian government in

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<sup>142</sup> Ibid.

<sup>143</sup> Yeselson, *United States-Persian Diplomatic Relations: 1883-1921*, 193-194.

return for the north Persian oil concession.<sup>144</sup> In November 1921, the Iranian Parliament unanimously passed a bill granting a fifty-year concession to Standard Oil in Iran's Northern provinces. The Persian government was to receive ten percent of the gross profits, with other details to be determined at a later time. The United States government, however, was slow to arrive at a clear and unequivocal policy decision. In the meantime, Standard Oil sought an arrangement with the Anglo-Persian Oil Company for access to the pipelines in southern Iran, thus creating a coalition between the two companies. By ignoring its own government and its alliance with Britain, Standard Oil forfeited a friendship with Iran.

Upon learning of the announcement of the said alliance, the Persian government promptly annulled Standard Oil's concession.<sup>145</sup> The Anglo-Persian Agreement was also deemed invalid by the Persian government, as it was revealed that the Persian monarch<sup>146</sup> and two Iranian cabinet ministers who had signed the agreement, had received secret payments from the British government for their cooperation.<sup>147</sup> By 1922, American companies were exploiting nearly half of the total foreign production, and Iran was only one of the scenes of action in the contest between Britain and the United States over oil.<sup>148</sup>

The role of Americans as advisors in Iran continued, though not without incident. In 1927, Reza Shah Pahlavi announced that Iran would be seeking the

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<sup>144</sup> Ibid, 209-212.

<sup>145</sup> Ibid, 214-220.

<sup>146</sup> Mohammad Ali Shah Qajar ,the last acting ruler of the Qajar dynasty in Iran.

<sup>147</sup> Grayson, *United States-Iranian Relation*, 34-35.

<sup>148</sup> Ibid,196-197.

advice of European experts as well as American specialists. This decision was in part due to the strained relations resulting from the appointment and services of Dr. Arthur Millspaugh who had been acting as a financial advisor to the Persian government. The appointment was based on recommendation from the U.S. State Department, and against Iran's wishes for the return of Morgan Shuster to the role. The Coolidge administration had also been slow to recognize the new monarch (Reza Shah Pahlavi) and government of Iran. In the meantime, Sinclair Oil which had been granted concessions for oil exploration had been unable to secure the necessary loans.

The nationalist views of Reza Shah Pahlavi prompted his announcement in April 1927, of the abolishment of all capitulations and agreements that had forced Iran to relinquish its jurisdiction to foreign nations. The move surprised the United States government who until then, had received one of the most favorably-worded treaties in this area. After careful study, however, the United States government agreed to the new terms. An informal understanding was signed on May 14, 1928, and documented with an exchange of notes. Though intended to be temporary, the agreement in fact governed trade relations between the two countries for nearly five decades, until a new treaty was signed.<sup>149</sup>

The late 1920s also witnessed the beginnings of American participation in archaeology in Iran. The efforts of one man, Dr. Arthur Upham Pope, were particularly instrumental in this endeavor. Pope first travelled to Iran (then Persia) in 1925. The journey prompted Pope to undertake the publication of a book series

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<sup>149</sup> Ibid, 43.

entitled *An Architectural Survey of Iran*. In a memorial piece in honor of Arthur Pope, titled "Reflections on the Architectural Survey of Iran," and published in *Surveyors of Persian Art - A Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, Donald N. Wilber, who accompanied Pope on four trips to Iran, recalled about their travels.<sup>150</sup> According to Wilber, from 1929-1932, Pope was visiting Iran for two to three months at a time, and took nearly 10,000 photographs of hundreds of monuments that had never before been recorded. As an art advisor to the government of Iran, and despite initial protests by the country's Moslem clergy, Pope became the only American allowed to take photographs of the great mosques in Iran, illustrating the importance of recording great religious monuments. By fall 1932, Pope was already engaged in the fourth season of his book series *An Architectural Survey of Iran*. Additional trips ensued from 1934-1937, and the ninth (and final) season took place in 1939.<sup>151</sup>

Arthur Upham Pope was also a staunch advocate for the presence of American archaeological expeditions in Iran. In a letter to Professor Ernst Herzfeld, dated 18 October, 1927, Pope inquired whether Herzfeld knew about the details of any changes in the French Archaeological Treaty with Iran, indicating that, ". . . there are two American Institutes who are ready to go into Persia if it could be under the proper auspices. They would be very happy to cooperate with you, but I am not at all sure what their attitude toward the French

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<sup>150</sup>Gluck and Siver, editors, *Surveyors of Persian Art - A Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, 243.

<sup>151</sup>Ibid.,244.

would be. These Institutes have both officially protested the French treaty to our State Department . . ."152

In late 1929, the Iranian government was about to revise its antiquities laws that affected foreign archaeological expeditions. The French government had reportedly begun negotiations for a secret treaty which would have exempted that country from the law and in effect granted France a state concession on archaeology, similar to the special considerations held by the British in regards to petroleum(oil) and the Russians for caviar. Pope, who at the time, was in Iran for the second season of his book series *An Architectural Survey of Iran*, got involved in a plot to aid his Iranian friends in their attempt to derail the French treaty by leaking the news of the secret treaty to outside sources. Their efforts were successful and France withdrew the "Secret Treaty", and "American Archaeology was saved."<sup>153</sup>

Horace Jayne, the director of the University Museum of the University of Pennsylvania at the time, contacted Pope and expressed a strong desire that upon the enactment of the new antiquities law in Iran, his institution together with the Pennsylvania Museum of Art and the American Institute for Persian Art and Archaeology, be awarded excavation rights at Persepolis. In his letter to Ernst Herzfeld (dated 11 November 1929), Horace Jayne also discussed the "division of finds", from the excavation expeditions he was hoping to secure in Iran.

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<sup>152</sup> Ibid,215.

<sup>153</sup> Ibid.



Jayne wrote:

" . . . With regard to the division of the finds, the same basis as is established in Iraq would be satisfactory, that is, one-half to remain in Persia and one-half to be removed by those undertaking the excavations. I should incline against accepting any restriction with regard to unique pieces remaining in Persia since it is, I feel, a bad precedent to set, inasmuch as a hostile "director of Antiquities" might in future rule that any piece was unique if he so wished. . . ." <sup>154</sup>

He further stated,

" . . . Unfortunately, much as museum curators and the archaeologists of their staffs may insist that information is their only ultimate desire, trustees and boards of managers and contributors to expedition budgets insist upon visible and, if possible, spectacular results from the excavations. . . ." <sup>155</sup>

In a letter dated 4 October 1930, and written by J.B. Mirzayantz (an Iranian government official), Arthur Pope was informed that ". . . The Excavation Law project has been introduced to Parliament on 30th September last, and by the time you will be reading these lines or very soon after it will be approved and become a living law. . . The bill is none of those you have seen, it is a new one drawn up by Foroughi and your suggestions have almost all been adopted. . ." <sup>156</sup> In another letter to Arthur Pope, dated November 8, 1930, Mirzayantz noted, "The grand news I have to tell you in this letter is that the Law of Antiquities and excavations was passed and voted and finished on the 3rd of November just two days before

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<sup>154</sup> Ibid,218.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid,221. (Mohammad Ali Foroughi was the Prime Minister of Iran at the time).

the Majles was closed. It met great opposition and I, Foroughi and the friends of the law had to fight hard for it . . ."157

On November 3, 1930, Reza Shah Pahlavi established the Law for the Conservation of Persian Antiquities. The decree gave permission to scientifically-run expeditions from museums, universities and other such institutions.<sup>158</sup> The newly-enacted law also brought the monopoly of French archaeologists to an end, and allowed groups from other countries to conduct digs and expeditions in Iran.<sup>159</sup> As a result, a number of scientific expeditions from the United States became involved in archaeological projects in Iran.

The *Bulletin of the American Institute for Persian Art and Archaeology*, in its July 1931 edition reported, "The new Persian Antiquities Law granting all nations equal right for scholarly exploration in Persia, became a statute last November [3 November 1930]. As was expected, American expeditions were at once organized and it is gratifying to report that the first, undertaken jointly by the University Museum, Philadelphia, and the Pennsylvania Museum of Art, is already in Persia and excavations have been initiated at the site of the ancient Parthian capitol, Hecatompylos, modern Damghan. Dr. Erich Schmidt is field director of the expedition."<sup>160</sup> The same volume also noted that per announcement

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<sup>157</sup> Ibid,222.

<sup>158</sup> Borodkin, "The Economics of Antiquities Looting and a Proposed Legal Alternative":382.

<sup>159</sup> Stephen Vernoit, "The Rise of Islamic Archaeology," *Muqarnas*, vol. 14.,(1997).

<sup>160</sup> Gluck and Siver, editors, *Surveyors of Persian Art - A Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*,226.

by Dr. James Breasted, the Oriental Institute at the University of Chicago would undertake the "restoration of the ruins of Persepolis and that this site has been granted for the purpose."<sup>161</sup> At the time, Dr. Breasted, the director of the Oriental Institute, was also a member of the Board of Directors of the American Institute for Persian Art and Archaeology.

There are conflicting reports as to which expedition was the first American archaeological project in Iran. A news report regarding the Oriental Institute's Persepolis project called it the first American expedition in Iran.<sup>162</sup> On the other hand, reports in the *Bulletin of the American Institute for Persian Art and Archaeology* noted that the Institute's joint expedition with the University Museum, Philadelphia, and the Pennsylvania Museum of Art, was the first archaeological project by Americans in Iran.<sup>163</sup> The contradictory reports were indicative of the sense of competition that existed among American archaeologists in their efforts to obtain excavation rights for archaeological sites in Iran.

Despite personal misgivings about Ernst Herzfeld, Horace Jayne had told Arthur Upham Pope that it would be a good move to name Herzfeld as field director for the joint expeditions by the University Museum, Philadelphia, and the Pennsylvania Museum of Art. The efforts of Jayne, however, failed as Herzfeld managed to secure the Persepolis excavation for the Oriental Institute of the

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<sup>161</sup> Ibid,227.

<sup>162</sup> "Gets Rights to Dig Under Persepolis," *The New York Times*, January 27, 1931,13.

<sup>163</sup> Gluck and Siver, editors, *Surveyors of Persian Art - A Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*,227.

University of Chicago.<sup>164</sup> As a result, a deep sense of animosity evidently developed between Pope and Herzfeld, to the point that Herzfeld refused an offer from Pope to contribute to the Achaemenid section of Pope's book series, *Survey of Persian Art*. Efforts by Arthur Pope to take photographs at Persepolis were also blocked by Herzfeld, who told Pope that he was acting on the orders of James Breasted. Eventually, the Oriental Institute did supply Pope with official expedition photographs of Persepolis that were published in the multi-volume *Survey of Persian Art*.

Another story of hostility between Herzfeld and Pope centered around the friendship between Pope and Mrs. Ada Small Moore, the wealthy widow of a successful financier, who financed some of Herzfeld's archaeological excavations at Persepolis, through the Metropolitan Museum of Art in New York and the University of Chicago. According to her grandson (Paul Moore), Mrs. Moore, in Persepolis, "helped finance the beginning of the dig there and received a decoration from the Shah."<sup>165</sup> The actual date of the said commendation is unclear, especially as to whether the decoration to Mrs. Moore was bestowed by Reza Shah Pahlavi or his son, Mohammad Reza Shah Pahlavi.

A close companion and assistant of Arthur Pope, Farajollah Bazl, also noted that through his friendship with Mrs. Moore, "Dr. Pope, managed to remove Herzfeld from Persepolis, which was indeed the greatest prize, and replace him with the late Dr. Erich Schmidt, a good friend of Dr. Pope's, who had done good

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<sup>164</sup> Ibid,215-216.

<sup>165</sup> Ibid,238.

archaeological work at Rayy and Damghan . . . (quoted from letter by Farajollah Bazl in February 1980)."<sup>166</sup>

Archaeological expeditions in Iran came to a halt in 1939, due to the outbreak of World War II. The conflict also threatened Iran's autonomy and neutrality, as Russian and British forces invaded the country on August 25, 1941. The Russians occupied the north and the British took control of the southern regions of Iran. In response to a request by Iran for assistance, the Roosevelt administration advised Iran to comply with Britain and its needs. On August 27, 1941, the prime minister of Iran resigned in protest, and a new cabinet was formed to pursue a policy of cooperation with Britain and Russia. On September 16, 1941, Reza Shah Pahlavi relinquished the throne in favor of his son, Crown Prince Mohammad Reza. On October 8, 1941, the American minister in Tehran, Louis Dreyfus, had a lengthy audience with the new king, thus establishing a unique relationship between the young ruler and the United States that would develop and last until the end of the reign of Mohammad Reza Shah Pahlavi in 1979.<sup>167</sup>

In the 1950s, a mutual stance against the threat of Communism brought Iran and the United States closer to each other, and established Iran as a strong ally of the United States. The decade also gave rise to new criticism by opposition groups in Iran, regarding the influence of the United States in the country.

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<sup>166</sup> Letter from Rexford Stead to Robert Payne, August 27, 1982, in *Surveyors of Persian Art - A Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, edited by Gluck and Siver, 216.

<sup>167</sup> Grayson, *United States-Iranian Relation*, 57-61.

Perhaps the most significant episodes in U.S.-Iran relations, as referenced by the critics, relate to the events of August 1953. In 1952, the Iranian prime minister, Dr. Mohammad Mossadegh (a direct descendent of the Qajar dynasty), had announced the nationalization of the oil industry in Iran.

A series of events in the summer of 1953(August), mostly relating to the dissatisfaction of the population with rising inflation and economic hardships, led to unrest and subsequent riots, especially in the capital city of Tehran.

Mohammad Reza Shah (Pahlavi) and his wife (Queen Sorraya) left for Italy, a decision that was viewed by some Iranians as a sign of abdication. Supporters of Mohammad Reza Shah, however, ultimately joined forces with those loyal to the throne, in opposition to the government of Mossadegh. As a result, Dr. Mossadegh was arrested and later scheduled to go on trial. The trial resulted in a conviction for the deposed prime minister, and carried a death sentence. The Shah, however, commuted the sentence to "house arrest". Dr. Mossadegh remained in his family-owned property, named Ahmadabad (in the outskirts of Tehran), until his passing in March, 1967.

Opposition groups in Iran used the events leading to, and including the August 1953 uprising, as further proof of the influence of the United States government on Mohammad Reza Shah Pahlavi and his regime. The country witnessed a resurgence of the fundamental religious movement. These groups were led by Islamic clergymen whose influence, since the demise of the Qajar dynasty and especially during the reign of Reza Shah Pahlavi, had been greatly diminished. The increasing presence of the United States in Iran became a major

target for the criticism unleashed by the Islamic fundamentalists. The rapid westernization of Iran was also viewed with hostility by these groups, giving them further cause for opposition to Mohammad Reza Shah and his policies. One of the greatest issues of contention was the declaration of equal rights for Iranian women, particularly the provisions for women's voting rights. In 1963, tensions led to riots, and the instigators were ultimately defeated by government forces. The leader of the uprising, a clergyman named Ruhollah Khomeini, was sentenced and sent into exile.<sup>168</sup>

The golden period in Iran and its rise as a regional power began in the 1960s. The country's infrastructure was being strengthened and its economic outlook was taking shape. The American presence in Iran was also increasing, especially in the form of military and economic advisors. Institutions of higher education in Iran also benefited from the expertise of American advisors. Major Iranian universities developed educational and student exchange programs with their American counterparts. This trend continued throughout the 1970s, as the country's need for technical, technological and scientific needs were now being met by Iranians educated abroad, particularly in the United States. By the mid-1970s, Iran had emerged as America's strongest ally in the Middle East.

In the same time period, American archaeologists continued their efforts in conducting expeditions throughout Iran. Among the leading American archaeologists during this time (and beyond), was William M. Sumner. According to his former students, colleagues and friends, Sumner has both directly and

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<sup>168</sup> Originally to Iraq, and a few years later, with the intervention of some western powers, to France.

indirectly, influenced archaeology and archaeologists in Iran over his entire career.<sup>169</sup> Stationed in Tehran from 1960-1962, as a U.S. Navy supply officer, William Sumner developed an interest in archaeology, through his trips to southern Fars and the Persian Gulf which gave him the opportunity to visit archaeological sites. These visits were instrumental in Sumner's decision to become an Iranian specialist.

During his tour of duty, Sumner supplemented his interest by taking classes on Iranian archaeology at Tehran University, under the direction of Ezat O. Negahban. After resigning his commission in 1964, Sumner enrolled in the graduate anthropology program at the University of Pennsylvania, where he chose the Kur river basin in Fars province in Iran for his dissertation study and survey (1967-1969).<sup>170</sup> Although a number of researchers had excavated and conducted surveys in Iran, Sumner was among the first who decided to follow a regional approach aimed at answering broader questions about demography and land use. While many of his peers were working in the already crowded Susiana plain in Khuzestan, Sumner chose to focus on an equally important region, the Kur river basin in Fars.

