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From Repatriation to Cooperation: Gustaf Nordenskiöld's Mesa Verde Collection

FROM REPATRIATION TO COOPERATION: GUSTAF NORDENSKIÖLD'S MESA VERDE COLLECTION

David M. Barnes¹

ABSTRACT

Though Swedish explorer and scientist Gustaf Nordenskiöld was far from the first individual to excavate at what is now Mesa Verde National Park in Colorado, reports and rumors that a foreigner was shipping antiquities and human remains excavated at Mesa Verde out of the country sent some American citizens into an uproar. The controversy led to Nordenskiöld's arrest and the seizure of his 1400-plus pound Mesa Verde collection, but charges were dropped when it was later discovered that he broke no laws at the time by digging on American public land. More than 100 years have passed since Nordenskiöld shipped his collection back to Sweden, but inquiries into the possessory status of his collection continue today. This article analyzes those inquiries and the legal bases upon which they rest. It discusses the impact of nationalism and legality in shaping arguments, both for and against, the repatriation of Nordenskiöld's collection. Moreover, it details the influence Nordenskiöld played in impacting the creation of the American Antiquities Act of 1906 and the establishment of Mesa Verde National Park. Using interviews and email communications from private citizens and representatives from the National Park Service and National Museum of Finland, the current home of Nordenskiöld's collection, this article also tells the story of the 1991 loan of 17 objects from the National Museum of Finland to the National Park Service as part of a Nordenskiöld centennial exhibit. Finally,

¹ Student, Stanford Law School. My appreciation to Robert C. Heyder, Irving L. Diamond, Elizabeth Bauer, Judith Reynolds, Gustaf Arrhenius, and Heli Lahdentausta for taking the time to speak or email with me regarding this project. This article would not have been possible without their generosity and time. I would also like to thank my mother, Elizabeth Barnes, for all of her support and encouragement throughout law school.

it provides a discussion on the current possessory status of Nordenskiöld's Mesa Verde collection.

I. INTRODUCTION

Gustaf Nordenskiöld, son of famed international explorer and discoverer of the Northeast Passage, Nils Adolf Erik Nordenskiöld, first visited the ruins of what is now Mesa Verde National Park in Southwestern Colorado in 1891 while on a journey across the world.² Though originally intended to only be a quick “look-see” at the now-famous cliff dwellings of the region, Nordenskiöld's visit transformed into a four-month long stay and the first extensive archaeological study of the Mesa Verde ruins.³ Nordenskiöld's study culminated in the publication of his landmark work, *The Cliff Dwellers of the Mesa Verde, Southwestern Colorado: Their Pottery and Implements*, and drew scientific acclaim both in the United States and Europe.⁴ It also sparked an international controversy that captured the attention of diplomats on both sides of the Atlantic and helped prompt both the creation of Mesa Verde National Park and the American Antiquities Act of 1906.

The unrest regarding Nordenskiöld centered on his shipping of artifacts and human remains excavated at Mesa Verde back to Sweden. Though Nordenskiöld was far from the first individual to remove artifacts from the Mesa Verde region – local residents had started collecting artifacts from the region more than a decade before – many locals took offense at the idea of a “foreigner” shipping American relics out of the country.⁵ Within a twenty-four hour span in September 1891, Nordenskiöld found his fifteen crate and two barrel collection of antiquities and remains bound for Sweden seized and himself under arrest for allegedly removing the

² PIRJO VARJOLA, NATIONAL BOARD OF ANTIQUITIES, GUSTAF NORDENSKIÖLD: MESA VERDE 1891 2 (Gillian Häkli, trans., 1992).

³ See JUDITH REYNOLDS & DAVID REYNOLDS, NORDENSKIÖLD OF MESA VERDE: A BIOGRAPHY 55 (Suzanne Ramberg-Becker, trans., 2006); Florence C. Lister, *The Man and His Legacy*, in GUSTAF NORDENSKIÖLD: PIONEER ARCHAEOLOGIST OF MESA VERDE 2-3 (1991).

⁴ VARJOLA, *supra* note 2, at 2.

⁵ REYNOLDS, *supra* note 3, at 49, 69.

artifacts from the Southern Ute Indian Reservation.⁶ The contentious case, in which United States Attorney General, Secretary of State, and Secretary of Interior, as well as the Swedish Minister for Foreign Affairs and the Swedish Consulate General in New York became involved, was eventually dropped because it was determined that Nordenskiöld removed the artifacts and remains from public land, which was not forbidden at the time, and not from an Indian reservation.⁷

With the charges dropped, Nordenskiöld shipped his collection of artifacts back to Sweden. He then sold it in 1893 to Finnish collector Herman Frithiof Antell.⁸ Upon his death in 1893, Antell bequeathed Nordenskiöld's Mesa Verde artifacts to the Finnish people, with the collection eventually ending up at its current home, the National Museum of Finland's Museum of Cultures.⁹ Though more than a century has passed since Nordenskiöld removed his collection of artifacts and remains from Mesa Verde, inquiries into the possessory status of these objects have been raised throughout history and continue today.

This article examines those inquiries and the legal bases upon which they rest. It proceeds as follows. Part II begins by providing the factual background of Nordenskiöld at Mesa Verde and the story of how his collection of artifacts came to arrive at the National Museum of Finland. Part III follows by identifying the principles underlying possessory claims made by various parties to his Mesa Verde collection. Then, Part IV examines relations between the National Park Service and the National Museum of Finland regarding the collection. In particular, the early failed repatriation efforts by the National Park Service, the 1991 loan of 17 objects from the National Museum of Finland's Nordenskiöld collection to the National Park Service, and recent updates on the possessory status of the collection are discussed. Information regarding the 1991 loan was personally obtained from individuals

⁶ REYNOLDS, *supra* note 3, at 69-70, 81.

⁷ Irving L. Diamond, *Much Trouble Some Expense No Danger*, in PROCEEDINGS OF THE ANASAZI SYMPOSIUM 1991 257, 263-65 (Art Hutcinson & Jack. E Smith, eds., 1991).

⁸ VARJOLA, *supra* note 2, at 2.

⁹ VARJOLA, *supra* note 2, at 2.

representing both the National Park Service and the National Museum of Finland as well as private citizens who facilitated the loan, specifically: Nordenskiöld's grandson, the National Park Service Curator in charge of the centennial exhibit, and a private citizen whose interest in Nordenskiöld thrust him into the middle of the loan negotiations. Part V provides concluding thoughts.

II. BACKGROUND: FROM COLORADO TO STOCKHOLM TO HELSINKI

Three weeks after the enactment of the American Antiquities Act of 1906, President Theodore Roosevelt established Mesa Verde National Park in Southwestern Colorado to “preserve the works of man.”¹⁰ Encompassing more than 5000 known archaeological sites,¹¹ including 600 cliff dwellings,¹² Mesa Verde was the first national park in the world designated to protect an archaeological site.¹³ The park, which currently attracts more than 500,000 visitors per year,¹⁴ was designated as a World Heritage Site in 1978 and is widely considered one of the premier archaeological sites in the world.¹⁵ At the time Nordenskiöld first visited the Mesa Verde region in 1891, however, the scientific community knew very little about the region's cliff dwellings or the people who inhabited them.

¹⁰ See *American Antiquities Act of 1906*, NATIONAL PARK SERVICE, <http://www.nps.gov/history/local-law/anti1906.htm> (last visited May 15, 2015); *History & Culture*, NATIONAL PARK SERVICE, <http://www.nps.gov/meve/learn/historyculture/index.htm> (last visited May 15, 2015) [hereinafter *History and Culture*].

¹¹ See *Preserving the Works of Man*, NATIONAL PARK SERVICE, <http://www.nps.gov/meve/index.htm> (last visited May 18, 2015).

¹² Cliff dwellings were rock and adobe dwellings built on the rock ledges and natural recesses of canyon walls and cliffs. See *Cliff Dweller*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/cliff%20dweller> (last visited May 23, 2015).

¹³ *History & Culture*, *supra* note 10.

¹⁴ *Visitation Statistics*, NATIONAL PARK SERVICE, <http://www.nps.gov/meve/learn/management/statistics.htm> (last visited May 29, 2015).

¹⁵ *Welcome*, MESA VERDE MUSEUM ASS'N., <http://www.mesaverde.org/> (last visited May 18, 2015).

A major turning point in Mesa Verde's history was the discovery of the Cliff Palace. Containing 150 rooms and twenty-three kivas,¹⁶ the Cliff Palace is the largest cliff dwelling at Mesa Verde.¹⁷ In 1885, Al Wetherill, a Mancos, Colorado, rancher whose Alamo Ranch was situated in close proximity to Mesa Verde, first saw Mesa Verde's Cliff Palace off in the distance, and in 1888, his son, Richard Wetherill, and future son-in-law, Charles Mason, inadvertently rediscovered the Cliff Palace during a snowstorm.¹⁸ Over the next year, the Wetherills located and mapped 182 nearby cliff structures, including the Cliff Palace, and began removing artifacts from the sites in large quantities.¹⁹ In 1889, after failing to generate interest from the Smithsonian Institution, the Wetherills sold a large collection of pottery, sandals, tools, bones, and other artifacts to the Colorado Historical Society for \$3000.²⁰ The Wetherills realized that the ruins of Mesa Verde had immense untapped potential to attract the attention of both the general public and the scientific community and reoriented their ranch towards attracting tourists, playing host to approximately 1000 visitors prior to losing their ranch in 1902.²¹ On July 2, 1891, Nordenskiöld himself arrived as a tourist at the Alamo Ranch.²²

Nordenskiöld never anticipated that his stay at Mesa Verde would total more than a couple days. In a letter to his father written the evening before he left his hotel in Denver for Mesa Verde, Nordenskiöld discussed his plans to visit Pike's Peak on his return trip

¹⁶ A kiva is a roofed chamber, usually built underground near homesites, used for ceremonial and political gatherings. See *What is a Great Kiva?*, CROW CANYON ARCHAEOLOGICAL CENTER, http://www.crowcanyon.org/EducationProducts/peoples_mesa_verde/definition_great_kiva.asp (last visited May 20, 2015).

