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### Pharaohs, Nubians, and Antiquities: International Law Suggests It's Time for a Change in Egypt

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## COMMENT

# Pharaohs, Nubians, and Antiquities: International Law Suggests It's Time for a Change in Egypt

ANGELA M. PORTER\*

INTRODUCTION .....	542
I. BACKGROUND: KEMET, EGYPTIAN ANTIQUITIES LAW, AND EGYPT'S INTERNATIONAL OBLIGATIONS .....	545
A. Egyptian Antiquities Law over the Years .....	547
B. International Law Regarding Racial Discrimination and Culture .....	554
II. TO BE COMPLIANT WITH CERD, EGYPT MUST INCLUDE THE NUBIANS AND ITS ANTIQUITIES BODY MUST ADOPT A NEUTRAL EGYPTOLOGICAL NARRATIVE .....	557
A. Nubians Are a Distinct Indigenous Cultural Group, and Egypt Is Not as "Homogenous" as It Purports to Be .....	558
B. Nubians Have a Stake in Kemetic Cultural Property Decisions .....	562
C. Exclusion: Nubians Are Underrepresented in the Egyptian Government .....	563

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\* J.D. Candidate, Howard University School of Law, Class of 2013. I dedicate this Comment to my father, Douglas V. Porter, who nurtured my interest in all things Kemet and never let me quit on anything. I would like to thank my gracious advisor, Dean Lisa Crooms-Robinson, for pushing me; you helped me earn the title of "The Infamous Ms. Porter" at the Library of Congress. Dr. Greg Carr, I can't even begin to thank you for all that you've taught me; I could write another Comment just about that. I hope this footnote will suffice for the time being. Finally, to my family (especially Barbara L. Porter, Joseph, Tamara, Alexis, Sara-Louise, and Brittani), thank you for inspiring me and making me smile.

D. What Is Egypt's Paradigm? An Analysis of Egyptological Superiority Narratives Against CERD Article 4(a) .....	565
1. Racist and Ethnocentric Egyptological Ideas Forming the Superiority Narratives Prohibited by Article 4(a) of CERD .....	567
2. The Special Case of Cheikh Anta Diop .....	573
3. Counteracting Superiority Narratives with Neutral Scholarship: Egyptological Ideas that Comply with Article 4(a) of CERD .....	575
III. RESOLUTION: <i>MAAT</i> AND EDUCATION. <i>RENSI</i> <i>AND PER-AA</i> .....	580
A. Progress: A Positive Start, But More Action Required .....	580
B. Egypt Should Adhere to CERD and Respond to the Recommendations .....	582
C. Egypt Should Ratify the International Labour Organization's Convention No. 169 .....	585
D. Petitioning to Rensi: Egypt Should Assemble a Special Tribunal or Include More Nubians in Antiquities Governance .....	586
1. Educating Accurately: Pursuing the Truth .....	587
2. Educating Widely: Dispersal of Antiquities .....	588
3. Educating Forever: Prioritizing Preservation ....	589
E. Sending Eloquent Speeches to the <i>Per-Aa: Maat</i> and Education Intertwined Create an International Tribunal to Decide the Fate of Kemetic Antiquities .....	591
CONCLUSION .....	592

## INTRODUCTION

"Speak Maat, Do Maat, since it is important, it is great, and it endures."<sup>1</sup>

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1. JACOB H. CARRUTHERS, MDW NTR—DIVINE SPEECH: A HISTORIOGRAPHICAL REFLECTION OF AFRICAN DEEP THOUGHT FROM THE TIME OF THE PHARAOHS TO THE PRESENT 163 (2d ed. 1995) (providing an excerpt of Carruthers' unpublished translation of the Kemetic tale, the *Nine Petitions of the Farmer*). *Maat* is a Kemetic concept that is difficult to define exactly; Asante and Abarry attempt to define it in this way: "*Maat* recurs in most African societies as the influence of right and righteousness, justice and harmony, balance, respect, and human dignity." AFRICAN INTELLECTUAL HERITAGE: A BOOK OF SOURCES 59 (Molefi Kete Asante & Abu S. Abarry eds., 1996) [hereinafter AFRICAN INTELLECTUAL HERITAGE]. Russ

Between 1,985 and 1,773 BC, these words were written in a story entitled *The Nine Petitions of the Farmer Whose Speech Is Good*.<sup>2</sup> The story details a property dispute between a farmer, Khun Inpu (or “the one protected by the final judge”), and a wealthy man, Nemtynakht (or “strong robber”).<sup>3</sup> In the story, the wealthy man steals the farmer’s belongings after devising a scheme to justify the theft.<sup>4</sup> The farmer petitions the city official, Rensi, and after nine speeches, Rensi is compelled to have the farmer’s eloquent speeches recorded and presented to the *per-aa* (or “pharaoh”).<sup>5</sup> Finally, the *per-aa* orders the official to rule in the farmer’s favor, and the official awards the wealthy man’s entire estate to the farmer.<sup>6</sup>

Today, the Egyptian government assumes the role of Nemtynakht, while the indigenous Nubians<sup>7</sup> are placed in Khun Inpu’s unfortunate position; the Arab Egyptian-dominated government solely owns and manages ancient property to which the Nubians have a significant connection, while the Nubians have little say or consideration in determining what happens to their tangible cultural heritage.<sup>8</sup> Egypt’s Law 117 textually ignores the cultural connection that the Nubians have to antiquities, and Nubians are virtually absent in the agency executing antiquities law.<sup>9</sup> Furthermore, the Egyptian gov-

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VerSteege, author of *Law in Ancient Egypt*, describes *Maat* as “the Egyptian abstract sense of justice [that] guided the King’s command.” RUSS VERSTEEGE, *LAW IN ANCIENT EGYPT* 17-18 (2002).

2. CARRUTHERS, *supra* note 1, at 143.

3. *Id.* at 143-52.

4. *Id.* at 150-51.

5. *Id.* at 153-65. The word pharaoh comes from the Kemetic term *per-aa*, which literally means “the great house.” *Pharaoh*, *ENCYCLOPEDIA BRITANNICA*, <http://www.britannica.com/EBchecked/topic/455117/pharaoh>. It was originally used to identify the royal palace, but by the New Kingdom era, it was used as a synonym for the Kemetic king. *Id.* However, *per-aa* was never the king’s formal title. *Id.*

6. CARRUTHERS, *supra* note 1, at 165.

7. The term “Nubian” is a modern term, and it is unclear whether the people of ancient *Nbu* or Kush used or exhibited the language or ethnicity denoted by the modern term “Nubian” or if that term is merely projected backward. DAVID O’CONNOR, *ANCIENT NUBIA: EGYPT’S RIVAL IN AFRICA*, at xii (1993). The modern-day group known as the Nubians are a population indigenous to Egypt. See BRUCE G. TRIGGER, *HISTORY AND SETTLEMENT IN LOWER NUBIA* 16 (1965) [hereinafter TRIGGER, *HISTORY AND SETTLEMENT*]. The Nubians are the result of a mixture with other populations “from a surprising variety of places.” *Id.* The majority of the population is Muslim and speaks Nubian as a first language. *Id.* at 16, 18.

8. See discussion *infra* Part II.

9. See S. DERSO, INT’L LABOUR ORG. & AFRICAN COMM’N ON HUMAN & PEOPLES’ RIGHTS, *EGYPT: CONSTITUTIONAL, LEGISLATIVE AND ADMINISTRATIVE PROVISIONS CONCERNING INDIGENOUS PEOPLES* 20 (2009) [hereinafter *EGYPT: INDIGENOUS PEOPLES*]. See generally Law No. 117 of 1983 (Antiquities Protection Law), *Al-Jarida Al-Rasmiyya*, 11 Aug. 1983, art. IV (Egypt) [hereinafter *Egypt Law 117 Original*], available at [http://www.unesco.org/culture/natlaws/media/pdf/egypt/egypt\\_law117\\_1983\\_engtof.pdf](http://www.unesco.org/culture/natlaws/media/pdf/egypt/egypt_law117_1983_engtof.pdf).

ernment has neglected and excluded the Nubians.<sup>10</sup> This is a problem under international law, especially if the Nubians' cultural connection to "ancient Egyptian" history is systematically ignored, as it has been in Egyptology.<sup>11</sup> Egypt's legal approach to antiquities must change because, by ignoring the Nubian cultural connection to "ancient Egyptian" antiquities, Egypt is racially discriminating against the Nubians, which violates Egypt's international legal obligations and the fundamental principal of *maat* (justice).<sup>12</sup>

The upheaval of the 2011 Egyptian Revolution provides an opportunity for participants, scholars, and advocates to reflect on the country's treatment of its people to identify opportunities for improvement.<sup>13</sup> This Comment proposes that the Egyptian government seize this period of change by properly acknowledging the Nubians and their connection to ancient cultural remains through inclusion in Egypt's antiquities system and law. By doing this, the country will live up to its international obligations and eliminate any racial discrimination that it may be perpetuating. In making this recommendation, it is important to review the history of Egypt's antiquities system up to the time of the Egyptian Revolution.

Part I of this Comment describes the history and structure of Egypt's antiquities laws. It also describes Egypt's relevant international obligations under the (1) Convention on the Elimination of All Forms of Racial Discrimination, (2) the International Covenant on Economic, Social and Cultural Rights, and (3) the United Nations Declaration on the Rights of Indigenous Peoples. In Part II, this Comment argues that the current state of Egypt's antiquities system is inconsistent with its international obligations. Part II considers (1) whether Egypt's exclusion of the Nubians stems from Egyptological superiority narratives and (2) analyzes which narratives Egypt could adopt without violating international law. Finally, Part III of this Comment proposes potential solutions that promote Nubian inclusion and Egyptian compliance with CERD, ICESCR, and UNDRIPs.

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10. See discussion *infra* Parts II.C, II.D.

11. See discussion *infra* Part II.

12. See discussion *infra* Part II.

13. See Nevine El-Aref, *Heritage at What Cost?*, AL-AHRAM WKLY. (Cairo), Jan. 12–18 2012, <http://weekly.ahram.org.eg/2012/1080/eg42.htm?mid=57> [hereinafter El-Aref, *Heritage*] (mentioning the 2011 Egyptian Revolution and changes that have been made in Egyptian governance since).

## I. BACKGROUND: KEMET, EGYPTIAN ANTIQUITIES LAW, AND EGYPT'S INTERNATIONAL OBLIGATIONS

The “ancient Egyptian” cultural record includes papyri decorated with stories like the Nine Petitions of the Farmer, passed down four thousand years to us through the work of ancient *sešhw* (or scribes).<sup>14</sup> It consists of many other items that have similarly withstood the tests of thousands of years.<sup>15</sup> From antiquities found in Egypt, we learn about Kemet, the ancient civilization popularly known as “ancient Egypt.”<sup>16</sup> The Kemetic people influenced and greatly contributed to most aspects of modern society, including law,<sup>17</sup> mathematics,<sup>18</sup> medicine,<sup>19</sup> astronomy,<sup>20</sup> religion,<sup>21</sup> art,<sup>22</sup> writing,<sup>23</sup> architecture,<sup>24</sup> and

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14. See ALAN GARDINER, *EGYPTIAN GRAMMAR: BEING AN INTRODUCTION TO THE STUDY OF HIEROGLYPHS* 27, 37, 58 (3d ed. 1957) (demonstrating that the ancient Egyptian word for scribe is likely pronounced *sešh*, and pluralizing requires the addition of the suffix *-w*); *Papyrus with Part of the Tale of the Eloquent Peasant*, BRITISH MUSEUM, [http://www.britishmuseum.org/explore/highlights/highlight\\_objects/aes/p/papyrus\\_with\\_part\\_of\\_the\\_tale.aspx](http://www.britishmuseum.org/explore/highlights/highlight_objects/aes/p/papyrus_with_part_of_the_tale.aspx) (last visited Nov. 23, 2012) (“The *Tale of the Eloquent Peasant* is . . . from the Middle Kingdom (2040-1750 BC).”).

15. See generally Ian Shaw, *Introduction to THE OXFORD HISTORY OF ANCIENT EGYPT* 1, 1-16 (Ian Shaw ed., 2000) (explaining that the book creates a historical account of ancient civilization in the Nile Delta through examination of its surviving tangible record and artifacts).

16. See generally *id.* Throughout this Comment, the word Kemet and its variants will be used to refer to the ancient Nile river valley civilization popularly called “ancient Egypt.” The term “kmt” dates back to 3100 BC AFRICAN INTELLECTUAL HERITAGE, *supra* note 1, at 6. “Egypt” comes from the later Greek word “Aigyptos.” *Id.* Aigyptos is the Greek translation of “Hekaptah,” a Kemetic phrase that the Greeks tried to emulate after noticing many “temples of the diety Ptah” during their visits to Kemet from 800 B.C. forward. *Id.* This Comment prefers the older, native term for the ancient country. Kemet is translated to mean “the black land.” *Id.*; see also GARDINER, *supra* note 14, at 57 (listing *kmt* as the transliteration for “the Black Land, i.e. Egypt”). This Comment will use the terms “Kemet,” “Kemetic,” and “Kemetians,” recognizing that these terms are adaptations to the ancient word “kmt” and are not confirmed representations of how “kmt” was adapted or pronounced. This Comment does not use the phrase “ancient Kemet” because it is redundant, as Kemet is an ancient civilization that did not survive into modernity. Also, many of the quotes and references to citations in this Comment will employ the term “ancient Egypt” or simply “Egypt” as to respect and avoid distortion of the cited author’s choice to use the more popular term.

17. See generally VERSTEEG, *supra* note 1 (detailing Kemet’s contribution to the legal field).

18. “[T]he Rhind Mathematical Papyrus from Egypt, dating back 4,000 years ago . . . is the oldest mathematical treatise on record.” *Editorial*, in EGYPT: CHILD OF AFRICA 1, 4 (Ivan Van Sertima ed., 1994); see also Alim Gaynor, *Blacks: The Founders of Medicine Mathematics and Astronomy*, MISS. LINK, Feb. 21, 2008, at 16 (explaining that the Rhind papyrus indicates that the Kemetic people knew the exact formula for the volume of a cylinder and sphere). The African contribution to math and engineering is “little known, or attributed to other peoples.” Beatrice Lumpkin, *Mathematics and Engineering in the Nile Valley*, in EGYPT: CHILD OF AFRICA, *supra*, at 323.

19. See, e.g., Gaynor, *supra* note 18, at 16 (“Egyptians were writing medical textbooks as early as 5,000 years ago.”).

20. “[T]he earliest identifiable calendar date we have is 4241 B.C. from Egypt’s famed Sothic calendar, the one still in use today.” Charles S. Finch III, *Nile Genesis: Continuity of Culture from the Great Lakes to the Delta*, in EGYPT: CHILD OF AFRICA, *supra* note 18, at 35, 47. The Kemetic people used a 365-day calendar with twelve months of thirty days plus five extra

engineering.<sup>25</sup> Evidence of this magnificent civilization lies within a tangible record of ancient artifacts.<sup>26</sup> Papyri, reliefs, temples, statues, mummified remains, household items, stelae, food items, and clothing all tell us about ancient lives and culture.<sup>27</sup>

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days devoted to divine figures. Gaynor, *supra* note 18, at 16. They also found a solution for the extra  $\frac{1}{4}$  day that the modern calendar resolves with a leap-day every four years: a leap-year every 1,460 years. *Id.* Ancient Greek writer and traveler Herodotus wrote that priests of Heliopolis and Memphis, Egypt acknowledged Egyptian creation of the earliest calendar:

[T]he priests agreed with one another in saying that the Egyptians were the first of all men on earth to find out the course of the year, having divided the seasons into twelve parts to make up the whole; and this they said they found out from the stars: and they reckon to this extent more wisely than the Hellenes, as it seems to me, inasmuch as the Hellenes throw in an intercalated month every other year, to make the seasons right, whereas the Egyptians, reckoning the twelve months at thirty days each, bring in also every year five days beyond number, and thus the circle of their season is completed and comes round to the same point whence it set out.

HERODOTUS, AN ACCOUNT OF EGYPT 9 (G.C. Macaulay trans., Arc Manor 2008). The Kemetic people also knew how to align monuments with the stars. See Gaynor, *supra*, at 18.

21. See, e.g., THE OXFORD HISTORY OF ANCIENT EGYPT, *supra* note 15, at 82, 273 (describing phases of religious development in Kemet).

22. See, e.g., W.E.B. DU BOIS, THE NEGRO 45-46 (Humanity Books 2002) (1915) ("Before the reign of the first recorded king, five thousand years or more before Christ, there had already existed in Egypt a culture and *art* arising by long evolution from the days of paleolithic man, among a distinctly Negroid people.") (emphasis added).

23. See, e.g., THE OXFORD HISTORY OF ANCIENT EGYPT, *supra* note 15, at 78, 81-82 (describing the development of writing in Kemet).

24. See, e.g., *id.* at 282-83, 69-70, 120 (explaining different architectural phases in Kemetic history).

25. Additionally, the Greeks and Romans, who influenced Western civilization, were taught by the Kemetic people. See James Cuno, *Introduction to WHOSE CULTURE? THE PROMISE OF MUSEUMS AND THE DEBATE OVER ANTIQUITIES* 27 (James Cuno ed., 2009) ("Greek culture itself bears the imprint of other cultures: Egypt and the lands eastward toward India . . ."); see also Gaynor, *supra* note 18, at 16 (explaining that ancient Greek physician Galen studied in Egyptian medical schools). See generally ERIC HORNING, *HISTORY OF ANCIENT EGYPT: AN INTRODUCTION* (David Lorton trans., Cornell University Press 1999) (1978) (providing a history of Kemet and including its relationships with other civilizations). Horning describes the two cultures of Greeks and Egyptians, respectively, as "the younger, western one with its open attitude and the self-contained eastern one that bore the burden of thousands of years of history and had answers from primeval times at hand for all questions." *Id.* at 146. Members of archeological organizations asserted in an amicus brief that Kemetic civilization "inspired and influenced the very Graeco-Roman cultures that are the well-springs of Western heritage." Brief for Archaeological Institute of America et al. as Amici Curiae Supporting Appellee, United States v. Schultz, 333 F. 3d 393 (2d Cir. 2003) (No. 02-1357). Africana scholars write that "Egypt remains the most important civilization of antiquity in its impact on European and African civilizations." AFRICAN INTELLECTUAL HERITAGE, *supra* note 1, at 4; see also CHEIKH ANTA DIOP, *THE AFRICAN ORIGIN OF CIVILIZATION: MYTH OR REALITY* 230 (Mercer Cook ed. & trans., 1967) ("The Greeks merely continued and developed, sometimes partially, what the Egyptians had invented."); Linda L. Ammons, *Mules, Madonnas, Babies, Bath Water, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 Wis. L. REV. 1003, 1030 n.118 (1995) (citation omitted) ("The ancient African civilizations of Egypt, Ethiopia, and Nubia, among others, were respected, envied, and imitated by western cultures.").