In the 1970s, one of the main topics discussed by American archaeologists working in Iran was the development of complex societies and the origins of the state. Sumner's survey was one of the first regional studies of cultural and demographic cycles in an important cultural area focusing on both

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<sup>169</sup> Miller and Abdi, editors, *Yeki Bud, Yeki Nabud - Essays on the Archaeology of Iran in Honor of William M. Sumner*, 1.

<sup>170</sup> *Ibid.*



sedentary and nomadic populations. His project provided much of the basic data and interpretive approach for answering questions about the evolution of societies in Fars from the Neolithic period to the Bronze Age and about the nature of the Proto-Elamite, Elamite, and Achaemenid worlds.<sup>171</sup> In 1989, William M. Sumner took over the directorship of The Oriental Institute of the University of Chicago. Sumner's extensive administrative experience in addition to his archaeological knowledge was of great benefit to the Oriental Institute. In 1997, Sumner retired from that position.<sup>172</sup> Ironically, in the same year, the bomb attack in Jerusalem occurred, which later prompted the initiation of the lawsuit targeting the Persepolis Tablets that were being studied 'on loan' at the Oriental Institute.

In the late 1970s, the political atmosphere in Iran began to change, and renewed interest in religious fundamentalism soon forced the country into a direction few had anticipated. In 1979, the Islamic revolution established a new theocratic government and political system in Iran, with a supposedly anti-western and particularly anti-American rhetoric. The Carter administration, however, "recognized" the new government and looked to continue its normal relations with the new regime. In November 1979, a group of so-called students stormed the U.S. Embassy in Tehran, taking fifty-two Americans as hostages.

The situation soon escalated into a serious political standoff and lasted for 444 days. The ordeal also drastically impacted the re-election campaign of President Carter, and by some accounts cost him the election. On the day Ronald

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<sup>171</sup> Ibid,3.

<sup>172</sup> Ibid,2.

Reagan was sworn in as the 40th President of the United States (January 20, 1981), the government of the Islamic Republic of Iran freed the American hostages. Diplomatic relations between the two countries were severed, and each country was represented by other governments and diplomatic delegations on the international scene.

In its response to the crisis of November, 1979, the Carter administration ordered a "freeze" on all Iranian assets in the United States. In the search for a mutually acceptable solution to the dispute, the Algerian government served as intermediary. Having consulted extensively with the two governments as to the commitments which each was willing to undertake in order to resolve the crisis, the government of Algeria recorded those commitments in two declarations made on January 19, 1981. The "General Declaration" and the "Claims Settlement Declaration" or the "Algiers Declarations" as they are often called, were then adhered to by both Iran and the United States.<sup>173</sup> As a result of the Algiers Accord, the Iran-United States Claims Tribunal came into existence as a measure designed to resolve some issues resulting from the crisis between the two

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<sup>173</sup> The Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Art. II (1), gave the Tribunal jurisdiction over disputes then outstanding between U.S. nationals and the Government of Iran arising out of "expropriations or other measures affecting property rights." 1 IRAN-U.S. C.T.R. 9 (1981-2), 20 ILM 231 (1981), 75 AJIL 423 (1981).

governments.<sup>174</sup> The tribunal was also given jurisdiction over the expropriation of claims of U.S. nationals against Iran.<sup>175</sup>

The new government of Iran and its political views and practices would also have a great impact on the Middle East. In efforts to establish itself as the dominant Shiite presence in the region, the Islamic Republic of Iran sought to advance its ideology and political views by strengthening other Shiite groups. In so doing, the Islamic government of Iran focused its attention on the Palestinian refugee population, and created organizations within the region. In the early 1980s, the Islamic government of Iran was responsible for the creation and financing of two major organizations: Hezbollah in Lebanon and Hamas in the Gaza strip. Both groups are regarded as terrorist organizations and have claimed responsibility for numerous attacks in the region over the past three decades. Their targets have generally been Israel and western interests. As it now appears, the terrorist actions of one of these groups, Hamas, could also directly affect the heritage and cultural history of the Iranian people. The Hamas organization, in fact, claimed responsibility for the September 4, 1997, bomb attack in Jerusalem, that later prompted the *Rubin et al* lawsuit.

Since its inception, the actions and policies of the Islamic government of Iran have created a serious threat to the heritage of the country it supposedly represents. From the beginning of its rule, the Islamic government in Iran has declared its resentment towards the country's ancient culture and history prior to

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<sup>174</sup> <http://www.iusct.org/english>.

<sup>175</sup> Norton, "A Law of the Future or a Law of the Past? Modern Tribunals and the International Law of Expropriation":482-483.

the Arab conquest of the seventh century A.D. Officials in the Islamic regime of Iran have employed every tactic and policy in efforts to eradicate any sign of Iran's pre-Islamic history.

One of the earliest attempts was aimed at destroying the remains of Persepolis (near Shiraz), as zealots and clerics brought bulldozers to demolish the historic structure.<sup>176</sup> Their efforts were met with strong resistance by scores of Iranians who blocked access to the roads leading to the site. The Islamic government's track record in preservation and conservation is also indicative of its lack of respect for, and disdain towards the cultural heritage of Iran. Among the more recent efforts of the Islamic government in this regard, one could point to the construction of a dam in close proximity to the tomb of Cyrus-the-Great at Pasargad, which would flood a number of archaeological sites near the structure.<sup>177</sup> It is in this light that the people of Iran have been viewing the case involving the Persepolis Tablets with great concern.

### The Persepolis Tablets

In January 1931 the Oriental Institute at the University of Chicago obtained the rights to conduct excavations at the ancient Persian city of Persepolis in Iran.<sup>178</sup> As one of the less than half a dozen such endeavors authorized at the

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<sup>176</sup> Similar to the destruction of the Budha statues in the Bamiyan region of Afghanistan, by the Taliban forces.

<sup>177</sup> Cyrus was the founder and the first ruler of the Achaemenid Empire, who decreed the first written decree for "Universal Declaration of Human Rights"; a replica of the tablet and its inscription has long been on display at the site of the United Nations in New York City.

<sup>178</sup> Referred to as "Persia" in western countries; in 1935 Reza Shah Pahlavi announced that all references to the country should indicate "Iran", which is and has always been the name of the country.

site of Persepolis, the American project led by Dr. James H. Breasted, head of the Oriental Institute at the University of Chicago, was among the first archaeological studies working under the newly enacted antiquities law in that country.<sup>179</sup> The project would bring the number of excavations by the Oriental Institute in the Near East to eleven, thus enhancing "the Oriental Institute's attempts to reconstruct a unified picture of the rise of human civilization."<sup>180</sup>

The executive secretary of the Oriental Institute, Charles Breasted, completed the final arrangements for the project in Iran. A notable scholar in Persian archaeology, Dr. Ernst Herzfeld, had agreed to serve as the field director for the expedition. According to Dr. James Breasted, the archaeologists "expected to unearth records in the form of golden tablets, earthenware and other artifacts which will reveal pertinent data bearing on the Indo-European ancestry of the American people."<sup>181</sup> Secretary of State Henry Stimson had notified Dr. Breasted that the Persian Cabinet by unanimous vote had granted the Oriental Institute a concession to excavate Persepolis.<sup>182</sup> Dr. Breasted also asserted that the new Persian Antiquities Law would insure fair and equitable treatment for excavating expeditions.

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<sup>179</sup> The Law for the Conservation of Persian Antiquities, enacted November 3, 1930.

<sup>180</sup> "Gets Rights to Dig Under Persepolis," *The New York Times*, January 27, 1931,13.

<sup>181</sup> Ibid.

<sup>182</sup> Henry Stimson, Secretary of State during Hoover administration (1922-1929); later served as Secretary of War in the Roosevelt Administration.

Two years after the start of the expedition, in 1933, Dr. Herzfeld notified Dr. Breasted of the discovery of at least hundreds and perhaps thousands of cuneiform tablets in the Elamite language at the excavation site. The documents, Elamite business records, were considered to be of unprecedented importance, as they were the first such discovery in Iran. Scientists proclaimed that the discovery of the Elamite business records in the form of cuneiform tablets "not only will help in the deciphering of Elamite and shed light on the pre-Persian civilization, but also is the first discovery of such documents in the ruins of a large body of cuneiform tablets in Persian and demonstrates the presence of such documents in the ruins of a Persepolis Palace."<sup>183</sup> Other valuable discoveries by archaeologists at the sites soon followed, including the unearthing (in May 1933) of an aqueduct near Nineveh that supplied water to Persepolis.<sup>184</sup>

American archaeologists were also conducting a number of other expeditions during the same period (1930-1935). The University Museum of the University of Pennsylvania and the Pennsylvania Museum of Art began excavating at a site in Rayy (near Tehran), and in a cemetery that was discovered in 1931, the group found valuable archaeological treasures including the unearthing of a grave of a warrior dating back 4,000 years. The American Institute for Persian Art and Archaeology, under the direction of Dr. Arthur

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<sup>183</sup> "Persepolis Yields Cuneiform Slabs," *The New York Times*, March 10, 1933, 17.

<sup>184</sup> "Breasted Returns From Near East Tour," *The New York Times*, May 30, 1933, 20.

Upham Pope, was also conducting excavations in Luristan.<sup>185</sup> According to some newspaper reports, this group later joined forces with a number of Soviet archaeologists in studying Persian architecture in Armenia and Turkestan, as part of that Institute's study of the influence of Iran's architecture on Romanesque and Gothic architecture.<sup>186</sup>

All of the objects and artifacts discovered by the archaeological expeditions were to remain in Iran, as the Persian Antiquities Law prohibited the transfer of any object of antiquity outside of the country. However, the Oriental Institute archaeologists soon realized that the translation and study of the newly-found tablets at Persepolis would not be an easy task. The scientists sought the cooperation of the government of Iran in allowing for the transfer of the tablets to the United States for further research and analysis. On November 16, 1935, Dr. James Breasted announced that the government of Iran had finally agreed to allow the Oriental Institute to transport the 30,000 Elamite tablets to Chicago for deciphering and further study.<sup>187</sup> Thus began the journey of the ancient artifacts from their place of discovery at Persepolis, to the Oriental Institute at the University of Chicago.

By 1936, the Elamite tablets had not yet been studied. Their analysis was further complicated by the need for the painstaking reconstruction of Elamite,

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<sup>185</sup> Gluck and Siver, editors, *Surveyors of Persian Art - A Documentary Biography of Arthur Upham Pope & Phyllis Ackerman*, 147.

<sup>186</sup> "Inflation Plagued Ancient Babylonia," *The New York Times*, January 26, 1936, N8.

<sup>187</sup> "Persepolis Tablets to Be Deciphered at Chicago," *The New York Times*, November 16, 1935,13.

Assyrian and Aramaic dictionaries to allow for the translation of the ancient documents. The task was also monumental in its scope of tracing the price history of over 3,000 years which the scientists hoped would also shed light on many economic problems of modern times.<sup>188</sup> The Institute's new field director, Dr. Erich Schmidt, sought the expertise of Dr. Ernst Herzfeld to decode and decipher the tablets in Chicago.<sup>189</sup> The Oriental Institute's excavation project at Persepolis continued under Dr. Erich Schmidt until 1939 when the outbreak of World War II brought the expedition to a halt.<sup>190</sup> Translation and analysis of the tablets began in 1937, and has been an ongoing project at the Oriental Institute.<sup>191</sup>

The Persepolis Tablets fall into two categories: Treasury and Fortification, named after the locations at the Persepolis Palace complex where they were discovered. The treasury tablets date in the years 492-458 B.C., that is, from the thirtieth year of Darius I through the seventh year of Artaxerxes I (of the Achaemenid dynasty). These texts recorded disbursements of silver from the Persepolis treasury, chiefly in lieu of rations in kind. The fortification tablets, which are the focus of the *Rubin et al* lawsuit and hence this case study, were found in the fortification wall at the northeast corner of the Persepolis terrace during the excavation efforts in 1933-34. The fortification texts were in the

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<sup>188</sup> Ibid.

<sup>189</sup> "Dr. Herzfeld Dies; Archaeologist, 68," *The New York Times*, January 23, 1948,23.

<sup>190</sup> "Dr. Erich F. Schmidt Dies at 67; Professor and Oriental Scholar," *The New York Times*, October 5, 1964,33.

<sup>191</sup> Mark B. Garrison, and Margaret Cool Root, *Seals on the Persepolis Fortification Tablets, volume I: Images of Heroic Encounter* (Chicago, Oriental Institute Publications, University of Chicago Press, 2001),1.



Elamite language and dealt with administrative transfers of food commodities in the years 509-494 B.C., in the thirteenth through the twenty-eighth year of Darius I.<sup>192</sup>

The Achaemenids instituted a remarkably flexible governmental organization which served as a model for later states. Ruling over diverse peoples and religions, the Achaemenids were not only tolerant in religious matters, but actually exerted themselves to show honor to the various religions of the empire.<sup>193</sup> Darius I, also referred to as Darius the Great, was the real architect of the Achaemenid Empire. Darius I began the great platform and buildings at Persepolis where the ruins still stand today, in the outskirts of Shiraz, Iran. One of the lesser known achievements of Darius I is his introduction of coinage on a world scale. Probably originating in Lydia, coinage had been in use only a short time before Darius I, but it was Darius I who revolutionized the economy of his empire by putting it on a monetary basis rather than a barter source. The Elamite clay tablets found at Persepolis also provide proof of this innovation during his reign.<sup>194</sup>

In his article, "Persepolis Treasury Tablets Old and New," published in the *Journal of Near Eastern Studies*, George G. Cameron presented a summary of the documents written on the clay tablets found at Persepolis.<sup>195</sup> Cameron's article

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<sup>192</sup> Ibid.

<sup>193</sup> Richard N. Frye, *Iran* (New York, Henry Holt and Company, Inc., 1953), 36.

<sup>194</sup> Ibid, 37.

<sup>195</sup> George G. Cameron, "Persepolis Treasury Tablets Old and New," *Journal of Near Eastern Studies*, vol. 17, no.3 (July 1958), 161-176.

noted the existence of a royal storekeeper who either had an office at the Persepolis complex or kept some of his records in certain rooms within the fortification walls at the site, where the "fortification texts" were discovered by Ernst Herzfeld and his team. Cameron indicated that the number of tablets reputedly (though not actually) amounted to 30,000 items. According to Cameron, many of the tablets were being prepared for publication by Dr. Richard T. Hallock, also of the Oriental Institute.<sup>196</sup>

According to George Cameron, the fortification tablets dealt with the receipt or inventory of commodities "in kind" such as grain, flour, wine, beer, and sheep, or with the distribution of such commodities to workmen or to official messengers traveling on government business from one place to another within the Achaemenid empire. Many of the "pay-roll" records were equipped with strings or cords. Cameron thought it was quite possible that each clay tablet was once attached to another document denoting the additional payment in money, which was intended to go to the specified individuals.<sup>197</sup>

Cameron believed that the treasury tablets, as well as the large number of tablets discovered in the fortification walls at Persepolis, served as witnesses to the many activities that took place at that flourishing capital. The tablets also were indicative of the busy life of court accountants and paymasters and their skill in

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<sup>196</sup> Ibid,164.

<sup>197</sup> Ibid.

the keeping of books.<sup>198</sup> Experts at the Oriental Institute decided that due to the many similarities existing between the Persepolis fortification tablets and the Persepolis treasury tablets with regards to vocabulary and subject matter, the two groups of material should constitute a single field of study.<sup>199</sup>

The study of the fortification tablets was carried out by Richard T. Hallock, who took on the task of transcribing, interpreting, editing and publishing over 2,100 texts from the collection of the Persepolis fortification tablets. Research conducted by Richard T. Hallock indicated that the fortification tablets essentially dealt with the movement and expenditure of food commodities in the region of Persepolis. The study of the tablets made it clear that everyone in the state sphere of the Persian economy was on a fixed ration-scale, or rather, since some of the rations were on a scale impossible for an individual to consume, a fixed salary expressed in terms of commodities. The payment of rations was highly organized. Travelers along the road carried sealed documents issued by the king or high ranking officials, stating the scale on which they were entitled to be fed. Tablets sealed by supplier and recipient went back to Persepolis as a record of the transaction. The Persepolis fortification texts applied to a rather large geographic area, and could be divided into two main groups: 1) those concerned with large operations such as movement of commodities from place to place,

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<sup>198</sup> Cameron, "Persepolis Treasury Tablets Old and New":169.