¹⁷ See *Cliff Palace*, NATIONAL PARK SERVICE, http://www.nps.gov/meve/learn/historyculture/cd_cliff_palace.htm (last visited May 20, 2015).

¹⁸ REYNOLDS, *supra* note 3, at 51.

¹⁹ REYNOLDS, *supra* note 3, at 51.

²⁰ REYNOLDS, *supra* note 3, at 51.

²¹ REYNOLDS, *supra* note 3, at 52-53.

²² REYNOLDS, *supra* note 3, at 55.

from the ruins.²³ Al Wetherill remarked shortly after the lightly-packed Nordenskiöld arrived that Nordenskiöld “probably left all his baggage in Denver or Durango, because he drove out to the Alamo Ranch in a light buggy. His plan was just to go and take a look-see.”²⁴ Nordenskiöld’s plans, however, drastically changed when he discovered that the ruins of the Mesa Verde region had largely been ignored by scientific and archaeological study.

The opportunity to publish a groundbreaking scholarly study on Mesa Verde was not one that a budding scientist like Nordenskiöld could forgo. In 1889, Nordenskiöld graduated from Uppsala University in Sweden with an undergraduate degree in chemistry and mineralogy, presently described by the university as being comparable to an American Master of Science degree.²⁵ Enrolled as a graduate student, Nordenskiöld followed in the footsteps of his father and went on his own arctic expedition to Spitzbergen, an island located halfway between Scandinavia and the North Pole.²⁶ Nordenskiöld was successful in publishing a 71 page account of his arctic expedition in Sweden’s main scholarly journal in geology and mineralogy, *Proceedings*, but he came down with tuberculosis near the end of his voyage.²⁷

When Nordenskiöld’s doctors suggested the then-popular “travel cure” for tuberculosis, Nordenskiöld planned an ambitious trip that would take him across Europe, North America, and Asia.²⁸ Though the purpose of the trip was to combat his tuberculosis, Norden-

²³ Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (June 30, 1891) in *Letters of Gustaf Nordenskiöld*, 28 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, June 30, 1891*].

²⁴ BENJAMIN ALFRED WETHERILL, *THE WETHERILLS OF THE MESA VERDE: AUTOBIOGRAPHY OF BENJAMIN ALFRED WETHERILL* 215 (Maurine S. Flether ed., 1977).

²⁵ REYNOLDS, *supra* note 3, at 22.

²⁶ REYNOLDS, *supra* note 3, at 26.

²⁷ REYNOLDS, *supra* note 3, at 34-36.

²⁸ See REYNOLDS, *supra* note 3, at 38-42. Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (June 24, 1891) in *Letters of Gustaf Nordenskiöld*, 35 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, June 24, 1891*].

skiöld also viewed the trip as a unique opportunity to further his research and write additional articles for scholarly publication. Prior to arriving in Colorado, he sent back to Sweden drafts and manuscripts of articles he had written about phosphate caves in Florida and Kentucky's Mammoth Cave.²⁹ Upon visiting the Mesa Verde region for the first time, Nordenskiöld learned that an in-depth scientific study detailing the archaeological sites of Mesa Verde and its former inhabitants had yet to be conducted.³⁰ On July 3, 1891, before embarking with the Wetherills on a week-long exploration of some of Mesa Verde's archaeological sites, he wrote to his father, "As far as I can tell, the only scientific expedition which has examined [the archaeological sites of the Mesa Verde region] was the Jackson and Holmes party in 1874 The result of the expedition seems to have been only a small number of photographs and a rather incomplete knowledge of the appearance and extent of these remarkable buildings."³¹

Nordenskiöld's initial trip through the Mesa Verde region with the Wetherills confirmed his belief that a study of the region's archaeological sites had great scientific potential. For three days, the expedition party explored a cliff house which had not been previously excavated, and Nordenskiöld not only unearthed antiquities, but also he created detailed field sketches and artifact reports.³² Moreover, the expedition opened Nordenskiöld's eyes to the lack of professionalism with which many artifact hunters and prospectors were treating the archaeological sites of Mesa Verde and the

²⁹ Letter to Nils Adolf Erik Nordenskiöld, *supra* note 28 at 26; Letter from Gustaf Nordenskiöld to Anna Maria Mannerheim (June 27, 1891) in *Letters of Gustaf Nordenskiöld* (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Anna Marie Mannerheim, June 27, 1891*].

³⁰ See REYNOLDS, *supra* note 3, at 48-50 (describing the existing body of Mesa Verde research prior to Nordenskiöld's arrival. The existing scholarly record included studies by William Jackson and William Holmes on archaeological sites nearby, but outside Mesa Verde, and a chapter by Francois-Albert du Pouget, Marquis de Nadaillac that broadly discussed the cliff dwellings of the American Southwest in general without focusing on Mesa Verde).

³¹ Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (July 3, 1891) in *Letters of Gustaf Nordenskiöld*, 35 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, July 3, 1891*].

³² REYNOLDS, *supra* note 3, at 56.

great amount of damage their activities were causing the sites.³³ Many previous visitors to the archaeological sites had left the grounds they excavated in shambles. Walls were broken down to allow light to enter darker rooms, floorboards were removed, and centuries old kivas were destroyed to reveal their contents.³⁴ Moreover, prospectors who visited the region frequently used wooden beams from the cliff dwellings as their own firewood.³⁵ The Wetherills, who were greatly familiar with the ruins of the region, provided Nordenskiöld with the opportunity to excavate sites that previous visitors had left untouched.

At the end of his initial expedition, Nordenskiöld penned a letter to his father that served as a de facto grant proposal for a detailed and thorough study of Mesa Verde's archaeological sites.³⁶ In his letter, Nordenskiöld discussed the existing body of scholarly research on the cliff dwellings of the region, prior collections of artifacts taken from the archaeological sites, the financial costs of his study, and an outline of how his study would proceed.³⁷ To help persuade his father to help finance his study, Nordenskiöld noted that no museum in Scandinavia had a collection of artifacts from the Cliff Dwellers of the Southwest, selling a collection of Mesa Verde artifacts similar to the Wetherills' could easily cover the costs of his expedition "many times over," and that the warm and sunny climate of Southwest Colorado was having a positive effect on his tuberculosis treatment.³⁸ Nordenskiöld's father approved his request, Nordenskiöld immediately opened up a bank account at the First National Bank of Durango, and he commenced his study.³⁹

³³ Lister, *supra* note 3, at 2.

³⁴ Ronald F. Lee, *Vandalism and Commercialism of Antiquities*, in THE STORY OF THE ANTIQUITIES ACT, NATIONAL PARK SERVICE (1970), http://www.nps.gov/archeology/pubs/Lee/Lee_CH4.htm.

³⁵ *Id.*

³⁶ See REYNOLDS, *supra* note 3, at 57.

³⁷ REYNOLDS, *supra* note 3, at 57.

³⁸ REYNOLDS, *supra* note 3, at 57.

³⁹ REYNOLDS, *supra* note 3, at 58.

Nordenskiöld introduced a degree of scientific precision that previous excavations at Mesa Verde were lacking. As a chemistry and mineralogy student in college, Nordenskiöld never received formal archaeological training, but he was able to apply the skills he had learned in college to his archaeological digs at Mesa Verde.⁴⁰ In the process, Nordenskiöld taught the Wetherills, who housed him and served as his guides throughout his four months in Southwest Colorado, his careful methods of excavation.⁴¹ Whereas previously the Wetherills excavated relics with shovels and only took some photographs and notes of their dig sites, Nordenskiöld introduced them to the scientific method and tools such as the trowel, whisk broom, and camel's hair brush, as well as the concept of taking before and after photographs of their dig sites.⁴² Furthermore, unlike previous relic hunters who discarded and passed over many seemingly trivial items of archaeological sites, such as fragments of pottery and food remains, Nordenskiöld studied and took every individual object that surfaced in a dig.⁴³ As a result, both his knowledge about the history of Mesa Verde as well as his collection of artifacts began to grow significantly. He also began to attract the attention of influential locals.

On July 18, 1891, Nordenskiöld began a ten day excavation project at three of the cliff dwellings that would eventually compose a significant portion of his artifact collection: Step House, Long House, and Mug House.⁴⁴ When the well of artifacts began to run dry at these dig sites, in part because of the previously poor condition in which the sites were left, he began embarking on what he referred to as "tours of discovery," exploratory treks in search of new archaeological sites to excavate, with Al Wetherill.⁴⁵ Many of these treks involved Nordenskiöld and Wetherill travelling through rough terrain and dense brush and, most likely, portions of the Southern Indian Ute Reservation.⁴⁶ On August 4, 1891, Nordenskiöld left on an eight-to-ten day tour of discovery with Wetherill,

⁴⁰ VARJOLA, *supra* note 2, at 6.

⁴¹ REYNOLDS, *supra* note 3, at 58-59.

⁴² REYNOLDS, *supra* note 3, at 58-59.

⁴³ VARJOLA, *supra* note 2, at 6.

⁴⁴ VARJOLA, *supra* note 2, at 6; REYNOLDS, *supra* note 3, at 59.

⁴⁵ REYNOLDS, *supra* note 3, at 59-60.