26. See generally Shaw, *supra* note 15.

27. See generally *id.*

Today, Kemet is long gone, and in its place sits Egypt, a country that is transforming as a result of demands from its people during the 2011 Egyptian Revolution.<sup>28</sup> Thousands of years separate Egypt from Kemet, both culturally and demographically.<sup>29</sup> Over time, different cultural groups have developed in the country, some indigenous, others developing because of various foreign occupations.<sup>30</sup> However, the Egyptian government often imposes equal treatment on its varied population and affords little recognition to the heterogeneity of its citizenry.<sup>31</sup> One example of this—and the primary focus of this Comment—is Egypt’s antiquities system.<sup>32</sup>

#### A. Egyptian Antiquities Law over the Years

The history of Kemetic antiquities is a tumultuous one.<sup>33</sup> In the 1600s, Europeans carried out exploration missions in southern Egypt.<sup>34</sup> Exploration accelerated when Napoleon Bonaparte led his Egyptian conquest in 1798.<sup>35</sup> The French ventured into Egypt to attack British interests in the Mediterranean and India.<sup>36</sup> While digging fortifications, they found the famous Rosetta Stone.<sup>37</sup> In 1801, the British took the Rosetta Stone as a spoil of war, marking the beginning of major European export of Kemetic antiquities from Egypt.<sup>38</sup>

In 1836, Europeans founded “the Egyptian Society” for European travelers in Egypt, which amassed a library of Egyptological resources.<sup>39</sup> While the Society helped foster European interest in Kemet, scholar Rifaa al-Tahtawi was largely responsible for creating

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28. See El-Aref, *Heritage*, *supra* note 13 (mentioning the Egyptian Revolution).

29. See Wiley Henry, *Africa's Own: Egypt*, TRI-STATE DEFENDER (Memphis, Tenn.), Apr. 21, 1999, at 1B (quoting Ivan Van Sertima who makes the point that modern Egypt and ancient Egypt are two completely different civilizations).

30. Cf. EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 3-4, 14-16 (explaining what “indigenous” means and that the Nubians are an indigenous group in Egypt).

31. See discussion *infra* Part II.A.

32. See generally Law No. 117 of 1983, as amended by Law No. 3 of 2010, (Promulgating the Antiquities’ Protection Law), *Al-Jarida Al-Rasmiyya*, 14 Feb. 2010 (Egypt) [hereinafter Egypt Law 117 Amended] (outlining Egypt’s antiquities patrimony law).

33. See Dan Duray, *Pyramid Scheme: What's Next for Egypt's Artifacts?*, N.Y. OBSERVER, Aug. 23, 2011, available at <http://www.observer.com/2011/08/pyramid-scheme-what%E2%80%99s-next-for-egypt%E2%80%99s-artifacts/>.

34. DONALD MALCOLM REID, *WHOSE PHARAOHS? ARCHAEOLOGY, MUSEUMS, AND EGYPTIAN NATIONAL IDENTITY FROM NAPOLEON TO WORLD WAR I*, at 27 (1997).

35. *Id.* at 1.

36. *Id.* at 31.

37. *Id.*

38. *Id.*

39. *Id.* at 49.



that interest in his fellow Egyptians.<sup>40</sup> Meanwhile, the Egyptian Pasha Muhammed Ali viewed Kemetic antiquities mainly as “bargaining chips to be exchanged for European diplomatic and technical support.”<sup>41</sup>

In 1830, French Egyptologist Jean-François Champollion asked Ali to protect endangered antiquities in Egypt because many ancient temples had disappeared as a result of antiquities dealing.<sup>42</sup> Ali responded by blaming the Europeans, citing European precedent to ban export of antiquities and ordering their collection for display in Cairo.<sup>43</sup> European archaeologists took the ban as a joke and continued smuggling antiquities out of Egypt, with obelisks as “the most spectacular prizes of all.”<sup>44</sup> Nevertheless, many view Ali’s decree as the founding of Egypt’s Antiquities Service and the Egyptian Museum.<sup>45</sup>

It took several attempts to truly establish the Egyptian Museum, however.<sup>46</sup> Ali’s successor, Ottoman governor Abbas I, only “paid sporadic attention to antiquities,” and many were given as a gift to the Sultan in Turkey.<sup>47</sup> Abbas’s successor Said continued the trend by giving away the government’s collection of antiquities to Archduke Maximilian of Austria in 1855.<sup>48</sup>

Egyptologist Auguste Mariette excavated for Said.<sup>49</sup> During his time in Egypt, Mariette re-founded the Egyptian Antiquities Service and tried to prevent the loss of antiquities, but he ultimately could not.<sup>50</sup> He voiced his frustration that only five obelisks remained in Egypt, and when he died, the Egyptian cabinet declared that “hereafter no Egyptian monument shall be given to any power or to any city whatever not forming a part of the Egyptian territory.”<sup>51</sup>

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40. *Id.* at 50.

41. *Id.* at 54.

42. *Id.* at 41, 54-55. For example, the Temple of Dendera had been quarried to build a cloth factory. *See id.* at 55.

43. *Id.*

44. *Id.* at 57.

45. *Id.* at 56.

46. *See id.* at 58.

47. *Id.*

48. *Id.* at 100.

49. *See id.*

50. *Id.* at 100, 102.

51. *Id.* at 102-03.

As time went on, archaeology played a significant role in shaping Egyptian national identity.<sup>52</sup> The Egyptian public's interest in Kemet really began to grow in the 1800s.<sup>53</sup> It was during this time when Egyptian scholars began to participate in Western-dominated Egyptology.<sup>54</sup> As a result, in the mid-1800s, Egypt began adopting Kemetic symbols as part of its national identity.<sup>55</sup>

While Egypt was developing this connection to Kemet, Europe still dominated in the field of Egyptology: the Institut égyptien (a "learned society"), the Antiquities Service, and the Egyptian Museum were all the results of European interest and influence.<sup>56</sup> Europe also dominated Egypt itself, as Britain took political control of Egypt when it colonized the country in 1882.<sup>57</sup> Egypt, at this time, also remained connected to the Ottoman Empire.<sup>58</sup>

In 1883, Egypt's antiquities law declared all antiquities and museum objects property of the state, and the Antiquities Service was housed in the Ministry of Public Works.<sup>59</sup> The next year, the Ottoman antiquities law moved the Antiquities Service to the Ministry of Education, implying that antiquities were at that time viewed "as part of the national patrimony."<sup>60</sup> Egyptians slowly gained participation in the Antiquities Service: at its founding in 1860, fourteen percent of the Antiquities Service was Egyptian, and in 1890, that number grew to thirty-one percent.<sup>61</sup>

Britain severed Egypt's loose ties to Istanbul and the Ottoman Empire in 1914 and declared Egypt a British protectorate.<sup>62</sup> Five years later, the 1919 Egyptian Revolution forced Britain to eventually

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52. See *id.* at 2. "Ancient Egypt" was "an inspiration for a modern Egyptian renaissance." *Id.* at 8.

53. See *id.* at 118.

54. *Id.* at 95-96. For example, Al-Tahtawi wrote a history of ancient Egypt in Arabic. *Id.* at 95.

55. See *id.* at 95-96, 119. Al-Ahram, the government newspaper, appeared in 1876 and adopted "the pyramids" as its name. *Id.* at 95-96, 118. Also, Egypt's official postage displayed a pyramid and sphinx as symbols from 1867 to 1914. *Id.* at 96.

56. *Id.* at 97. European prevalence is also evidenced by the original Egyptian Museum's Beaux Arts neoclassical architectural design. *Id.* at 192 ("An Egyptian architect and indigenous design were out of the question.").

57. See Terje Tvedt, *The Nile and the British Road to Imperialism*, AL JAZEERA, <http://www.aljazeera.com/programmes/struggleoverthenile/2011/05/201153181349369966.html> (last modified June 12, 2011).

58. See REID, *supra* note 34, at 175.

59. *Id.*

60. *Id.*

61. *Id.* at 189.

62. *Id.* at 119, 292.

give Egypt more autonomy in 1922; this was the same year that Tutankhamun's famous tomb came to light, and Egypt, in its limited independence, was able to keep the tomb's contents; pass stricter antiquities exportation laws; "Egyptianize" museums and the Antiquities Service; and empower Egyptian Egyptology through education and training of its universities.<sup>63</sup>

In 1951, Egypt adopted "Law No. 215 Concerning Antiquities' Protection" (Law No. 215), which sought to more strictly retain antiquities within its borders.<sup>64</sup> In 1952, the political climate was ripe for military leader Gamal Abdel Nasser's military takeover.<sup>65</sup> A reshuffle in power resulted in the end of British occupation in 1954.<sup>66</sup> With that, Egypt won full control of Kemetic antiquities and museums, and ninety-four years of French control of the Antiquities Service came to an end.<sup>67</sup> That same year, the country beamed with pride as the step pyramid at Saqqara and *per-aa* Khufu's solar boat were discovered by *Egyptian* archaeologists.<sup>68</sup> Four years later, the Antiquities Service finally moved to the Ministry of Culture and National Guidance, where it has remained since.<sup>69</sup>

Despite its retention concerns, Egypt temporarily changed Law No. 215 immediately before the construction of the Aswan High Dam.<sup>70</sup> Nasser supported construction of the dam in 1960 because it would industrialize Egypt and make the country self-sufficient after years of simple basin irrigation and foreign rule.<sup>71</sup> The dam, however, would inundate a large area called Lower Nubia, which was rich in Kemetic artifacts and monuments.<sup>72</sup>

To incentivize excavation and salvage these artifacts, the country lifted its restrictions on the removal of antiquities.<sup>73</sup> At this time, Egypt employed a system allowing foreign excavation teams to dig in

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63. *Id.* at 293.

64. Egypt Law 117 Original, *supra* note 9, at art. IV; John Alan Cohan, *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part Two)*, ENVIRONS ENVTL. L. & POL'Y J., Fall 2004, at 1, 52.

65. REID, *supra* note 34, at 293.

66. *Id.*

67. *Id.* at 294. Mustafa Amer became the first Egyptian to direct the Antiquities Service. *Id.*

68. *Id.*

69. *Id.* at 175.

70. See Kanchana Wangkeo, *Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime*, 28 YALE J. INT'L L. 183, 206 (2003).

71. *Id.* at 202-03.

72. *Id.* at 205.

73. *Id.* at 206.

more areas and take a fifty percent share of antiquities from an archaeological dig in Egypt.<sup>74</sup> Under this “partage” system, an Egyptian government official would go to an archaeological dig site, select “culturally significant artifacts” for the government to keep, and then—in two piles—evenly split the remaining antiquities with the archaeologist.<sup>75</sup> Thus, foreign archaeologists and excavation teams shared their finds with the Egypt’s national museums.<sup>76</sup>

Nasser was succeeded by military officers Anwar al-Sadat and Hosni Mubarak.<sup>77</sup> In 1983, under the presidency of Mubarak, Egypt returned to strict retention when it passed The Law on the Protection of Antiquities, which is often referred to as “Law 117.”<sup>78</sup> Egyptian Law 117 was the lawmakers’ answer to some of Egypt’s cultural ownership goals.<sup>79</sup> The law is a vesting statute and an anti-possession statute—vesting in the state all ancient property found therein.<sup>80</sup> It nationalizes ancient artifacts,<sup>81</sup> regardless of who discovers those artifacts;<sup>82</sup> thus, foreign excavation teams in Egypt must turn over their finds to the Egyptian government.<sup>83</sup> The law also nationalizes Egypt’s antiquities museums and stores.<sup>84</sup>

As for artifacts privately owned in Egypt, the law requires that they be registered, recorded, and kept within Egypt’s borders.<sup>85</sup> Law 117 also criminalizes smuggling antiquities out of Egypt.<sup>86</sup> Furthermore, trade in antiquities is strictly prohibited, and upon adoption of Law 117, traders were given one year to get rid of the ancient contra-

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74. Duray, *supra* note 33; Wangkeo, *supra* note 70, at 206.

75. Duray, *supra* note 33.

76. See James Cuno, *Preface to JAMES CUNO, WHO OWNS ANTIQUITY? MUSEUMS AND THE BATTLE OVER OUR ANCIENT HERITAGE*, at xxxiii (2008) [hereinafter Cuno, *Preface*].

77. REID, *supra* note 34, at 293.

78. See Egypt Law 117 Original, *supra* note 9, at art. IV; EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 5; Cohan, *supra* note 64, at 67.

79. See Zahi Hawass, *Introduction to Egypt Law 117 Amended*, *supra* note 32, at 4 (“[W]e have taken a serious step in order to preserve the heritage of Egypt.”); Cohan, *supra* note 64, at 51 (“In order to combat looting of archaeological sites and advance policies supporting the retention of cultural property, many nations have enacted ‘umbrella’ retention laws that declare archaeological materials to be national property.”).

80. See generally Egypt Law 117 Amended, *supra* note 32 (outlining Egypt’s antiquities retention law).

81. See Egypt Law 117 Original, *supra* note 9, at art. 6 (“All antiquities are considered public property . . .”).

82. See Egypt Law 117 Amended, *supra* note 32, at art. 35.

83. See *id.* at art. 34, 35.

84. See *id.* at art. 28.

85. Egypt Law 117 Original, *supra* note 9, at art. 8 (“Anyone who does not notify the Authority of what he has of antiquities for registration . . . is considered an unlawful possessor . . .”); see also Cohan, *supra* note 64, at 67.

86. Cohan, *supra* note 64, at 67.

band they possessed.<sup>87</sup> Law 117 also reaches private ownership of real estate that may be “archaeological[ly] importan[t].”<sup>88</sup> If a person’s land is likely to contain antiquities, the government can confiscate that land.<sup>89</sup> In compensating those who previously owned the confiscated land, the government is not required to take into account the value of the antiquities found on that land.<sup>90</sup>

Before the 2011 Egyptian Revolution, the Egyptian government actively enforced Law 117 through a department devoted specifically to antiquities.<sup>91</sup> This arm of government, whose precursor was the Antiquities Service, was known as the Supreme Council of Antiquities (“SCA”).<sup>92</sup> It consisted of a Board of Directors (“SCA Board”) and two permanent committees which focused on different types of antiquities found in Egypt.<sup>93</sup> The SCA Board made recommendations regarding the registration of specific antiquities.<sup>94</sup>

Zahi Hawass became Secretary General of the SCA in 2002.<sup>95</sup> He instituted a catalogue system for artifacts; constructed storage units and new museums; and trained temple guards.<sup>96</sup> Hawass was a proponent of antiquities law reform, and he supported amendments to Law 117.<sup>97</sup> He expressed a need for harsher penalties to stop antiquities trafficking.<sup>98</sup> On February 14, 2010, under President Hosni Mubarak’s administration, Egyptian Law No. 3 (Law 3) went into effect.<sup>99</sup> Law 3 made possession of antiquities illegal:<sup>100</sup> possessors had

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87. See Egypt Law 117 Original, *supra* note 9, at art. 7 (“Trade in antiquities shall be prohibited from the date of effecting said law and present tradesmen are hereby granted a one year period of grace to arrange their circumstances and to dispose of antiquities they have.”).

88. Egypt Law 117 Amended, *supra* note 32, at art. 18; Egypt Law 117 Original, *supra* note 9, at art. 18.

89. See Egypt Law 117 Amended, *supra* note 32, at art. 18; Egypt Law 117 Original, *supra* note 9, at art. 18 (“Lands owned by individuals may be expropriated for their archaeological importance.”).

90. Egypt Law 117 Amended, *supra* note 32, at art. 18, 23.

91. Patty Gerstenblith, *The McClain/Schultz Doctrine: Another Step Against Trade in Stolen Antiquities*, CULTURE WITHOUT CONTEXT (Illicit Antiquities Research Ctr.), Autumn 2003, [www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue%2013/gerstenblith.htm](http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue%2013/gerstenblith.htm).

92. Egypt Law 117 Amended, *supra* note 32, at art. II, 5.

93. See *id.* at art. II, 7, 12.

94. *Id.* at art. II, 12.

95. *Recovering Stolen Treasures*, SUPREME COUNS. ANTIQUITIES, [http://www.sca-egypt.org/eng/rst\\_mp.htm](http://www.sca-egypt.org/eng/rst_mp.htm) (last visited Nov. 24, 2012).

96. Nevine El-Aref, *New Law on the Way*, AL-AHRAM WKLY. (Cairo), 27 Oct. – 2 Nov. 2005, <http://weekly.ahram.org.eg/2005/766/he1.htm> [hereinafter El-Aref, *New Law*].

97. *Recovering Stolen Treasures*, *supra* note 95.