<sup>199</sup> Ibid, 164.

assignments for broad general purposes, etc., and 2) those which detailed apportionments to the ultimate consumer.<sup>200</sup>

According to experts at the Oriental Institute, as a rule, the individual fortification texts did not immediately convey very much useful information, as the individual text was usually not very meaningful and acquired meaning only when compared with other texts. Researchers at the Oriental Institute believed that while the study of individual texts was important, the most productive results could only be achieved by comparing individual texts, as well as groups of texts.<sup>201</sup> In this light, any dispersion of the Persepolis tablets (i.e. through auction) would adversely affect the research and scholarship efforts associated with the artifacts and other related studies.

In regards to the ownership of the Persepolis tablets, the Oriental Institute and the University of Chicago have long asserted that the artifacts were "on loan" and that the Institute had been entrusted with their care and stewardship during the period of study. The emphasis was on the arrangement being viewed as a "trust" agreement, not a "business" contract.<sup>202</sup> The content and actual terms of the agreement for the transfer of the artifacts to the United States have not been available (to this author).

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<sup>200</sup> Garrison and Root, *Seals on the Persepolis Fortification Tablets, volume I: Images of Heroic Encounter*, 1.

<sup>201</sup> *Ibid.*, 3.

<sup>202</sup> Gil J. Stein, *A Heritage Threatened: The Persepolis Tablets Lawsuit and the Oriental Institute* (The Oriental Institute, University of Chicago Press, Winter 2007).

Per stipulations in the 1935 agreement, the Oriental Institute was also responsible for the safe return of the artifacts to their place of origin, once their analysis and recording had been completed. No indication could be found regarding a time limit for the duration of study of the artifacts, or a deadline for their return. In compliance with the terms of the agreement, in 1948, professor George Cameron returned the first set of tablets, 179 in total, to Iran. In 1951, a second set consisting of 37,000 tablet fragments were shipped to that country. The most recent shipment took place in 2004, whereby Gil Stein, the director of the Oriental Institute, and two members of the Oriental Institute research staff, Laura D'Alessandro and William Harms, accompanied over 300 complete tablets on their return to the National Museum in Tehran.<sup>203</sup> The Oriental Institute has estimated that more than two-thirds of the Persepolis Fortification texts have been returned to Iran.

As of 2007, approximately 8,000 tablets and nearly 11,000 poorly-preserved fragments of the unbaked clay tablets are expected to be analyzed at the Oriental Institute.<sup>204</sup> The fate of these remaining tablets, as important components of the cultural heritage of the Iranian people, is now a matter of dispute and litigation in U.S. courts, in a lawsuit based on certain provisions of a piece of U.S. legislation commonly referred to as FSIA.

The next chapter will review the *Rubin et al* lawsuit, as well as, the Foreign Sovereign Immunities Act of 1976 (FSIA) and its provisions, which

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<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

allowed the plaintiffs to bring their case to court, and claim the Persepolis Tablets as "attachment" for compensation.

## Chapter 3

### LITIGATION AND LEGISLATION

Two factors were of key importance to this case study and its analysis. First, the *Rubin et al* lawsuit had to be examined. Second, FSIA, the legislation that gave the plaintiffs the opportunity to bring the suit to court, needed to be addressed. In so doing, an explanation for the motives in the lawsuit could be found, particularly in regards to targeting the government of Iran as "defendant". The analysis of FSIA would also shed light on the reasons behind its implementation, and the ways in which certain provisions (called "exceptions") of this legislation have been employed by plaintiffs in bringing cases to U.S. courts. One key element, however, set apart the *Rubin et al* lawsuit from other court cases that had used the FSIA "exception" provisions to further their claims. The *Rubin et al* lawsuit was the only case that ultimately sought to "attach" ancient artifacts as part of its claim for compensation. In my view, this unique and unprecedented element would make this case study worthy of further contemplation and examination.

#### The *Rubin et al* Lawsuit

On September 9, 2000, a lawsuit was filed in the District of Columbia, on behalf of three American victims of the bombing attack on September 4, 1997, in Jerusalem.<sup>205</sup> Referred to as the *Campuzano* plaintiffs, the claimants (Diana Campuzano, Avi Elishis, and Gregg Salzman) named the Islamic Republic of Iran

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<sup>205</sup> *Campuzano et al v. The Islamic Republic of Iran*, 30 (No. 00-2328,30).

("Iran"), the Ministry of Information and Security ("MOIS"), and the Iranian Revolutionary Guards as defendants.

Less than a year later, on July 31, 2001, a second lawsuit was filed on behalf of another group of American victims of the same bombing attack.<sup>206</sup> The latter group (referred to as *Rubin* plaintiffs) named five victims of the attack and some members of their families, as plaintiffs.<sup>207</sup> In addition to naming the Islamic Republic of Iran ("Iran"), and the Ministry of Information and Security ("MOIS") as defendants, the *Rubin* plaintiffs also added three senior Iranian officials to that list: Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi-Rafsanjani, and Ali Fallahian-Khuzestani. The *Rubin* lawsuit, however, did not name the Iranian Revolutionary Guards as defendant.

All three of the *Campuzano* plaintiffs and five of the *Rubin* plaintiffs were injured in the bomb attack of September 4, 1997. The plaintiffs injured by the detonated bombs were Diana Campuzano, Avi Elishis, Gregg Salzman, Jenny Rubin, Daniel Miller, Abraham Mendelson, Stuart Hersh, and Noam Rozenman. Of the victims of the bombing attack, Jenny Rubin was the only one who did not sustain any physical injuries in the September 4, 1997, attack. Rubin, who at the time of the bombing was sixteen years old, later was diagnosed with PTSD.<sup>208</sup> Four plaintiffs in the *Rubin et al* lawsuit (Deborah Rubin, Renay Frym, Elena

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<sup>206</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-1655,14,20).

<sup>207</sup> The plaintiffs in the *Rubin* lawsuit were: Jenny Rubin, Daniel Miller, Abraham Mendelson, Stuart Hersh, Noam Rozenman, Deborah Rubin, Renay Frym, Elena Rozenman, and Tzvi Rozenman.

<sup>208</sup> Post-Traumatic Stress Disorder.



Rozenman, and Tzvi Rozenman), were relatives of the bombing victims, and though were not present at the bombing, suffered from emotional harm and distress as a result of the injuries sustained by their family members.<sup>209</sup> Two law firms based in Washington, D.C., represented the first group of plaintiffs.<sup>210</sup> The second group of plaintiffs employed the services of two lawyers from Rhode Island.<sup>211</sup>

The *Campuzano* and *Rubin* lawsuits alleged that the government of the Islamic Republic of Iran and its agencies were directly responsible for the bombing attack because of their support of the militant organization, Hamas. Lawyers for the plaintiffs were seeking compensation for injuries and subsequent pain and suffering to which their clients had been subjected in the attack. The Islamic Republic of Iran did not respond to the charges, as it did not recognize the U.S. legal jurisdiction over the matter. The government of Iran and its officials claimed that as a sovereign nation, the Islamic Republic of Iran was not subject to U.S. state and local laws.

Court documents noted the plaintiffs' allegation that "the defendants are responsible for the bombing because the defendants provided training and support to the terrorist group Hamas."<sup>212</sup> Reports from the court proceedings further

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<sup>209</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655,14,20).

<sup>210</sup> Jacob A. Stein, Stein, Mitchell & Mezines, Washington, D.C.; John Joseph McDermott, Hall, Estill, Hardwick, Gable, Golden & Nelson, Washington, D.C. It should also be noted that in one section of the court documents, the name of Sherry Wise appears as a "plaintiff"; however, this name does not appear anywhere else in the subsequent court documents, or the list of plaintiffs.

<sup>211</sup> No. 00-2328, 30; No. 01-1655,14, 20.

<sup>212</sup> *Ibid.*,3.

indicated that "Pursuant to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §1602 *et seq.*, the plaintiffs seek compensatory and punitive damages for their personal injuries caused by the bombing."<sup>213</sup> The plaintiffs motioned for a default judgment, as the defendants had failed to appear or respond to the plaintiffs' complaints. On December 6, 2001, the Clerk of the District Court entered a default judgment against the defendants in the *Campuzano* lawsuit. A similar judgment was entered on March 6, 2002, against the *Rubin et al* defendants.

Since both cases rose out of the same terrorist bombing, in 2003, the clerk of the US District court for the District of Columbia consolidated the two cases for trial "pursuant to Federal Rule of Civil Procedure 42(a)."<sup>214</sup> Named after Jenny Rubin, one of the principal plaintiffs in the lawsuit, the consolidated case would be referred to as *Rubin et al v. Islamic Republic of Iran*.<sup>215</sup>

Court papers indicated that "Despite the defendants' willful default, the court had to conduct an evidentiary hearing before it could enter a judgment by default against the defendants."<sup>216</sup> Therefore, in following the FSIA's hearing requirement, the court held a hearing from January 6 through January 9, 2003, to

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<sup>213</sup> Ibid.

<sup>214</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655,14,20),4.

<sup>215</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655,14,20),1-40.

<sup>216</sup> Ibid,3.

hear evidence from the plaintiffs. Based on its review of the evidence presented, the court granted the plaintiffs' motion for default judgment.<sup>217</sup>

In rendering his decision, US District Judge Ricardo M. Urbina, considered the information presented by the plaintiffs' attorneys.<sup>218</sup> Court papers filed in support of the lawsuits had included information about each plaintiff, the extent of his/her injuries, and the long-term effects of the bombing on the victims' lives. Medical experts testified as to the extent of injuries suffered by each victim. Experts in psychology and psychiatry presented evidence in support of their opinion that all of the victims suffered from Post Traumatic Stress Disorder (PTSD), some more severely than others. The plaintiffs' lawyers also included "before" and "after" photographs of the victims to illustrate the extent and level of their injuries. A financial expert was called to testify on behalf of one of the victims who was seeking additional compensation for loss of future income due to her injuries.

Lawyers for the plaintiffs also presented testimony from experts in terrorism and counter-terrorism, in order to establish the validity of the relationship between Hamas and the government of Iran and its agencies, particularly the Ministry of Information and Security (MOIS) and its military wing, the Islamic Revolutionary Guard (IRG). A counter-terrorism advisor to the Israeli prime minister (at the time of his testimony), named Yigal Pressler, who

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<sup>217</sup> Ibid.

<sup>218</sup> Judge Ricardo M. Urbina, United States District Judge, U.S. District Court for the District of Columbia.

had specialized in terrorism for thirty years, confirmed that Iran was responsible for sponsorship, training and economic support of Hamas.<sup>219</sup> Another terrorism expert, Dr. Bruce Tefft, asserted that in 1995, Iran's support of Hamas had amounted to over \$30,000,000. Testimony of Dr. Patrick Clawson, also a terrorism expert, noted that for over a decade, the financial support by Iran towards Hamas had ranged from \$20,000,000 to \$50,000,000 (annually).<sup>220</sup>

In its findings, the court also determined that Iran was funneling much of its support to Hamas through MOIS, a ministry with approximately 30,000 employees and a budget of between \$100,000,000 and \$400,000,000. With Iranian government funds, MOIS "spends between \$50,000,000 and \$100,000,000 a year, sponsoring terrorist activities of various organizations such as Hamas."<sup>221</sup> One of the terrorism expert witnesses, Dr. Tefft, had testified that the Iranian Revolutionary Guards (IRG) was MOIS's "action arm or paramilitary arm" and was responsible for "implementing the military or quasi-military actions abroad."<sup>222</sup> The court also determined that as the military wing of MOIS and under its direction, the Iranian Revolutionary Guards was in charge of providing professional military and terrorist training to Hamas operatives responsible for executing terrorist acts throughout the Middle East.<sup>223</sup>

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<sup>219</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655,14,20),6.

<sup>220</sup> *Ibid*,5.

<sup>221</sup> *Ibid*.

<sup>222</sup> *Ibid*..

<sup>223</sup> *Ibid*.

The Iranian government's support of terrorism was deemed by the court to be an official state policy. The court further asserted that the approval of high-ranking Iranian officials including Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi-Rafsanjani, and Ali Fallahian-Khuzestani, was necessary for Iran and MOIS to support Hamas with training and economic assistance. Therefore, Iran's support of Hamas could not have occurred without this senior leadership approval.<sup>224</sup> Court documents also indicated that since 1984, the U.S. Department of State had included Iran on its list of state sponsors of terrorism, and that, according to the 1997 Global Patterns report, Iran was the principal state sponsor of terrorism from 1996-1997.<sup>225</sup> Based on the testimonies provided and the information presented in the court, the *Rubin et al* plaintiffs were able to establish a "right to relief". As a result, the court decided to enter default judgments against the defendants.<sup>226</sup>

In determining the amount of monetary compensation sought by the plaintiffs, the court looked to legal precedence.<sup>227</sup> Among previous lawsuits filed against the Islamic Republic of Iran, one in particular, *Mousa v Islamic Republic of Iran*, was very similar to the case of *Rubin et al*. The *Mousa* case involved a young woman who had been injured in a bomb attack on an Israeli bus, and was

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<sup>224</sup> Ibid.

<sup>225</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655,14,20),6.

<sup>226</sup> Ibid.

<sup>227</sup> The lawsuits cited by the court were: *Foremost-McKesson v. The Islamic Republic of Iran*, *Roeder v. The Islamic Republic of Iran*, *Elahi v. The Islamic Republic of Iran*, *Weinstein v. The Islamic Republic of Iran*, *Bettis v. The Islamic Republic of Iran*, *Jenco v. The Islamic Republic of Iran*, *Sutherland v. The Islamic Republic of Iran*, *Cronin v. The Islamic Republic of Iran*.

seeking compensation from the Islamic Republic of Iran. Similar to the plaintiffs in the *Rubin et al* case, and unlike most FSIA plaintiffs who were either killed or held as hostages, Ms. Mousa survived a terrorist bombing and was not a hostage.<sup>228</sup> Judge Urbina cited *Mousa v Islamic Republic of Iran* as a reference for the determination of the amount of compensation for the *Rubin et al* plaintiffs. Depending on the extent of each plaintiff's injuries, compared to the injuries that Ms. Mousa had suffered, and based on the compensation awarded to Ms. Mousa in her case against the government of Iran, the judge granted a monetary amount to the plaintiffs in *Rubin et al*. The court also awarded a single amount of \$300,000,000 as punitive damages to be shared by the plaintiffs and their families. Based on expert testimony provided in the case and other precedents, the amount was to be three times the "approximately \$100 million each year in support of . . . terrorist activities," that was at the time being spent by the government of Iran.<sup>229</sup> In total, the court awarded the plaintiffs over \$400 million.<sup>230</sup> Ironically, Jenny Rubin, for whom the consolidated lawsuit *Rubin et al v. The Islamic Republic of Iran* was named, received the least amount of compensation (\$7,000,000) as she was not physically injured in the bomb attack of September 4, 1997.<sup>231</sup>

In order to collect the monetary sum awarded to their clients, lawyers for the *Rubin et al* plaintiffs looked to various sources. Their efforts, however, were

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<sup>228</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655,14,20),26.

<sup>229</sup> *Ibid*.

<sup>230</sup> Stein, *A Heritage Threatened: The Persepolis Tablets Lawsuit and the Oriental Institute*.

<sup>231</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655,14,20),32.

not very successful, as the majority of Iranian assets had been liquidated and transferred out of the country, or were subject to diplomatic immunity. The plaintiffs' lawyers, led by David Jacob Strachman, were able to locate a house in Lubbock, Texas, that had been purchased decades earlier by the late shah of Iran for his eldest son. Sale of that property brought them \$400,000 – leaving the bulk of the award uncollected.

In 2004, a press release by the Oriental Institute at the University of Chicago presented new opportunities for the *Rubin et al* lawyers in finding additional sources of funds for their clients.<sup>232</sup> This prospect appeared in the form of ancient Persian artifacts collectively known as the "Persepolis Tablets". The artifacts had been in the care of the Oriental Institute for more than six decades. The lead lawyer for the bombing victims, David Strachman, brought a lawsuit against the University of Chicago and its Oriental Institute, in order to halt the return of the remaining group of tablets to Iran. The lawsuit alleged that the artifacts would be considered as part of Iranian assets in the United States. Therefore the objects should be auctioned off, with the proceeds to benefit his clients. Strachman and his team of lawyers filed similar lawsuits against the Field Museum in Chicago, Harvard University, the University of Michigan, and the Museum of Fine Arts in Boston, where other collections of Persian artifacts were being housed.<sup>233</sup> Legal teams for Harvard University, University of Michigan, and

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<sup>232</sup> Alicia M. Hilton, "The Persepolis Tablets: Terror Victims Target Ancient Persian Artifacts," *Litigation Update* (ABA Section of Litigation, April 2007), accessed 4/22/2007, [http://www.abanet.org/litigation/litigationupdate/2007/april\\_hottopics.html/](http://www.abanet.org/litigation/litigationupdate/2007/april_hottopics.html/).