⁴⁶ See REYNOLDS, *supra* note 3, at 59-60; Diamond, *supra* note 7, at 264-65.

but he hastily returned to Mancos upon learning that he had attracted the attention of local law enforcement.⁴⁷ On August 23, he wrote the following to his father:

“I have recently fallen into some difficulties with the authorities. One of the area’s two largest merchants became dissatisfied with me, since I bought all of my supplies from the other. He sent some sort of report to interested authorities, stating that a foreigner was busy destroying some of the most beautiful ruins. The result of this was a public notice in the Mancos post office, to approximately the following effect:

‘Nobody is allowed in this reservation for the purpose of procuring Indian (!) relics from the Aztec (!) ruins . . . No foreigner is allowed on the Indian land without permission . . . fine 1000 dollars.’”⁴⁸

The warning was based on §2134 of the Revised Statutes of the United States.⁴⁹ Under §2134, which was not repealed until 1934, any foreign citizen who entered Native American land without a valid passport from either a military or civilian authority stating the time, route, and object of his or her travels was subject to a penalty of \$1000.⁵⁰ Nordenskiöld wrote to his father that he “rode in haste” to the nearest military station to obtain a passport, and he successfully received a passport from a United States military officer.⁵¹ However, his passport contained the following provision, “[t]his

⁴⁷ REYNOLDS, *supra* note 3, at 61-62.

⁴⁸ Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (Aug. 23, 1891) in *Letters of Gustaf Nordenskiöld* (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, Aug. 23, 1891*].

⁴⁹ Diamond, *supra* note 7, at 258.

⁵⁰ Diamond, *supra* note 7, at 258.

⁵¹ *Letter to Nils Adolf Erik Nordenskiöld, Aug. 23, 1891, supra* note 48, at 45; REYNOLDS, *supra* note 3, at 73.

pass do not [sic] include any right of making excavations in the ruins.”⁵² Nordenskiöld received reassurance from Benjamin Ritter, Chief Official at the United States Land Office in Durango and a close personal friend, that he would be left alone as long as “no ruins were destroyed” by his excavations.⁵³ On September 8, 1891, Nordenskiöld shipped a collection of seven crates and two barrels of artifacts and remains to the Swedish Consulate in New York, with directions for the consulate to contact the Mineralogical Department of the Swedish National Museum, as a precautionary matter.

With Ritter’s backing and his permit handy, Nordenskiöld carried on with his excavation of Mesa Verde’s archaeological sites. What he did not know, however, was that some local citizens had caught wind that Mesa Verde artifacts and human remains were en route to Sweden. On September 16, 1891, after what Nordenskiöld described as an “ignorant newspaper” accused him of “vandalism” and “robbery” and claimed that he “must be stopped at once,” he wrote home that it was time for him to ship the rest of his collection back home and leave Southwestern Colorado.⁵⁴ Unfortunately for Nordenskiöld, though, neither his collection nor he would be leaving the United States in the foreseeable future.

On September 17, 1891, Nordenskiöld and Al Wetherill rode into Durango to ship Nordenskiöld’s newest collection of eight crates of artifacts and remains back to Sweden.⁵⁵ When they arrived at the shipping station for the Denver and Rio Grande Railroad, Nordenskiöld and Wetherill were informed not only that the railroad was refusing to ship Nordenskiöld’s eight crate collection, but also that the previous collection of seven crates and two barrels

⁵² Letter to Nils Adolf Erik Nordenskiöld, Aug. 23, 1891, *supra* note 48, at 45.

⁵³ Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (Sep. 9, 1891) in *Letters of Gustaf Nordenskiöld*, 51 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld*, Sep. 9, 1891].

⁵⁴ Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (Sep. 16, 1891) in *Letters of Gustaf Nordenskiöld*, 52 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld*, Sep. 16, 1891].

⁵⁵ REYNOLDS, *supra* note 3, at 69.

had been impounded while in transit to New York City.⁵⁶ Rumors circulated throughout Durango and Mancos that an arrest of Nordenskiöld was imminent, and a distraught Nordenskiöld sent a telegraph home to his father in Sweden stating, “[m]uch trouble some expense no danger Gustaf.”⁵⁷ A United States Marshal arrested Nordenskiöld near midnight that evening for allegedly violating §2134 of the Revised Statutes of the United States by illegally excavating Native American ruins.⁵⁸ Bail was set and posted at \$1000,⁵⁹ equivalent to over \$13,000 in 2015.⁶⁰

Nordenskiöld’s arrest captured international attention, making headlines in newspapers from Colorado to New York City and London.⁶¹ Meanwhile, in Sweden, the Wild West arrest of the son of one of the country’s most famous explorers captured the attention of both the public and government officials. Swedish Foreign Secretary Carl Lewenhaupt sent the following command via telegraph to his delegate in Washington, D.C., “[h]elp Nordenskiöld out of difficulties related in Herald London edition for about the twentieth.”⁶² While the Swedes agreed to hold Nordenskiöld’s shipments that were bound for Sweden until the legal matters were resolved,⁶³ the Swedish Minister for Foreign Affairs and the Swedish Consul in New York left numerous messages for the United States Commissioner of Indian Affairs, T.J. Morgan, pleading Nordenskiöld’s case.⁶⁴ From local citizens in Durango to United

⁵⁶ REYNOLDS, *supra* note 3, at 69.

⁵⁷ Letter to Nils Adolf Erik Nordenskiöld (Sep. 17, 1891) in *Letters of Gustaf Nordenskiöld*, 53 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, Sep. 17, 1891*].

⁵⁸ REYNOLDS, *supra* note 3, at 70.

⁵⁹ REYNOLDS, *supra* note 3, at 70.

⁶⁰ *CPI Conversion Factors from 1774 to Estimated 2024 to Convert Dollars of 1999*, OREGON STATE UNIV.,

<http://liberalalerts.oregonstate.edu/files/polisci/faculty-research/sahr/inflation-conversion/excel.cv1999.xls> (last visited May 30, 2015).

⁶¹ REYNOLDS, *supra* note 3, at 71.

⁶² REYNOLDS, *supra* note 3, at 76.

⁶³ Diamond, *supra* note 7, at 262.

⁶⁴ REYNOLDS, *supra* note 3, at 77.

States Government Officials, Americans were torn on what action, if any, should be taken against Nordenskiöld.

Nordenskiöld's controversy divided the people of Southwestern Colorado. Some local citizens went as far as to hire a lawyer, Reece McCloskey, partner at the Durango law firm Wilson and McCloskey, to advocate against Nordenskiöld shipping his collection to Sweden.⁶⁵ The most prominent opponent in the anti-Nordenskiöld faction, however, was Charles Bartholomew. As United States Indian Agent for the Southern Ute and Jicarilla Apache Reservations, Bartholomew had ordered the posting of the \$1000 warning signs at the Mancos Post Office in mid-August.⁶⁶ When Bartholomew learned that Nordenskiöld had been issued a passport to travel through the Southern Ute Reservation, he denied the legitimacy of the passport among his colleagues. Against the plain language of the statute, Bartholomew insisted that approval for Nordenskiöld's passport had to be granted from both a military and civilian authority and that Nordenskiöld's military-authorized passport was consequently invalid.⁶⁷

Upon learning that Nordenskiöld had shipped seven crates and two barrels of artifacts and remains back to Sweden, Bartholomew sent a formal letter of complaint to his supervisor, T.J. Morgan.⁶⁸ Bartholomew's persistent efforts eventually persuaded the United States District Attorney for Colorado, John D. Fleming, to issue the warrant that led to Nordenskiöld's arrest.⁶⁹ Bartholomew took full credit for the arrest of Nordenskiöld in a letter to Morgan, "I commenced an investigation and discovered that the Baron [Nordenskiöld] had . . . shipped several barrels and boxes of relics for Sweden. I therefore caused his arrest"⁷⁰

Nordenskiöld was not without his supporters, though. A significant number of local citizens actually supported Nordenskiöld and

⁶⁵ See REYNOLDS, *supra* note 3, at 73; Diamond, *supra* note 7, at 259.

⁶⁶ REYNOLDS, *supra* note 3, at 70.

⁶⁷ REYNOLDS, *supra* note 3, at 73.

⁶⁸ See REYNOLDS, *supra* note 3, at 72.

⁶⁹ Diamond, *supra* note 7, at 262.

⁷⁰ REYNOLDS, *supra* note 3, at 72.

believed that he did not do anything illegal.⁷¹ Though Nordenskiöld hired his own attorney, Adair Wilson, co-partner with Reece McCloskey at Wilson and McCloskey,⁷² the most influential ally in his camp proved to be the same individual who had told him earlier that he could continue digging as long as he did not damage the ruins: Benjamin Ritter. On September 19, 1891, two days after Nordenskiöld's arrest, Ritter penned a letter directly to O.P. Hubbard, Secretary of the Attorney General of the United States.⁷³ Ritter emphasized that Nordenskiöld in fact had a valid passport under §2134 and that he did not destroy any ruins.⁷⁴ His letter concluded:

“It does look hard that unscientific vandals, both native and foreign, should be permitted to efface and destroy, and they have done that, when an enthusiastic man who has some learning and preparation in such matters comes and does not even throw down a single stone, but prosecutes his investigations intelligently and for a scientific purpose, we should arrest him and hound him with every annoyance.”⁷⁵

Hubbard forwarded the letter to the Attorney General for the United States, William Miller.⁷⁶ On September 25, 1891, Miller passed the letter on to the Secretary of the Interior, John Noble, with the instruction that, unless there were other grounds for the claim, “such prosecution must be abandoned.”⁷⁷

Ritter was not Nordenskiöld's only ally. The acting United States Secretary of State, William F. Wharton, telegraphed Durango Mayor J.W. McHolland with a request for information on Nordenskiöld's case. McHolland telegraphed back stating that the purpose of Nordenskiöld's visits was scientific, Nordenskiöld had permis-

⁷¹ REYNOLDS, *supra* note 3, at 71.

⁷² REYNOLDS, *supra* note 3, at 73.

⁷³ Diamond, *supra* note 7, at 261-62.

⁷⁴ REYNOLDS, *supra* note 3, at 75.

⁷⁵ Diamond, *supra* note 7, at 261-62.

⁷⁶ Diamond, *supra* note 7, at 262.