98. El-Aref, *New Law*, *supra* note 96.

99. See Egypt Law 117 Amended, *supra* note 32, at 10; *Recovering Stolen Treasures*, *supra* note 95.

100. See Egypt Law 117 Amended, *supra* note 32, at art. 9.

one year to turn their antiquities over to Hawass's storehouses.<sup>101</sup> With Law 3, Hawass was also awarded his wish of harsher penalties for antiquities offenses.<sup>102</sup>

Pursuant to these two laws, the SCA routinely prosecuted individuals who were found to deal in post-1983 antiquities.<sup>103</sup> Since the 2011 Egyptian Revolution, however, the SCA has been in a state of flux.<sup>104</sup> Its name and structure have repeatedly changed, and it has undergone new leadership multiple times.<sup>105</sup> It is now called the Ministry of State for Antiquities (MSA), and is led by Antiquities Minister Mohamed Ibrahim.<sup>106</sup>

As the tourism industry, which employs tens of thousands of Egyptians, continues to boom in Egypt, antiquities governance becomes more important.<sup>107</sup> However, Egyptian national identity is becoming less associated with Kemet.<sup>108</sup> Today, there is a dual Islamic and "ancient Egyptian" identity.<sup>109</sup> Furthermore, "most Egyptians [are] far more at home with Arab and Islamic than with ancient Egyptian legacies . . ."<sup>110</sup> The tension between the two national identities "has no end in sight."<sup>111</sup> This abbreviated history reveals that while France, Britain, Germany, Italy, and later Egypt participated in archaeology and Egyptology, Nubian Egyptians were left in the shadows.<sup>112</sup> Their identity and their involvement in the antiquities system are notably absent in Egypt's antiquities chronology.

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101. El-Aref, *New Law*, *supra* note 96.

102. *See id.*

103. *See* Gerstenblith, *supra* note 91.

104. El-Aref, *Heritage*, *supra* note 13 ("In the many changes of 2011 the MSA replaced the SCA, and vice versa.").

105. *Id.* ("Meanwhile, the official body, the Supreme Council of Antiquities (SCA), then under the umbrella of the Ministry of Culture, swung between a Ministry of State for Antiquities (MSA) and an independent SCA body affiliated to the cabinet.").

106. Nevine El-Aref, *Major Project to Document All Egypt's Sites Starts with Beni Hassan Tombs*, AHRAH ONLINE (Cairo), July 2, 2012, <http://english.ahram.org.eg/NewsContent/9/40/46726/Heritage/Ancient-Egypt/Major-project-to-document-all-Egypt-sites-starts.aspx> (describing the Ministry of State for Antiquities).

107. REID, *supra* note 34, at 295-96.

108. *Id.*

109. *See id.* at 295. For example, currency bears both Islamic and pharaonic monuments. *Id.*

110. *Id.*

111. *Id.* at 296.

112. *See id.* at 403 (mentioning the word "Nubia" in the index of a comprehensive history book only twice). *See generally id.* (detailing the history of Egyptology and Egypt's antiquities structure).

## B. International Law Regarding Racial Discrimination and Culture

The Constitution of the Arab Republic of Egypt provides that treaties “shall have the force of law after their conclusion, ratification and publication . . . .”<sup>113</sup> This text suggests that treaties do not require enabling legislation to have the force of law in Egypt.<sup>114</sup> The Convention on the Elimination of All Forms of Racial Discrimination (CERD) attempts to eliminate racial discrimination in all of its manifestations.<sup>115</sup> CERD defines “racial discrimination” as

any . . . exclusion . . . or preference based on race, . . . [or] descent . . . which has the purpose or effect of nullifying or impairing the recognition, . . . on an equal footing, of human rights and fundamental freedoms in the political, economic, social, *cultural*, or any other field of public life.<sup>116</sup>

This discrimination can be intentional but also by effect.<sup>117</sup> Additionally, discrimination may occur as a result of treating groups with similar circumstances differently or treating groups with varying circumstances equally.<sup>118</sup> Finally, the CERD Committee has expressly stated that CERD applies to indigenous groups.<sup>119</sup>

State Parties to CERD must review their current laws and regulations and nullify those that perpetuate racial discrimination.<sup>120</sup> Additionally, State Parties to CERD “condemn all propaganda . . . which are based on ideas or theories of superiority of one race or group of

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113. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, March 26, 2007, art. 151. At the time of publication of this Comment, Egypt is about to write a new constitution (after June 2012).

114. EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 10.

115. See generally International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195, available at <http://www2.ohchr.org/english/law/cerd.htm> (last visited Mar. 9, 2012) [hereinafter CERD] (promoting human dignity and equality and outlining an agreement to eradicate threats to those core principles).

116. *Id.* at art. 1(1) (emphasis added).

117. United Nations, Comm. on the Elimination of Racial Discrimination, General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination, ¶ 7, U.N. Doc. CERD/C/GC/32 (Sept. 24, 2009) [hereinafter General Recommendation No. 32].

118. See *id.* ¶ 8.

119. See United Nations, Comm. on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples, ¶ 2, U.N. Doc. A/52/18, annex V (Aug. 18, 1997) [hereinafter General Recommendation No. 23], available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?OpenDocument).

120. CERD, *supra* note 115, at art. 2(1)(c).

persons of one colo[ ]r or ethnic origin . . . .”<sup>121</sup> Egypt is a State Party to CERD, having acceded to the international convention in 1967.<sup>122</sup>

Another international treaty pertaining to culture is the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>123</sup> Article 15 of ICESCR asserts that the State Parties to the Covenant “recognize the right of everyone . . . to take part in cultural life . . . [and] enjoy the benefits of scientific progress and its applications.”<sup>124</sup> ICESCR’s General Comment No. 21 defines “cultural life” as an idea that considers “individuality and otherness.”<sup>125</sup> Furthermore, in the context of minority groups, State Parties are required to recognize minority groups within the State as an important and distinct component of the State’s own larger culture and identity.<sup>126</sup> For indigenous groups especially, ICESCR demands State action securing the right of groups to “maintain, control, protect and develop their cultural heritage . . . .”<sup>127</sup> Egypt is a State Party to ICESCR as well, having signed the treaty in 1967 and ratified it in 1982.<sup>128</sup> However, the United Nations Economic and Social Council (ECOSOC) has observed that it is unclear whether Egypt has domestically implemented ICESCR.<sup>129</sup>

As a State Party to these two treaties, Egypt is required to submit reports periodically regarding its efforts to achieve the aims set out in the treaties.<sup>130</sup> For CERD, Egypt reports to the Committee on the

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121. *Id.* at art. 4.

122. See Reports Submitted by States Parties Under Article 9 of the Convention, Apr. 11, 2001, ¶ 3, U.N. Doc. CERD/C/384/Add.3, [hereinafter Egypt Report to CERD]; see also United Nations, Comm. on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Egypt, 08/15/2001, paras. 278-279, U.N. Doc. A/56/18; CERD, 59th Sess. (2001) [hereinafter CERD Report on Egypt], available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/A.56.18,paras.278-297.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/A.56.18,paras.278-297.En?Opendocument).

123. See generally International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, available at <http://www2.ohchr.org/english/law/cescr.htm> (last visited Nov. 25, 2012) [hereinafter ICESCR] (outlining cultural rights of citizens of the treaty’s state parties).

124. *Id.* at art. 15(1)(a)-(b).

125. See United Nations, Econ. & Soc. Council, General Comment No. 21: Right of Everyone to Take Part in Cultural Life, ¶ 12, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

126. See *id.* ¶ 32.

127. *Id.* ¶ 37.

128. Egypt Report to CERD, *supra* note 122, at para. 6; see United Nations, Econ. & Soc. Council, Comm. on Econ., Soc., and Cultural Rights, Concluding Observations of the Committee on Economic, Social, and Cultural Rights: Egypt, May 23, 2000, at para. 12, U.N. Doc. E/C.12/1/Add.44; ICESCR (2000) [hereinafter ICESCR Report on Egypt], available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.44.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.44.En?Opendocument); see also EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 11.

129. See ICESCR Report on Egypt, *supra* note 128, at para. 12; EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 10.

130. See CERD, *supra* note 115, at art. 9(1); ICESCR, *supra* note 123, at art. 16-17.



Elimination of Racial Discrimination (CERD Committee).<sup>131</sup> Egypt must report its ICESCR progress to ECOSOC.<sup>132</sup>

Another important treaty to which Egypt is required to adhere is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIPs).<sup>133</sup> Adopted by the United Nations General Assembly in 2007 with Egypt's favorable vote,<sup>134</sup> UNDRIPs recognizes that (1) indigenous peoples have been discriminated against and oppressed in various aspects of life, and (2) there is a need to hold State Parties to treaties and agreements establishing the rights of indigenous peoples.<sup>135</sup> It prohibits discrimination based on indigenous *origin or identity*.<sup>136</sup>

UNDRIPs provides that indigenous groups have the right to "participate fully, if they so choose" in the cultural life of their respective States.<sup>137</sup> Moreover, it requires State Parties to take measures to prevent or provide redress for actions that have the "aim or effect of depriving [indigenous groups] of their integrity as *distinct* peoples, or of their cultural values or ethnic identities."<sup>138</sup> One of the key provisions of UNDRIPs relevant to the Nubians and antiquities in Egypt is contained in article 11: "Indigenous peoples have the right to . . . maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature."<sup>139</sup>

Despite Egypt's status as a State Party to CERD, ICESCR, and UNDRIPs, no Egyptian legislation addresses the rights of indigenous or marginalized peoples.<sup>140</sup> Egypt's constitution is silent about the rights of indigenous peoples, containing only an implicit notion that there are smaller groups within the purportedly homogenous Arab

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131. CERD, *supra* note 115, at art. 8-9.

132. ICESCR, *supra* note 123, at art. 16(2).

133. G.A. Res. 61/295, U.N. Doc. A/61/L.67 (Sept. 13, 2007) [hereinafter UNDRIPs].

134. *See id.*; *see also* INT'L LABOUR ORG. & THE AFRICAN COMM'N ON HUMAN & PEOPLES' RIGHTS, THE RIGHTS OF INDIGENOUS PEOPLES IN 24 AFRICAN COUNTRIES 8 (2009) [hereinafter ILO, RIGHTS OF INDIGENOUS].

135. *See* ILO, RIGHTS OF INDIGENOUS, *supra* note 134, at 1-2; *see also* UNDRIPs, *supra* note 133, at art. 37 ("Indigenous peoples have the right to the recognition, observance and enforcement of treaties . . .").

136. UNDRIPs, *supra* note 133, at art. 2 ("Indigenous peoples and individuals are free and equal to all other peoples and . . . have the right to be free from any kind of discrimination . . . in particular that based on their indigenous origin or identity.").

137. *Id.* at art. 5.

138. *Id.* at arts. 8(2), 38 (emphasis added).

139. *Id.* at art. 11(1).

140. ILO, RIGHTS OF INDIGENOUS, *supra* note 134, at 35.

state.<sup>141</sup> Unfortunately, Egypt has not met its treaty obligations. Meeting the requirements of these instruments is the first step toward inclusion in the antiquities structure to which the Nubians are entitled.

## II. TO BE COMPLIANT WITH CERD, EGYPT MUST INCLUDE THE NUBIANS AND ITS ANTIQUITIES BODY MUST ADOPT A NEUTRAL EGYPTOLOGICAL NARRATIVE

Considering CERD, ICESCR, and UNDRIPs, Egypt's antiquities system racially discriminates against Nubian Egyptians.<sup>142</sup> This is because Egypt's antiquities law and structure exclude Nubian Egyptians.<sup>143</sup> The Egyptian government has a legal problem: it has noticeably ignored the needs of its minority groups and vulnerable communities.<sup>144</sup>

Upon reviewing Egypt's CERD reports in 2001, the Committee on Elimination of Racial Discrimination (CERD Committee) noticed and expressed concern at the lack of information contained therein about the Nubians and other cultural groups.<sup>145</sup> The Committee expressed this concern after noting Egypt's view that its population was homogenous.<sup>146</sup> The Committee then recommended that Egypt provide information on small ethnic groups like the Nubians and their ability to preserve their culture.<sup>147</sup>

This ignorance of minority needs extends to Egypt's antiquities law. Law 117, as amended by Law 3, describes the structure of the SCA, which consists of two "Competent Permanent Committee[s]": "the permanent committee concerned with the ancient Egyptian, Greek and Roman Antiquities [and] the permanent committee concerned with Islamic and Coptic monuments."<sup>148</sup> There is no mention of concern for Nubian antiquities here.<sup>149</sup> In fact, the term "Nubian" is not used once in the thirty-nine-page legislation, despite the presence of Nubian artifacts in Egypt.<sup>150</sup> This is probably due to Egypt's

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141. *See id.* at 18.

142. *See discussion infra* Part III.

143. *See discussion infra* Part III.

144. *See CERD Report on Egypt, supra* note 122, at paras. 286, 293; ICESCR Report on Egypt, *supra* note 128, at para. 13.

145. CERD Report on Egypt, *supra* note 122, at para. 286.

146. *Id.*

147. *Id.* at para. 293.

148. Egypt Law 117 Amended, *supra* note 32, at art. II, 7.

149. *Id.* at art. II.

150. *See generally id.* (exhibiting no use of the term "Nubian" throughout the Egypt antiquities legislation document).

claims of cultural homogeneity, as the CERD Committee noted in its concerns and recommendations.<sup>151</sup>

This section will explore reasons why Egypt should recognize and involve its Nubian population in its antiquities system. It will explain that the Nubians are a culturally distinct group in Egypt and that they have a stake in Kemetic history. This section will also explore the lack of Nubian presence in the Egyptian antiquities system and discuss how this exclusion violates CERD. Finally, this section will examine the role that Egyptology might play in Nubian exclusion and its relationship to CERD.

A. Nubians Are a Distinct Indigenous Cultural Group, and Egypt Is Not as “Homogenous” as It Purports to Be

In 1965, Egyptologist B.G. Trigger stated that “[t]he present-day Nubians are linguistically and culturally distinct from the Egyptians.”<sup>152</sup> In 2011, Journalist Tom Begg wrote that, “[i]n spite of the huge changes that swept across the region down the millennia, the Nubians retained their own distinct language, customs and culture until the present day.”<sup>153</sup> Despite the fact that the Nubians make up a distinct community in Egypt, the Nubian community and its history are often overlooked, in and outside of Egypt.<sup>154</sup> Representatives of the Egyptian government have maintained that Egypt is a culturally homogenous country without a major minority population.<sup>155</sup>

In its report to the CERD Committee, Egypt stated that, as a country, it “[did] not have any main ethnic minorities.”<sup>156</sup> Its report went on to state that “[t]here is full homogeneity among all the groups and communities of which the Egyptian population consists since they all speak the same language . . . and Arab culture predominates in all

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151. CERD Report on Egypt, *supra* note 122, at para. 286. The CERD Committee has been very active in analyzing State Party reports and recommending appropriate treatment of indigenous peoples. See ILO, RIGHTS OF INDIGENOUS, *supra* note 134, at 9.

152. TRIGGER, HISTORY AND SETTLEMENT, *supra* note 7, at 16 (forming this conclusion as a result of his studies in Egypt).

153. Tom Begg, *What Next for Egypt's Forgotten Minority? Egypt's Government Can No Longer Ignore the Grievances of Its 3 Million-Strong Nubian Community*, THINK AFRICA PRESS (July 14, 2011), <http://thinkafricapress.com/egypt/what-next-egypts-forgotten-minority>.

154. See Idris Weusi, *The Overlooked Civilization of Nubia*, MICH. CITIZEN, Feb. 7, 2003, at B1; see also Egypt Report to CERD, *supra* note 122, at para. 334.

155. United Nations Committee on the Elimination of Racial Discrimination, *Summary Record of the First Part (Public) of the 1484th Meeting*, Aug. 10, 2001, para. 29, U.N. Doc. CERD/C/SR.1484 (Sept. 17, 2002) [hereinafter CERD 1484th Mtg.].

156. Egypt Report to CERD, *supra* note 122, at para. 334; see also CERD 1484th Mtg., *supra* note 155, at para. 29.

its geographical regions . . . .”<sup>157</sup> This notion is also reflected in Egypt’s constitution, which similarly refers to the Egyptian people as one Arab nation and fails to recognize culturally distinct groups like the Nubians.<sup>158</sup>

Egypt’s purported homogeneity does not seem to be an accurate account of the reality on the ground.<sup>159</sup> Upon reviewing Egypt’s report, one CERD Committee Member noted that Egypt’s homogeneity assertions seemed to ignore indigenous groups in Egypt, like the Nubians.<sup>160</sup> Even within Egypt’s report, the country’s alleged homogeneity seemed unrealistic due to the report’s mention of the presence of Nubians in Egypt.<sup>161</sup>

Egypt’s claims of homogeneity seem to spring from the state’s perception that diversity is a threat.<sup>162</sup> Regardless of its purpose, the assertion that there is a homogenous “Egyptian” culture is not only inaccurate; it does not effectively serve communities like the Nubians in Egypt.<sup>163</sup> Ahmed Ragheb, lawyer and Head of the Hisham Mubarak Law Center, critiqued Egypt’s ousted military regime in January 2012, stating that the government marginalized minority issues in Egypt by “tying them to the idea of the unity of the state,” and shunning advocacy for minority rights as attempts to divide the state.<sup>164</sup> Furthermore, Ragheb urged, “[w]e need to redefine the Egyptian national fabric . . . . *We are not one entity or one culture like the ousted regime has been telling us; we are based on diversity not homogeneity.*”<sup>165</sup> Elham Eidarous, Popular Socialist Alliance Party Representative agreed: “[t]he failing . . . theory of having a unified development

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157. Egypt Report to CERD, *supra* note 122, at para. 334; *see also* CERD 1484th Mtg., *supra* note 155, at para. 29. It is important to note that the Nubians do not speak Arabic as a first language. *See* TRIGGER, HISTORY AND SETTLEMENT, *supra* note 7, at 16. Rather, they speak various dialects of Nubian. *Id.*

158. *See* ILO, RIGHTS OF INDIGENOUS, *supra* note 134, at 18 (explaining that Egypt’s constitution represents the country as a homogenous Arab nation).

159. *See generally* *Military Rule Failed Us, Say Nubian Youth*, DAILY NEWS EGYPT, Jan. 19, 2012, available at <http://dailynewsegypt.com/2012/01/19/military-rule-failed-us-say-nubian-youth/>.

160. CERD 1484th Mtg., *supra* note 155, at para. 36. Scholar Ivan Van Sertima sees the Nubians as a native group within Egypt. *See* Henry, *supra* note 29, at 1B. He compares Egypt to America in that both countries’ true natives are scarce. *Id.*

161. *See* CERD 1484th Mtg., *supra* note 155, at para. 29.