<sup>233</sup> No.:06-11053-GAO.

Museum of Fine Arts in Boston rejected the claim made by the lawsuit, in asserting that the collections in their possession were owned by the institutions, not the government of Iran.<sup>234</sup>

The collection at the Oriental Institute became the primary target for the victims' lawyers since it was "on loan" to the University of Chicago, and not owned by the institution. The *Rubin et al* lawyers cited certain provisions ("commercial activity" and "terrorism" exceptions) of the Foreign Sovereign Immunities Act of 1976 (generally referred to as FSIA), in their claim to "attach" the Persian artifacts. A number of lawsuits previously filed on behalf of American citizens against foreign governments and their agencies had also relied on various provisions of FSIA, as part of their petition for claims. As a result, a group of artifacts from the collection of the Persepolis Tablets that were still under the care of the Oriental Institute for research and study, have been caught in the middle of the *Rubin et al* lawsuit.

#### Foreign Sovereign Immunities Act of 1976 (FSIA)

The origins of the Foreign Sovereign Immunities Act date back to May 19, 1952, and a letter written by Jack Tate, legal advisor to the U.S. State Department. In the letter (later referred to as the Tate Letter), Tate advised the U.S. Attorney General to adopt the restrictive theory of sovereign immunity that recognized sovereign immunity only for the public acts of a state, and not for the state's private acts. By restricting the immunity of nation-states, the Tate Letter allowed

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<sup>234</sup> Amy Braverman Puma, "Worth millions . . . Or Priceless?," *University of Chicago Magazine*, vol. 99, Issue 1(October 2006).



for more frequent occurrences of lawsuits against foreign nations in U.S. courts.<sup>235</sup>

As a result, American citizens, and most notably, American companies conducting business abroad were able to pursue their claims for compensation against foreign entities and governments. The claims generally were associated with incidents whereby a foreign government or foreign national had ceased (or refused) compensation for services rendered by the American claimant. In some cases (mostly relating to natural resources, i.e. oil, copper), the foreign government (sovereign) had seized the American company's operations as part of nationalization efforts.

For over twenty years, recommendations would, on a regular basis, be made by the State Department to U.S. courts regarding the applications of sovereign immunity, based on submissions by foreign governments. The Tate Letter, however, "contained few guidelines for distinguishing between public and private acts."<sup>236</sup> Therefore, grants of immunity were often influenced and determined by foreign policy considerations and exertion of diplomatic pressure by other countries, rather than by the criteria contained in the Tate Letter. In 1976, these diplomatic problems in addition to threats against the lives of Americans abroad, led to the codification by the US Congress, of the restrictive theory of

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<sup>235</sup> Daveed Gartenstein-Ross , "A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act," *New York University Journal of International Law and Politics* (Summer 2002):3.

<sup>236</sup> Ibid.

sovereign immunity as a matter of federal law in the Foreign Sovereign Immunities Act (FSIA).<sup>237</sup>

The Foreign Sovereign Immunities Act of 1976 was approved on October 21, 1976, as "an act to define the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit and in which execution may not be levied on their property, and for other purposes."<sup>238</sup> In his remarks dated October 22, 1976, pertaining to the signing of the Foreign Sovereign Immunities Act (FSIA), President Gerald Ford stated:

"It is with great satisfaction that I announce that I have signed H.R. 1131, the Foreign Sovereign Immunities Act of 1976. This legislation, proposed by my administration, continues the long-standing commitment of the United States to seek a stable international order under the law. It has often been said that the development of an international legal order occurs only through small but carefully considered steps. The Foreign Sovereign Immunities Act of 1976, which I sign today, is such a step. This legislation will enable American citizens and foreign governments alike to ascertain when a foreign state can be sued in our courts. In this modern world, where private citizens increasingly come into contact with foreign government activities, it is important to know when the courts are available to redress legal grievances.

This statute will also make it easier for our citizens and foreign governments to turn to the courts to resolve ordinary legal disputes. In this respect, the Foreign Sovereign Immunities Act carries forward a modern and enlightened trend in international law. And it makes this development in the law available to all American citizens."<sup>239</sup>

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<sup>237</sup> Ibid.

<sup>238</sup> Public L. No. 94-583, H.R. 11315, 28 USC §1605, 94th Congress (1976).

<sup>239</sup> *Public Papers of the Presidents of the United States: Gerald R. Ford, 1974-1977*, 6vols. Washington, DC: Government Printing Office (1975-79), "Statement on Signing the Foreign Sovereign Immunities Act of 1976," (The American Presidency Project, accessed 6/3/2011, <http://www.presidency.ucsb.edu/ws>).

The FSIA allowed for the transfer of immunity decisions from the U.S. State Department to the judiciary branch of the United States government, which was considered to be less susceptible to political pressure by foreign nations.<sup>240</sup>

It is worth noting that during the period in which FSIA was enacted, certain legislative measures relating to arts, cultural affairs and international terrorism were also being considered by the US Congress. A couple of weeks prior to the approval of FSIA, the US Congress had approved the Arts, Humanities, and Cultural Affairs Act of 1976, "To amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for the improvement of museum services, to establish a challenge grant program, and for other purposes."<sup>241</sup> In his statement regarding the signing of this legislation, President Ford had remarked:

"I am pleased today to sign H.R. 12838 authorizing the National Foundation on the Arts and Humanities to continue and expand its work through 1980. The Arts, Humanities, and Cultural Affairs Act of 1976 reflects the continuing strong bipartisan support of the programs of the National Endowments for the Arts and for the Humanities . . . The support of the arts and humanities provided by the Federal Government has permitted a marked increase in individual participation in, and support of, a wide range of cultural activities . . ." <sup>242</sup>

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<sup>240</sup> Gartenstein-Ross, "A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act":3.

<sup>241</sup> Public L. No. 94-462 (H.R. 12838), was approved on October 8, 1976, and authorized the National Foundation on the Arts and Humanities to continue and expand its work through 1980.

<sup>242</sup> *Public Papers of the Presidents of the United States: Gerald R. Ford, 1974-1977*, 6vols. Washington, DC: Government Printing Office (1975-79), "Statement on Signing the Arts, Humanities, and Cultural Affairs Act of 1976," (The American Presidency Project, accessed 6/3/2011, <http://www.presidency.ucsb.edu>).

On the same day (October 8, 1976), President Ford also signed the International Terrorism Prevention Bill, in part due to certain events that had occurred that year, including the kidnapping and murders (on June 16, 1976), of Francis E. Meloy, Jr. - U.S. Ambassador to Lebanon, and his economic counselor – Robert O. Waring.<sup>243</sup>

Ironically, the provisions of these two pieces of legislations would, in later years, be at odds with each other, as the rise of terrorism led to stricter measures taken by the United States government in its efforts to protect American citizens abroad. Two decades later, a so-called "terrorism exception" to FSIA, as approved by the US Congress, would jeopardize the intent and interests of the "wide range of cultural activities" for which president Ford had pledged his support in the Arts, Humanities, and Cultural Affairs Act of 1976.<sup>244</sup>

In its original form, the FSIA served to provide immunity for foreign states (sovereign) against lawsuits unless the alleged activity upon which the plaintiffs' claims were based, could be subject to any of the "exception" provisions entailed in the legislation. At the time, the following exceptions were applicable to FSIA: waiver, commercial activity, expropriation, gifts/immovable property, tort, enforcement of arbitration award, and counter-claims.<sup>245</sup> In 1996,

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<sup>243</sup> Public L. No. 94-467 (H.R. 15552), also referred to as The Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons.

<sup>244</sup> *Public Papers of the Presidents of the United States: Gerald R. Ford, 1974-1977*, 6vols. Washington, DC: Government Printing Office (1975-79), "Statement on Signing the Arts, Humanities, and Cultural Affairs Act of 1976," (The American Presidency Project, accessed 6/3/2011, <http://www.presidency.ucsb.edu>).

<sup>245</sup> Gartenstein-Ross, "A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act":3.

an amendment to FSIA added another "exception" provision: terrorism. Known as the Anti-terrorism and Effective Death Penalty Act of 1996, this amendment waived the sovereign immunity of governments deemed to be "state sponsors of terrorism".<sup>246</sup> Three major events significantly influenced the passage of the terrorism exception: the dismissal of a case against Libya relating to the bombing of Pan Am Flight 103, the Oklahoma City bombing in 1995, and the murder of an American college student named Alisa Flatow by a Palestinian suicide bomber in Israel (also in 1995).<sup>247</sup> The death of Alisa Flatow prompted the US Congress to incorporate another amendment to the FSIA, in the form of the Civil Liability for Acts of State Sponsored Terrorism Act, commonly referred to as the Flatow Amendment. The Flatow Amendment in effect would create a cause of action for victims of terrorism.<sup>248</sup>

The terrorism exception to the FSIA appeared to be a drastic departure from the tradition of U.S. foreign sovereign immunity legal system. Although other countries had preceded the United States in adopting restrictive measures similar to those contained in the 1952 Tate Letter, no other countries have implemented any laws similar to the terrorism exception, other than certain legislation intended to retaliate against the United States. The terrorism exception, "allowed U.S. citizens to sue foreign states for non-commercial acts committed

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<sup>246</sup> *Rubin et al v. The Islamic Republic of Iran* (No.01-cv-01655-RMU,14,20),19.

<sup>247</sup> Gartenstein-Ross , "A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act":3.

<sup>248</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655,14,20),19.

abroad, even though US courts had consistently held (as recently as 1996 when the exception was enacted), that sovereign immunity would shield foreign states from suit in such situations."<sup>249</sup>

Defendant countries have often disregarded the requests for court appearances, since relations are generally hostile and the defendant sovereigns reject the legitimacy of the terrorism exception's repeal of sovereign immunity. As a result, U.S. courts have entered a large number of default judgments against such defendants. Claimants, therefore, are generally not successful in receiving the compensation that was to have been provided by the terrorism exception, unless such payments are furnished by the U.S. government.<sup>250</sup>

#### The *Rubin et al* Lawsuit and FSIA

Since 1996, the terrorism exception to FSIA has allowed lawsuits against seven countries that were designated by the U.S. Secretary of State as sponsors of terrorism,<sup>251</sup> even though foreign states are generally shielded from suit by the doctrine of sovereign immunity.<sup>252</sup> In March 2000, American journalist and former hostage in Lebanon, Terry Anderson (perhaps the most famous plaintiff in a lawsuit against the Islamic Republic of Iran) won a default judgment for \$341

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<sup>249</sup> Ibid.

<sup>250</sup> Gartenstein-Ross, "A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act":5.

<sup>251</sup> The seven countries were: Iran, Iraq (until recently), Syria, Libya, Cuba, North Korea, and Sudan.

<sup>252</sup> Gartenstein-Ross, "A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act":1.

million in damages, to be paid by the government of Iran.<sup>253</sup> Lawyers for Anderson, who at the time of his kidnapping in 1985, was the chief Middle East correspondent for the Associated Press in Beirut, Lebanon, had employed the terrorism exception of the FSIA in their suit against the Islamic Republic of Iran.<sup>254</sup>

In the *Rubin et al* lawsuit, the court reviewed prior cases that had employed the FSIA terrorism exception against the Islamic Republic of Iran, and concluded that default judgment for the plaintiffs was proper because "they have proven each of the applicable elements by evidence satisfactory to the court."<sup>255</sup> The *Rubin et al* court also looked to other lawsuits in order to determine the liability of the defendants for injuries and emotional distress suffered by the plaintiffs, especially the role of Iran and MOIS in funding and supporting the terrorist group responsible for the bombing.<sup>256</sup>

Of all the court cases consulted, The *Rubin et al* court determined that *Mousa v. Islamic Republic of Iran* was the case most similar to, and therefore most helpful for the calculation of pain and suffering damages to the plaintiffs.

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<sup>253</sup> *Anderson et al v. The Islamic Republic of Iran*.

<sup>254</sup> Diana Digges, "Former Hostage Terry Anderson Wins \$341 Million Against Iran; Legislation Enables Small Group of Victims of Terrorism to Collect," *Lawyers Weekly Inc.*, (2001).

<sup>255</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 01-cv-01655, United States District Court for the District of Columbia, 14, 20), 20.

<sup>256</sup> *Ibid*, 23-24.

The *Rubin et al* court also looked to *Mousa v. Islamic Republic of Iran*, in determining the award amount for medical expenses incurred by the plaintiffs.<sup>257</sup>

In 2004, lawyers for the *Rubin et al* plaintiffs filed a suit in the US District Court for the Northern District of Illinois, to attach collections of Persian antiquities as part of their claim for compensation. The Oriental Institute at the University of Chicago and the Field Museum of Natural History in Chicago became the primary targets, since at the time these institutions housed a number of collections of Persian artifacts and antiquities. In response to the claims brought on by the *Rubin et al* plaintiffs, lawyers for the University of Chicago contended that the Persepolis Tablets would be subject to certain provisions of the Foreign Sovereign Immunities Act (FSIA) which exempt foreign governments from jurisdiction of United States courts in lawsuits.

However, FSIA included "general exceptions to the jurisdictional immunity of a foreign state," and two exceptions cited in the legislation had caught the attention of the *Rubin et al* lawyers. The first exception was related to cases centered on "an action based on commercial activity carried on in the United States by the foreign state."<sup>258</sup> The second exception applied to cases "in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortuous act or omission of that foreign state."<sup>259</sup> Lawyers for the *Rubin et*

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<sup>257</sup> Ibid,40.

<sup>258</sup> Public L. No. 94-583, H.R. 11315, 28 USC§1605, 94<sup>th</sup> Congress (1976).

<sup>259</sup> Ibid.



al plaintiffs alleged that the Persian artifacts were "commercial" in nature, therefore, would not be immune from the jurisdiction of U.S. courts, despite statements by the Oriental Institute and the University of Chicago that the artifacts were only being used for scholarship purposes.

On July 28, 2004, the United States government issued a statement of interest regarding this lawsuit, opposing the attachment of the artifacts as part of the claim. On December 15, 2005, Magistrate Judge Martin C. Ashman of the District Court for the Northern District of Illinois, issued an opinion granting the plaintiffs' motion for partial summary judgment, finding that "as a matter of law, no party other than Iran may assert Iran's sovereign immunity under Sections 1609 and 1610 of the FSIA."<sup>260</sup>

The United States government issued a second statement of interest, dated March 3, 2006, in reference to the case, maintaining that,

"the United States has significant foreign policy interests in ensuring that principles of foreign sovereign immunities are properly interpreted and applied and, moreover, believes that the Magistrate Judge abused his discretion when he refused to impose any burden on the plaintiffs in the circumstances of this case to demonstrate their entitlement to the properties they seek to attach solely because of the foreign sovereign's absence."<sup>261</sup>

In June 2006, the court rejected the FSIA claim by the legal team from the University of Chicago, declaring that the institution could not claim sovereign

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<sup>260</sup> *Rubin et al v. The Islamic Republic of Iran* (No. 03-cv-9370, United States District Court for the Northern District of Illinois, [Judge Blanche M. Manning]).

<sup>261</sup> Second Statement of Interest of the United States, No. 03-cv-9370, United States District Court for the Northern District of Illinois (Judge Blanche M. Manning).

immunity on behalf of the government of Iran.<sup>262</sup> The judge ruled that the artifacts should be auctioned and the proceeds used towards compensating the *Rubin et al* plaintiffs.<sup>263</sup> The court declared that the government of Iran alone was responsible for claiming sovereign immunity. Until then, the decision of the court regarding the "default judgment" would stand.<sup>264</sup>

Concerned that strained relations and political tension between the governments of the United State and Iran may have been a contributing factor in the court's decision, the legal team from the University of Chicago raised this issue in court, contending that Iran's refusal to take part in the case was "because its experience of the American legal system had long been negative."<sup>265</sup> In her ruling on June 22, 2006, in Chicago, US District Judge Blanche M. Manning responded that the University's "brazen accusation that the courts of the United States are hostile to Iran and that, as a result, Iran should be excused from bothering to assert its rights, is wholly unsupported."<sup>266</sup>

The government of Iran requested assistance from the United Nations and its agency, UNESCO, in efforts to prevent the artifacts from being auctioned. The Iranian government also demanded that the United States government intervene on its behalf in safeguarding the artifacts. In the midst of the legal battles, the

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<sup>262</sup> Hilton, "The Persepolis Tablets: Terror Victims Target Ancient Persian Artifacts".

<sup>263</sup> Judge Blanche M. Manning, United States District Court for the Northern District of Illinois.