⁷⁷ Diamond, *supra* note 7, at 262.

sion to travel through Native American lands, the relics taken by Nordenskiöld were of small value, and the people of Durango desired that the prosecution be dropped.⁷⁸ Wharton directly quoted this letter in drafting his own correspondence on the case to Attorney General Miller.⁷⁹ As Nordenskiöld's scheduled October 2 trial date inched closer, it was becoming more apparent in Washington that the government did not have a valid case against Nordenskiöld.

On September 29, 1891, Commissioner of Indian Affairs Morgan suggested to Secretary of the Interior Noble that the prosecution of Nordenskiöld be dropped and that a verdict of *nolle prosequi* be entered.⁸⁰ A *nolle prosequi* entry does not entail dismissing a case, but instead it is a "formal entry upon the record, by . . . prosecuting officer in a criminal action, by which he declares that he will 'no further prosecute' the case"⁸¹ Noble concurred with Morgan's suggestion, and later on the same day, advised Attorney General Miller that a *nolle prosequi* order be entered by the government.⁸² While it was clear among District Attorney Fleming's superiors that the government could not prove beyond a reasonable doubt that Nordenskiöld had violated §2134, the decision on how to proceed with the case was ultimately Fleming's. When travel delays prevented Fleming from arriving to Denver by Friday, October 2, the long-awaited trial was postponed three more days until the following Monday.⁸³

For all the drama and tension leading up to Nordenskiöld's day in court, the trial itself was anticlimactic. Attorney General Fleming informed the court that the excavations were made on public land, not the Southern Ute land, and recommended to the court that the charges against Nordenskiöld be dropped.⁸⁴ Judge Cyrus New-

⁷⁸ REYNOLDS, *supra* note 3, at 76.

⁷⁹ REYNOLDS, *supra* note 3, at 76.

⁸⁰ REYNOLDS, *supra* note 3, at 77.

⁸¹ *What is a Nolle Prosequi?*, BLACK'S LAW DICTIONARY (2d online ed.), <http://thelawdictionary.org/nolle-prosequi/>.

⁸² REYNOLDS, *supra* note 3, at 77.

⁸³ REYNOLDS, *supra* note 3, at 77.

⁸⁴ REYNOLDS, *supra* note 3, at 78.

comb agreed, dismissing the government's case.⁸⁵ Nordenskiöld was a free man. Notably absent from the trial was Nordenskiöld's staunchest opponent, Indian Agent Charles Bartholomew.⁸⁶ Bartholomew, who had earlier claimed credit for Nordenskiöld's arrest and whose testimony would have played an integral role in the case against Nordenskiöld, never revealed why he did not attend the trial. Many people believed that Bartholomew was ordered by his supervisors to drop the case.⁸⁷ Al Wetherill stated that Bartholomew blamed members of the Southern Ute tribe for lying to him about Nordenskiöld excavating on their land and that he changed his stance on Nordenskiöld's guilt.⁸⁸ Regardless, with the charges against him dropped, Nordenskiöld was now able to shift his focus towards getting his collection of artifacts and human remains back to Sweden.

In the eyes of some government officials, even if Nordenskiöld was not found criminally guilty of violating §2134, he still should have been required to return the artifacts and human remains he excavated to their original resting place. In light of the charges against Nordenskiöld being dropped, Bartholomew was ordered by his supervisor, R.V. Belt, to write a letter to Nordenskiöld informing him that he was permitted to keep the relics he excavated but required to return any bones or skeletons he excavated to their original resting place.⁸⁹ Once again, Ritter advocated on Nordenskiöld's behalf. Ritter sent another letter to O.P. Hubbard, this time claiming that Nordenskiöld's collection was smaller and of insignificant value in comparison to collections the government now possessed; District Attorney Fleming added his name and concurrence to the bottom of the letter.⁹⁰ Attorney General Miller forwarded the letter to Indian Commissioner Morgan, who responded with the conclusion that the relics and remains were not excavated from the Southern Ute Reservation and that Nordenskiöld was free

⁸⁵ REYNOLDS, *supra* note 3, at 78.

⁸⁶ REYNOLDS, *supra* note 3, at 78.

⁸⁷ REYNOLDS, *supra* note 3, at 78.

⁸⁸ REYNOLDS, *supra* note 3, at 78.

⁸⁹ REYNOLDS, *supra* note 3, at 79.

⁹⁰ REYNOLDS, *supra* note 3, at 79.

to ship his entire collection back to Sweden.⁹¹ An exhausted Nordenskiöld wrote home to his father, giving credit to Ritter for the happy ending in his case, and stating, “[a]ll of the ridiculous quibbling and arresting is now completely over, and I have permission to ship out as many relics as I want.”⁹²

On November 7, 1891, more than four months after Nordenskiöld first arrived at the Wetherills Alamo Ranch, his collection of artifacts and human remains were loaded onto the steamship Thingvalla and bound for Scandinavia.⁹³ His collection composed of 15 crates and two barrels full of artifacts and human remains and weighed more than 1400 pounds.⁹⁴ Among other objects, the collection consisted of three mummies, human and animal bones, pottery, textiles, and stone tools.⁹⁵ Nordenskiöld returned home to Sweden in January 1892 and pored through his field notes, photographs, and artifact collection, before eventually producing two articles in the Swedish Society for Anthropology and Geology’s journal *Ymer* and his landmark work, *The Cliff Dwellers of the Mesa Verde*.⁹⁶ While these works were heralded in the scientific community, they provided very little financial return to Nordenskiöld, who insisted on repaying his father for the expenses of his trip across Europe and North America. His prized Mesa Verde collection offered a quick and easy financial fix.

⁹¹ REYNOLDS, *supra* note 3, at 79.

⁹² See Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (Oct. 7, 1891) in *Letters of Gustaf Nordenskiöld*, 59 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, Oct. 7, 1891*]; Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (Oct. 21, 1891) in *Letters of Gustaf Nordenskiöld*, 59 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, Oct. 21, 1891*].

⁹³ REYNOLDS, *supra* note 3, at 81.

⁹⁴ See REYNOLDS, *supra* note 3, at 81. Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (Nov. 1, 1891) in *Letters of Gustaf Nordenskiöld*, 65 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, Nov. 1, 1891*].

⁹⁵ VARJOLA, *supra* note 2, at 6. Jay Pridmore, *Mesa Verde Exhibit Shows How the Past Can Enchant*, CHICAGO TRIBUNE (June 26, 1992), http://articles.chicagotribune.com/1992-06-26/entertainment/9202260365_1_mesa-verde-national-park-archeology-exhibit.

⁹⁶ See REYNOLDS, *supra* note 3, at 111-13.

Nordenskiöld came from an affluent family and was engaged to the daughter of the wealthiest man in Stockholm, but he insisted on being self-supporting.⁹⁷ He originally desired to sell his Mesa Verde collection to a Swedish museum, but no museum in the country at the time could afford to pay him for it.⁹⁸ As a result, Nordenskiöld entered into a loan agreement with Finnish physician and avid art collector Herman Frithiof Antell for 1000 kronor – equivalent to \$6000 today – with the Mesa Verde collection held as collateral.⁹⁹ Nordenskiöld biographers Judith and David Reynolds speculate that both Antell and Nordenskiöld never expected the loan to be repaid and that a loan agreement was originated to allow Nordenskiöld to have the option to sell his collection to a museum if the opportunity arose in the future.¹⁰⁰ Such an opportunity never presented itself, and when Antell died in 1893, he bequeathed his entire art collection to the people of Finland.¹⁰¹ Antell's donation, which alongside Nordenskiöld's Mesa Verde collection contained Moroccan and Siberian artifacts and a sizable coin collection, still remains the largest single donation ever made to the National Museum of Finland.¹⁰²

The Mesa Verde collection, along with all of the other antiquities and artwork donated by Antell was originally placed in the control of the Finnish State Museum of History and Ethnography in Helsinki.¹⁰³ The collection was supervised by the Finnish Parliament until it was transferred to the Finnish National Board of Antiquities in 1977.¹⁰⁴ The National Board of Antiquities placed the collection

⁹⁷ REYNOLDS, *supra* note 3, at 135.

⁹⁸ REYNOLDS, *supra* note 3, at 66, 155.

⁹⁹ REYNOLDS, *supra* note 3, at 155.

¹⁰⁰ REYNOLDS, *supra* note 3, at 155.

¹⁰¹ REYNOLDS, *supra* note 3, at 155.

¹⁰² REYNOLDS, *supra* note 3, at 155-56. E-mail from Heli Lahdentausta, Keeper, Nat'l. Museum of Fin., to author (May 4, 2015, 06:26 PDT) (on file with author) [hereinafter Email from Heli Lahdentausta]

¹⁰³ REYNOLDS, *supra* note 3, at 157.

¹⁰⁴ E-mail from Heli Lahdentausta, *supra* note 102.

in the National Museum of Finland's separately-administered Museum of Cultures, where it remains today.¹⁰⁵

After parting with collection, Nordenskiöld went on to publish *The Cliff Dwellers of the Mesa Verde* in 1893.¹⁰⁶ The book, which contained 174 pages of text, 30 pages of photographs, and a 30 page appendix on human remains, was written by a leading anthropology scholar at the time and was heralded in both the United States and Europe and is still considered a seminal work in Southwestern archaeology.¹⁰⁷ Though *The Cliff Dwellers of the Mesa Verde* appeared to be the beginning of an extremely promising career in science for the 25 year-old Nordenskiöld, his career and life were cut tragically short. In the spring of 1894, his tuberculosis returned, and, on June 6, 1895, Nordenskiöld succumbed to his condition while in a train car en route to a tuberculosis sanitarium in Mörsil, Sweden.¹⁰⁸ He left behind his wife of 20 months, Anna, and nine-month old daughter, Eva.¹⁰⁹ Though Nordenskiöld was gone, the fascination both with his life and his collection of Mesa Verde artifacts and human remains has persisted to this day.