162. *See* Elizabeth A. Smith, *Tributaries in the Stream of Civilization: Race, Ethnicity, and National Belonging Among Nubians in Egypt* (2006) (Ph.D. dissertation abstract, New York University), AAT 3222006.

163. *See* *Military Rule Failed Us, Say Nubian Youth*, *supra* note 159.

164. *Id.*

165. *Id.* (emphasis added).

plan for the entire country regardless of the cultural, socioeconomic, demographic specificity of every area in Egypt *has to change*.<sup>166</sup>

Why would the Egyptian government present this homogeneity in its international discourse and domestic laws, such as Law 117? And why does Law 117 and the prevailing discourse superimpose Egypt—a modern idea—over the ancient civilization of Kemet?<sup>167</sup> Blogger Ahmed Awadalla blames Arab nationalism as ideological justification for declaring homogeneity and discriminating against minorities.<sup>168</sup> Howard University's Dr. Mario Beatty argues that this purported homogeneity and backward projection is more about economics than cultural ties.<sup>169</sup> For tourism—one of Egypt's main industries—to prevail, Kemetic civilization must be married to the modern Egyptian state.<sup>170</sup> What better fiction<sup>171</sup> to perform this marriage than a consistent, un-

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166. *Id.* (emphasis added).

167. It is error to superimpose modern Egypt on the pharaonic Kemetic civilization: as anthropologist, linguist, and author Ivan Van Sertima warns, “[m]odern Egypt is not to be confused at all with Egypt of the pyramids.” Henry, *supra* note 29, at 1B (internal quotation marks omitted).

168. Ahmed Awadalla, *Lessons from Nubia, REBEL WITH A CAUSE* (May 15, 2012), <http://rwac-egypt.blogspot.com/2012/05/lessons-from-nubia.html#more>. “Nubians are accused of separationism when they speak up for their rights.” *Id.*

169. Interview with Mario Beatty, Professor, Howard University Department of Afro-American Studies, in Washington, D.C. (Feb. 6, 2012).

170. *Id.*; see Amina Abdul Salam, *New Antiquities Project*, EGYPTIAN GAZETTE, July 5, 2012, available at <http://213.158.162.45/~egyptian/index.php?action=news&id=26640&title=New%20antiquities%20project> (affirming that tourism is prominent in Egypt's economy, and it needs to be protected in the face of declines that resulted from the Egyptian Revolution).

171. This homogenous “Egyptian” identity is a fiction for three reasons. First, to superimpose “Egypt” on ancient times is fallacious because the idea “Egypt” came about *after* the age of the pharaohs (*per-aa-w*). See GARDINER, *supra* note 14, at 37, 75 (explaining that pluralizing requires the addition of the suffix *-w* and that the term for pharaoh is *per-aa*). Back then, the term “Kemet” was used to describe the inhabited Nile valley region famous now for its pyramids, hieroglyphs, and mummies. *Id.* at 57, 611 (providing the original characters for *kmt*, representing Egypt, and translating those characters as “*Kmt* the Black Land, i.e. Egypt”). “Egypt” was first used in 800 BC (then *Aigyptos*) to describe the country whose territory encompassed the Nile valley region and desert land to its east and west. AFRICAN INTELLECTUAL HERITAGE, *supra* note 1, at 6; see also EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 3. Second, the presumed unbroken “Egyptian” identity was indeed broken by the number of empires that ruled the land where Kemet once was. See *id.* Between 525 BC and the present, Persian, Roman, Byzantine, Arab, Ottoman Turkish, French, and British powers ruled the land where Kemet previously was. See *id.* at 3-4; see also Henry, *supra* note 29, at 1B (“Egypt has been invaded a half dozen times.”). These powers influenced the country and people living in it. EGYPT: INDIGENOUS PEOPLES, *supra*, at 3 (“Egypt has a very ancient history and civilization that is influenced by the many historical powers that at various times ruled over it.”). It was only after the 1952 Revolution, led by the Committee of the Free Officers’ Movement, when Egypt became an independent Republic able to develop an identity under self-rule. See *id.* at 5. Third, the “Egyptian” fiction is especially erroneous because Egypt is not culturally homogenous. See generally *id.* (examining rights on the premise that there is a group of indigenous peoples in Egypt). At one point in ancient times—about 3200 BC—Nile valley inhabitants expressed a consistent culture. See *id.* at 3 (“The Union of the Southern Kingdom of Upper Egypt, which was under the influ-

broken, monolithic Egyptian identity that has withstood thousands of years.<sup>172</sup> Breaking this fictional identity threatens the state's economic wellbeing.<sup>173</sup> However, as Gamal Nkrumah states, "[i]t is the height of hypocrisy to lure Western tourists to Pharaonic ruins when the original Egyptians are themselves living in poverty as outcasts."<sup>174</sup>

The world cannot ignore and Egypt cannot dispute that there are groups within Egypt whose cultures are distinct from the majority (e.g., the Nubians, Copts, Berber, Bedouin, and Beja).<sup>175</sup> While these cultural groups are small compared to the majority Arab Egyptian population, Egypt is not fully homogenous, as it purported to be in its CERD report.<sup>176</sup> Rather, it is home to indigenous groups with distinct cultures.<sup>177</sup> Nevertheless, Egypt's stance in its reporting to international bodies confirms that it is uninterested in its own diversity.<sup>178</sup>

All of these actions result in racial discrimination pursuant to CERD.<sup>179</sup> In its General Recommendation No. 32, the CERD Committee emphasized that discrimination in effect includes treating "in an equal manner persons or groups whose situations are objectively different."<sup>180</sup> Furthermore, the Committee requires States to achieve "non-discrimination" and take special measures to remedy past discrimination.<sup>181</sup> To achieve non-discrimination, Egypt must consider characteristics of groups within its population.<sup>182</sup> By purporting to be

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ence of Nubians, was united with the Northern Kingdom of Lower Egypt, leading the rise of a unified kingdom circa 3200."). However, the minority of unconquered, indigenous southern inhabitants—the group now called Nubians—retained a culture more consistent with that of the ancients. *Id.*; see also Fatimah L.C. Jackson, *Anthropological Measurement: The Mismeasure of African Americans*, 568 ANNALS AM. ACAD. POL. & SOC. SCI. 154, 162 (2000) (describing the Nubians as an "indigenous Nilotic group[ ]" that contrasts with Egyptian Arabs).

172. Interview with Mario Beatty, *supra* note 169.

173. See Smith, *supra* note 162.

174. Gamal Nkrumah, *Nubians Muscling in: Rioting in Aswan Has Put a Long-Festering Nubian Question on the Front Burner for Egypt*, AL-AHRAM WKLY. (Cairo) (Sept. 8-14, 2011), <http://weekly.ahram.org.eg/2011/1063/eg8.htm>.

175. See CERD Report on Egypt, *supra* note 122, at para. 286; EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 3, 6 (2009). The Berber, Nubian, Bedouin, and Beja represent one percent of the population, collectively. *Id.* at 6. "It's time for us to realize that values of democracy and diversity must be respected and should never be taken away under any ideological guise or notion." Awadalla, *supra* note 168.

176. See discussion *supra* Part II.A.

177. See discussion *supra* Part II.A.

178. Symposium, *Plenary Session Transcript*, 40 U.C. DAVIS L. REV. 1275, 1281 (2007) ("States are more often than not illiberal and uninterested in preserving cultural diversity within them. At least historically we have seen that problem in Egypt with the Nubians.").

179. See General Recommendation No. 32, *supra* note 117, ¶ 8.

180. *Id.*

181. See *id.* ¶¶ 5, 8.

182. *Id.* ¶ 8.

homogenous and ignoring the presence of Nubians in its reports and its laws, Egypt is treating all of its citizens in an equal manner and ignoring that certain minority groups with distinct cultures and traditions deserve attention and representation. This is racial discrimination.<sup>183</sup>

## B. Nubians Have a Stake in Kemetic Cultural Property Decisions

While Egypt's laws have strengthened its hold over Kemetic antiquities, scholarship in Egyptology and science has weakened Arab Egypt's supposed primacy in cultural and genealogical connection to Kemet. Recent studies, scholarship, and scientific evidence show that today's Nubian population is representative of Kemetic and ancient Nubian populations.<sup>184</sup> Scientists have presented evidence demonstrating that the Nubian population probably did not have "racial intrusions" from the Mesolithic to the Early Christian periods.<sup>185</sup> A study based on skull variations by A.C. Berry, R.J. Berry, and P. Ucko demonstrated an "amazing [genetic] closeness" between the Kemetic and ancient Nubian populations.<sup>186</sup>

Beyond this genetic affinity lies a type of continuity more relevant to this Comment: cultural continuity.<sup>187</sup> The ancient Nubians were geographically, culturally, linguistically, and ethnically connected to the Kemetians.<sup>188</sup> The people living in southern Egypt today who characterize themselves as "Nubian" exhibit a dramatic cultural unity—not only to ancient Nubia (*Nbu* or *Ta-Seti*)<sup>189</sup> but to Kemet as

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183. See *id.* ¶¶ 7-8.

184. See Dana Reynolds-Marniche, *The Myth of the Mediterranean Race*, in EGYPT: CHILD OF AFRICA, *supra* note 18, at 109, 110; discussion *infra* Part II.D.2.

185. Reynolds-Marniche, *supra* note 184, at 118; see also Jackson, *supra* note 171, at 162-63 (stating in a scientific article that Nubians are an indigenous group in Egypt).

186. Reynolds-Marniche, *supra* note 184, at 119.

187. Interview with Mario Beatty, *supra* note 169; see Maurice E.R. Munroe, *UnAmerican Tail: Of Segregation and Multicultural Education*, 64 ALB. L. REV. 241, 291 (2000).

188. See Munroe, *supra* note 187, at 293 (explaining that ancient Egypt had a "close cultural link" with the civilization that had formed in the south—Nubia). There was a geographical, cultural, and ethnic closeness between the ancient Nubians and Kemetic people. *Id.*; see also O'CONNOR, *supra* note 7, at xi ("Both the Nubian world view and modes of cultural expression were always unique, even when *Egyptian art, language, and concepts became part of the cultural vocabulary used by the Nubians.*") (emphasis added).

189. See *supra* note 7 (pointing out the uncertainty surrounding use of the term "Nubian"); see also Frank J. Yurco, *Egypt and Nubia: Old, Middle, and New Kingdom Eras*, in AFRICA & AFRICANS IN ANTIQUITY 28, 28-31 (Edwin M. Yamauchi ed., 2001) (using the Kemetic term *Ta-Seti*—translating to "land of the bow"—to describe ancient Nubia).

well.<sup>190</sup> Thus, Nubians in Egypt would likely find a cultural connection to the vast majority of what would be characterized as “ancient Egyptian” antiquities, precisely the type of antiquities with which Law 117 and the MSA are concerned.<sup>191</sup> It follows that the Nubian community should be involved in determining the affairs of “ancient Egyptian” antiquities.

C. Exclusion: Nubians Are Underrepresented in the Egyptian Government

CERD’s definition of racial discrimination includes “any . . . exclusion” of color-, ethnic- or descent-based groups that prevents enjoyment of cultural freedom.<sup>192</sup> The Nubians are one such descent-based group.<sup>193</sup> Egypt’s international legal discourse, its silent antiquities statute, and its antiquities structure exclude the Nubian Egyptians from participating in the preservation of their culture.<sup>194</sup>

Law 117 provides that the SCA “is the exclusive authority concerned with all that is related to antiquities’ affairs” in Egypt.<sup>195</sup> The Minister of Culture makes significant decisions that impact Nubian Egyptian life.<sup>196</sup> For example, the Minister of Culture ultimately decides which antiquities are registered,<sup>197</sup> and he or she can play a role in the building projects and easements allowed on lands near archaeological sites.<sup>198</sup> Furthermore, only the SCA (before the Egyptian Revolution) was responsible for maintaining and restoring antiquities.<sup>199</sup> The SCA also authorized and regulated all excavations and searches for antiquities in Egypt.<sup>200</sup> From these duties, it is apparent

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190. Interview with Mario Beatty, *supra* note 169. It is unclear whether the modern community calling themselves Nubian Egyptians descended from ancient Nubians or Kemetians (popularly called “ancient Egyptians”). See O’CONNOR, *supra* note 7, at xii.

191. Egypt Law 117 Amended, *supra* note 32, at art. II, 5.

192. See *supra* note 116 and accompanying text. Egypt’s own constitution defines “racial discrimination” in almost exactly the same terms. See Egypt Report to CERD, *supra* note 122, at para. 11(c).

193. See discussion *supra* Part II.A.

194. See discussion *supra* Part II.C.

195. Egypt Law 117 Amended, *supra* note 32, at art. II, 5.

196. See generally *id.* (containing several clauses defining the many duties of the Minister of Culture).

197. *Id.* at art. 12.

198. *Id.* at art. 16 (“Upon recommendation of the competent Minister in cultural affairs . . . [the] Supreme Council for Planning and Urban Development is entitled to arrange easement on real-estates adjacent to the archaeological sites . . .”).

199. *Id.* at art. 30.

200. *Id.* at art. 32.



that the SCA (now MSA) directly affects the Nubian interest in preservation of their ancient cultural items.

The Nubian Egyptian population of approximately three million is severely underrepresented in Egypt's antiquities governance because it is underrepresented in Egyptian government generally.<sup>201</sup> Blogger Ahmed Awadalla attested to this in his "attempt to explore not-so-often-discussed taboo issues in Egypt" when he wrote that "the issue of Nubian rights is an often neglected and poorly understood issue . . . ."<sup>202</sup> Nubian Egyptians have expressed their frustrations with underrepresentation in the Egyptian government as a whole, claiming that the government has failed to address Nubian concerns since Egypt's military rule was established in the 1960s.<sup>203</sup> Currently, school curricula exclude Nubian cultural heritage, and because Nubian language is not taught in any Egyptian schools, it is at risk of becoming extinct.<sup>204</sup>

Nubian activists have complained that Egypt's new constituency laws give Nubians even less representation in parliament than they had before.<sup>205</sup> It is also notable that no Nubians were on the committee that was assembled in April 2012 to write Egypt's new constitution.<sup>206</sup> In this way, "*as usual*, Nubians were excluded from participating in shaping their country's future . . . ."<sup>207</sup> Fatima Imam, a Nubian Egyptian woman, laments this point, saying "[u]nfortunately,

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201. Begg, *supra* note 153; see Julia Simon, *How the Nubians View Egypt's Elections*, WORLD, Nov. 29, 2011, available at <http://www.theworld.org/2011/11/nubian-egypt-elections/> (putting the population at two million); see also Khaled Diab, *Hope for the Egyptian Nubians Damned by the Dam: Half a Century After the Inundation, Nubians May Finally Have the Prospect of Compensation for the Loss of Their Homeland*, GUARDIAN, Apr. 21, 2012, <http://www.guardian.co.uk/commentisfree/2012/apr/21/egypt-nubians-dam>.

202. Awadalla, *supra* note 168. Awadalla claims that the Nubians participated in the 2011 Revolution and championed their cause amidst a history of discrimination, but nevertheless "little attention is given to them." *Id.*

203. See *Military Rule Failed Us, Say Nubian Youth*, *supra* note 159.

204. Awadalla, *supra* note 168.

205. Nkrumah, *supra* note 174.

206. See Aya Batrawy, *Citing Islamists, Egypt's Coptic Church Pulls Out of Constitution Committee*, HUFFINGTON POST (Apr. 2, 2012, 1:35 PM), [http://www.huffingtonpost.com/2012/04/02/egypts-coptic-church-pulls-out\\_n\\_1396619.html](http://www.huffingtonpost.com/2012/04/02/egypts-coptic-church-pulls-out_n_1396619.html); see also Kristen Chick, *Egyptian Court Ruling Raises Stakes in Presidential Race*, CHRISTIAN SCI. MONITOR, Apr. 11, 2012. There were also no Bedouins on the committee, and twenty-five public figures pulled out of the committee in protest, arguing that the committee did not represent the country's diversity. Batrawy, *supra*.

207. Awadalla, *supra* note 168 (emphasis added).

we live in a society that does not see us and does not recognize that we share this country.”<sup>208</sup>

With all of these actions and accounts, it is clear that the Egyptian government is excluding the Nubians from participating generally. In turn, this broad exclusion means that the Nubians are also excluded from MSA and other bodies that make cultural decisions. This exclusion of the Nubians violates CERD Article 1(1).<sup>209</sup> One cannot be sure what ideology or paradigm drives Nubian exclusion, but the next section will examine different Egyptological ideologies and explore which are acceptable under CERD.

#### D. What Is Egypt’s Paradigm? An Analysis of Egyptological Superiority Narratives Against CERD Article 4(a)

In its most recent report regarding Egypt, the CERD Committee noted that Egypt did not comply with Article 4(a) of CERD, which requires the country to pass laws punishing “dissemination of ideas based on racial superiority.”<sup>210</sup> The CERD Committee observed, in its 2011 General Recommendation concerning racial discrimination against people of African descent, that “it has become evident from the examination of the reports of States parties to the Convention that people of African descent continue to experience racism and racial discrimination.”<sup>211</sup> The committee then recognized that people of African descent<sup>212</sup> have “[t]he right to their cultural identity,” the right

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208. *Fatima Imam: Diary [of an] Egyptian Black*, SHOROUK NEWS (Apr. 9, 2012, 10:55 PM), <http://www.shorouknews.com/menbar/view.aspx?cdate=09042012&id=f3cbafd4-d6d1-46a6-889e-e3c12698b005>.

209. See CERD, *supra* note 115, at art. 1(1).

210. CERD Report on Egypt, *supra* note 122, at para. 287.

211. United Nations, Comm. on the Elimination of Racial Discrimination, General Recommendation No. 34 Adopted by the Committee: Racial Discrimination Against People of African Descent, at 1, U.N. Doc. CERD/C/GC/34 (Oct. 3, 2011) [hereinafter General Recommendation No. 34].