<sup>264</sup> *Rubin et al v. Islamic Republic of Iran*, No. 03-cv-9370, United States District Court for the Northern District of Illinois [Judge Blanche M. Manning].

<sup>265</sup> Nasser Karimi, "Iran: U.S. must Block Bid to Seize Artifacts," *Associated Press/Chicago Sun-Times*, July 5, 2006.

<sup>266</sup> *Ibid.*

Iranian foreign ministry even accused the United States of blocking the return of the artifacts to Iran. In August 2006, the Islamic Republic of Iran finally decided to obtain legal representation through a law office in Washington, D.C., and filed a motion for summary judgment asserting sovereign immunity under FSIA.

In March 2007, Magistrate Judge Martin C. Ashman stayed the summary judgment motion to allow the plaintiffs enough time to provide information in support of their claim that the Persepolis Tablets were subject to the "commercial activity" exception under the FSIA. The court also granted the plaintiffs additional time to support their claim towards two additional collections of artifacts – the Chogha Mish collection at the Oriental Institute and the Herzfeld collection at the Field Museum of Natural History in Chicago. The fate of the collections would depend on the plaintiffs' success in proving that the University of Chicago had acted as Iran's agent and had used the artifacts in commercial activities.<sup>267</sup> At the time, the general counsel for the University of Chicago, Theodore Stamatakos, believed the case to be far from over, and stated, "there's a lot more litigation to be done."<sup>268</sup> The FSIA exception clearly stipulates that the property in question "has to be in commercial activity", and the Persepolis Tablets would not fit into that category.<sup>269</sup>

While the final ruling on the lawsuit is still pending, many critics believe that the outcome could have a negative impact on various areas of practice and

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<sup>267</sup> Hilton, "The Persepolis Tablets: Terror Victims Target Ancient Persian Artifacts".

<sup>268</sup> Braverman Puma, "Worth millions . . . or priceless?".

<sup>269</sup> Ibid.

scholarship. Of grave concern is the impact that the outcome of the *Rubin et al* lawsuit is likely to have on areas related to academic and scholarly research, as well as, cultural resource management. The next chapter presents a review and analysis of a number of these issues, and the consequences that may follow.

## Chapter 4

### IMPLICATIONS

Questions have been raised about the implications of rulings in legal cases involving antiquities, including the entanglement of the Persepolis Tablets in the *Rubin et al* lawsuit. For one thing, this court case (and other similar cases) were impacted by, and in turn influenced all three branches of the United States government. The legislative branch was responsible for initiating, and subsequently enacting the law that afforded the plaintiffs their claim - namely the FSIA. The judicial branch of the government was directly involved in delivering a ruling on a national level (US federal court), for an issue that would directly affect, if not overextend, its authority beyond the nation's borders and widen its reach on decisions made by the executive branch - the United States president and the policies set by his administration. The executive branch was affected by the court's decision to overstate its authority and undermine that of the president of the United States and his respective administration, especially in regards to foreign policy and international relations.

For their decision regarding the fate of the Persepolis Tablets, judges looked for precedence in other lawsuits, especially those involving the use of "commercial activity" and "terrorism" exception provisions of FSIA. Critics have also been examining such legal cases in their review of the advantages (or shortcomings) of FSIA, and the implications that could arise from its application.

## Legal Issues

Lawsuits involving artwork, foreign nations and the United States have been the subject of a number of scholarly publications. Most of these works have focused on issues relating to repatriation claims by individuals, source nations, and ethnic or cultural groups in the United States, against cultural institutions particularly museums. Most notable cases in the United States have involved repatriation claims by Native American groups against institutions and individuals. In such cases, claimants have employed the Native American Graves Protection and Repatriation Act (NAGPRA), to address patrimony issues related to human remains, funerary objects, sacred objects and cultural artifacts.<sup>270</sup> Under NAGPRA, federal agencies and museums that have received federal funds are required to repatriate Native American ancestral human remains and cultural items to tribes that can show genetic or cultural affiliation with such remains and items. NAGPRA also regulates the excavation of such remains and items on federal and Indian land, and provides for a minimum thirty-day hold on earth-moving activities that cause the inadvertent discovery of such remains and items.<sup>271</sup>

One of the more successful examples of using NAGPRA for repatriation claims, referred to as "The Gramly Case", was brought to court in December

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<sup>270</sup> Jennifer R. Richman and Marion P. Forsyth, editors, *Legal Perspectives on Cultural Resources* (Walnut Creek, Ca., Altamira Press - a division of Rowman & Littlefield Publishers, Inc., 2004), 7.

<sup>271</sup> Thomas F. King, *Cultural Resource Laws and Practice - An Introductory Guide* (Walnut Creek, Ca., Altamira Press, A Division of Rowman & Littlefield Publishers, Inc.,2004),370-371.

1999.<sup>272</sup> The Seneca nation of Indians and the Tonawanda Seneca Nation (together, "the Seneca Nation") sought the assistance of the New York State attorney general's office in presenting their case regarding the alleged unauthorized excavation of a Native American village and burial site by a professional archaeologist named Richard Michael Gramly who was based in Buffalo, New York. Known in archaeological circles as the "Kleis Site"(named after a prior owner of the property), the excavation site was an ancient Iroquoian village that together with its associated burial site, dated from the seventeenth century. The site and the cultural items located therein were claimed by the Seneca Nations as part of their cultural heritage.<sup>273</sup> Prior to the court ruling, the parties reached a settlement whereby Gramly agreed to refrain from further excavation on the Kleis Site, repatriate all cultural items removed from the site to the Seneca Nations, and comply with NAGPRA concerning any future excavation of Native American archaeological sites on any land, public or private, in New York State.<sup>274</sup>

In her article "Economics of Antiquities Looting," Lisa Borodkin stated that foreign claimants have been able to pursue the return of artifacts in state courts, provided that they could establish the minimum contacts required to gain personal jurisdiction. In particular, New York City has become a common

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<sup>272</sup> Christopher Amato, "Using The Courts To Enforce Repatriation Rights: A Case Study Under NAGPRA," in *Legal Perspectives on Cultural Resources*, edited by Richman and Forsyth, 232-251.

<sup>273</sup> Ibid, 235-236.

<sup>274</sup> Ibid, 239.

site for international art disputes because of its role as an art-dealing capital. The statute of limitations in New York laws also make the city a more favorable arena for claimants of repatriation cases related to artwork and antiquities.<sup>275</sup>

According to Borodkin, the international nature of the art market has led to "frequent conflict of laws problems."<sup>276</sup> In her view, restoration of stolen artifacts to their owners through court orders does not alleviate the dilemma that valuable archaeological information has already been lost as a result of an artifact having been dismembered, defaced, or isolated from its context.<sup>277</sup> Borodkin also believes that in cases involving antiquities, state succession issues tend to further complicate the problems of conflicting laws, as the artifacts in dispute often predate the governments that claim their ownership.<sup>278</sup>

The best known legal dispute over national repatriation issues is the case of the Parthenon marbles, commonly referred to as the Elgin Marbles.<sup>279</sup> Many experts also consider this case to be the longest-running debate over cultural property in the world.<sup>280</sup> The debate stemmed from claims made by Greece regarding the ownership of the artifacts, which would require the return of the objects from their current location at the British Museum in London, England, to

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<sup>275</sup> Borodkin, "The Economics of Antiquities Looting and a Proposed Legal Alternative":400.

<sup>276</sup> Ibid.

<sup>277</sup> Ibid,399.

<sup>278</sup> Ibid, 400-401.

<sup>279</sup> Kate Fitz Gibbon, "The Elgin Marbles - A Summary," in *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*,109.

<sup>280</sup> Ibid.



their original home at the site of Acropolis in Athens, Greece. The story of the Elgin Marbles dates back to the early years of the nineteenth century, and the removal of the objects from their place of origin, under the direction of Thomas Bruce, seventh Earl of Elgin. A passionate art enthusiast, Elgin had used his post as the British ambassador (from 1799 to 1803) in the Ottoman court in Constantinople (today's Istanbul, Turkey), to pursue his interests in the art of ancient Greece. At the time, Greece was under the rule of the Ottoman Empire. Due to his diplomatic status, Elgin was able to obtain the permission of local authorities to dismantle a significant portion of the fine decorative elements remaining at the Parthenon.<sup>281</sup>

Upon the removal of the artifacts by his workmen, Elgin arranged for the transfer of the items to England. As a result, the artifacts have been on display at the British Museum for over two hundred years. Almost immediately, though, Elgin's legal claim to the artifacts became a matter of dispute, and led to a fierce debate in the British Parliament over the purchase of the marbles for the British Museum. Some members argued in favor of keeping the marbles for their safe keeping. Others believed that the artifacts should be held "in trust". Another group called for the return of the marbles to the Ottoman government.<sup>282</sup> Ultimately, in 1816, the British Parliament authorized the purchase of the collection from Elgin, and its placement in the British Museum where they still remain.

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<sup>281</sup> Ibid,111.

<sup>282</sup> Ibid,112.

In 1982, the case of the Elgin Marbles once again came to public attention. That year, for the first time, Greece formally requested the return of the artifacts from Britain. At an International Conference of Ministers of Culture, Greece's then-Minister of Culture, Melina Mercouri (formerly, a world-renowned actress and political activist), called for the restoration of the Elgin marbles to Greece. The appeal made by Greece for the repatriation of the artifacts led to an increase in public awareness regarding the issue of cultural patrimony, and in turn, resulted in the formation of grassroots organizations in Britain and Greece, to lobby for the return of the marbles.<sup>283</sup> However, the Greek government and its supporters were unsuccessful in their efforts to return the Elgin Marbles to their place of origin. More recently, Greece made another attempt to bring the artifacts home, as the country sought to obtain the marbles as part of a long-term loan from the British Museum, in time for the 2004 Olympics in Athens.<sup>284</sup>

In her article, "Contemplating Contradictions: A Comparison of Art Restitution Policies," Emily Winetz Goldsleger used the case of the Elgin Marbles, in order to address policy variances that exist in handling cases of restitution request.<sup>285</sup> Goldsleger argued that the laws and regulations concerning ownership or restitution of cultural property have generally failed to emerge in enforceable forms. Goldsleger further contended that for the most part, such

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<sup>283</sup> Ibid, 112-113.

<sup>284</sup> Ibid,114.

<sup>285</sup> Emily Winetz Goldsleger, "Contemplating Contradiction: A Comparison of Art Restitution Policies," *The Journal of Arts Management, Law, and Society*, vol. 35, no.2(Summer 2005) :109-120.

regulations only exist as resolutions passed by international governing bodies such as UNESCO, or as recommendations written by private professional associations such as ICOM.<sup>286</sup> These regulations could only serve as suggestions that occasionally concern those governments or institutions that have ratified them.<sup>287</sup> For example, in the case of the Elgin Marbles, Britain had not signed UNESCO 1970 until March, 2001.<sup>288</sup> As a result, for years Britain was able to refuse the requests made by Greece regarding the return of the Elgin Marbles.<sup>289</sup>

Goldsleger also asserted that laws vary between countries, and national legislation sometimes contradicts international regulations. According to Goldsleger, it appears that certain circumstances have made some claims of patrimony more successful than others. This is most evident in cases related to Nazi-looted artwork and belongings, whereby individual claimants have been more successful in their repatriation efforts than ethnic groups and/or nations. It is also notable that in matters related to Nazi-looted artwork, private associations such as the American Association of Museums (AAM), and individual museums in the United States have been initiating systematic approaches to provenance research to address such issues.<sup>290</sup>

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<sup>286</sup> International Council of Museums.

<sup>287</sup> Goldsleger, "Contemplating Contradiction: A Comparison of Art Restitution Policies":109-110.

<sup>288</sup> The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970.

<sup>289</sup> Ibid,110.

<sup>290</sup> Ibid.

The American Association of Museums established a code of ethics urging all museums to inventory their collections for all objects created before 1946 and acquired after 1932, in cases where a transfer of ownership occurred between 1932 and 1946, and when the objects were believed to be located in Europe. The AAM code of ethics also instructed museums to actively research and publicize the provenance histories of objects in their collection.<sup>291</sup> Furthermore, governments, museums, and private organizations have created research and recovery associations such as the Holocaust Art Restitution Project in Washington, D.C., devoted to assisting victims of the Nazi era, and their heirs with research and claims for the restitution of lost artwork.<sup>292</sup>

Goldsleger compared the case of Greece's claim regarding the Elgin Marbles to those involving artwork that was looted by the Nazis between 1933 and 1945. Claims by Greece relating to the patrimony of the Elgin Marbles were complicated since under the Ottoman rule, for over four hundred years Greece did not exist as an individual country, and was only established later based on the group of people residing in the area.<sup>293</sup> A question was therefore raised about whether or not groups or cultures could claim ownership of objects without being encompassed by the boundaries and laws of an established nation.

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<sup>291</sup> Ibid,111.

<sup>292</sup> Ibid.

<sup>293</sup> The Independence war of 1821-1829 brought liberation to a small part of today's modern Greece and its declaration as an independent nation; other sections and islands were liberated eventually, with the last group of island(Dodecanese islands) returned to Greece after World War II. (source: <http://www.greeceindex.com/history-mythology/greece-march25.htm>).

On the other hand, in cases related to Nazi-looted property, a more traditional type of ownership existed whereby individuals had purchased the artwork with personal funds, kept the objects in their own possession, and could often provide concrete evidence of their ownership. Goldsleger also asserted that denying a request for the return of artwork to a nation of "seemingly faceless masses," namely Greece, proved to be much easier than refusing to provide restitution to direct heirs of the victims of Nazi brutality.<sup>294</sup> Another weak point for Greece, according to Goldsleger, was lack of support from strong and powerful allies in its pursuit.

The involvement of both art groups and Jewish communities in lobbying efforts to bring attention to the issue of Nazi-era looting, led to government actions that eventually resulted in the establishment of research and recovery associations that actively pursued the restitution of looted property.<sup>295</sup> Goldsleger contends that art administrators should also play a more active role in developing and establishing programs and guidelines for professional practice that would address such issues as provenance history and ownership, so long as they are based on ethics and morals.<sup>296</sup>

While recommendations made by Goldsleger address the art world, I believe the same principles could be effective in other cultural institutions, especially publicly-funded institutions that rely on "on loan" material for

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<sup>294</sup> Goldsleger, "Contemplating Contradiction: A Comparison of Art Restitution Policies":113.

<sup>295</sup> Ibid.

<sup>296</sup> Ibid,115.

exhibition and scholarship. Professional practices based on ethics will allow these institutions to provide a real "safe haven" for cultural treasures belonging to groups and nations that lack the expertise or knowledge for the preservation and protection of the "world's cultural treasures."<sup>297</sup>

In recent years, individual claimants have been successful in bringing cases related to Nazi-looted artwork to the U.S. courts, by using certain provisions of the Foreign Sovereign Immunities Act (FSIA). One provision frequently cited in such claims has been FSIA's "commercial activity" exception. A number of scholars have addressed the advantages and deficiencies of FSIA as a legislative act, and the use or abuse of its provisions. Most notably, a number of articles have addressed the use of the "commercial activity" exception by American lawyers and plaintiffs, in their demands for compensation from defendants, who in many cases are foreign sovereigns. In this regard, a few articles have cited the lawsuit involving the Persepolis Tablets, along with somewhat similar court cases.<sup>298</sup>

In her article, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act," Charlene A. Caprio studied the effects of FSIA on three lawsuits: *Rubin et al v. The Islamic Republic of Iran*, *Altmann v. Republic of Austria*, and *Malewicz v. City of Amsterdam*.<sup>299</sup> The two latter lawsuits concerned individual ownership claims pertaining to artwork that was looted during the Nazi era.

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<sup>297</sup> Ibid,116.

<sup>298</sup> *Rubin et al v. The Islamic Republic of Iran*.

<sup>299</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act," 285-309.

The premise for *Altmann v. Republic of Austria*, was a claim of ownership and repatriation involving six paintings by world-famous artist, Gustav Klimt. The artworks were originally owned by a Jewish sugar entrepreneur named Ferdinand Bloch-Bauer, who had lived in Vienna, Austria prior to World War II.<sup>300</sup> In 1938, Bloch-Bauer fled Austria and resided in Switzerland until his death there, in 1945. In the meantime, all of his belongings and possessions in Austria had been seized by the Nazis. In his will, Bloch-Bauer had left his entire estate to his heirs, one nephew and two nieces, one of whom was Maria Altmann. In 1938, Altmann had also left Austria and settled in California, where she later became a U.S. citizen. In 1946, the Austrian government enacted a law "designed to annul transactions motivated by the Nazi ideology."<sup>301</sup> The measure was to allow Jewish Austrians to retrieve their properties and belongings that had been confiscated and looted during the Nazi era.