III. PRINCIPLES UNDERLYING POSSESSORY CLAIMS

Inquiries into whether Gustaf Nordenskiöld's Mesa Verde collection should remain in Finland or be returned to Southwestern Colorado continue to arise. Judith Reynolds, biographer of Gustaf Nordenskiöld and Adjunct Professor of Art History at Durango's Fort Lewis College, gives numerous lectures on the life of Nordenskiöld and stated in personal communication that the question of "when will the artifacts in Finland be returned to Mesa Verde?" is one that invariably arises at each speech.¹¹⁰ Before examining

¹⁰⁵ E-mail from Heli Lahdentausta, *supra* note 102.

¹⁰⁶ REYNOLDS, *supra* note 3, at 120.

¹⁰⁷ See REYNOLDS, *supra* note 3, at 121-23. Ferdinand von Richtofen, a leading geographer and geologist in Nordenskiöld's time, praised, "'The *Cliff Dwellers of the Mesa Verde*,' unsurpassed in a technical regard, the contents are superbly developed."

¹⁰⁸ REYNOLDS, *supra* note 3, at 137-39.

¹⁰⁹ REYNOLDS, *supra* note 3, at 135-36, 139

¹¹⁰ E-mail from Judith Reynolds, Adjunct Professor, Fort Lewis Coll., to author (May 29, 2015, 17:59 PDT) (on file with author) [hereinafter Email from Judith Reynolds].

these inquiries, past and present, it is useful to first outline the principles that impact arguments for and against the repatriation of Nordenskiöld's Mesa Verde collection. Two major principles in particular, legality and nationalism, prominently influence possessory claims to the collection and are examined below.

A. Legality

A general principle of property law is that the ownership of an object obtained legally at the time it is acquired remains legal even if the law subsequently changes.¹¹¹ In line with this principle, if the artifacts and human remains in Nordenskiöld's Mesa Verde collection are to be conceived of as property, then a key determination in whether the collection should be returned is whether Nordenskiöld removed them from Mesa Verde legally or illegally. The answer to this question is ambiguous and varies depending on the perspective from which the question is addressed and the standard of proof considered.

On one hand, the vast majority of government officials involved in Nordenskiöld's case were of the opinion that he never conducted illegal excavations on the Southern Ute Indian Reservation. With Nordenskiöld's activities in the Mesa Verde region having predated the passage of the American Antiquities Act of 1906 by 15 years, there was no law in place that prevented the removal of antiquities from United States public land.¹¹² Nordenskiöld was only charged with violating §2134 of the Revised Statutes of the United States for allegedly making excavations on the Southern Ute Indian Reservation. The pivotal argument in Ritter and Nordenskiöld's defense was that, while Nordenskiöld did possibly cross Southern Ute lands while traveling the Mesa Verde region, he never conducted excavations on the reservation. The prosecution was unable to present any evidence to the contra-

¹¹¹ See John Henry Merryman, *Introduction*, in *IMPERIALISM, ART, AND RESTITUTION* 11, (John Henry Merryman ed. 2006) (explaining how different principles guide claims from source nations for the restitution of art and antiquities and describes how these principles interact, and frequently, clash).

¹¹² See REYNOLDS, *supra* note 3, at 86.

ry, resulting in the charges being dropped. In Ritter's letter to O.P. Hubbard, written shortly in the aftermath of the case's dismissal, Ritter wrote that Nordenskiöld even brought proof with him to the courtroom that the artifacts he obtained were not obtained from the reservation.¹¹³ With the exception of Charles Bartholomew, United States government officials were confident that Nordenskiöld never conducted any illegal excavations. Indian Commissioner Morgan found the government's case against Nordenskiöld unconvincing and remarked in the trial's aftermath that "the relics in question were not taken from the Southern Ute Indian Reservation . . . this office recedes from its demand for the surrender of the relics and claims no jurisdiction whatsoever over them."¹¹⁴ While the government was unable to prove that Nordenskiöld violated §2134 or any other law, prior research has found it likely that Nordenskiöld at least trespassed onto the reservation and that he did possibly illegally excavate on the reservation.

Though he believed that Nordenskiöld never excavated illegally on the Southern Ute lands, Colorado District Attorney Fleming conceded that Nordenskiöld did likely trespass on the reservation without a permit. At the end of Nordenskiöld's trial, he asserted, "[t]he offense of Nordenskiöld was at best a technical one. He did in fact, being a foreigner, go upon the Southern Indian Ute Reservation without a passport, in contravention of the statute [§2134]. . . ."¹¹⁵ Earlier studies have verified that Nordenskiöld did likely trespass onto the reservation. Irving Diamond, a private American citizen who helped facilitate the 1991 loan of 17 objects of Nordenskiöld's collection from the National Museum of Finland to the National Park Service, superimposed the current boundary of the Southern Indian Ute Reservation onto the map Nordenskiöld presented in *The Cliff Dwellers of Mesa Verde*.¹¹⁶ Diamond's study found not only that it was likely that Nordenskiöld crossed the Southern Indian Ute Reservation without a passport, but also that most, if not all, of his excavation sites fell within the reservation.¹¹⁷ With the Department of the Interior having previously refused to

¹¹³ Diamond, *supra* note 7, at 264.

¹¹⁴ REYNOLDS, *supra* note 3, at 80.

¹¹⁵ REYNOLDS, *supra* note 3, at 78.

¹¹⁶ Diamond, *supra* note 7, at 264.

¹¹⁷ Diamond, *supra* note 7, at 264.

allow the Southern Utes to lease any of the reservation's lands and no record of a transfer of reservation land found, Diamond found that, absent contrary evidence, Nordenskiöld did likely violate §2134 by illegally excavating from the reservation.¹¹⁸ Drawing their conclusion from Diamond's study, Nordenskiöld biographers Judith and David Reynolds assert that it was "probable, though not certain, that Gustaf passed through and excavated on the reservation."¹¹⁹

Both proponents and opponents of repatriating Nordenskiöld's Mesa Verde collection could cite the legality principle in support of their case. Those who support the repatriation of the collection could cite Diamond's study and the likelihood that Nordenskiöld did in fact trespass onto the Southern Ute Reservation. Opponents, meanwhile, could counter that the charges against Nordenskiöld were dropped and Nordenskiöld was never actually found to have done anything illegal. In line with the conclusion of District Attorney Fleming, an argument can also be made that, even if Nordenskiöld did trespass upon the Southern Ute Reservation in traversing the Mesa Verde region, that it cannot be proved that he actually excavated any artifacts or human remains from the reservation. As applied to Nordenskiöld's case, the legality principle is inconclusive. It is worth noting, however, that even though subsequent changes in the law do not impact arguments made under the legality principle, Nordenskiöld's actions at Mesa Verde helped spur the creation of a future law, the American Antiquities Act of 1906, as well as the establishment of Mesa Verde National Park.

The enactment of the American Antiquities Act of 1906 and the creation of Mesa Verde National Park occurred within a three-week window in June 1906.¹²⁰ Enacted into law during the presidency of Theodore Roosevelt, the American Antiquities Act of 1906 made it illegal to "appropriate, excavate, injure, or destroy

¹¹⁸ Diamond, *supra* note 7, at 264-65.

¹¹⁹ REYNOLDS, *supra* note 3, at 80.

¹²⁰ See *History & Culture*, *supra* note 10; See also *American Antiquities Act of 1906*, *supra* note 10.

any historic or prehistoric ruin or monument, or object of antiquity” on any public grounds without first obtaining a passport issued from a United States governing body with appropriate jurisdiction.¹²¹ Furthermore, the Antiquities Act provided the president the authority to create, by presidential proclamation, national monuments from public land to protect landmarks, structures, and objects of historic and scientific value.¹²² Three weeks after the enactment of the Antiquities Act, Theodore Roosevelt took further steps towards protecting American archaeological and historical sites and established Mesa Verde National Park with the goal of “protect[ing] the works of man.”¹²³ Nordenskiöld’s role in the creation of Mesa Verde National Park and the passage of the American Antiquities is acknowledged both by his supporters and critics, though attitudes towards regarding the impact he played vary widely.

Gustaf Nordenskiöld: Pioneer Archaeologist of Mesa Verde, a National Park Service publication created for the 1991 centennial of Gustaf Nordenskiöld’s visit to Mesa Verde, credits Nordenskiöld with having played a causal role in both the park’s creation and the act’s passage.¹²⁴ Duane Smith, Professor of History at Fort Lewis College, asserted in the publication, “[Nordenskiöld’s] activities made the residents of [S]outhwestern Colorado more appreciative of the Anasazi culture in their midst. In doing so, Nordenskiöld helped set in motion the chain of events which led to the creation of Mesa Verde National Park and the passage of the Antiquities Act.”¹²⁵ Heli Lahdentausta, Keeper at the National Museum of Finland, remarked similarly, labeling Nordenskiöld’s visit to Mesa Verde as a “key factor” in the passage of the Antiquities Act.¹²⁶ Former National Park Service Historian Robert F. Lee, meanwhile, paints an entirely different picture of Nordenskiöld’s influence on American law. According to Lee, Nordenskiöld’s shipping a valuable collection of American artifacts back to Swe-

¹²¹ *American Antiquities Act of 1906*, *supra* note 10.

¹²² *American Antiquities Act of 1906*, *supra* note 10.

¹²³ *History & Culture*, *supra* note 10.

¹²⁴ See Duane Smith, *Preserving Archaeological Resources*, in GUSTAF NORDENSKIÖLD: PIONEER ARCHAEOLOGIST OF MESA VERDE 26-27 (1991).

¹²⁵ *Id.*

¹²⁶ Email from Heli Lahdentausta, *supra* note 102.

den prompted Congress to pass legislation to in order to protect American archaeological sites from vandals.¹²⁷ While perspective influences whether one views Nordenskiöld as a hero or villain and whether his actions were legal or illegal, his impact in spurring the creation of Mesa Verde National Park and the American Antiquities Act cannot be denied.