212. The CERD Committee defines “people of African descent” as “those referred to as such by the Durban Declaration and Programme of Action and who identify themselves as people of African descent.” *Id.* The Durban Declaration and Programme of Action (DDPA) explains that slavery, the transatlantic slave trade, and colonialism, have all contributed to racism and racial discrimination, and “Africans and people of African descent . . . continue to be victims of [these historical events and] their consequences.” See United Nations, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, ¶¶ 13-14 (2001). From these descriptions and definitions, a strong argument can be made that, based upon the prevailing international discourse after transatlantic slavery, the implications of colonialism in Egypt, the history of Egypt, and the differences in skin color and attitudes springing therefrom, the Nubians can be considered a “people of African descent” regardless of the fact that they are in an African country and notwithstanding the fact that Egypt’s majority population is technically of African descent. More information would be needed to assess whether a substantial number of the majority Egyptian population identifies itself as people of African descent, and

to protect “their traditional knowledge and their cultural and artistic heritage.”<sup>213</sup>

In Egypt, justification for Law 117 is an argument that Kemetic artifacts are part of Egypt’s heritage because there is cultural continuity between the ancient and modern civilizations within Egypt’s borders.<sup>214</sup> Cultural continuity can mean one of two things. It can mean continuity from Kemet to modern Arab Egypt, excluding continuity to modern Nubian Egyptians. This meaning is reinforced by Egyptological and anthropological theories suggesting that Kemetians looked like modern Arab Egyptians, and did not consist of black Africans.<sup>215</sup> These theories form a superiority narrative that denies Nubian Egyptians and other black Africans their claim to Kemetic culture and genealogy.<sup>216</sup> Alternatively, the continuity argument could mean continuity from Kemet to many different cultural groups, an idea supported by more neutral Egyptological theories and supporting inclusion of the Nubians.<sup>217</sup>

To which narrative do the MSA and Egyptian legislators subscribe? They must be careful, because the superiority narrative violates Article 4(a) of CERD, while the latter narrative does not.<sup>218</sup> In the following two sections, this Comment will survey some of the narratives within Egyptology—the ethnocentric, race-based superiority narratives and the neutral, inclusionary narratives—and their theoretical relationship to actions in Egypt. The following sections will not analyze the narratives for their truth; it merely seeks to assess their flaws and strengths as a way to posit whether they comply with Article 4(a) of CERD. Based on this assessment, this Comment will recommend to the Egyptian government which narratives to adopt or endorse.

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confirmation is needed to confirm that the Nubians identify themselves as people of African descent. However, in the absence of sound and timely studies seeking these findings, the argument is strong that the minority of black Africans in Egypt are those people of African descent with which the DDPA and CERD Committee are concerned.

213. General Recommendation No. 34, *supra* note 211, ¶ 4(b), (c).

214. Cuno, *Introduction*, *supra* note 25, at 2.

215. See discussion *infra* Part II.D.1.

216. See Munroe, *supra* note 187, at 297 (“[T]he view that blacks are inferior is passed on by the notion that the ancient Egyptians were not black.”); see also discussion *infra* Part II.D.i.

217. See discussion *infra* Part II.D.ii. The issue of race in Kemet is a confusing one complicated by modern ideas superimposed on earlier times. It is even more confusing when one contemplates the ancient Nubians (or “Kushites”) and where the modern Nubians fall in the equation.

218. See discussion *infra* Parts II.D.1, II.D.2.

1. Racist and Ethnocentric Egyptological Ideas Forming the Superiority Narratives Prohibited by Article 4(a) of CERD

Egyptology is a field historically fraught with racism.<sup>219</sup> What reads as such a sweeping and damaging conclusion has been asserted by numerous scholars from diverse backgrounds. For example, Physicist John Pappademos stated that “historians of science have, with few exceptions, allowed the influence of racism to distort their scholarship to such an extent that the importance to science of the Black civilization of the Nile valley has been neglected and denied.”<sup>220</sup>

Another scholar, Martin Bernal, has written that “European Nationalist” scholars attempted to whiten Kemet to resolve their opposing cognitive tensions of respect for ancient African achievement and simultaneous racial supremacist thought.<sup>221</sup> Bernal also asserted that scholars and historians attempted to erase connections between ancient Greece and Kemet for the same racist reasons.<sup>222</sup> Are these assertions overcritical or unfounded? The idea that Egyptology was—and may continue to be—tainted by racism ought to be examined here, for the implications of discriminatory Egyptological thought may bleed into the Egyptian government’s legal stance toward the Nubian people.<sup>223</sup>

Almost a century ago, W.E.B. Du Bois asked “[o]f what race, then, were the [ancient] Egyptians?”<sup>224</sup> Before and since he posed that question, scholars have searched for the answer.<sup>225</sup> Scholars have written that “the more Egypt is seen as a society of significance to human civilization, the more its origins are disputed . . . .”<sup>226</sup> The debate surrounding the ethnic origins of ancient “Egyptians” draws

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219. See John Pappademos, *The Newtonian Synthesis in Physical Science and its Roots in the Nile Valley*, in *EGYPT: CHILD OF AFRICA*, *supra* note 18, at 305, 313; cf. Jackson, *supra* note 171, at 162-63 (suggesting generally that scientists searching for descent from Africa to Europe purposefully ignore the indigenous Nubians and focus on descent from Egyptian Arabs for racist reasons).

220. See Pappademos, *supra* note 219, at 305, 313.

221. Asa G. Hilliard III, *Bringing Maat, Destroying Isfet: The African and African Diasporan Presence in the Study of Ancient KMT*, in *EGYPT: CHILD OF AFRICA* *supra* note 18, at 127, 131. See generally, MARTIN BERNAL, *BLACK ATHENA: THE AFROASIATIC ROOTS OF CLASSICAL CIVILIZATION, VOLUME I: THE FABRICATION OF ANCIENT GREECE 1785-1985* (1987) (arguing that the African contribution to classical Greek civilization is purposely obscured due to racist reasons).

222. Hilliard III, *supra* note 221, at 131.

223. Cf. STUART TYSON SMITH, *WRETCHED KUSH: ETHNIC IDENTITIES AND BOUNDARIES IN EGYPT’S NUBIAN EMPIRE 14-15* (2003).

224. DU BOIS, *supra* note 22, at 43.

225. See *infra* Part II.D.1.

226. *AFRICAN INTELLECTUAL HERITAGE*, *supra* note 1, at 4.

from relatively modern ideas about race, which categorize races into "black" and "white."<sup>227</sup> As a result, Egyptological "studies . . . have in some cases degenerated into acrimonious wrangling over who owes what to whom in a cultural sphere and the ingratitude in failing to acknowledge the alleged debt."<sup>228</sup> The participants of this "acrimonious wrangling" are the Eurocentrists and the Afrocentrists.<sup>229</sup>

In nineteenth-century America, the majority belief in academic and popular culture was that the ancient Egyptians were racially and culturally dominated by Caucasian influence.<sup>230</sup> Because blacks were seen as inferior, "ancient Egyptians could not be black."<sup>231</sup> As one participant in this denial, Jacques Joseph Champollion-Figeac once stated that "two physical traits of black skin and kinky hair are not enough to stamp a race as negro."<sup>232</sup> As a result of this cognitive dissonance, many early Eurocentric Egyptologists categorized the Kemetite people as races other than black or African.<sup>233</sup>

Egyptologist Charles G. Seligman (1873-1940) subscribed to the "Hamitic Hypothesis," which asserted that African civilizations were actually created by the Hamites, descendants of the Biblical Noah's middle child, Ham.<sup>234</sup> Seligman asserted that "[t]he . . . Hamites were pastoral 'Europeans' . . . better armed as well as quicker witted than the dark agricultural Negroes."<sup>235</sup> Other respected scholars, like Grafton Elliot Smith (1871-1937), claimed that the Kemetians belonged to "the Brown race."<sup>236</sup> This theory was largely based on the observation that the Kemetians colored themselves brown on temple

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227. *Id.* at 3. These ideas, and thus the entire debate, would probably be vastly different or perhaps nonexistent if not for African enslavement. *Id.* ("There probably would never have been a question about the Africanity and blackness of the ancient Egyptians had Africans never been enslaved by Europeans.").

228. DONALD B. REDFORD, *FROM SLAVE TO PHARAOH: THE BLACK EXPERIENCE OF ANCIENT EGYPT*, at x (2004).

229. *Id.*

230. WALDO E. MARTIN, JR., *THE MIND OF FREDERICK DOUGLASS* 204 (1984) ("In the increasingly racist milieu of nineteenth-century Euro-America, the concept of the ancient Egyptians as a people dominated racially, culturally, and politically by Caucasians, or at worst, a Caucasoid-dominated mixture, curried scholarly and popular favor.").

231. Munroe, *supra* note 187, at 296.

232. CHEIKH ANTA DIOP, *ORIGIN OF THE ANCIENT EGYPTIANS* (1989) [hereinafter *DIOP, ORIGIN*], available at [http://www.melanet.com/clegg\\_series/diop.html](http://www.melanet.com/clegg_series/diop.html).

233. See generally Runoko Rashidi, *From the Center to the Fringe: The Persistence of Racial Myths in Physical Anthropological Theory*, in *EGYPT: CHILD OF AFRICA*, *supra* note 18, at 105 (discussing the various racial classification attempts of early Egyptologists).

234. *Id.* at 105-06.

235. *Id.* at 106 (internal quotation marks omitted).

236. *Id.*; see also *DIOP, ORIGIN*, *supra* note 232 ("Elliott Smith classes . . . Proto-Egyptians as a branch of what he calls the brown race.") (internal quotation marks omitted).

reliefs and papyri.<sup>237</sup> Instead of conceding that the brown paint meant the Kemetians were black Africans, scholars made up an entirely new race altogether.<sup>238</sup> That separation enabled Smith to one day suggest that “there is a profound gap that separates the Negro from the rest of mankind, including the Egyptian.”<sup>239</sup>

The creation of new, illusory racial categories continued with the mysterious “Mediterranean race,” Giuseppe Sergi’s (1841-1936) term for the group to which the Kemetic people belonged.<sup>240</sup> By championing the concept of the Mediterranean race, scholars like Sergi “sought to attribute Eurasian and Aryan origins to all of the earliest complex societies.”<sup>241</sup> The primary basis for Mediterranean race theory was the analysis of apparent cranial similarities between the remains of certain groups.<sup>242</sup> Scholars connected the peoples of Ethiopia and Somalia to Southern Italians and Nordic peoples, due to the similarities in their long skulls.<sup>243</sup> This theory is much like the “Aryan” theory, which posited that black Africa, Semitic Asia, and all of Europe belonged to a white race responsible for modern culture.<sup>244</sup> Finally, there was William Flinders Petrie’s idea of the “dynastic race . . . a superior white or at best brown” race from the north that built the pyramids and performed other great Kemetic achievements.<sup>245</sup> Walter Emery championed Petrie’s “dynastic race” as late as 1961.<sup>246</sup>

Much of Eurocentric Egyptology was supported by polygenism,<sup>247</sup> which rested on craniology or phrenology work by Samuel G.

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237. See Reynolds-Marniche, *supra* note 184, at 112.

238. See generally *id.* (discussing the origins and motives of the Mediterranean race myth).

239. *Id.* at 113 (quoting Grafton Elliot Smith). Smith also asserted that there was “only a minute Negroid element in the earliest Egyptians.” *Id.* (paraphrasing Smith).

240. Rashidi, *supra* note 233, at 106.

241. Reynolds-Marniche, *supra* note 184, at 109. Reynolds-Marniche “debunks” the Mediterranean racial myth by examining modern archaeological studies that contrasted ancient European, Southwest Asian, and North African skeletal and cranial remains. See generally *id.*

242. See generally *id.* (discussing the origins and motives of the Mediterranean race myth).

243. *Id.* at 110.

244. DU BOIS, *supra* note 22, at 34.

245. SMITH, *supra* note 223, at 14.

246. *Id.* A similar theory survived even longer: a “Professor Gallab” stated in 1974 that the early Kemetian was Caucasian, and the Negro culture of Kemet arrived later. UNESCO, THE PEOPLING OF ANCIENT EGYPT AND THE DECIPHERING OF MEROITIC SCRIPT: PROCEEDINGS OF THE SYMPOSIUM HELD IN CAIRO FROM 28 JANUARY TO 3 FEBRUARY 1974, at 81 (1978) [hereinafter UNESCO PROCEEDINGS]. Cheikh Anta Diop and Théophile Obenga sharply criticized Gallab for his theory. *Id.* at 87.

247. Polygenism was the idea that there was more than one human creation. MARTIN, JR., *supra* note 230, at 226. It rejected the idea that all mankind derived from one group. *Id.*

Morton, Josiah Nott, George R. Gliddon, and Louis Agassiz.<sup>248</sup> Their work posited that Caucasians had larger crania and larger brains, and therefore were more intelligent than other races, especially blacks.<sup>249</sup> Because these men also argued that Kemetians were mixed with a superior Caucasian component, they concluded that Kemetite intelligence and achievement should be accredited to the Kemetians' Caucasian-ness.<sup>250</sup>

Today, "[m]ost Egyptologists, anthropologists, and historians . . . still find it hard to accept the fact that Egypt was once a predominantly Black civilization," claims scholar Dana Reynolds-Marniche.<sup>251</sup> Commentators continue to classify "ancient Egyptians" as "Caucasoid" or a "mixed race," and deny that they were black Africans.<sup>252</sup> Sociologist Nathan Glazer, for example, stated in 1997 that the notion that Kemetians were black Africans is an "extravagant enhancement of the role of black Africa in World history."<sup>253</sup>

It would be unfair to posit that the aforementioned Eurocentrists were the only Egyptologists creating superiority narratives. As Redford said, there are also extreme Afrocentrists in this discussion.<sup>254</sup> Stuart Tyson Smith, author of *Wretched Kush*, pointed out that the Afrocentrists merely reversed the direction of the Eurocentric movement.<sup>255</sup> They chose to use the same rhetoric and assumptions that the Eurocentrists used, instead of refuting those racist assumptions by pointing to the considerable evidence that Kemetite civilization developed in Africa and interacted with other African cultures.<sup>256</sup>

However, it is difficult to harshly critique early Afrocentrists because their appeals were a necessary reaction to the outrageous Eurocentric narrative. Where one group asserted that the Kemetians were a "non-African Caucasian-dominated hybrid," another group

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Monogenists, too, believed in Caucasian superiority; they just found that non-Caucasians like the Negro were a "degeneration from the Caucasian original." *Id.* at 228.

248. *See id.* at 226.

249. *Id.*

250. *Id.* at 226-27.

251. Reynolds-Marniche, *supra* note 184, at 119-20.

252. *See* Munroe, *supra* note 187, at 295-96. Munroe points out the irony of classifying the Kemetians as "mixed race" when juxtaposed with the readiness to classify mixed race African Americans as "light-skinned" black. *Id.* ("Perhaps it is easier to associate 'blackness' with crime as opposed to unique achievements.").

253. *Id.* at 242 n.1, 296 (citation omitted) (internal quotation marks omitted).

254. *See supra* note 229 and accompanying text.

255. SMITH, *supra* note 223, at 14. Smith refers to Cheikh Anta Diop as an Afrocentrist. *See id.* However, I have placed him in a category of his own, somewhere between Afrocentrist and neutral. *See infra* Part II.D.1.

256. SMITH, *supra* note 223, at 14.

felt the need to rise up and rebut the notion.<sup>257</sup> Thus, the Afrocentric paradigm was a counterbalance to the skewed and damaging Eurocentric message.<sup>258</sup> This is why St. Clair Drake called early Afrocentrists “vindicationists,” scholars whose goal was to “[d]efen[d] . . . the Negro Against Vicious Assaults.”<sup>259</sup>

W.E.B. Du Bois was one of the most notable vindicationists.<sup>260</sup> In 1915, Du Bois examined and dispelled the Eurocentric theories in his work, *The Negro*, stating that “it is certainly proved to-day beyond doubt that the so-called Hamites of Africa, the brown and black curly and frizzly-haired inhabitants of North and East Africa, are not ‘white’ men if we draw the line between white and black in any logical way.”<sup>261</sup> Du Bois’s projections on Kemet were always anchored in black Africa.<sup>262</sup> To him, Kemet was “always palpably Negroid,” both in phenotype and culture.<sup>263</sup> Similarly, Howard University historian Chancellor Williams also took an Afrocentric approach when he referred to the Great Sphinx at Giza and its African features in forming his conclusion that the Kemetians—and the *per-aa* Khafre, specifically—were “Negro[es].”<sup>264</sup>

The attempt to claim the Kemetians as Negroid was meant to achieve a necessary element in a larger Afrocentric syllogism, with the conclusion being that the American Negro can claim Kemet. It was under this logic that Frederick Douglass, Martin Delany, William

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257. See MARTIN, JR., *supra* note 230, at 206. Many racist Egyptological ideas were “widespread until the 1930s, and Afro-American leaders felt duty-bound to combat them.” 1 St. CLAIR DRAKE, *BLACK FOLK HERE AND THERE: AN ESSAY IN HISTORY AND ANTHROPOLOGY* 132 (1987). Egyptology was therefore “a crucial arena in the persisting struggle between antiblack racists and those black intellectuals who considered themselves to be vindicationists.” *Id.*

258. The counterbalance involved criticizing evolutionists who constantly asserted that blacks were “closest to the ape” and attacking proponents of Aryan, Hamitic, and other superior race theories. DRAKE, *supra* note 257, at xvii.

259. *Id.* Furthermore, Afrocentrism was not only a counter to Eurocentric Egyptology, it was an opportune source for pride for African descendants. See MARTIN, JR., *supra* note 230, at 207.

260. DRAKE, *supra* note 257, at xvii.

261. DU BOIS, *supra* note 22, at 34.

262. See *id.* at 37.

263. See *id.* “The truth is, rather, that Egypt was herself always palpably Negroid, and from her vantage ground as almost the only African gateway received and transmitted Negro ideals.” *Id.* Du Bois expounded on this idea:

They [the Kemetians] certainly were not white in any sense of the modern use of that word—neither in color nor physical measurement, in hair nor countenance, in language nor social customs. They stood in relationship nearest the Negro race in earliest times, and then gradually through the infiltration of Mediterranean and Semitic elements became what would be described in America as a light mulatto stock of Octoroons or Quadroons.

*Id.* at 43-44.