However, certain Austrian authorities including the Federal Monument Agency and state museums, required that individuals who had purchased any of the stolen or looted objects should be compensated for the return of the objects to their original owners. Claims were also made that certain valuable artworks had been "donated" to the state museums and therefore should be exempt from any repatriation efforts. The Austrian Gallery, in fact, laid claim to the Klimt paintings owned by Bloch-Bauer. The Gallery alleged that in her will, Bloch-Bauer's wife, Adele (who had died in 1925), had indicated that upon her husband's passing, the

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<sup>300</sup> In fact, Bloch-Bauer's wife, Adele, had been the subject of two of the paintings.

<sup>301</sup>Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act": 289.

paintings be donated to the Austrian Gallery. The attorney for Maria Altmann was also unsuccessful in his attempts to seek permission to export the remainder of Bloch-Bauer's collection. The request was met with demands by the Austrian Gallery for Altmann's attorney to execute a document recognizing Bloch-Bauer's intent to honor his wife's request regarding the disposition of the Klimt paintings. As a result, the paintings remained in Austria.<sup>302</sup>

In 1998, a series of articles published by an Austrian journalist suggested that officials at the Austrian Gallery had knowledge of the fact that neither Bloch-Bauer nor his wife, Adele, had donated the Klimt paintings to the Gallery. Soon after, the Austrian government announced the adoption of a law that would allow individuals to reclaim artwork that had been forcefully obtained by Austrian state museums in exchange for export permits. In this light, Maria Altmann sought to reclaim the Klimt paintings, that by now were estimated to be worth between 135 to 150 million dollars. A panel of Austrian government officials and art historians denied Altmann's request, still maintaining that the paintings had been transferred to the Austrian Gallery according to Adele Bloch-Bauer's will.<sup>303</sup> Altmann decided to bring her claim for the ownership of the paintings to Austrian courts. However, the sizeable amount of the filing fee required for the claim (equivalent to two million Austrian Schillings) prevented her from further pursuing the suit.<sup>304</sup>

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<sup>302</sup>Ibid.

<sup>303</sup>Charles H. Brower, II, "Republic of Austria v. Altmann," *The American Journal of International Law*, vol. 99, no. 1 (Jan., 2005): 236-242; (<http://www.jstor.org/stable/3246102>) [Accessed: 10/09/2008].

<sup>304</sup> Ibid,237.



In 2001, an advertisement by the Austrian Gallery was published in the United States, announcing an exhibition at the Gallery in Austria displaying the Klimt paintings.<sup>305</sup> The notice provided a new (and financially feasible)<sup>306</sup> opportunity for Maria Altmann to sue the Austrian Gallery in the US federal court system.<sup>307</sup> A new claim was filed in the US District Court for the Central District of California, against Austria and the Austrian Gallery (collectively, Austria).<sup>308</sup> In the lawsuit, Maria Altmann and her lawyers invoked the expropriation exemption of FSIA.<sup>309</sup>

The court conducted an assessment of the Austrian government's activities in the United States pertaining to the Klimt paintings. The court reviewed measures such as the publication of a museum guidebook, publication of photographs of the disputed Klimt paintings, and advertisements for the Austrian Gallery about exhibitions relating to the said paintings. The court also considered the fact that the Austrian Gallery had in the past, loaned one of the Klimt paintings to the United States for exhibition. In rendering its opinion, the *Altmann* court concluded that "these activities were the "types" of actions in which private

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<sup>305</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":289.

<sup>306</sup> The filing fee in the United States was far less than the two million Austrian Schillings required in Austria.

<sup>307</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":289.

<sup>308</sup> Brower, "Republic of Austria v. Altmann":237.

<sup>309</sup> 1605(a)(3), "[I]n which rights in property taken *in violation of international law* are in issue and that property or any property exchanged for such property is present in the United States in connection with a *commercial activity* carried on in the United States by the foreign sovereign; or that the property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a *commercial activity* in the United States.(emphasis added)"

parties readily engaged, and that through them the Austrian Gallery was acting as a private player in the market and conducting commercial activities in the United States as defined in the FSIA."<sup>310</sup> The court asserted that operating a museum is an activity in which private parties engage. The Ninth Circuit Court upheld the ruling by the *Altmann* court, further noting that "Austria's commercial activities in this case were all centered around the disputed paintings and even went as far as attracting American tourists to Austria to view the looted artwork."<sup>311</sup>

The *Altmann* case finally reached the US Supreme Court.<sup>312</sup> On June 7, 2004, in *Republic of Austria v. Altmann*, the Supreme Court held that "FSIA applies to claims involving conduct predating both the enactment of the FSIA by Congress in 1976, and the adoption of the restrictive theory of state immunity by the Department of State in 1952."<sup>313</sup> After the Supreme Court ruling, the plaintiffs and the Austrian Gallery engaged in binding arbitration; and in early 2006, five of the Klimt paintings were returned to the Altmann heirs. Later that year, in November 2006, four of the recovered Klimt paintings were sold by the Altmann heirs for over 190 million dollars, in an auction at Christie's in New York.<sup>314</sup>

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<sup>310</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":290.

<sup>311</sup> Ibid,290-291.

<sup>312</sup> *Republic of Austria v. Altmann* (124 S. Ct.2240. United States Supreme Court, June 7, 2004).

<sup>313</sup> Brower, "Republic of Austria v. Altmann":237.

<sup>314</sup> According to Caprio, "A critical part of the lower-court *Altmann* decision involved awarding jurisdiction over the Republic of Austria. This meant that under the FSIA, the paintings and the defendant could both stay in Austria while the claim was being brought in the United States against an agency or instrumentality of the foreign sovereign."

Caprio contended that although the *Altmann* ruling served as a setback for international art and cultural exchanges, the outcome was "arguably outweighed by the justice served."<sup>315</sup> Caprio, however, also viewed the *Altmann* ruling as a "warning sign" to the international art community, as it would subject state-run museums and galleries to U.S. lawsuits once their activities extend to American soil.<sup>316</sup> In Caprio's opinion, from the *Altmann* ruling one could also assume that educational and cultural promotions for international art exhibitions would be "forms of commercial activities capable of stripping foreign sovereigns of their immunity."<sup>317</sup> The *Altmann* ruling has, in Caprio's opinion, "cast a wide net" to deny immunity under the FSIA, and helped launch a series of U.S. court decisions that further limit foreign sovereign immunity in cases related to state-run museums and educational exchanges of artwork and cultural property.<sup>318</sup>

Another court case examined in Charlene Caprio's article, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act," had also employed the FSIA's expropriation exception in a claim related to Nazi-era looting. Caprio contends that the lawsuit, *Malewicz v. The City of Amsterdam*, went beyond the *Altmann* case by confronting foreign sovereign immunity in the context of a cross-border museum loan.<sup>319</sup> The case involved paintings by

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<sup>315</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":291.

<sup>316</sup> Ibid.

<sup>317</sup> Ibid.

<sup>318</sup> Ibid.

<sup>319</sup> Ibid, 291-292.

Kazimir Malewicz, one of the leaders of the Russian avant-garde movement, and the father of "Suprematism", considered to be the "first systematic school of abstract painting in modern art."<sup>320</sup>

In 1927, on a trip to Poland and Germany, Malewicz brought over one hundred of his works for exhibition, and promotion of Suprematism. While in Berlin, Malewicz was suddenly ordered by the Stalinist government to return to Leningrad. Fearful that his works would be in jeopardy under the Soviet rule, Malewicz entrusted his artwork to his friends in Germany for safekeeping. One such friend was Dr. Alexander Dorner, who at the time was the director of the Landesmuseum in Hanover, Germany.<sup>321</sup> By 1935, fear of Nazi condemnation of what it considered "degenerate art", prompted Dr. Dorner to store Malewicz's artwork, away from public view. The same year, Alfred Barr, director of the Museum of Modern Art in New York (MoMA), visited Dr. Dorner and expressed great interest in the Malewicz collection, which led to Dorner's decision to transfer some of the works on loan to MoMA. In 1937, Dr. Dorner himself fled to the United States and brought with him two of the Malewicz paintings. Prior to his death in 1957, Dr. Dorner had bequeathed both paintings to Harvard University's Busch-Reisinger Museum, to be held on loan and for the benefit of

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<sup>320</sup> Howard N. Spiegler, "Surviving War and Peace: The Long Road to Recovering the Malevich Paintings," *The Journal of Art Crime* (Spring 2009),4. [www.artcrime.info](http://www.artcrime.info).

<sup>321</sup> According to Spiegler's article, Malewicz was faced with a grim future despite his hopes to soon return to Germany to continue the exhibition. Arrested and detained for three months, Malewicz was later diagnosed with cancer. In 1933, Malewicz's request to go abroad for medical treatment was denied, and in 1935 he passed away.

"the rightful owners."<sup>322</sup> In June 1999, upon their request, MoMA returned one of the paintings to the Malewicz heirs. In November 1999, the Busch-Reisinger Museum announced that it would return both Malewicz paintings in its care to the artist's heirs. As a gesture of gratitude, the Malewicz heirs, in turn, donated one of the paintings to the Busch-Reisinger Museum.<sup>323</sup>

Before departing Germany in 1937, Dorner had left the remaining Malewicz collection in the care of Hugo Häring, a notable architect and writer in Berlin who was the only member of Malewicz's group of friends still residing in Germany.<sup>324</sup> Häring continued his stewardship of the Malewicz works, despite repeated advice by friends to place them on loan at one of the museums, always maintaining that he was merely the custodian of the collection.<sup>325</sup>

In 1951, upon learning of the existence of the Malewicz paintings in Germany, Dr. W.J. H.B. Sandberg, the director of the Stedelijk Museum in Amsterdam, paid a visit to Hugo Häring.<sup>326</sup> From 1951 to 1956, Sandberg's persistent attempts to obtain the Malewicz collection for the Stedelijk Museum were declined by Häring. After a long illness, finally in 1956, Hugo Häring agreed to lend the paintings to the Stedelijk Museum for restoration and exhibition. The loan contract apparently contained an option for the Stedelijk

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<sup>322</sup> Spiegler, "Surviving War and Peace: The Long Road to Recovering the Malevich Paintings":5.

<sup>323</sup> Ibid.

<sup>324</sup> The others had already fled to other countries.

<sup>325</sup> Spiegler, "Surviving War and Peace: The Long Road to Recovering the Malevich Paintings":5.

<sup>326</sup> The Stedelijk Museum is a modern art museum owned by the City of Amsterdam, The Netherlands.

museum to purchase all of the works. Since 1958, the Malewicz collection has been housed in the Stedelijk Museum.<sup>327</sup>

After the fall of the Soviet Union, and since 1996, the Malewicz heirs had sought the return of the paintings from the Stedelijk Museum and the City of Amsterdam, alleging that the documents related to the loan contract were fraudulent. In September, 2001, the City of Amsterdam denied their request, claiming that the Stedelijk Museum was the rightful owner of the paintings. In 2003, fourteen pieces from the collection of forty-eight Malewicz paintings at the Stedelijk Museum, were sent on loan to the United States for exhibition at the Solomon R. Guggenheim Museum in New York, and later at the Menil Collection in Houston, Texas.<sup>328</sup> Two days before the paintings were to be returned to Amsterdam, the Malewicz heirs brought an action in US federal court without seizing the paintings, since under the rules of IFSA<sup>329</sup>, the US State Department had granted the City of Amsterdam immunity from seizure protection for the paintings.<sup>330</sup>

The City of Amsterdam argued that the IFSA immunity clearly shielded the paintings from the prospect of being subject to lawsuit. The argument was

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<sup>327</sup> Spiegler, "Surviving War and Peace: The Long Road to Recovering the Malevich Paintings":5.

<sup>328</sup> Ibid.

<sup>329</sup> 22 USC §2459 - Sec. 2459. Immunity from seizure under judicial process of cultural objects imported for temporary exhibition or display. Enacted in 1965, the Immunity From Seizure Act (the I.F.S.A.) provides the President with the authority to grant immunity from seizure under judicial process for artworks temporarily in the United States under a loan agreement with a United States museum.(source: Rodney M. Zerbe, *COMMENT: Immunity from Seizure for Artworks on Loan to United States Museums*, Northwestern University School of Law Northwestern Journal of International Law & Business, Winter, 1984-85).

<sup>330</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":292.

supported by the State Department's assertion that the IFSA immunity was meant to ensure protection against such cases being brought against the foreign sovereign. The State Department also reminded the court that the purpose of 22 U.S.C. §2459 [the IFSA] was "to encourage the exhibition in the United States of objects of cultural significance, which in the absence of such assurances. . . would not be made available".<sup>331</sup> The City of Amsterdam further declared that had it known that the paintings could be subject to a lawsuit, the collection would have never been loaned to American museums. The *Malewicz* court, however, allowed the claim without seizure, maintaining that the paintings only had to be present in the United States at the moment when the suit was filed, not during the proceedings.<sup>332</sup>

According to Caprio, the *Malewicz* court did not take into account the general public's perception of museum loans as non-commercial activities that allow for cultural and educational exchanges. The court did, however, stop short of ruling for the plaintiffs, in deference to the U.S. State Department. In a written brief, the State Department had warned, "Foreign states are unlikely to expect that this [commercial activity] standard is satisfied by a loan of artwork for a U.S. Government-immunized exhibit that must be carried out by a borrowing on a non-profit basis."<sup>333</sup> The State Department had further stated that "The possibility that such a minimum level of contact will necessarily suffice to provide jurisdiction

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<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid,293.

threatens to chill the willingness of sovereign leaders to participate in the section 2459 [IFSA] program."<sup>334</sup> According to Caprio, the *Malewicz* court "reserved judgment to consider whether the commercial activities of the City of Amsterdam and its contacts with the United States were sufficient in satisfying the §1603(3)(e) substantial contacts requirement," whereby, "A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States."<sup>335</sup>

Caprio believes that the *Malewicz* case has served as a warning for foreign sovereigns that the IFSA only protects the property from being seized, and that a U.S. lawsuit is still a possibility.<sup>336</sup> The author further asserts that even if the *Malewicz* court were to ultimately dismiss this claim, the case may have left a negative impression on foreign states who in the future must decide whether to loan artwork to U.S. museums and galleries, especially when dealing with multi-million dollar artwork. According to Caprio, the *Malewicz* case could also result in a significant decrease in the number of art loans that provide educational and cultural opportunities to the U.S. population. In addition, in response to "the lack of comity offered to Dutch laws regarding this claim," art loans from the United States may also be faced with challenging litigation risks abroad. In Caprio's

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<sup>334</sup> Ibid.

<sup>335</sup> Ibid,293-294.

<sup>336</sup> Ibid.



opinion, "a detraction in cross-cultural art exchanges would not be hard to imagine."<sup>337</sup>

Of the scholarly articles that had addressed the legal issues related to foreign sovereigns and artwork with reference to FSIA, one in particular, focused entirely on the lawsuit involving the Persepolis Tablets.<sup>338</sup> In "Rubin v. the Islamic Republic of Iran: A Struggle for Control of Persian Antiquities in America," author James Wawrzyniak, Jr., concentrated on the terrorism exception provision of FSIA, and its application in the *Rubin et al* lawsuit. The author also presented a critique of the decisions made by the *Rubin et al* court, in reference to the plaintiffs' claims.<sup>339</sup>

According to Wawrzyniak, there was significant reason to believe that certain decisions rendered by the two judges in the case (Judge Ashman, and later Judge Manning) could be overturned in the federal courts of appeals.<sup>340</sup> Wawrzyniak also pointed out that the implications from the decisions made by the two judges were likely to spread quickly through the rest of the antiquities world. The author believed that "dealers, private collectors, museums, auction houses, and even nation-states would have an interest in the *Rubin et al* litigation, as the

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<sup>337</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":294.

<sup>338</sup> James Wawrzyniak, "Rubin v. The Islamic Republic of Iran: a Struggle for Control of Persian Antiquities in America," *Harvard Law School Student Scholarship Series*, no.17(2007),1-57.

<sup>339</sup> Wawrzyniak, "Rubin v. The Islamic Republic of Iran: a Struggle for Control of Persian Antiquities in America":4.

<sup>340</sup> *Ibid*,54.

fate of these important Persian antiquities could be a warning sign of things to come."<sup>341</sup>

### Foreign Relations/Politics

One of the issues brought to light in lawsuits related to FSIA has been the impact that such cases could bear on the relations between United States and foreign sovereigns. In general, legal cases citing FSIA have involved U.S. citizens or companies as plaintiffs, and a foreign sovereign as a defendant. In a number of such court cases, economic loss had been the issue, generally suffered by the plaintiff as a result of a sudden change in the national politics and policies of the defendant country (namely, a foreign sovereign).