B. Nationalism

Nationalistic principles often prove relevant when considering the possessory status of allegedly-stolen antiquities and artwork. Antiquities are commonly perceived as being part of a nation's cultural "patrimony" or "heritage."¹²⁸ For example, some supporters of repatriating the Elgin Marbles to Greece argue that "they belong in Greece because they are Greek."¹²⁹ From the moment Nordenskiöld began excavating at Mesa Verde to long after the establishment of Mesa Verde National Park, nationalism has had a monumental impact in debates regarding the possessory status of his collection. Historically, some opponents of Nordenskiöld have believed that the objects he took from Mesa Verde "belong in America because they are American."

Nordenskiöld was well-aware that arguments against him shipping Mesa Verde artifacts back to Sweden were rooted in nationalism. To start, §2134 only applied to "foreigner[s]" who travelled onto Native American land.¹³⁰ United States citizens did not need permits stating the purpose and time of their travels through Native American reservations and could travel freely. Moreover, Nordenskiöld was far from the first individual to excavate artifacts and human remains at Mesa Verde: the Wetherills and others had removed objects from Mesa Verde archaeological

¹²⁷ Lee, *supra* note 34.

¹²⁸ See Merryman, *supra* note 111, at 10.

¹²⁹ Merryman, *supra* note 111, at 10.

¹³⁰ Diamond, *supra* note 7, at 258 (while Nordenskiöld's father had been granted title of "Baron," Nordenskiöld himself was never bestowed the title. Had Nordenskiöld, the eldest son his family, survived his father, he would have inherited the title).

sites undeterred for years prior to his arrival.¹³¹ Despite the fact that Nordenskiöld's excavations left the archaeological sites he visited in much better shape than those of American relic hunters and prospectors, unrest stirred within the community when it was discovered that a foreigner was shipping American antiquities and human remains out of the country.

Local newspapers falsely referred to Nordenskiöld as “the [B]aron” when reporting on the Mesa Verde controversy.¹³² Nordenskiöld biographers Judith and David Reynolds explain that the title carried with it an “aroma of pretentious nonsense” in the late nineteenth-century American West.¹³³ Additionally, local newspapers misrepresented the nature of Nordenskiöld's digs and portrayed him as a hapless tourist who did not respect the ruins. In an article titled, “He is Under Arrest,” *The Rocky Mountain News* described the arrest of the individual they referred to as “Baron Lordenskiöld” [sic], “[m]uch indignation is expressed by the people here, as it is believed that the [B]aron's expedition was one of devastation, more than mere pleasure jaunt.”¹³⁴

Nordenskiöld expressed frustration over the treatment he received as a foreign citizen in a letter written to his father approximately two weeks before his scheduled court date, “Americans would rather that cowboys, miners, etc., dig amongst their antiquities than foreigners.”¹³⁵ Ritter's influential letter to Attorney General Miller articulated this concern, and emphasized that, unlike the “vandals both native and foreign” who defaced Mesa Verde's archaeological sites, Nordenskiöld's investigations carried a scientific purpose.¹³⁶ The influence of nationalism into inquiries over the possessory status of Nordenskiöld's Mesa Verde has persisted

¹³¹ See *supra* note 17. The Wetherills sold an entire collection of Mesa Verde artifacts to the Colorado Historical Society for \$3000 in 1889.

¹³² See REYNOLDS, *supra* note 3, at 67.

¹³³ REYNOLDS, *supra* note 3, at 67.

¹³⁴ REYNOLDS, *supra* note 3, at 71.

¹³⁵ Letter from Gustaf Nordenskiöld to Nils Adolf Erik Nordenskiöld (Sept. 19, 1891) in *Letters of Gustaf Nordenskiöld*, 53 (Irving Diamond & Daniel M. Olson eds., Daniel M. Olson trans., 1991) [hereinafter *Letter to Nils Adolf Erik Nordenskiöld, Sep. 19, 1891*].

¹³⁶ See *supra* note 72 (containing an excerpt of Ritter's letter).

in the decades following the shipment of his collection back to Sweden.

In 1991, the National Museum of Finland held an exhibition honoring the centennial of Nordenskiöld's visit to Mesa Verde.¹³⁷ The exhibit, which did not showcase any of the collection's mummies or human remains, was the last time the artifacts in Nordenskiöld's collection have been shown on the whole at the National Museum of Finland.¹³⁸ As part of the exhibit, the National Museum of Finland published the booklet, *Gustaf Nordenskiöld: Mesa Verde 1891*.¹³⁹ The portion of the booklet that describes Nordenskiöld's arrest and the seizure of his collections examines the role nationalism played in his legal troubles. After describing the impact early artifact hunters had in damaging the ruins and the Wetherills' failed efforts to sell their collection to the Smithsonian Institution, the booklet asserts, "[i]t was only when Nordenskiöld started to transport his finds back to Sweden that a local movement tried to interfere [to protect Mesa Verde]."¹⁴⁰ Just as many of the arguments that Nordenskiöld should not have been permitted to ship his collection back to Sweden were influenced nationalism, nationalism has played a major role in some of the more recent critiques of Nordenskiöld's work at Mesa Verde.

In their biography of Nordenskiöld, Judith and David Reynolds listed nationalism as one of the likely forces behind continued efforts to repatriate Nordenskiöld's collection.¹⁴¹ Reynolds' claim has proven accurate. In 1970, Ronald Freeman Lee, former Chief Historian for the National Park Service, authored a historical account of the American Antiquities Act in advance of the centennial of Yellowstone National Park in 1972.¹⁴² In a chapter titled "Vandalism and Commercialism of Antiquities, 1890-1906," Lee described what he deemed to be the "indiscriminate

¹³⁷ Email from Heli Lahdentausta, *supra* note 102.

¹³⁸ Email from Heli Lahdentausta, *supra* note 102; VARJOLA, *supra* note 2, at 6.

¹³⁹ See VARJOLA, *supra* note 2.

¹⁴⁰ VARJOLA, *supra* note 2, at 6.

¹⁴¹ See REYNOLDS, *supra* note 3, at 157.

¹⁴² Lee, *supra* note 34.

digging” in which Nordenskiöld “needed no one’s permission” to take part.¹⁴³ Lee asserted that the loss of a valuable collection of American artifacts caused “deep resentment among American archaeologists” and voiced his support for the failed efforts of previous attempts at repatriating Nordenskiöld’s collection.¹⁴⁴ Before discussing these attempts, it is important to analyze one last aspect of the nationalism principle and how it can impact debates over allegedly-stolen antiquities.

The controversy over Nordenskiöld’s collection is unique from many debates over the possessory status of antiquities because the United States is playing the role of alleged “victim.” Opponents of repatriating Nordenskiöld’s collection could counter the argument that the collection “belongs in America because it is American” by noting that the loss of this one collection of artifacts does not deprive the United States of its cultural identity. John Henry Merryman applied a similar argument when advocating that the Elgin Marbles should stay at the British Museum instead of being returned to Greece.¹⁴⁵ Merryman noted that, even without the Elgin Marbles, Greece is still a nation rich in monuments of antiquity and museums full of Greek art from all of its historic pieces.¹⁴⁶ Similarly, opponents of repatriating the objects could argue that the United States still has ample museums and monuments honoring the American identity. This argument is bolstered by the fact that, while Nordenskiöld’s collection was unsurpassed at the time he excavated it, later excavations at Mesa Verde have given American museums larger and more representative collections than Nordenskiöld’s.¹⁴⁷ The National Museum of Finland’s centennial booklet on Nordenskiöld describes his collection as a “representative and valuable, but by no means unique, record of the life of the canyon Pueblo Indians.”¹⁴⁸ A similar sentiment was

¹⁴³ Ronald F. Lee, *Vandalism and Commercialism of Antiquities*, in THE STORY OF THE ANTIQUITIES ACT, NATIONAL PARK SERVICE (1970), http://www.nps.gov/archeology/pubs/Lee/Lee_CH4.htm.

¹⁴⁴ *Id.*

¹⁴⁵ JOHN HENRY MERRYMAN, THINKING ABOUT THE ELGIN MARBLES: CRITICAL ESSAYS ON CULTURAL PROPERTY, ART AND LAW 103 (2nd ed. 2009).

¹⁴⁶ *Id.*

¹⁴⁷ VARJOLA, *supra* note 2, at 6.

¹⁴⁸ *Id.*

expressed in 1960 by American archaeologist Charlie Steen when he cataloged the Nordenskiöld collection at the National Museum of Finland.¹⁴⁹

IV. RELATIONS BETWEEN THE NATIONAL PARK SERVICE AND NATIONAL MUSEUM OF FINLAND: REPATRIATION, THE 1991 LOAN, AND THE FUTURE

Relations between the National Park Service and the National Museum of Finland in regards to the Nordenskiöld collection have shifted dramatically over the last century. Despite continued interest in the question of whether Nordenskiöld's Mesa Verde artifacts and human remains should be returned to the United States, there have been very few formal efforts at repatriation.¹⁵⁰ Early efforts at repatriating Nordenskiöld's collection were made by Dr. Jesse Nusbaum.¹⁵¹ Nusbaum, who grew up reading *The Cliff Dwellers of the Mesa Verde* as a child in Greeley, Colorado,¹⁵² became Superintendent at Mesa Verde National Park in 1921 and eventually the first archaeologist hired by the National Park Service.¹⁵³ As park superintendent, Nusbaum tried repeatedly in the early decades of the twentieth century to secure the return of Nordenskiöld's collection but was unsuccessful in these endeavors.¹⁵⁴ With the exception of Nusbaum's efforts at bringing the collection back to the United States, research revealed no other formal American repatriation efforts. The National Museum of Finland's Nordenskiöld centennial booklet suggests that repatriation efforts dwindled after American archaeologists obtained similar, if not larger,

¹⁴⁹ REYNOLDS, *supra* note 3, at 6.

¹⁵⁰ See *supra* note 107 (describing modern interest in the possible repatriation of Nordenskiöld's collection but the lack of formal repatriation movements).