264. DRAKE, *supra* note 257, at 134.



Wells Brown, and Edward W. Blyden “all argued that the ancient Egyptians were primarily a Negroid people,” and thus the Negro should be credited with their ancient achievements.<sup>265</sup> As noble as it was, the vindicationist mission was also a quest for entitlement, and it, too, is a narrative that can be used to exclude and discriminate.<sup>266</sup> Accordingly, it runs afoul of Article 4(a).<sup>267</sup>

While the more extreme Eurocentric and Afrocentric positions in Egyptology have been abandoned, there are still Eurocentrists and Afrocentrists in the field, and neither camp sets for neutral, empirical work.<sup>268</sup> Looking through the lens of Article 4(a), the point is clear: the language arising out of these narratives violates human rights norms as a matter of law. The injury caused by these narratives is subscription; the narratives justify racial entitlement to an ancient culture, the “acrimonious wrangling” of which Redford warned.<sup>269</sup> These narratives drive arguments that one group is entitled to the Kemetic legacy (which includes its antiquities). Ultimately, these narratives do not seek some sort of truth; rather, by using ancient achievement, they further the predefined goals of raising and lowering stature along racial or cultural lines.

The superiority narratives not only spawn ideas of entitlement, they fuel acts of exclusion.<sup>270</sup> For example, Smith likens the method of the Eurocentrists and Afrocentrists to those of Nazi scholars and other movements where ethnic superiority was supported by anthropological research.<sup>271</sup> Smith’s assertion emphasizes how scholarly discourse can reinforce, justify, or legitimize real conflict and the human rights violations that come with it.<sup>272</sup> This is likely the precise fear of Article 4(a). Accordingly, legislators and MSA officials in Egypt

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265. MARTIN, JR., *supra* note 230, at 203. Blyden said in 1866, “I felt that I had a peculiar heritage in the Great Pyramid built . . . by the enterprising sons of Ham, from which I descended.” *Id.*

266. What made scholars like Douglass Afrocentric was the impulse to award to one modern racial group the rightful claim to Kemet at the exclusion of all others. *See id.* at 205. The debate was a fight between white and black over Kemet.

267. Today, when ethnocentrism in science is not tolerated and where societies have promulgated rules like Article 4(a) of CERD, *both* the Eurocentric and Afrocentric messages become dangerous because they justify exclusion, mistreatment, and entitlement at any cost.

268. *See* REDFORD, *supra* note 228, at x.

269. *Id.*

270. SMITH, *supra* note 223, at 14-15.

271. *Id.* (pointing to conflicts in the Balkans, conflicts concerning the Celtic ethnic group, conflicts in Palestine, and other examples of “ethnic polarization”).

272. *See id.*

should ensure that superiority narratives do not guide their decisions about antiquities or any other government action.

## 2. The Special Case of Cheikh Anta Diop

Some scholars call Cheikh Anta Diop an Afrocentrist.<sup>273</sup> I conclude that he is not. Diop is not completely neutral, but he comes from a more neutral philosophy than an ethnocentric one. Thus, I place him in a special category—a “neutral zone” for those who have vindicationist goals but also work according to neutral methodology—even though he may lean toward the Afrocentric side of the spectrum. Diop is neutral and compliant with Article 4(a) because of his methodology and desire for critique.

His Afrocentric conclusion—that Kemetic people were originally black Africans as the modern Nubians are—was supported by a variety of evidence.<sup>274</sup> Diop supported his conclusion with assertions by ancient writers, ancient artists, modern linguists, and modern interpreters of archaeological evidence.<sup>275</sup> He referred to skeletal- and skin-fragment melanin evidence (his “melanin dosage test”);<sup>276</sup> Professor Louis Leakey’s work;<sup>277</sup> Gloger’s law;<sup>278</sup> blood group evidence; iconographic data; and ancient written sources by Kemetians and other groups.<sup>279</sup>

For example, Diop pointed to the Kemetians’ artistic depictions, in which they painted themselves like the Nubians: dark-skinned brown or black with similar dress.<sup>280</sup> They also signified a connection

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273. See, e.g., *id.* at 14.

274. DIOP, ORIGIN, *supra* note 232. Diop supported his hypothesis that the Kemetians were black Africans with studies that supported blackness through osteological measurements, blood groups, ancient testimony, and linguistic affinity. *Id.*

275. See Reynolds-Marniche, *supra* note 184, at 120.

276. DIOP, ORIGIN, *supra* note 232. Diop conducted a melanin dosage test on the skin of Kemetic mummies, which resulted in finding that the Kemetians possessed melanin in their derma at levels “non-existent in the white-skinned races.” *Id.* Diop wanted to test more famous mummies, but he was denied access to the Cairo Museum’s royal mummies. *Id.*

277. *Id.* Based on Professor Louis B. Leakey’s work, Diop summarized that “beings morphologically identical with the man of today” lived “at the sources of the Nile and nowhere else.” *Id.*

278. *Id.* Diop concluded, based on Gloger’s law regarding climate and pigment, that the earliest people “were ethnically homogeneous and negroid.” *Id.* He also states that the only two routes out of the cradle of Africa for these early people to move were the Sahara and the Nile valley. *Id.*

279. UNESCO PROCEEDINGS, *supra* note 246, at 76-78.

280. See Munroe, *supra* note 187, at 294; see also CHEIKH ANTA DIOP, CIVILIZATION OR BARBARISM: AN AUTHENTIC ANTHROPOLOGY 66 fig.17 (Yaa-Lengi Meema Ngemi trans., Harold J. Salemson & Marjolijn de Jager eds., 1981) (showing an ancient image called the “table of races”).

to the Nubians through their language; for example, the Kemetians called ancient Nubia *Ta-Kenset* or “placenta-land,” suggesting genealogical descent from the land of the Nubians.<sup>281</sup> The Kemetians’ ancient contemporaries also agreed that they were black Africans.<sup>282</sup> Ancient Graeco-Latin authors Herodotus, Diodorus Siculus, Aristotle, Lucian, Apollodorus, Aeschylus, Achilles Tatius, Strabo, Diogenes Laertius, and Ammianus Marcellinus all described the Kemetians as “black” or “dark[ ]” skinned.<sup>283</sup>

Diop’s presentation at the 1974 United Nations Educational, Scientific and Cultural Organization (UNESCO)<sup>284</sup> Symposium revealed his findings and sparked lively debate.<sup>285</sup> In fact, Diop sought critique and debate about his work,<sup>286</sup> and that attribute makes him more neutral than not. In the end, UNESCO adopted resolutions requesting scholars to perform more research like Diop’s.<sup>287</sup>

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281. See Gaynor, *supra* note 18, at 16.

282. See AFRICAN INTELLECTUAL HERITAGE, *supra* note 1, at 3.

283. *Id.*; see also DIOP, ORIGIN, *supra* note 232. Herodotus stated that the Kemetians were “black-skinned” in *Histories*, Book II. AFRICAN INTELLECTUAL HERITAGE, *supra* note 1, at 4; see also DU BOIS, *supra* note 22, at 44 (“Herodotus, in an incontrovertible passage, alludes to the Egyptians as ‘black and curly-haired’—a peculiarly significant statement from one used to the brunette Mediterranean type . . . .”) (footnote call number omitted). Aristotle mentions the Egyptians’ black skin in *Physiognomica*. AFRICAN INTELLECTUAL HERITAGE, *supra*. “Aeschylus, mentioning a boat seen from the shore, declares that its crew are Egyptians, because of their black complexions.” DU BOIS, *supra*. Unlike later Egyptologists, these contemporaries had actually seen the Kemetians with their own eyes. AFRICAN INTELLECTUAL HERITAGE, *supra*, at 5.

284. UNESCO.ORG, <http://www.unesco.org/new/en/> (last visited Nov. 28, 2012) (providing the full name for the acronym UNESCO).

285. UNESCO PROCEEDINGS, *supra* note 246, at 82. A “Professor Shinnie” critiqued Diop’s use of classical writings—that the ancient writers referred to the Kemetians as “black” should not be used because “black” is a subjective description. *Id.* at 78. Professor Abdelgadir M. Abdalla also refuted Diop in stating that it was not important to determine if the Kemetians were Negroid, and that the Afrocentric approach to Egyptology was flawed because the Kemetians detested the Nubians (who were black) and depicted the Nubians as different from themselves. *Id.* at 81. It is interesting that Abdalla assumed that to “detest” or distinguish a black race, one must be non-black. This is a flawed assumption because different groups of black people can distinguish and detest one another, just as different groups of Europeans have done. Black people are of different cultures and complexions; they can go to war and they can unite. Abdallah’s arguments thus reveal his own racial paradigm, one that views blacks as monolithic.

286. In a frustrated retort to the refutations to his ideas, Diop stated that the counterarguments lacked “critical rigour” and were “not based on the facts.” UNESCO PROCEEDINGS, *supra* note 246, at 86. “Professor Diop felt that the objections which had been advanced against his ideas did not amount to positive and soundly argued criticisms.” *Id.* at 88.

287. See UNESCO PROCEEDINGS, *supra* note 246, at 102. UNESCO recommended “[t]hat the Egyptian authorities do everything in their power to facilitate the necessary study of examinable vestiges of skin . . . .” *Id.* (emphasis added). This suggests that Diop created a new scientific standard in Egyptology, and there was a clear need to follow up on his melanin dosage test. See *id.*

Undoubtedly, some of Diop's statements and conclusions reveal an Afrocentrist or vindicationist bent. However, because of his varied methodology and evidence and because the reactions to his work have not refuted it with similar evidence,<sup>288</sup> it would be unfair to call him a complete Afrocentrist. His method—namely the melanin dosage test and its corroborating evidence—and his demand for sound critique show a desire to discover the truth about the Kemetians' appearance and relationship to black Africa. Therefore, much of his work complies with Article 4(a), and he cannot be dismissed in a conversation about Kemet.

3. Counteracting Superiority Narratives with Neutral Scholarship:  
Egyptological Ideas that Comply with Article 4(a) of  
CERD

Over time, thoughts about Kemetic ethnicity have evolved from speculative ethnocentrist hypotheses to more informed, neutral analyses, partially because "[e]vidence about Egypto-Nubian relations has increased markedly in the last quarter century."<sup>289</sup> Based on a survey of what could be classified as neutral Egyptology narratives, there are a couple of unifying features of neutrality: (1) recognition of bias and methodological error; and (2) emphasis on culture rather than race. With those features, Kemet scholars are able to set forth more sound conclusions.

The first feature of neutral scholarship—recognition of bias and methodological error—was exhibited by W.Y. Adams, who stated that the Nubians can be black or white; it all depends on the "prejudices of one's time or temperament."<sup>290</sup> Stuart Tyson Smith is another Kemet scholar who could be classified as neutral under Article 4(a) due to his recognition of methodological error. In his 2003 book *Wretched Kush*, Smith conducts a cautious study of ethnicity and ethnic stereotypes in antiquity and considers the flaws of ethnic ideas, ethnic philosophy,

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288. The conclusion published in the UNESCO discussions stated that the debate at the symposium was unbalanced because "not all participants had prepared communications comparable with the *painstakingly researched contributions of Professors Cheikh Ania Diop and Obenga*." *Id.* (emphasis added). This quote acknowledges the methodology of Diop's work.

289. Yurco, *supra* note 189, at 28.

290. FRANK M. SNOWDEN, JR., *BEFORE COLOR PREJUDICE: THE ANCIENT VIEW OF BLACKS* 16 (1983). Similarly, Nicole Blanc stressed the significance of divorcing one's studies about Kemet from "the inheritance of the nineteenth century and the first half of the twentieth, or by the racial assumptions associated therewith." UNESCO PROCEEDINGS, *supra* note 246, at 74. Professor Säve-Söderbergh, too, thought that race was an "outmoded notion" that was inappropriate to use in any attempt to characterize the ancients. *Id.* at 76.

and extreme ethnocentrism.<sup>291</sup> Frederick Douglass recognized bias when he acknowledged that his description of race was "an American description," one that operated under the "one-drop rule" of blackness.<sup>292</sup> His acknowledgement is important because it reveals that any attempt to racialize a people must also analyze the lens and orientation of the racializer.<sup>293</sup>

Some scholars have also recognized methodological errors or limitations. Du Bois is one of those scholars;<sup>294</sup> he recognized the difficulty of presenting his own conclusions about African peoples: "so little is known and so much is still in dispute."<sup>295</sup> The work of Professor Jean Vercoutter is likely neutral in recognizing methodological unreliability—he acknowledged how little was known generally in Egyptology.<sup>296</sup> He stated at the 1974 UNESCO Convention that (1) physical anthropological data was largely unreliable with respect to ancient Egypt, and (2) craniometry—on which early Eurocentrists relied—was no longer considered a reliable method of research.<sup>297</sup>

The second feature of neutrality is emphasis on culture rather than race. This feature is marked by scholarly focus on the "African" attributes of the Kemetians, as opposed to the black or "Negroid" attributes.<sup>298</sup> It reflects neutrality because it unites groups under an overarching idea of Africa, as any phenotypic group could belong to Africa by participating in a unified African culture. Egyptologist B.G. Trigger believed that classifying ancient Nile valley inhabitants into racial categories was "an act that is arbitrary and wholly devoid of historical or biological significance."<sup>299</sup> Trigger's study of Nubia did not grapple with race, but rather with relationship.<sup>300</sup>

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291. See generally SMITH, *supra* note 223.

292. See MARTIN, JR., *supra* note 230, at 205-06. Douglass saw Kemetians as Negroid because they were at least *partially* Negroid. Others, however, racialized under a rule of "intermediate caste," where degrees of Negro mattered and racial mixture made the ancient Egyptians a race of their own. See *id.*

293. See *id.*

294. While I have classified some of Du Bois' narrative as Afrocentric (or "vindicationist," as discussed *supra*), much of what he wrote could also fall into the neutral category.

295. DU BOIS, *supra* note 22, at 36.

296. See UNESCO PROCEEDINGS, *supra* note 246, at 73.

297. *Id.*

298. See, e.g., *id.* at 78. Professor Jean LeClant took a neutral stance by divorcing the ideas of race and culture. *Id.* at 80. His conclusion that Kemetic civilization had a strong African character therefore escapes the risk of championing racial superiority and violating CERD. See *id.*

299. SNOWDEN, JR., *supra* note 290, at 16 (quoting B.G. Trigger) (internal quotation marks omitted).

300. See BRUCE G. TRIGGER, NUBIA UNDER THE PHARAOKHS 149 (1976) [hereinafter TRIGGER, NUBIA].

Frederick Douglass, who had his Afrocentric moments but was probably more neutral by the standards of his time, saw Africa as having one *culture* and one people, as Europe or Asia have.<sup>301</sup> As an ethnologist, he believed that “the people of Africa have an African character,” a character that the Kemetians shared.<sup>302</sup> Du Bois also emphasized this point.<sup>303</sup> Finally, Vercoutter made a cultural point when he “remarked that, in his view, Egypt was African in its way of writing, in its culture and in its way of thinking.”<sup>304</sup>

With recognition of bias and emphasis on culture in mind, it is important to explore what scholars in the neutral realm have suggested about the Kemetians and ancient Nubians. Snowden found that the Kemetians described their southern neighbors in political and military terms, not in racial or color terms.<sup>305</sup> Teeter, editor of *Before the Pyramids*, acknowledged in 2011 that the study of predynastic Kemet is dramatically evolving, and discoveries are constantly taking place.<sup>306</sup>

Trigger’s work indicates the Kemetic-Nubian relationship changed throughout Kemetic history; parts of ancient Nubia were a part of Kemet depending on the time period.<sup>307</sup> Ancient Nubians were a part of the Kemetic community.<sup>308</sup> Therefore, ancient Nubia cannot be cleanly severed from Kemet. Additionally, Théophile Obenga’s groundbreaking work<sup>309</sup> is neutral under Article 4(a) because of its methodology.<sup>310</sup> Obenga compared pharaonic Egyptian

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301. MARTIN, JR., *supra* note 230, at 205.

302. *Id.* Additionally, much of Douglass’ work was based on linguistic affinity between the Kemetians and other African groups. *Id.* This was much like Obenga’s later work. *See infra* text accompanying note 311.

303. *See* DRAKE, *supra* note 257, at xviii.

304. UNESCO, *supra* note 246, at 88. Furthermore, Vercoutter rejected a racial paradigm when he concluded that it was incorrect to speak of either a “white” or “Negro” population in ancient Egypt. *Id.* at 73-74.

305. SNOWDEN, JR., *supra* note 290, at 37-42. One contrary point is the Hymn of the Aten, however. *See id.* at 39. This hymn, often attributed to the per-aa Akenaten, stated (according to one translation) that the “skins” of the Syrians, the Nubians, and the Kemetians were “distinguished.” *Id.*

306. *BEFORE THE PYRAMIDS* 9 (Emily Teeter ed., 2011).

307. *See* TRIGGER, NUBIA, *supra* note 300, at 149.

308. *See id.*

309. As a result of Obenga’s study, UNESCO recommended more linguistic study of African languages “in order to establish all possible correlations between African languages and ancient Egyptian.” UNESCO PROCEEDINGS, *supra* note 246, at 103.

310. *See generally* Théophile Obenga, *The Genetic Linguistic Relationship Between Egyptian (Ancient Egyptian and Coptic) and Modern Negro-African Languages*, in UNESCO PROCEEDINGS, *supra* note 246, at 65 (seeking to determine the cultural origin of the Kemetians by analyzing comparative linguistic evidence). Like Diop, Obenga may have Afrocentric conclusions, but

language with modern African languages to determine the existence of “a cultural connection” between the Kemetians and other African peoples.<sup>311</sup> His findings strongly suggest the existence of that connection.<sup>312</sup>

Frank J. Yurco is another scholar who could be considered neutral under Article 4(a). Yurco points to the discovery of a cemetery in Lower Nubian (Qustul) and the work of Keith Seele, Carl DeVries, and Bruce Williams, who interpreted the Qustul cemetery artifacts to suggest that the Nubian kings buried there were “proto-pharaohs.”<sup>313</sup> This means that Kemet had cultural origins in ancient Nubia.<sup>314</sup> The kings buried at Qustul may represent “the earliest ancestors of the kings who eventually unified Egypt, ca. 3100 B.C.”<sup>315</sup> Yurco’s study is one that could guide Egyptian legislators and the MSA because he conducts a systematic analysis of the evidence without being driven by racial assumptions.<sup>316</sup>

The aforementioned neutral narratives are what should guide any approach to Kemetic antiquities because—unlike the Eurocentric and Afrocentric narratives—they seek some sort of truth that is unrelated to racial superiority. They contain no implicit denigration of Africans or Europeans. Therefore, they do not promote superiority, exclusion, or entitlement, so they comply with Article 4(a). Moreover, these neutral narratives support inclusion of all groups in the Kemetic antiquities dialogue because these narratives transcend racial categories. They suggest that many groups, inside and outside of Egypt’s modern

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his methodology pushes him into the neutral zone. See *id.* (describing Diop’s sound methodology).