In "Jurisdiction Under the Foreign Sovereign Immunities Act for Nazi War Crimes of Plunder and Expropriation," published in the *NYU Journal of Legislation and Public Policy*, author Michael D. Murray pointed to a number of US Supreme court cases that had involved American claimants and foreign sovereigns as defendants.<sup>342</sup> According to Murray, since the enactment of FSIA, most of the Supreme Court cases on sovereign immunity have involved commercial transactions.<sup>343</sup> In their claims, the plaintiffs had employed the "commercial activity" exception of the FSIA. In later years, however, a number of individuals used the "terrorism" exception of FSIA to bring suits against foreign governments and their agencies, seeking compensation for pain and suffering

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<sup>341</sup> Ibid.

<sup>342</sup> Michael D. Murray, "Jurisdiction Under the Foreign Sovereign Immunities Act for Nazi War Crimes of Plunder and Expropriation," *NYU Journal of Legislation and Public Policy*, vol.7, (2004),223-286.

<sup>343</sup> Ibid,256.

sustained as a result of a terrorist act either within the boundaries of the foreign nation, or due to policies set by the foreign sovereign (i.e. Libya, Islamic Republic of Iran). A quick survey of the lawsuits citing FSIA revealed that relations between the United States and the majority of the foreign sovereigns targeted in these cases had been less than cordial. In fact, in some instances (i.e. Cuba, Libya, Islamic Republic of Iran), relations have been that of hostility or animosity.

In recent years, court cases relating to artwork and cultural property, and involving foreign sovereigns have added a new dimension to the issues facing the United States in matters pertaining to foreign relations. The *Altmann* and *Malewicz* lawsuits involved two European allies of the United States - Austria and The Netherlands(Holland). At one point, the two cases threatened the amicable and close relationship between these two countries and the United States. In fact, in *Altmann v. Republic of Austria*, the Bush Administration came to the defense of the Austrian government, contending that Austria cannot be sued through the U.S. court system due to concerns over strained relations between the two countries which could result from the proceedings.<sup>344</sup> The Malewicz case threatened to jeopardize the amicable relations between the United States and The Netherlands (Holland).

In another court case, the family of a Russian merchant whose property had been seized by the Russian government during the 1917 Bolshevik Revolution, had filed a suit in the United States against the Russian Federation. This lawsuit however, bore certain similarities to the *Rubin et al* case. Similar to

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<sup>344</sup> Goldsleger, "Contemplating Contradiction: A Comparison of Art Restitution Policies":119.

*Rubin et al* lawsuit, the "commercial activity" exception under 28 USC§1065 clause of the FSIA was cited as cause for claim. Another similarity with the *Rubin et al* case was the failure of the defendants to respond to the suit, which resulted in a "bench trial". The court issued an "order of default" and awarded the plaintiffs \$234 million. Another similarity between the two cases was the court's decision to deny the defendants' motion to vacate the judgment.<sup>345</sup>

Such court rulings may, in fact, have caused a number of foreign sovereigns to shy away from expanding and enhancing cultural exchanges between their countries and the United States. In early 2009, news reports indicated that Syria had withheld artifacts that had been selected to go on display for an "on loan" exhibit at the Metropolitan Museum of Art in New York City. According to a statement by the Archaeological Institute of America, despite a request made by the Metropolitan Museum to the State Department for a grant of immunity for the loaned materials, Syrian officials were concerned that the immunity would be insufficient protection, and as a result, the transfer of the artifacts for exhibit in the United States came to a halt.<sup>346</sup>

Compared to *Altmann* and *Malewicz* cases, the *Rubin et al* lawsuit entailed a different form of political and diplomatic association. Relations between the United States and the Islamic Republic of Iran have been strained for over three decades. A number of lawsuits have since been brought in U.S. courts against the

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<sup>345</sup> "Government Seizes Property: Foreign Sovereign Immunities Act: Economic Loss: Verdict," *Law Reporter*, Association of Trial Lawyers of America, Apr 2000.

<sup>346</sup> Alison Sider, "Trial of the Centuries," *Chicago Maroon*, March 9, 2009. (www.chicagomaroon.com)

Islamic Republic of Iran. The majority of these lawsuits were filed on behalf of individuals and companies. The Islamic Republic of Iran has also been named as "defendant" in a number of civil lawsuits in U.S. courts, for its role as a "state sponsor of terrorism." In the majority of those cases, the plaintiffs cited Section 28 USC§1602 of the Foreign Sovereign Immunities Act (FSIA), as a basis for their claims.<sup>347</sup> In all of these lawsuits, punitive damages were awarded to the plaintiffs in a "bench trial", since the Iranian government did not respond to any of the claims in court.<sup>348</sup>

While legal experts have known about previous cases against the government of Iran, the case of the Persepolis Tablets has been unique in a number of ways. For one thing, the *Rubin et al* case created an unusual alliance between the governments of the United States and Iran despite the fact that diplomatic relations between the two countries have been suspended since the 1979 hostage crisis. The U.S. State Department twice filed statements of interest regarding the case of the Persepolis Tablets - one supporting the University of Chicago's right to assert Iran's immunity, and another in support of the interpretation of the statute by the University of Chicago.<sup>349</sup> The Justice Department also lent its support of the immunity claim by the defendants under FSIA. After more than thirty years, some observers believed, the legal crisis

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<sup>347</sup> Public Law 94-583, 28 USC 1602. *Findings and declaration of purpose*. ". . . Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities."

<sup>348</sup>"Passengers Held by Hijackers: Foreign Sovereign Immunities Act Violations," *Law Reporter*, Association of Trial Lawyers of America, August 2002.

<sup>349</sup> *Ibid.*

regarding the Persepolis Tablets may have created an unusual opportunity for cooperation between the two governments.<sup>350</sup>

Notwithstanding this exception, the *Rubin et al* case can be particularly problematic for the image of the United States from a diplomatic viewpoint. Other countries and governments may perceive the final ruling in this lawsuit as evidence of politics overriding cultural interaction and exchange of ideas. The ruling may also present a negative view of the United States in regards to culture, heritage and history, especially for the non-western world and source nations. By allowing national and domestic laws to prevail in matters of international and global significance, the United States is likely to be perceived as insensitive, particularly if the U.S. foreign policy does not include adherence to local and state laws of other countries. Many of the "most favored nation" treaties will have to be re-examined as well, in reference to certain clauses that may have provided legal protection for U.S. residents in other countries.

#### Cultural Institutions

Traditionally, the United States government has granted a large amount of deference to foreign sovereigns regarding ownership rights in regards to artwork and cultural heritage property. Charlene Caprio pointed out that "principles such as grace and comity with other nations, respect for cultural heritage property ownership, and increasing public access to art, were reflected in a number of U.S. legislative measures," including: CPIA (The Convention on Cultural Property

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<sup>350</sup> Ibid.

Implementation), ARPA(The Archaeological Resources Protection Act), and NAGPRA (The Native American Graves Protection and Repatriation Act).<sup>351</sup>

Such legislative acts, Caprio asserted, were indicative of a strong position held by the United States in recognizing and protecting ownership rights of cultural heritage property.<sup>352</sup>

Caprio contended that rulings in cases involving artwork and the FSIA, have extended the judicial arm of the U.S. government into collections of art and cultural heritage owned by foreign sovereigns and their agents. As a result, foreign sovereigns may very well keep their collections out of the reach of U.S. litigation, as well as, the U.S. population at large.<sup>353</sup> The *Altmann* and *Malewicz* cases warned the international community in general, and foreign sovereigns in particular, of the fact that at any time cultural property could be subject to lawsuits in the U.S. courts. The rulings in the two cases also emboldened

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<sup>351</sup> CPIA- The Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601-13, is the legislation that implements the U.S.'s ratification of the 1970 UNESCO Convention to curb archaeological pillage and illicit trafficking in cultural property. The CPIA grants the President the authority to impose import restrictions on categories of archaeological and ethnological materials that are vulnerable to pillage following a request from another State that is a party to the Convention. Such a request is filed because a State Party believes that pillage is placing its cultural heritage in jeopardy. (Source: <http://www.archaeological.org/news/sitepreservation>).

ARPA- The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470mm; Public Law 96-95 and amendments to it) was enacted "...to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals (Sec. 2(4)(b))". (Source: <http://www.nps.gov/archeology>).

<sup>352</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":285.

<sup>353</sup> *Ibid*,286.

individuals to pursue lawsuits claiming ownership of cultural property located beyond U.S. borders.<sup>354</sup>

Organizations involved in cultural resource management, especially museums, have been particularly wary of the outcome of the *Rubin et al* case, as it could have a negative impact on policies and practices of such institutions regarding acquisition of collections from other countries. As this may be the first case involving cultural property as a possible source of monetary compensation, many are concerned about its consequences in setting legal precedence for other claims.<sup>355</sup> The final decision in the *Rubin et al* lawsuit could have long-term effects on cultural institutions, not only from an educational, but also an economic standpoint. Donation of collections and material for exhibits could also be in jeopardy with regards to acquisitions and obtaining "on loan" material and exhibitions. Cultural institutions could also see an increase in estimated insurance costs, particularly liability insurance.

Another area of concern is that the final ruling in the *Rubin et al* lawsuit could impede cultural exchange programs between organizations in the United States and their counterparts in other countries. Cultural institutions in the United States are also troubled by the influence that the outcome of *Rubin et al* could have on the willingness of other countries to loan their artifacts and collections to American institutions. There is also cause for alarm as to the safety of American

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<sup>354</sup> Ibid.

<sup>355</sup> Robin Pogrebin, "In a Lawsuit Aimed at Iran, Terror Victims Focus on Ancient Artifacts in a Chicago Museum," *The New York Times*, July 18, 2006. ([www.nytimes.com/2006/07/18/arts/design/18pers.html](http://www.nytimes.com/2006/07/18/arts/design/18pers.html))



artifacts currently on exhibit in cultural institutions abroad. With such precedents it is likely that political, governmental and policy changes towards the United States could bear heavily on the station and safety of collections of American artifacts in foreign countries.

American universities and academic institutions are concerned about the possible lack of interest by other institutions, as well as governmental restrictions that may be placed on materials and artifacts for research and study in U.S. institutions. Such rulings also have the potential to deter future U.S. cultural art exchanges, and can greatly restrict the extent of research being conducted by scholars in the United States in areas related to art and archaeology. In so doing, important activities and efforts to enhance knowledge about world histories and cultures could be hampered.<sup>356</sup>

Artifacts and collections currently in American institutions could become subject to repatriation, which is an issue that has been of growing concern for experts in cultural resource management, especially museum professionals. Recently a number of governments and individuals have employed the U.S. legal system to seek the return of cultural property and artifacts. The government of Italy has demanded the repatriation of a number of its artifacts, in a lawsuit against the Metropolitan Museum of Art, the Getty Museum, and the Museum of Fine Art in Boston, claiming that the artifacts were looted and illegally exported.<sup>357</sup> The Islamic Republic of Iran has itself been attempting to repatriate a

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<sup>356</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":286.

<sup>357</sup> Braverman Puma, "Worth millions . . . or priceless?".

number of ancient Persian artifacts. The Islamic government's similar efforts in British courts, however, have as yet been unsuccessful, as the courts ruled that the artifacts would be subject to British and French laws.<sup>358</sup>

Caprio argued that an attachment of the Persian artifacts in *Rubin et al* would be against the spirit of all U.S. legislation that attempts to respect and promote national ownership of cultural heritage property. Caprio also pointed out that the interests of archaeology and anthropology should be considered. In her argument, Caprio contended that the irreparable harms that an attachment will cause should outweigh the justice that the individuals are seeking in this case.<sup>359</sup>

James Wawrzyniak argued that a final outcome in which the *Rubin et al* plaintiffs are allowed to assert Iranian ownership of the artifacts in the museum, attach them in a court of law and order their auction to the highest bidder in satisfaction of their judgment, would have serious consequences for all cultural property located in the United States.<sup>360</sup> In Wawrzyniak's view, in the event that such an outcome, "though highly unlikely under the correct application of U.S. and International law, occurs, it would be especially shocking to those who believe that "cultural property" should be treated differently than other forms of assets."<sup>361</sup>

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<sup>358</sup> AFP, "Christie's Withdraws Ancient Iranian Artifact From Sale," *Middle East Times*, April 21, 2005.

<sup>359</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":302.

<sup>360</sup> Wawrzyniak, "Rubin v. The Islamic Republic of Iran: a Struggle for Control of Persian Antiquities in America":54.

<sup>361</sup> *Ibid*, 54-55.

The most immediate, and perhaps greatest impact from the final ruling in the *Rubin et al* lawsuit, would befall the historical research that is being conducted by scholars and researchers at the Oriental Institute. The court's decision would directly affect their work, if not bring their research to a complete halt. In his presentation at a conference held in November 2007, Matthew Stolper of the Oriental Institute provided a concise overview of the story of the Persepolis Tablets and their plight. Stolper also aptly noted the consequences of the outcome of the lawsuit, which in his view, would cause an interruption in the study of the artifacts, which after more than seventy years, is still ongoing.<sup>362</sup>

In short, the outcome of the case of the Persepolis Tablets, though not easily discerned at this point, has the potential of becoming a "Pandora's box", if local, state and federal officials fail to realize the possible consequences of a hasty decision. This is the case of individual rights vs. national heritage, or as some experts consider "humanity's cultural heritage".<sup>363</sup>

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<sup>362</sup> Matthew Stolper, "The Persepolis Fortification Tablets and The Persepolis Fortification Archive Project At the Oriental Institute"(paper presented at SSZ Conference, Burr Ridge, IL, November 2007:1-11).

<sup>363</sup> Merryman, "Two Ways of Thinking About Cultural Property":853.

## Chapter 5

### CONCLUSION

Culture relates to customs and social practices of a group of people bound together by ethnic, religious, historical and/or geographic commonalities. Cultural heritage can be restricted to the boundaries of one nation (by today's standards) or encompass a vast region. Politics and governments can also envelop a wide expanse. What sets culture apart from politics and governments is a matter of longevity. As the culmination of a series of beliefs, practices and standards (both material and intangible), culture has had the ability to withstand the test of time. Politics change; so do governments, even during a person's lifetime. Culture, however, has been a survivor - of time, and of memory.

Wars, conflicts, and disasters (natural and man-made) have changed the physical boundaries of a region, forming new borders and new nations, and have caused the relocation of scores of people to other parts of the world. Yet, a much stronger force has kept the same group of people together, helping them to maintain a certain sense of identity and distinction. That force is none other than their cultural heritage. Due to its unifying nature, culture has also played a positive role in establishing relations between groups and nations. The use of cultural programs as "good will ambassadors" has been a mainstay of diplomatic relations throughout the world. Some of the most successful efforts in U.S.

foreign policy have, in fact, been accomplished with the aid of cultural programs and exchanges.<sup>364</sup>

The lawsuit involving the Persepolis Tablets has brought to light the adverse effects that singular events could impose on efforts aimed at bringing people and nations closer to each other. Such efforts include cultural exchange programs that have generally centered around the performing arts and exhibitions. It should be noted that the exchange of ideas in the form of education, research and scholarship have also constituted a prominent form of cultural exchange and interaction, particularly in areas related to history, anthropology and archaeology. In my view, this fact is no more true than in the case of the Persepolis Tablets, where a group of scholars from the United States, through extensive and painstaking research, have been providing the Iranian people with new clues and valuable information about their past history and heritage.

With that in mind, this case study set out to examine the *Rubin et al* lawsuit and determine whether its outcome could, in fact, have implications beyond its immediate scope. In so doing, a review of the *Rubin et al* lawsuit has been presented herein, as well as a historical overview of the Persepolis Tablets - the artifacts that have become subject to attachment claims by the plaintiffs in the lawsuit. Emphasis was placed on the history of the tablets and their discovery, in order to illustrate the significance and importance with which these objects are viewed by scholars and experts in related fields of study. Information about the Persepolis Tablets also draws attention to the fact that subjecting these artifacts to

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<sup>364</sup> For example, the USSR Bolshoi Ballet touring the U.S. during the Cold War years; the "Ping Pong" policy of the Nixon Administration in China.

any form of disbursement, i.e. auction or sale, would be unwise, even from an economic (and/or business) point of view.