¹⁵¹ Lee, *supra* note 143.

¹⁵² *The Nusbaum Years*, in MESA VERDE NATIONAL PARK, SHADOWS OF THE CENTURIES, NATIONAL PARK SERVICE (2002), http://www.nps.gov/parkhistory/online_books/smith/chap7.htm.

¹⁵³ Francis P. McManamon & Jesse L. Nusbaum, *First National Park Service Archaeologist*, NATIONAL PARK SERVICE (2009), http://www.nps.gov/parkhistory/online_books/smith/chap7.htm.

¹⁵⁴ Lee, *supra* note 34.

Mesa Verde collections.¹⁵⁵ As the twentieth century was drawing near its conclusion and the centennial of Nordenskiöld's visit to Mesa Verde approached, the National Park Service's interest in the Nordenskiöld collection took an entirely different tone.

In 1991, 17 objects from Nordenskiöld's Mesa Verde collection made their way back to Southwestern Colorado.¹⁵⁶ These objects were not being permanently returned to Mesa Verde as a result of a repatriation effort, but instead were sent to help honor the man who excavated them. Both Mesa Verde National Park and the National Museum of Finland concurrently held centennial exhibits honoring Nordenskiöld and his 1991 visit to Mesa Verde. Information regarding the loan was obtained through interviews and email communications with representatives of the National Park Service and the National Museum of Finland, former National Park Service employees who helped create the loan agreement and Nordenskiöld exhibit, and private citizens who helped fund and facilitate the loan. Additionally, loan agreements and copies of other correspondence between the National Park Service and National Museum of Finland were obtained.

Former Mesa Verde National Park Superintendent Robert C. Heyder first conceived the idea of creating an exhibit honoring the centennial of Nordenskiöld's visit to Mesa Verde when the National Park Service and the Mesa Verde Museum Association hosted an Anasazi Symposium at Mesa Verde National Park in 1981.¹⁵⁷ Elizabeth Bauer, former Mesa Verde National Park Museum Curator, recalled Heyder approaching her with the idea of the exhibit.¹⁵⁸ Bauer shared Heyder's belief that a Nordenskiöld exhibit would be a fitting tribute to an individual they both felt helped protect Mesa Verde and answered affirmatively when asked if she

¹⁵⁵ VARJOLA, *supra* note 2, at 6.

¹⁵⁶ Letter from Pirjo Varjola, Curator, Nat'l Museum of Fin., to Robert C. Heyder, Former Superintendent of Mesa Verde Nat'l Park (Apr. 5, 1991) (on file with author) [hereinafter Letter from Pirjo Varjola to Robert C. Heyder].

¹⁵⁷ Telephone Interview with Robert C. Heyder, Former Superintendent of Mesa Verde Nat'l Park (May 8, 2015) [hereinafter Telephone Interview with Robert C. Heyder].

¹⁵⁸ Telephone Interview with Elizabeth Bauer, Former Museum Curator at Mesa Verde Nat'l Park (June 4, 2015) [hereinafter Telephone Interview with Elizabeth Bauer].

was interested in helping organize the exhibit.¹⁵⁹ In 1987, one year before the centennial of Richard Wetherill and Charles Mason's rediscovery of Cliff Palace, noted Heyder, Bauer and he began working very heavily on planning a centennial exhibit honoring Nordenskiöld.¹⁶⁰

Heyder and Bauer both remarked that they had initial concerns that the Nordenskiöld exhibit would never come to form due to a lack of funding.¹⁶¹ As was expressed in a November 1990 letter from the National Museum of Finland to the National Park Service, Mesa Verde National Park was expected to cover all costs related to the loan: packing, shipping, insurance, export, and import costs, and any unforeseen expenses.¹⁶² The National Park Service was limited in the funds it could provide for the exhibit, so Bauer and Heyder had to look to outside funding sources. A major breakthrough came when a grant request written by Bauer was approved by the Colorado National Endowment for the Humanities.¹⁶³ According to Bauer, the grant "gave us a good part of what was needed for the exhibit."¹⁶⁴

Both Bauer and Heyder openly acknowledged that, without the assistance of some private individual citizens, the Mesa Verde exhibit likely would not have been a success. Heyder quickly contacted Gustaf Arrhenius, Professor of Earth and Planetary Sciences at the University of California, San Diego, and grandson of Gustaf Nordenskiöld, upon deciding to move forward with the

¹⁵⁹ *Id.*

¹⁶⁰ Telephone Interview with Robert C. Heyder, *supra* note 157.

¹⁶¹ Telephone Interview with Robert C. Heyder, *supra* note 157; Telephone Interview with Elizabeth Bauer, *supra* note 158.

¹⁶² Letter from C.J. Gardberg, Former Dir. Gen. of the Nat'l Museum of Fin., & Osmo Vuoristo, Former Dir. of the Nat'l Museum of Fin. to Robert C. Heyder, Former Superintendent of Mesa Verde Nat'l Park, (Nov. 22, 1990) (on file with author) [hereinafter Letter from C.J. Gardberg and Osmo Vuoristo to Robert C. Heyder, Nov. 22, 1990].

¹⁶³ Telephone Interview with Elizabeth Bauer, *supra* note 158.

¹⁶⁴ Telephone Interview with Elizabeth Bauer, *supra* note 158.

Nordenskiöld exhibit.¹⁶⁵ Arrhenius, a previous acquaintance and personal friend of Heyder's, helped furnish the exhibit by loaning Mesa Verde National Park photographs and family documents from the Nordenskiöld/Arrhenius family archives.¹⁶⁶ Moreover, Arrhenius contacted representatives at the National Museum of Finland, serving as a liaison between the museum and the National Park Service. According to Heyder, Arrhenius' contributions played an integral role in making the exhibit a success.¹⁶⁷

Another private citizen, Irving L. Diamond of Wilmette, Illinois, played a crucial role in the loan agreement. Diamond remarked that he became extremely interested in the story of Nordenskiöld after vacationing to Mesa Verde National Park in 1971.¹⁶⁸ Diamond's interest led him to further research the history of Mesa Verde and Nordenskiöld, and in 1985, he presented a paper at Mesa Verde National Park titled, "Mesa Verde Goes Back East."¹⁶⁹ Diamond remarked that it was at this presentation that he met Arrhenius and began speaking with Heyder about the possibility of a Nordenskiöld centennial exhibit.¹⁷⁰ Diamond then went on to note, "[w]e were not sure if we could ever make [the Nordenskiöld exhibit] happen. I began by writing letters on my primitive computer to the Finnish Ambassador in Washington [D.C.]."¹⁷¹

Diamond then relayed that Heyder advised him not to use the word *repatriation* in any of his correspondence with the Finns, as the word possibly could have prompted fears that any loaned objects would not be returned.¹⁷² At the same time Diamond began writing to the Finnish Ambassador in Washington D.C., he also began exploring other potential sources of funding for the exhibit, con-

¹⁶⁵ Telephone Interview with Robert C. Heyder, *supra* note 157; Interview with Gustaf Arrhenius, Professor of Earth and Planetary Sciences at the Univ. of Cal., San Diego (May 20, 2015) [hereinafter Interview with Gustaf Arrhenius].

¹⁶⁶ Interview with Gustaf Arrhenius, *supra* note 165.

¹⁶⁷ Telephone Interview with Robert C. Heyder, *supra* note 157.

¹⁶⁸ Interview with Irving L. Diamond, Former Eng'r and Active Citizen Participant in the 1991 loan between the Nat'l Park Service and Nat'l Museum of Fin., (May 27, 2015) [hereinafter Interview with Irving L. Diamond].

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Interview with Irving L. Diamond, *supra* note 168.

¹⁷² Interview with Irving L. Diamond, *supra* note 168.

tacting individuals and organizations he thought might be willing to contribute. One of the individuals whom Diamond contacted about the exhibit was a Finnish diplomat stationed in Chicago.¹⁷³ The diplomat forwarded information regarding the Nordenskiöld exhibit to the Leaf Candy Company in Chicago.¹⁷⁴ Leaf, which is known for producing Whoppers, Milk Duds, and Jolly Ranchers, was purchased by Huhtamäki Oyj of Helsinki, Finland, in 1983.¹⁷⁵ After speaking with the Finnish diplomat contacted by Diamond, Oyj agreed to donate \$5000 on behalf of the Leaf Candy Company to help make the Nordenskiöld exhibit a reality.¹⁷⁶ While, among other contributions and funds, Leaf's donation and the Colorado National Endowment for the Humanities grant, gave the National Park Service the money it needed to furnish the exhibit, Bauer, Heyder, Diamond, and Arrhenius still faced the hurdle of actually arriving to a loan agreement with the National Museum of Finland.

According to both Bauer and Diamond, representatives from the National Museum of Finland initially expressed some concern about repatriation and the possibility that loaned items from the Nordenskiöld collection could be seized by the United States.¹⁷⁷ Persistent communication and reassurance to the Finnish Museum, however, allayed their concerns, and officials from both sides began drafting a loan agreement in the latter half of 1990. In a meeting held on November 22, 1990, the Finnish National Board of Antiquities agreed to lend 17 items from the Nordenskiöld collection to Mesa Verde National Park.¹⁷⁸ As the National Museum of Finland was simultaneously presenting its own Nordenskiöld centennial exhibit, it was not able to loan the National Park

¹⁷³ Interview with Irving L. Diamond, *supra* note 168.

¹⁷⁴ Interview with Irving L. Diamond, *supra* note 168.

¹⁷⁵ *About Us*, LEAF BRANDS, <http://leafbrands.com/about-us/> (last visited June 1, 2015).

¹⁷⁶ Interview with Irving L. Diamond, *supra* note 168.

¹⁷⁷ Interview with Irving L. Diamond, *supra* note 168; Telephone Interview with Elizabeth Bauer, *supra* note 158.