311. *Id.*

312. *Id.*

313. Yurco, *supra* note 189, at 28-31. Williams argued that the earliest Kemetic pharaohs were the “ideological and cultural heirs, perhaps even the actual descendants of the Nubian pharaohs . . . .” See O’CONNOR, *supra* note 7, at 21.

314. See Yurco, *supra* note 189, at 34 (“I would agree with Williams, that the Qustul documentation, and its early dating, suggests strongly that the mainstream pharaonic tradition stemmed from Qustul, although clearly the Classic A-Group tradition is jointly Nubian and Upper Egyptian Napadan.”). Before Yurco furthered Bruce Williams’ theory about Kemet’s Nubian origin, David O’Connor critiqued it. See O’CONNOR, *supra* note 7, at 21. Surveying the evidence found in Nubian tombs at Qustul, O’Connor attempted to discredit what he called Williams’ “exciting” theory. *Id.* While O’Connor systematically walked through the analysis, he seemed to prematurely dismiss any claims of a Kemetic-Nubian connection. See *id.* at 2, 21. Eight years later, Yurco stated: “That these kings were proto-pharaohs is beyond dispute . . . .” Yurco, *supra*, at 31. He dismissed objections—like O’Connor’s—to the Qustul cemetery conclusions. *Id.* at 32-33.

315. Yurco, *supra* note 189, at 32.

316. See *id.* at 28-31.

boarders, are interested parties regarding Kemetic history and its tangible legacy.

What we can safely conclude from the neutral narratives is that, for much of Kemet's history, the Kemetic phenotype was not monolithic.<sup>317</sup> Rather, the Kemetians were diverse, and ancient Nubians were part of the Kemetic mix.<sup>318</sup> Thus, any community maintaining that it possesses a cultural or genealogical relationship to Kemet *or* ancient Nubia probably actually does. In turn, that community has some sort of interest in the outcome of decisions about Kemetic antiquities. Accordingly, many of the attempts to classify, entitle, and exclude groups based on their relationship to the Kemetians are wrong.<sup>319</sup>

Depending on the Egyptological evidence relied upon by the MSA and Egyptian legislators, the Egyptian government's ignorance of the Nubian Egyptian connection to Kemetic artifacts could be construed as an adoption of superiority narratives. Egypt should make every effort to use neutral Egyptological narratives as support for its actions. As those neutral narratives support inclusion, the Egyptian government should include the Nubians in all antiquities dialogue, in turn becoming compliant with its international obligations and avoiding discrimination in the interest of *maat* (justice). Furthermore, Egypt should commit to recognizing its own diversity and embrace that diversity through inclusion.

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317. See SNOWDEN, JR., *supra* note 290, at 40.

318. As discussed in Part II.D.2 of this Comment, the ancient Nubians were culturally intertwined with the Kemetians, and some have argued that they were the Kemetians' predecessors. Yurco concluded that, based on the Qustul cemetery, "Nubia played a significant role in the development of the pharaonic Egyptian tradition and it is also the earliest known source for the kingship that later evolved in Upper Nubia (Kush)." Yurco, *supra* note 189, at 34. Furthermore, the ancient Nubians' dark skin did not determine their status in society. See SNOWDEN, JR., *supra* note 290, at 40; see also Alexander Francis Chamberlain, *The Contribution of the Negro to Human Civilization*, in SELECT DISCUSSIONS OF RACE PROBLEMS: A COLLECTION OF PAPERS OF ESPECIAL USE IN STUDY OF NEGRO AMERICAN PROBLEMS 87, 87 (J.A. Bigham ed., 1916) (explaining the presence of dark-skinned Nubians at all levels of life, from the harem to the royal palace); SMITH, *supra* note 223, at 22 (citing Snowden) ("[T]he ancient Egyptians. . . did not make skin color a definitive criterion for racial discrimination . . .").

319. See SNOWDEN, JR., *supra* note 290, at 40.



### III. RESOLUTION: MAAT AND EDUCATION. RENSI AND PER-AA.

"All Nubians want is to be recognized and respected as one of Egypt's most ancient cultures and peoples, the direct descendants of the Pharaohs."<sup>320</sup>

Egyptian Journalist Gamal Nkrumah

The Egyptian government has made strides in its relationship with its Nubian citizens. However, much more needs to be done to avoid violations of CERD, ICESCR, and UNDRIPs as well as to ensure the racist narrative of Egyptology does not prevent Nubian people from participating in decisions governing their cultural property.

#### A. Progress: A Positive Start, But More Action Required

Egypt has made some efforts to prioritize Nubian heritage in its antiquities governance.<sup>321</sup> One of the early efforts was Egypt's call to UNESCO and the world community for assistance in excavating and preserving Nubian artifacts before the 1960 construction of the Aswan High Dam.<sup>322</sup> Despite the international support that ensued and the successful preservation of sites like the temples at Abu Simbel and Philae,<sup>323</sup> the Aswan High Dam efforts failed in one key respect: they did not account for the connection between Nubian artifacts and the "living Nubian community."<sup>324</sup> When the Aswan High Dam was built, the international community showed more concern about Nubian relics than it did for the Nubian people.<sup>325</sup> Furthermore, Egypt has capitalized on the surviving Nubian cultural property by making the temple of Abu Simbel a major tourist attraction and by creating the

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320. Nkrumah, *supra* note 174.

321. See discussion *infra* Part III.A.

322. See Wangkeo, *supra* note 70, at 206. The Egyptian government asked archaeological teams to focus on excavating in Nubia for five years. *Id.* at 205. UNESCO launched its campaign to save Nubian monuments in 1959. *Id.* at 207.

323. See *id.* at 205; see also Yurco, *supra* note 189, at 28 ("A world-wide effort was mounted to salvage the threatened temples, from the entire area to be flooded by the lake."). "[B]ecause of the various Aswan Dam projects, Egyptian Nubia is one of the best surveyed regions in all of Africa as far as the cultures subsequent to the Neolithic period are concerned." TRIGGER, HISTORY AND SETTLEMENT, *supra* note 7, at iii. It is important to note that Nubian artifacts and communities in Sudan were also lost to Lake Nasser. See Wangkeo, *supra*, at 207. Sudan's campaign to save Nubian artifacts was not as successful as Egypt's: there was less international enthusiasm. *Id.* Fewer archaeologists were interested in excavating in Sudan. *Id.*

324. *Id.* at 227 (emphasis added). The connection between Nubian people and Nubian antiquities seems to be often ignored. See *id.*

325. *Id.*

Nubian Museum.<sup>326</sup> It is unclear whether and to what extent the Nubian people benefit from these successful tourist centers.

It is clear that, in the end, the Nubian community suffered a great loss as the Aswan High Dam destroyed over 100 Nubian villages, leaving 33,000 Nubians displaced and the Nubian community divided by relocation.<sup>327</sup> The lake created by the dam's inundation ("Lake Nasser") covered Nubian areas of Egypt and Sudan that had not been extensively surveyed for artifacts; thus, an irreplaceable historical record of Nubian civilization was lost.<sup>328</sup>

After the 2011 Egyptian Revolution, the Egyptian government has made efforts to remedy its relations with the Nubians and generally include Nubian people in state governance.<sup>329</sup> For example, in late 2011 and early 2012, Nubians in Egypt protested outside of the cabinet building in Egypt.<sup>330</sup> The government answered these protests in February 2012 by announcing that it would compensate Nubians for the lands they lost as a result of Aswan High Dam construction.<sup>331</sup>

In February 2012, the new Prime Minister of Egypt, Kamal Al-Ganzoury, met with an assembly called the "Nubia committee."<sup>332</sup> The committee included several governmental leaders and Nubian representatives.<sup>333</sup> Their meeting focused on development of the Nubian region (southern Egypt), and the government offered 5,000 acres of land to the Nubian community.<sup>334</sup> This meeting signifies progress in the Egyptian government's recognition of Nubian people.<sup>335</sup>

The Egyptian government has also made some efforts specifically regarding recognition of Nubian culture.<sup>336</sup> At the Future of Culture conference held in February 2012, attendees discussed plans for restructuring the Ministry of Culture in Egypt.<sup>337</sup> This dialogue con-

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326. *Id.* at 209.

327. Weusi, *supra* note 154, at B1; see Wangkeo, *supra* note 70, at 206.

328. *See id.* at 205.

329. *See Egypt to Compensate Nubians for 20th Century Evictions*, BIKYA MASR (Egypt), Feb. 22, 2012.

330. *Id.*

331. *Id.*

332. *Egypt: Prime Minister, Dr. Kamal Al-Ganzoury, Held Nubia Committee Meeting*, MENA REP., Feb. 11, 2012.

333. *Id.*

334. *Id.*

335. *Cf. id.*

336. *See, e.g.*, Farah Montasser, 'The Future of Culture' Seeks Solution to 'Identity Confusion', AHRAM ONLINE (Cairo), Feb. 24, 2012, <http://english.ahram.org.eg/NewsContent/5/35/35290/Arts—Culture/Stage—Street/The-Future-%20of-Culture-seeks-solution-to-identity-c.aspx> (detailing the Future of Culture conference).

337. *Id.*

tained one demand from participants that military officers be ousted from the Ministry.<sup>338</sup> One participant in particular, cultural activist Basma El-Husseiny, proposed to restructure the Ministry of Culture by making all cultural organizations and activities in Egypt independent while lessening the role of the Ministry to a more advisory one.<sup>339</sup> These conversations—in which structural and practical changes are offered for Egypt's cultural and antiquities system—can be the start of Egypt's inclusion of the Nubians in decisions regarding ancient cultural property.

Another effort was seen during the 2012 presidential race in Egypt.<sup>340</sup> During his campaign, unsuccessful presidential candidate Abdel Moneim Aboul Fotouh promised to establish “an independent body” in Egypt that could address and seek to eliminate all forms of discrimination.<sup>341</sup> One particular goal of the body would have been to address the omission of Nubians and Copts in school curricula.<sup>342</sup> Fotouh's proposal is the type of planning that needs to occur to create an Egyptian populace that is more inclusive and apt to recognize the connection that Nubians have to Egyptian antiquity and culture.

These acts recognize Egypt's neglect of the Nubian people, but all fall short of truly acknowledging the Nubian community's significant cultural connection to Kemetic history. As was forgotten in the period preceding the construction of the Aswan High Dam, the Nubian community is connected to its antiquities.<sup>343</sup> Thus, members of that community should always be participants in action and conversation concerning their cultural heritage.

#### B. Egypt Should Adhere to CERD and Respond to the Recommendations

Egypt should first respond to the Committee on the Elimination of Racial Discrimination's (“the CERD Committee”) most recent concluding observations, issued on August 15th, 2001.<sup>344</sup> Currently,

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338. *Id.* (“El Askar (military officers) should be out of the [culture] ministry. . . we must put an end to Mubarak's police state.”) (internal quotation marks omitted).

339. *Id.* (“The ministry from now on should only supervise and assist any cultural activity; and not restrict or limit and most importantly not to produce . . .”).

340. See Yolande Knell, *Egypt Candidate: Moderate Islamist, Abdel Moneim Aboul Fotouh*, BBC NEWS: MIDDLE EAST, Apr. 13, 2012.

341. *Id.*

342. See *id.*

343. See Wangkeo, *supra* note 70, at 227.

344. See CERD Report on Egypt, *supra* note 122; EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 12-13.

Egypt is delinquent in its reporting to CERD, with the last report due in 2006.<sup>345</sup> Additionally, Egypt's reports must be more thorough; rather than maintain its assertions that it is a culturally homogenous country, Egypt must recognize and provide information about its minority and indigenous groups.<sup>346</sup>

Second, Egypt must adopt temporary special measures in its antiquities system in order to get the Nubians on the proper footing with respect to their cultural property.<sup>347</sup> A focused attempt to include the Nubians in the MSA or other governing body would not violate CERD because, pursuant to Article 1(4), these "special measures" to ensure the advancement of a previously disadvantaged group are not considered a form of racial discrimination.<sup>348</sup> The Egyptian government should make this attempt, specifically in the area of antiquities, as cultural property is integral to a people's preservation of their history. One special measure Egypt can adopt could take the form of a program or "preferential regime[ ]" in hiring for the MSA or whichever entity the MSA evolves to become.<sup>349</sup> In addition to special measures, Egypt should establish certain permanent rights for its indigenous peoples with respect to culture and all areas of life.<sup>350</sup>

It seems appropriate to view the Nubians as a group of people of African descent within Egypt. The CERD Committee asserted that people of African descent internationally, especially indigenous groups, have "[t]he right to prior consultation with respect to decisions which may affect their rights."<sup>351</sup> This could mean that the Nubians, as an indigenous population of African descent within a majority mixed population, should have a permanent right to consultation with respect to protecting their tangible cultural heritage.<sup>352</sup>

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345. EGYPT: INDIGENOUS PEOPLES, *supra* note 9, at 12-13.

346. See General Recommendation No. 23, *supra* note 119, ¶ 6 ("The Committee further calls upon States parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.").

347. See General Recommendation No. 32, *supra* note 117, ¶ 11.

348. CERD, *supra* note 115, at art. 1(4).

349. See General Recommendation No. 32, *supra* note 117, ¶ 13.

350. See *id.* ¶ 15.

351. General Recommendation No. 34, *supra* note 211, ¶ 4(d); General Recommendation No. 23, *supra* note 119, ¶ 4(d) ("The Committee calls in particular upon States parties to . . . [e]nsure that members of indigenous peoples have equal rights in respect to effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.").

352. See General Recommendation No. 34, *supra* note 211, ¶ 4(c) ("People of African descent live in many countries of the world, either dispersed among the local population or in communities, where they are entitled to exercise, without discrimination . . . [t]he right to the

Accordingly, at the very least, the Egyptian government under CERD is responsible for including the Nubians in dialogues about Kemetic antiquities. CERD also requires the Egyptian government to actively seek to improve the Nubian situation and protect Nubians from discrimination by its government entities.<sup>353</sup>

In addition to consulting with Nubian groups in antiquities decisions, Egypt should also adopt explicit constitutional language prohibiting discrimination toward indigenous groups like the Nubians.<sup>354</sup> This would comply with the CERD Committee's General Recommendation No. 29, which addresses the fact that constitutions like Egypt's only imply the presence of indigenous or minority groups.<sup>355</sup> Furthermore, Egyptian legislators and MSA officials should use sound, neutral Egyptological narratives and findings to change the way they view ancient history; mention of the Nubians in Law 117 would be a step forward, but the ideal solution would be for Egypt to recognize the "ancient Egyptians" as Kemetians—members of a culture much too distant to bear the name of any modern civilization—and omit any language of false entitlement suggesting reliance on superiority narratives.<sup>356</sup>

Finally, efforts in the area of education seem appropriate to remedy neglect and attitudes toward Nubians with respect to Kemetic antiquities.<sup>357</sup> The CERD Committee has recommended special educational measures to assist in eliminating racism against people of African descent.<sup>358</sup> Under CERD, these measures could include (1) ensuring that all students are exposed to Nubian history and under-

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protection of their traditional knowledge and their cultural and artistic heritage."); *see also supra* note 212 (explaining that a strong argument exists for Nubians to be considered "people of African descent" within Egypt, despite the fact that Egypt is technically an African country and all of its inhabitants could claim to be of African descent).

353. *See* General Recommendation No. 34, *supra* note 211, ¶¶ 8, 11 ("The Committee recommends that States parties adopt the following measures: . . . Review, adopt and implement national strategies and programmes with a view to improving the situation of people of African descent and protecting them against discrimination by State agencies and public officials, as well as by any persons, group or organization.").

354. *See* United Nations, Comm. on the Elimination of Racial Discrimination, General Recommendation No. 29: Article 1, Paragraph 1 of the Convention (Descent), ¶ 2, (Nov. 1, 2002) [hereinafter General Recommendation No. 29].

355. *See generally id.*; *see also* ILO, RIGHTS OF INDIGENOUS, *supra* note 134, at 35.

356. *See* discussion *supra* Part II.D.2.

357. *See* General Recommendation No. 34, *supra* note 211, ¶ 66.

358. *See id.* ("Include in textbooks, at all appropriate levels, chapters about the history and cultures of peoples of African descent and preserve this knowledge in museums and other forums for future generations, encourage and support the publication and distribution of books and other print materials, as well as the broadcasting of television and radio programmes about their history and cultures.").

stand the modern Nubians' cultural connection to Kemetic people; (2) updating and changing written labels in museums to correctly recount Kemetic history according to neutral Egyptological narratives; (3) adapting any official tour guide training or official literature to reflect any modern Nubian connection to Kemet; and (4) supporting publication and television broadcasting furthering neutral Egyptological narratives and supporting the modern Nubian cultural connection to Kemet.<sup>359</sup> All of these measures could counteract any acceptance of superiority narratives, ensuring compliance with Article 4(a) of CERD.