This case study has also asserted that the final ruling - subjecting the objects to an auction sale - could impact various government-related programs and policies. Of great importance would be the implications that such a ruling could have on programs related to cultural exchange and cooperation, especially pertaining to education and research programs. The value of the concept of "grace and comity" between the United States and many nations could be diminished, as a number of governments and nations could alter their views and policies towards the United States, in reaction to this ruling. Cultural exchange programs could be immediately and directly affected, as foreign sovereigns could decrease the level and extent of such endeavors involving the United States and its organizations.<sup>365</sup>

The implications of the final ruling in the *Rubin et al* lawsuit could have an immediate effect on cultural institutions in the United States. Such organizations would suffer setbacks in their efforts to provide programs and exhibitions that enhance our knowledge of other cultures. Efforts to promote American culture and history around the world would also be jeopardized, as the sense of reciprocity of information would be altered by the negative effects of the outcome of lawsuits like *Rubin et al*. Of particular note would be the danger of the loss of research and scholarship opportunities for U.S. experts in related fields of study (for example archaeology, history, art history, and anthropology). A number of academic areas could also lose their competitive advantage in attracting

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<sup>365</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":285.

scholars and researchers from around the world, and promoting the expertise of U.S. institutions abroad.

This case study has maintained that implications could also influence U.S. diplomatic efforts and relations around the world. Using the U.S. court system to bring lawsuits involving artwork and ownership issues has already received negative reactions from foreign sovereigns, especially nations that were directly targeted by such claims. Some have viewed the lawsuits and subsequent rulings by what they consider to be national courts, as being contrary to the norms of international relations. Unsuccessful attempts by the U.S. State Department to halt the court proceedings or persuade the judges to dismiss these cases, have been perceived as a sign of weakness on the part of the U.S. government and its agencies. The U.S. court system has been viewed as a predatory entity that arbitrarily applies local and national laws to international matters. Implementing national legislation that would allow U.S. citizens to bring suits in U.S. courts, against any or every foreign sovereign, has also been met with negative reactions abroad.

Experts and scholars in areas related to arts management and law have warned against the consequences of court rulings in cases like *Rubin et al.* A number of scholarly works related to this lawsuit and other similar cases were examined in this work. In particular, published material that directly addressed lawsuits involving artwork and the provisions of FSIA, were utilized in my analysis.

Molly A. Torsen examined policies related to the protection of international cultural property (i.e. the 1970 UNESCO Convention and UNIDROIT<sup>366</sup>), and their objectives and implementation in the United States and other countries (i.e. Great Britain and Switzerland).<sup>367</sup> Emily Winetz Goldsleger studied the policy variances in handling cases of restitution requests, and questioned whether "all art and artifacts removed from the possession of individuals, nations, civilizations, or by an occupying power," should "be returned to their original owners?"<sup>368</sup> Goldsleger also pointed to the role of art administrators in providing assistance to source nations who lack the resources and skills necessary to properly care for their artifacts.<sup>369</sup>

Charlene A. Caprio focused on lawsuits involving artwork and repatriation, and the affect of FSIA and the "commercial activity" exception on their subsequent rulings.<sup>370</sup> James Wawrzyniak examined the *Rubin et al* lawsuit from a legal standpoint to present what he considered to be the shortcomings and

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<sup>366</sup> UNIDROIT Convention on Stolen or illegally Exported Cultural Objects (Rome, 24 June 1995).

<sup>367</sup> Molly A. Torsen, "Fine Art in Dark Corners: Goals and Realities of International Cultural Property Protection," *The Journal of Arts Management, Law, and Society*, vol. 35, no. 2, (Summer 2005): 89-107.

Molly A. Torsen (JD University of Washington School of Law, 2005) is the Vice President of International Intellectual Property Institute (IIPi). She is also currently working with the World Intellectual Property Organization (WIPO) on its Creative Heritage Project.

<sup>368</sup> Goldsleger, "Contemplating Contradiction: A Comparison of Art Restitution Policies":109.

<sup>369</sup> Ibid, 116.

<sup>370</sup> Caprio, "Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act":286.



flaws in the judgments rendered by the courts.<sup>371</sup> In an article regarding international law and the expropriation of foreign property, entitled "A Law of the Future or a Law of the Past? Modern Tribunals and the International Law of Expropriation,"<sup>372</sup> Patrick Norton addressed the Iran-United States Claim Tribunal. In his article, Norton addressed the valuation process whereby many tribunals seemingly "pluck the amount of an award out of thin air."<sup>373</sup> Norton further asserted that various methods of valuation used by tribunals to determine such amounts are likely to diminish the effect of the legal rulings. He also noted that in many cases, calculation of the award was based on speculative economic assumptions. Tribunals also may have been responding to highly political circumstances in which many arbitrations are held.<sup>374</sup> Norton contended that the calculation of amounts awarded to plaintiffs in tribunals influenced subsequent valuation processes that resulted in massive amounts being awarded to a number of claimants, thus setting precedence for plaintiffs in future lawsuits, including *Rubin et al.*<sup>375</sup>

Venus Bivar's work perhaps came closest to the case of the Persepolis Tablets, in terms of the value of the objects as part of a national heritage. In her

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<sup>371</sup> Wawrzyniak, "Rubin v. The Islamic Republic of Iran: a Struggle for Control of Persian Antiquities in America":39.

<sup>372</sup> Patrick M. Norton, "A Law of the Future or a Law of the Past? Modern Tribunals and the International Law of Expropriation," *The American Journal of International Law*, vol. 85, (1991),474-505.

<sup>373</sup> *Ibid*,495.

<sup>374</sup> *Ibid*.

<sup>375</sup> *Ibid*.

study regarding the fate of the artwork collection of Andre Breton, the founding father of Surrealism, Bivar focused on the role of memory in history and the concept of collective memory which bears similarities to the Persepolis Tablets in their value as national cultural property and cultural heritage.<sup>376</sup>

Ultimately, the final ruling in the *Rubin et al* lawsuit, as it stands, would serve as precedent for other claimants targeting every possible means for seeking monetary compensation. Cultural property, collections of artifacts and antiquities will not be immune to such legal tactics. The outcome would be detrimental to the sense of trust embodied in the stewardship of cultural property and preservation of cultural heritage, for which cultural institutions stand.

#### Omissions

The court case involving the Persepolis Tablets comprised of multiple dimensions, each worthy of detailed study and examination. For example, circumstances that led to the bomb attack, and the terrorist organization ( Hamas) that claimed responsibility for the attack could be analyzed. The political environment of the region (the Middle East), and the role of the Islamic Republic of Iran as a "state sponsor of terrorism" including its role in this particular incident, are also topics that warrant further investigation. Another important subject for further study would be the effect of terror attacks on ordinary people, and the story of the victims of the bombing who in turn became the plaintiffs in the *Rubin et al* lawsuit. The political atmosphere in which the lawsuit was

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<sup>376</sup> Bivar, "History For Sale: The International Art Market and the Nation State":267.

presented is another example of future topics of study that could stem from this particular lawsuit.

Other issues could also be of interest for scholarship and research. For example, the court proceedings and legal representations for the parties to the lawsuit could become a topic of review for legal scholars. The ineptitude of the Islamic Republic of Iran to seek suitable legal representation and its disregard for the magnitude of the issue at hand, could also be analyzed, as well as that government's lack of adherence to the necessary protocol for legal representation. Researchers could also examine the extent and accuracy of the information that was disseminated in court in relation to the Persepolis Tablets and their legacy, as well as the testimony of experts on both sides, in order to determine whether scholars and researchers at the Oriental Institute (University of Chicago) were sought to provide expert opinion about the artifacts. The role of FSIA and its provisions was another key component of the *Rubin et al* lawsuit. The history of this legislative act, its enactment and its major features, could also be a very interesting topic of study.

My study, however, has concentrated on the final ruling of the lawsuit and the possibility of its future implications. Other aspects of the lawsuit are left for experts in law and legal history, political history, foreign policy, and political science (among others) to contemplate and consider for further study. Though fascinating and intriguing, these areas were outside of the scope of this case study, and more importantly, beyond my level of knowledge and expertise. For this case study, I also refrained from delving into the policies that currently exist in relation

to the protection of cultural property. My research had revealed that thus far the majority of the policies primarily (if not exclusively) address matters related to stolen property and repatriation issues.

#### Opportunities for further study

Scholarship addressing the *Rubin et al* lawsuit and the case of the Persepolis Tablets, has generally risen from fields of study related to the arts and the law. What has been missing, in my view, is research by experts in history, especially public history.

The economic effects of a court ruling as in the *Rubin et al* lawsuit, on cultural and academic institutions, could be closely examined by scholars in the areas of business and economics, as well as experts in the humanities. Special attention should be paid to the impact on university museums and academic programs which could experience significant decline in fundraising and cultural and exchange programs (including research and educational exchange). A survey, or an impact study of the institutions conducted at local, regional and national levels, could determine the extent to which these issues could impair the efforts and activities of programs involved. The effect on job security, employment opportunities and business activities related to cultural programs could also be addressed by experts to determine if, and how, the decline in cultural activities could impact the society at large.

The financial burden on cultural and academic institutions caused by legal issues such as the *Rubin et al* lawsuit could have dire consequences and result in budget shortfalls and constraints. A survey of legal counsels representing

academic and cultural institutions could illustrate the level and extent of their knowledge and awareness in regards to the organizations that they represent. Further studies could determine, if and how, detailed knowledge about cultural issues would enhance the ability of legal counsels to better represent their clients. For example, in the *Rubin et al* lawsuit, it was unclear (to me) whether the legal team for the University of Chicago provided ample information to the court, about the Persepolis Tablets and their value to scholarship and research. A better understanding of the significance of these objects could, perhaps, have influenced the judges' ruling.

In the absence of a national governing body (in the form of a government cabinet post) to support and address their concerns, cultural institutions and practitioners in the United States need to find more effective ways of presenting their issues of concern to national leaders, government agencies, and the public at large. Stronger lobbying efforts on the part of these organizations would provide them with better opportunities to voice their opinions and concerns at national and legislative arenas, especially in regards to enactment of laws that could adversely affect cultural programs in, and on behalf of, the United States.

The fate of the Persepolis Tablets is as yet unclear. A final decision by the court was to take place in September 2007, after the government of Iran had employed a law firm to represent its interests. In 2009, another group of claimants decided to "attach" the artifacts in their pursuit of locating sources of monetary

compensation.<sup>377</sup> On March 29, 2011, the Seventh Circuit Court of Appeals overturned the lower court's ruling that would allow the plaintiffs in the *Rubin et al* case to search for any and all Iranian assets in the United States to pay the judgment against Iran. Although the appeals court did not rule on the fate of the antiquities, it said the lower court "wrongly denied Iran its sovereign immunity," which it says "is presumed and did not need to be asserted in court by Iran."<sup>378</sup> The ruling also voided the lower court's order that all Iranian assets in the United States be disclosed, and sent the case back to the lower court for further proceedings "consistent with this opinion."<sup>379</sup>

The dynamic nature of this subject matter provides ample opportunities for further research as well as, reviews of previous studies, as changes in the final destiny of the Persepolis Tablets could require revisions to original theories and theses related to this topic. It is my hope that issues of this nature would be subject to broader and more in-depth studies by experts in this field in the near future, and that resolutions are made possible before matters reach a level of crisis.

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<sup>377</sup>"Terror victims seeking Persian relics in court - Fight over ancient tablets may have chilling effect on antiquities protection", *The Associated Press*, February 22, 2009. ([http://www.msnbc.msn.com/id/29319075/ns/us\\_news-crime\\_and\\_courts/from](http://www.msnbc.msn.com/id/29319075/ns/us_news-crime_and_courts/from))[accessed 3/14/2011]

<sup>378</sup> "U.S. court backs Iran in dispute over assets," *Reuters*, March 29, 2011. (<http://www.reuters.com/article/2011/03/29>)

<sup>379</sup> *Ibid.*

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APPENDIX A  
MAP OF IRAN

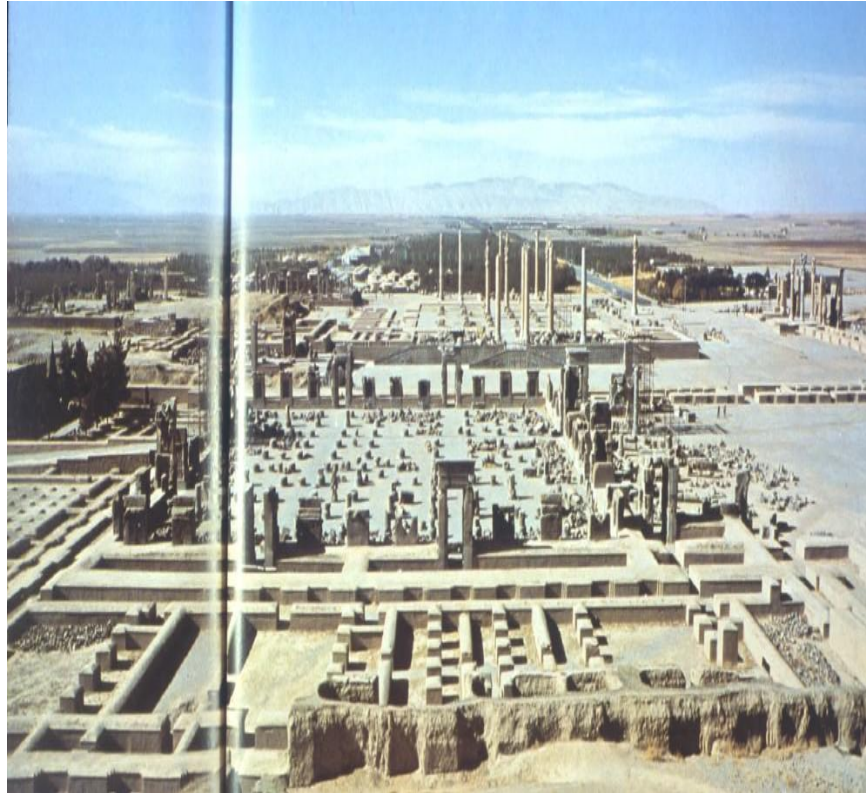




(Source: [www.lonelyplanet.com/maps/middle-east/iran](http://www.lonelyplanet.com/maps/middle-east/iran))

APPENDIX B

PHOTOGRAPH - PERSEPOLIS RUINS

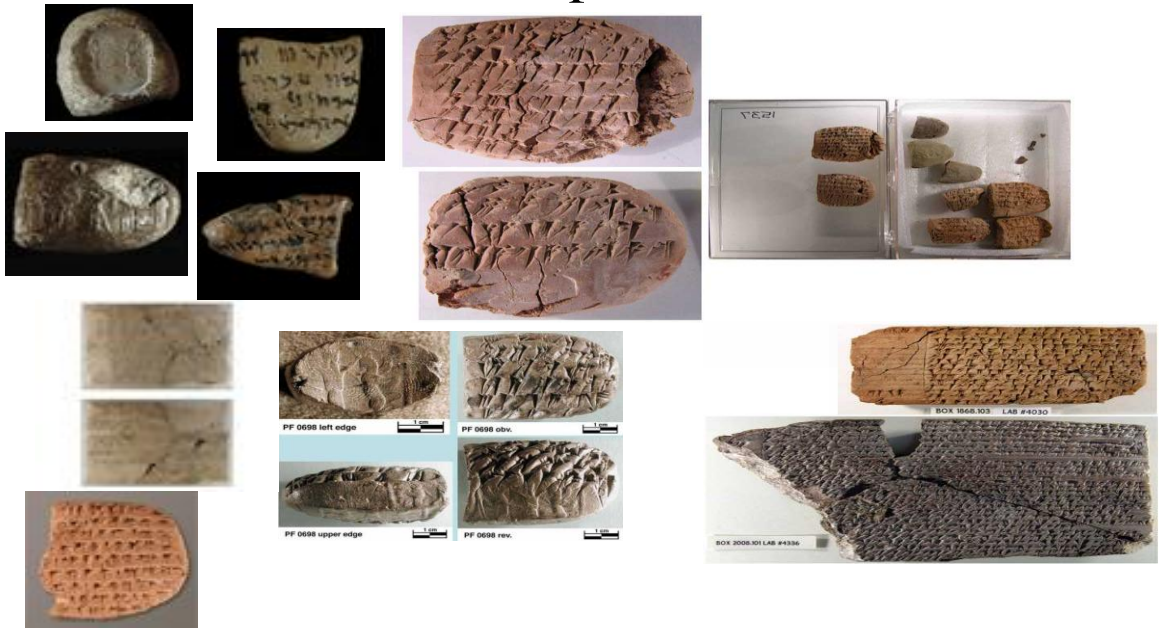


(Source: [www.utexas.edu/courses/introtogreece/.../img9achaemendmap.html](http://www.utexas.edu/courses/introtogreece/.../img9achaemendmap.html))

APPENDIX C

PHOTOGRAPH - THE PERSEPOLIS TABLETS

# The Persepolis Tablets



(Source: The Persepolis Fortification Archives,  
<http://oi.uchicago.edu/research/projects/pfa>)