¹⁷⁸ Letter from C.J. Gardberg and Osmo Vuoristo to Robert C. Heyder, Nov. 22, 1990, *supra* note 162.

Service all of the items it requested from the collection,¹⁷⁹ but the loan agreement was a major victory for an exhibit that was already years in the making.

The 17 object loan consisted primarily of tools and pieces of clothing excavated by Nordenskiöld at Mesa Verde. Among other items, the loan included: a hardwood arrowhead, flint blade, yucca-plaited sandal, digging stick, and bone flesher.¹⁸⁰ Mesa Verde National Park was responsible for insuring the collection, which was valued at \$88,000.¹⁸¹ Moreover, though Mesa Verde National Park planned a touring version of the Nordenskiöld exhibit to take place upon the conclusion of its own showing, the representatives from the National Museum of Finland explicitly stated that all objects from its collection were being loaned solely for the exhibit at Mesa Verde.¹⁸² In addition to the above terms, Heyder also agreed that Mesa Verde National Park was responsible for transporting the 17 objects from the Finnish Consulate in Los Angeles to Mesa Verde National Park.¹⁸³

Bauer was then placed in charge of transporting the loaned objects from Los Angeles to Mesa Verde. She drove over 11 hours to personally pick up the objects at the Finnish consulate and remarked that the experience demonstrated to her the importance of Nordenskiöld's collection to the National Museum of Finland.¹⁸⁴ "I saw firsthand how much this collection meant to them. The National Museum of Finland bought the box [containing the objects being loaned] its own seat on a direct flight from Helsinki to Los

¹⁷⁹ Letter from C.J. Gardberg and Osmo Vuoristo to Robert C. Heyder, Nov. 22, 1990, *supra* note 162.

¹⁸⁰ Proforma from Pirjo Varjola, Former Curator at the Nat'l Museum of Fin. to Robert C. Heyder, Former Superintendent of Mesa Verde Nat'l Park (Apr. 5, 1991) (on file with author) [hereinafter Proforma from Pirjo Varjola to Robert C. Heyder].

¹⁸¹ *Id.*

¹⁸² Letter from C.J. Gardberg and Osmo Vuoristo to Robert C. Heyder, Nov. 22, 1990, *supra* note 162.

¹⁸³ Letter from C.J. Gardberg and Osmo Vuoristo to Robert C. Heyder, Nov. 22, 1990, *supra* note 162; Proforma from Pirjo Varjola to Robert C. Heyder, *supra* note 180.

¹⁸⁴ Telephone Interview with Elizabeth Bauer, *supra* note 158.

Angeles.”¹⁸⁵ One hundred years after being shipped away from Southwestern Colorado on a train bound for the Swedish Consulate in New York, these 17 objects were now en route to their original home.

Back at Mesa Verde, Bauer, Heyder, and other National Park Service employees organized the centennial exhibit. Bauer and Heyder both remarked that the exhibit was a major hit among park visitors when it was finally opened to the public. Specifically, Bauer remarked, “[e]veryone loved [the exhibit]. The exhibit felt complete and so much more personal with Nordenskiöld’s objects here. Everything was represented.”¹⁸⁶ Heyder also praised the exhibit, and, in particular, Bauer’s efforts. “I cannot tell you enough how great of a job [Bauer] did. She designed everything from the exhibit layout to the verbiage. It would not have been possible without her.”¹⁸⁷ Moreover, Heyder expressed gratitude towards Arrhenius for lending many of Nordenskiöld/Arrhenius family items to the exhibit.¹⁸⁸

For Gustaf Arrhenius, the Nordenskiöld exhibit was a welcomed acknowledgement of the accomplishments of his grandfather and the impact he had in the creation of Mesa Verde National Park. Arrhenius remarked that negative nationalism and xenophobia commonly impact the way some people perceive his grandfather but that the efforts of the “enthusiastic and knowledgeable” Heyder went a long way towards confronting these misconceptions.¹⁸⁹ “Bob Heyder was the most creative and active Park Superintendent in Mesa Verde’s history. My family and I were happy to help make it happen,” he asserted.¹⁹⁰ Arrhenius also praised Judith and David Reynolds’ biography of Nordenskiöld, *Nordenskiöld of Mesa*

¹⁸⁵ Telephone Interview with Elizabeth Bauer, *supra* note 158.

¹⁸⁶ Telephone Interview with Elizabeth Bauer, *supra* note 158.

¹⁸⁷ Telephone Interview with Robert C. Heyder, *supra* note 157.

¹⁸⁸ Telephone Interview with Robert C. Heyder, *supra* note 157.

¹⁸⁹ Interview with Gustaf Arrhenius, *supra* note 169.

¹⁹⁰ Interview with Gustaf Arrhenius, *supra* note 169.

Verde: A Biography, as the most comprehensive scholarly account of his grandfather's life.¹⁹¹

Upon the conclusion of the showing of the Nordenskiöld exhibit at Mesa Verde, a touring version of the exhibit was shown in various cities in New Mexico and Colorado as well as Evanston, Illinois.¹⁹² Though in the original loan agreement, it was stipulated that none of the National Museum of Finland's objects would travel, a later agreement was made to allow the National Park Service to extend its loan on six objects that would be permitted to tour with the exhibit.¹⁹³ Irving Diamond lectured about his studies on Nordenskiöld and his role in helping secure the loan when the Nordenskiöld exhibit tour made its stop at the Maxwell Indian Museum in Evanston, Illinois.¹⁹⁴ After the tour made its exhibit made its final stop in Grand Junction, Colorado,¹⁹⁵ these objects once again made the trek from Colorado to Scandinavia. All 17 loaned objects were returned safely to the National Museum of Finland with the loan being considered a success on both ends.

Relatively few new developments or inquiries into the possessory status of Nordenskiöld's collection have been made in the aftermath of the 1991 loan. Lahdentausta remarked that, since she started working as Museum Keeper at the National Museum of Finland in 1994, no inquiries have been made regarding either the repatriation or loan of the Nordenskiöld collection.¹⁹⁶ Tara Travis, current Museum Curator at Mesa Verde National Park, asserted via

¹⁹¹ E-mail from Gustaf Arrhenius, Professor of Earth and Planetary Sciences at the Univ. of Cal., San Diego, to author (May 13, 2015, 18:06 PDT) (on file with author) [hereinafter Email from Gustaf Arrhenius].

¹⁹² Letter from Elizabeth Bauer, Former Museum Curator at Mesa Verde Nat'l Park, to Pirjo Varjola, Former Curator at the Nat'l Museum of Fin. (Feb. 29, 1992) (on file with author) [hereinafter Letter from Elizabeth Bauer to Pirjo Varjola].

¹⁹³ Letter from C.J. Gardberg, Former Dir. Gen. of the Nat'l Museum of Fin., & Osmo Vuoristo, Former Dir. of the Nat'l Museum of Fin, to Robert C. Heyder, Former Superintendent of Mesa Verde Nat'l Park, (Feb. 7, 1991) (on file with author) [hereinafter Letter from C.J. Gardberg and Osmo Vuoristo to Robert C. Heyder, Feb. 7, 1991].

¹⁹⁴ Pridmore, *supra* note 95.

¹⁹⁵ See Letter from Elizabeth Bauer to Pirjo Varjola, *supra* note 192.

¹⁹⁶ E-mail from Heli Lahdentausta, Keeper, Nat'l. Museum of Fin., to author (May 15, 2015, 02:12 PDT) (on file with author).

email that there are currently no plans for another Nordenskiöld in the future.¹⁹⁷ According to Judith Reynolds, while there has not been a recent effort to formally repatriate Nordenskiöld's collection, inquiries into the possessory status of the objects have persisted and likely will persist into the future.¹⁹⁸ Given the tendency of Nordenskiöld's story to stir up nationalistic feelings and debates into the legality of his actions at Mesa Verde, it is likely that, as long as the story as Nordenskiöld at Mesa Verde is told, such inquiries will continue to be made.

V. CONCLUSION

The controversy surrounding the possessory status of Gustaf Nordenskiöld's Mesa Verde collection demonstrates many of the most persistent themes in the study of allegedly stolen art and antiquities. In particular, it demonstrates the impact that nationalism and the legality of art and antiquity acquisition has in shaping arguments over who should pieces of the past. Nordenskiöld's story, furthermore, showcases how nationalism and pride can serve as the impetus in creating new laws to protect a nation's art and antiquities. Regardless of whether one views Nordenskiöld as a scientist who legally excavated on unprotected land or a "baron" who wrongfully stole American treasures, his influence on the creation of the American Antiquities Act of 1906 and the establishment of Mesa Verde National Park must be acknowledged.

The story of Gustaf Nordenskiöld's collection is also valuable because it shows how two agencies, to each of whom the allegedly stolen art and antiquities in question are of great importance, can work together to form a loan agreement for the benefit of the viewing public. As a result of the cooperation between the National Park Service and the National Museum of Finland, the public was able to learn and celebrate the tale of Gustaf Nordenskiöld by viewing firsthand some of the pieces he meticulously excavated from Mesa Verde and the very objects that helped spur an interna-

¹⁹⁷ E-mail from Tara Travis, Museum Curator, Mesa Verde Nat'l Park, to author (May 26, 2015, 08:45 PDT) (on file with author).

¹⁹⁸ Email from Judith Reynolds, *supra* note 110.

tional controversy. Primarily, the success of the loan is best summarized by Former Mesa Verde National Park Superintendent Robert Heyder in *Gustaf Nordenskiöld: Pioneer Archaeologist of Mesa Verde*, “[u]ndoubtedly, Nordenskiöld would be pleased to know that his work not only has withstood the test of time, but has brought together the United States and Finland in a cooperative effort to celebrate the anniversary of his visit.”¹⁹⁹

¹⁹⁹ ROBERT C. HEYDER, *Introduction to GUSTAF NORDENSKIÖLD: PIONEER ARCHAEOLOGIST OF MESA VERDE*, 1 (1991).