C. Egypt Should Ratify the International Labour Organization's Convention No. 169

The International Labour Organization's Convention No. 169 ("ILO 169") is a treaty that would only serve as a positive mechanism with respect to the Nubian cultural situation in Egypt.<sup>360</sup> Under ILO 169, the Nubians would likely be classified as "tribal peoples" in Egypt.<sup>361</sup> ILO 169 would significantly benefit Nubians in Egypt because the treaty would require Egypt to consult tribal peoples regarding cultural issues that affect them.<sup>362</sup> For example, the treaty would require the Egyptian government to "establish means by which [the Nubians] can freely participate . . . at all levels of decision-making in . . . administrative and other bodies responsible for policies and programmes which concern them."<sup>363</sup>

As this Comment has argued, cultural issues, "policies and programmes" that concern Nubians include the vast majority of issues regarding "ancient Egyptian" antiquities because the Nubians exhibit cultural continuity with Kemet, a civilization that the Egyptian state and the world have referred to as "ancient Egypt."<sup>364</sup> Thus, because Law 117 creates and defines the SCA as being the sole entity concerned with "ancient Egyptian" antiquities, and because all things "ancient Egyptian" have a close significance to modern Nubian cul-

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359. *See id.*

360. *See generally Convention No. 169*, INTERNATIONAL LABOUR ORG., <http://www.ilo.org/indigenous/Conventions/no169/lang-en/index.htm> (last visited Mar. 9, 2012) (summarizing the key features of the convention).

361. *See id.*

362. *See id.*

363. Indigenous and Tribal Peoples Convention, 1989, art. 6(1)(b), June 27, 1989, available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312314](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312314).

364. *Id.*

ture, under ILO 169, the SCA—now MSA—would inevitably have to consult the Nubians and allow them to participate in cultural decisions.

Currently, Egypt is only bound by ILO No. 107, an earlier, less stringent version of ILO 169 that has only been applied to the Bedouin population—not to the Nubians—in an “integrationist” sense, failing to recognize or celebrate cultural differences.<sup>365</sup> As of the time of publication of this Comment, Egypt has not ratified ILO 169.<sup>366</sup> ILO 169 would potentially force the Egyptian state to recognize the Nubian linkage to a treasured and lucrative past.<sup>367</sup> However, this is precisely what must occur in the interest of eliminating racial discrimination in all respects.

D. Petitioning to Rensi: Egypt Should Assemble a Special Tribunal or Include More Nubians in Antiquities Governance

UNDRIPs provides that State Parties must consult with indigenous groups and include these groups in decision-making that would affect their rights, such as decisions about cultural property.<sup>368</sup> Furthermore, CERD requires State Parties to protect and provide remedies to citizens through “competent national tribunals and other State institutions.”<sup>369</sup> Under these requirements, the MSA, whose primary concern is cultural property, cannot be a competent institution if it does not take into consideration Egypt’s various cultures. The best way to ensure those cultural views are expressed is to ensure that minority cultures are members of the MSA (or whatever future body governs antiquities in Egypt).

Not only should a more inclusive tribunal or body be assembled, but its decisions should be guided by a goal to determine and promote historical truth. There are two core interests that should guide the governing body’s allocation of ancient property in Egypt: (1) *maat*—or morality—and (2) education. The interest in *maat* would include recognition of any cultural continuity between a current population and its ancestry. It is morally right to allow the Nubians to benefit from their connection to their cultural history by having the opportu-

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365. See ILO, RIGHTS OF INDIGENOUS, *supra* note 134, at 18.

366. See *Convention No. 169*, *supra* note 360.

367. See *id.*

368. See UNDRIPs, *supra* note 133, at arts. 18, 19.

369. CERD, *supra* note 115, at art. 6.

nity to participate in the process that determines the fate of Kemetic antiquities.

Second is the interest in education. Museums and other entities displaying cultural property seek to educate to an extent, but cannot present radical educational ideas that go against popular discourse without betraying their economic interests.<sup>370</sup> This fiscal limit on education is undoubtedly occurring in Egypt. While appeasing tourists and museum visitors is a valid economic interest, the paramount interest of justice should require a goal of educating accurately and widely forever. Egypt should adopt an educational model that considers these three tenets, and all three tenets must require inclusion of and collaboration with the Nubian people of Egypt.

### 1. Educating Accurately: Pursuing the Truth

First, there is the ideal of *accurately* educating by communicating a message as close to the truth as possible. This truth can only be arrived at through communication between diverse parties, one of which should be the Nubians because of their strong cultural tie to Kemetic antiquities. Furthermore, educating accurately would involve presenting antiquities in context. Salima Ikram, a professor of Egyptology, argued that removing an artifact or mummy from Egypt is thus removing it from its context.<sup>371</sup> She argues that doing this destroys an artifact's meaning and damages its benefit to "the sum of human knowledge."<sup>372</sup> Archaeologists also emphasize the significance of context to studying antiquities: "[w]hether we focus upon the lives of pharaohs or ordinary citizens, the centrality of archaeological materials is crucial and can only be heightened when we are presented with *contextualized artifacts*."<sup>373</sup>

Egypt can educate accurately by displaying Kemetic artifacts in their original Nile valley context, as this gives observers an idea of the true story of each artifact because the artifacts are surrounded by their

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370. See Henrietta Lidchi, *The Poetics and the Politics of Exhibiting Other Cultures*, in REPRESENTATION: CULTURAL REPRESENTATIONS AND SIGNIFYING PRACTICES 202 (Stuart Hall ed., 1997) ("[I]f museums have to appeal to the public, their messages have in some way to concord with the collective view of this audience, since their survival depends on making the collection, the exhibition and the museum meaningful to this pre-defined group . . .").

371. Mette Eriksen, *International Smugglers Increasingly Target Egypt's Artifacts*, ALMASRY ALYOUM, Sept. 2, 2011, [www.almasryalyoum.com/en/node/491642](http://www.almasryalyoum.com/en/node/491642).

372. *Id.*

373. See Brief for Archaeological Institute of America et al. as Amici Curiae Supporting Appellee, at 6 United States v. Schultz, 333 F. 3d 393 (2d Cir. 2003) (No. 02-1357) (emphasis added).



original environment. The highest level of accuracy would be seen at the artifact's discovery site. Finally, any captions or messages describing the artifacts, temples, and monuments should accurately convey which population created those artifacts (e.g., the Kemetic civilization, not "ancient Egyptian") and that population's fate in history (e.g., its relationship to Egypt's modern cultural composition, including the Nubians).

## 2. Educating Widely: Dispersal of Antiquities

The next tenet goes beyond including the Nubians in Egypt's antiquities system: there is an ideal of educating the *widest audience possible*. This aspect corresponds with the aim of the 1970 UNESCO Convention, which encourages the "interchange of cultural property among nations" for worldwide education and cultural enrichment.<sup>374</sup> Those in favor of dispersal of Kemetic antiquities often present moral arguments concerning education.<sup>375</sup> Some debaters emphasize the simple value of sharing and benefiting others.<sup>376</sup> John Tierney, columnist for the *New York Times*' "Science Times" section, advocates for a system whereby Egypt would share duplicitous artifacts with other countries.<sup>377</sup> He asks, "why not let those objects be displayed and enjoyed by people overseas?"<sup>378</sup>

James Cuno champions dispersal of antiquities into the world's encyclopedic museums—museums that collect items from around the world as opposed to items only from their local country.<sup>379</sup> These encyclopedic museums are a beacon of light for their visitors, exposing them and educating them about peoples and places they may never otherwise see.<sup>380</sup> Cuno cautions that patrimony laws like Law 117 hinder the development and inhibit the creation of such encyclopedic museums.<sup>381</sup> Furthermore, patrimony laws attack the ideals and values

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374. See Cohan, *supra* note 64, at 58. The Preamble to the 1970 UNESCO Convention expresses that "the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and insures mutual respect and appreciation among nations." *Id.* (internal quotation marks omitted).

375. See generally John Tierney, *Who Should Own the Rosetta Stone*, N.Y. TIMES, Nov. 16, 2009, tierneylab.blogs.nytimes.com/2009/11/16/who-should-own-the-rosetta-stone/ (discussing dispersal of Kemetic antiquities for the benefit of international education).

376. See generally *id.* (advocating for the international dispersal of Kemetic antiquities).

377. See *id.*

378. *Id.*

379. See Cuno, Preface, *supra* note 76, at xxxi.

380. See *id.*

381. See *id.* at xxxii.

behind the encyclopedic museums: education, cultural understanding, and the sharing of ideas.<sup>382</sup> Cuno reasons that ancient artifacts are important to the entire world, not just to the “governments . . . of modern nations with jurisdiction over them.”<sup>383</sup> Thus, nationalist legal instruments like Law 117 “claim ownership of the world’s ancient heritage.”<sup>384</sup>

A tribunal or body governing antiquities in Egypt can educate widely by connecting with people who may not have the means to travel to the Nile valley or remote locations within Egypt. This translates to an interest in displaying the artifacts out-of-context. Out-of-context locations can include museums in the Nile valley that are far from the artifacts’ actual discovery sites. For example, an artifact taken from the remote site of Amarna, Egypt can be displayed in the more populous city of Luxor, Egypt. The out-of-context location could also be any museum or exhibit around the world. To make this happen more readily, a diverse tribunal (one including members of the Nubian community) could reanalyze some of the aims of laws like Law 117 and consider loosening Egypt’s strict hold on all of its artifacts. What is important is that the widely-communicated message is one that is accurate and not fiscally limited; the message should be molded by diverse points of view. In other words, “homogenous” Egypt should not tailor the message; rather, this task should be left to a diverse group of individuals who genuinely seek to reconstruct Kemet for the world.

### 3. Educating Forever: Prioritizing Preservation

Finally, the antiquities system must have a goal of educating *for as long as possible* to generations and generations of people. This tenet takes special note of preservation interests and favors museums with the best conservation facilities and most stable financial support.<sup>385</sup> Egypt’s patrimony laws and goals of retaining all antiquities do not protect against other threats to antiquities such as natural dis-

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382. *See id.*

383. *See id.* at xxxiv.

384. *See id.* at xxxii.

385. After the interest of keeping things in context, there should also be an interest in preservation of the artifacts. For example, if there is a statuary set that has been kept in an open-air museum in Aswan, Egypt, but hundreds of these statuary sets exist, now the interest should simply be in preservation. Therefore, it would not be wrong to export these redundant artifacts to other locales, so long as they are going to technologically sophisticated museums to ensure their preservation. *See Cohan, supra* note 64, at 57 (“The appetite for legal antiquities in the marketplace might be nourished and black market trading reduced if public institutions in source

aster, warfare, and accident.<sup>386</sup> Threats like warfare become even more salient in light of events like the 2011 Egyptian Revolution. Law 117 will not protect Kemetic antiquities from these threats.<sup>387</sup> Dispersal will.<sup>388</sup>

Furthermore, many retention or patrimony laws can actually cause various problems that adversely affect antiquities, as Professor John Alan Cohan notes.<sup>389</sup> One of those problems is over-retention, or “hoarding,” which involves the warehousing and decay of duplicitous antiquities that are already well-represented in national museums.<sup>390</sup> There is often no promise that these stored artifacts “will ever be studied, published, or displayed.”<sup>391</sup>

Museums outside of Egypt provide potentially ideal facilities to preserve the antiquities and give the curious and the scholarly an opportunity to view history without having to travel far.<sup>392</sup> Opponents to Law 117 argue that Egypt’s antiquities should be dispersed because museums outside of Egypt have superior resources and are thus a better, more-protective home for the artifacts.<sup>393</sup> Those who argue for dispersal because of better preservation facilities outside of Egypt may soon be silenced by the possibility that Egypt itself will have the best preservation facilities: the completion of the Grand Egyptian Museum in Cairo and its unrivaled conservation center.<sup>394</sup>

The three educational ideals of accuracy, dispersal, and preservation must be balanced against one another when it comes time to decide who should own or at least keep particular Kemetic artifacts. The point is that this balancing act should be performed by a diverse, competent tribunal that includes all parties with an interest in the antiqui-

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nations engaging in hoarding were to release some of the reputedly large supplies of marketable antiquities they now hold in storage.”).

386. See Cuno, *Introduction*, *supra* note 25, at 3.

387. See *id.*

388. See *id.*

389. See generally Cohan, *supra* note 64. Throughout the article, Cohan describes various issues that arise out of retention laws, repatriation efforts, and other legal sources in the field of archaeology. See generally *id.*

390. *Id.* at 56.

391. *Id.*

392. See generally Tierney, *supra* note 375 (listing preservation and better facilities as a benefit of artifact dispersal to other museums).

393. See David Bollier, *Who Should Own Antiquities?*, ON THE COMMONS (May 1, 2009), <http://onthecommons.org/who-should-own-antiquities>.

394. See generally Nevine El-Aref, *Grand Egyptian Museum Construction Work to Resume Next Week*, AHAM ONLINE (Cairo), Jan. 9, 2012, <http://english.ahram.org.eg/NewsContent/9/44/31234/Heritage/Museums/Grand-Egyptian-Museum-construction-work-to-resume-.aspx>.

ties. However that diverse tribunal is composed, it should undoubtedly include Nubian Egyptians.

E. Sending Eloquent Speeches to the *Per-Aa: Maat* and Education Intertwined Create an International Tribunal to Decide the Fate of Kemetic Antiquities

Egypt should have a domestic tribunal or body like the MSA, but the idea of a tribunal can also extend into the international sphere. Thus, weighing the concerns of *maat* and “educating accurately, widely, forever” can be a job for a carefully selected non-governmental body or tribunal, free from political concerns and loyal to academic concerns.<sup>395</sup> This organization or governing body could provide the benefit of neutrality to the system, as opposed to the bias that national governments or domestic organizations may possess from generations of argument.<sup>396</sup> At the very least, the *maat* and educational concerns could mean that the tribunal provides a declaration of the relationship between Kemetic artifacts, Nubian people, and other African peoples.

Professor Cohan elaborates on the point that an international tribunal might support vesting certain property to cultural groups (e.g., the Nubians) rather than states with arbitrary borders (e.g., Egypt):

[I]n view of changing national boundaries during the course of history, the tribunal may encounter difficulties in determining which specific claimed properties should be returned and to which cultural group they should be returned. The strongest historic cultural link seems to provide the most appropriate basis for determining cultural group-specific claims, and if that group has a modern-day counterpart, the property’s destination may be fairly clear.<sup>397</sup>

This assertion provides support for an international tribunal’s determination of where antiquities should go if there are paralyzing disputes that fall along cultural lines verses country borders.<sup>398</sup> This tribunal could be useful when “cultural group specific” claims arise and polarizing conflict occurs in the domestic tribunal. An international tribunal could at least place pressure on the Egyptian government to ensure controversial decisions are decided in the interests of justice and education. Nevertheless, allocating artifacts based on cul-

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395. See Cohan, *supra* note 64, at 99 (“[R]eliance on impartial third parties may be more productive than bilateral negotiations or diplomatic efforts.”).

396. See *id.* (“[P]arties may become deeply entrenched in their positions.”).

397. *Id.* at 101.

398. See discussion *supra* Part II.

tural group can become a difficult and flawed exercise,<sup>399</sup> and an international tribunal could ensure that interests in educating—not allocating—ultimately prevail.

The international tribunal should have diverse but relevant membership, with members from all around the international community and experts in various fields from classical African studies to archaeology, museum studies to education, biomedical science to law.<sup>400</sup> This diverse membership would not only aid in sound deliberation, but it would strengthen the international tribunal's credibility, jurisdiction, and enforcement.<sup>401</sup>

## CONCLUSION

With the 2011 Egyptian Revolution, the time has come for Egypt to reassess the legal and political treatment of its minority populations with respect to their cultural property.<sup>402</sup> The Nubians in Egypt are a distinct indigenous group with a cultural connection to both the ancient Nubian and Kemetic civilizations that have made modern-day Egypt prosperous.<sup>403</sup> The Egyptian government, in its legal structure and rhetoric, has ignored Nubian cultural distinctions and imposed an idea of cultural homogeneity across the state.<sup>404</sup> This ignorance is eerily similar to the ignorance exhibited by Egyptological superiority narratives.<sup>405</sup> However, a close connection between the Nubians and Kemet does exist, and it should be recognized and embraced by the controlling group: inclusion and consultation are required, at the very least.<sup>406</sup> Egypt's obligations to CERD, ICESCR, UNDRIPs only support this recommendation.<sup>407</sup>

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399. SMITH, *supra* note 223, at 33 ("The correlation of artifacts with specific groups has been a central problem in studies of ancient ethnic identity . . ."). Ethnicity is dynamic, fluid, multifaceted, overlapping, and ever-changing in its nature. *See id.* Because of this, it is difficult to select a corresponding ethnic group for each artifact, especially when the artifacts represent a shared cultural identity (which the ancient Nubians and Kemetics had). *Id.* Therefore, educating, not allocating, is a more appropriate priority.

400. *See* Cohan, *supra* note 64, at 99 ("[T]he tribunal would need to have substantial international membership in order for it to have jurisdictional validity.").

401. *See id.* ("[T]he tribunal would need to have substantial international membership in order for it to have jurisdictional validity.").

402. *See* El-Aref, *Heritage*, *supra* note 13 (reviewing some changes in Egyptian Government that have occurred since the Egyptian Revolution of 2011).

403. *See* discussion *supra* Part II.A.

404. *See* discussion *supra* Part II.A.

405. *See* discussion *supra* Part II.D.

406. *See* discussion *supra* Part II.B.

407. *See* discussion *supra* Part I.A.

Egypt's antiquities system should be inclusive of not only Arab Egyptians but also Nubian Egyptians, who undoubtedly have an interest in their historical record.<sup>408</sup> Egypt can do this by (1) intentionally including members of the Nubian community in its department governing antiquities (the MSA); (2) changing its international rhetoric and acknowledging Nubians as indigenous Egyptians; and (3) making all efforts to dispel the racist superiority narratives that disconnect and exclude groups from "ancient Egyptian" history.<sup>409</sup> Additionally, Egypt can become a party to more progressive international treaties such as ILO 169, and an international tribunal can be created to check the Egyptian government's decisions regarding the world's classical African heritage.<sup>410</sup> If these measures are employed, the Egyptian government will shed its role as "strong robber," and *maat* will be restored.<sup>411</sup>

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408. See discussion *supra* Part III.

409. See discussion *supra* Part III.

410. See discussion *supra* Part III.

411. See CARRUTHERS, *supra* note 1, at 143-52, 163 (providing a portion of the Kemetic tale, *Nine Petitions of the Farmer*, with references to Nemtynakht—which means "strong robber"—and the concept of *maat*).

