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“An archaeologists view of the trade in unprovenanced antiquities.”

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An Archaeologist's View of the Trade in Unprovenanced Antiquities

Neil Brodie

INTRODUCTION

Archaeological sites and monuments are important sources of historical information. That is an archaeologist's view of archaeology, though it is not the only one and there are other perspectives that need to be considered. Today, many archaeological sites have a cultural or religious significance, sometimes they stand in the way of (or are destroyed by) agricultural or industrial improvement, and some may constitute an economic resource, to be exploited by means of tourism or looting. People even build homes in them. Thus the attitudes towards sites of people that live in their localities range from reverence, through indifference, to outright hostility. Diametrically opposed opinions may exist in the same community, sometimes even within the same family, structured by the sometimes complex intersections of cultural, religious, and economic interests. National governments, too, often take an interest in archaeological heritage, which may or may not be in accord with that of local communities and archaeologists. Governments may view archaeological heritage, or parts thereof, as a tangible and often very visible reminder – whether true or not – of national history and purpose, a justification of the nation state. They are also well aware of its economic potential. Archaeology, however, has no favourites: it can also be subversive when it provides a pole around which dissident views might gather. Thus, governments take a close interest in archaeological remains, and most countries today have subjected their archaeological heritage to some kind of state definition and control.

In the past, perhaps, archaeologists have taken a rather proprietorial view of archaeological heritage, believing that their scientific methods and objective research strategies have privileged their claim and lifted it above politics. However, it follows from what was said earlier that archaeological practice, whether as excavation or as an intellectual process, is inherently political. Any physical or intellectual intervention carries social consequences, and archaeologists are increasingly aware of this. Yet, while recognising that it is no longer

possible to talk of a fully impartial standpoint from which a unique and objective account of the past can be delivered, they continue to maintain that their methods do produce a body of reliable historical knowledge that has general utility and that can protect against some of the wilder flights of fancy that are sometimes presented as fact to the public.

A central archaeological concept is context; that is to say, where an artefact is found and what is found with it. The methodology of archaeological excavation developed during the nineteenth and twentieth centuries to recover and record context, which was then regarded as the set of relationships among artefacts and between artefacts and their surrounding structures. However, the ever-growing battery of scientific techniques that is now available allows the reconstruction of context to go much further. For example, the analysis of lipid residues adhering to the walls of ancient pots makes it possible to identify the foodstuffs or goods that they may have contained. The soils and sediments in which artefacts are found can also be analysed microscopically to reveal information about past climates and environments. So today, when sites are excavated, contexts are carefully recorded. Indeed, in the expectation that methods of contextual analysis will continue to improve, and given the fact that the archaeological record is a limited resource, there is growing recognition that, where possible, archaeological sites should be conserved intact for future generations.

Most antiquities offered for sale on the international market have no provenance, which is to say that they have no accompanying information about findspot or previous ownership history. Most of these unprovenanced antiquities have probably been removed destructively and illegally from archaeological sites and monuments, so that their contexts have been destroyed, too. As a result, historical information is lost, and the reliability of any subsequent historical reconstructions is unavoidably reduced. The trade in unprovenanced antiquities has exploded over the past 40 years as barriers to communication have fallen and technology has improved. Antiquities are torn from standing monuments, secretly dug out from archaeological sites, or stolen from museums. They are exported illegally and traded around the world. It is a trade that antagonises all parties outlined earlier with a stake in archaeological heritage. Local communities may find their sacred monuments or statues defaced or their ancestral relics removed. The laws of states are ignored or subverted through corruption. But for archaeologists, an irreplaceable source of historical information is lost forever.

STRUCTURE OF THE TRADE

Although archaeological sites and monuments anywhere in the world may be plundered, most of the loot ends up in the private and public collections of Europe, North America, and, increasingly, the Far East. However, antiquities collecting in these countries is not an underground activity, as might be expected given the source of the collectables. People

do not gather furtively at night to view one another's latest acquisitions. On the contrary, antiquities collectors see themselves as patrons of culture and the arts – as public benefactors. They expect others to see them in that light also. Many unprovenanced antiquities eventually come to rest in famous museums, which are the cultural repositories of Western society, a society that prides itself for being law-abiding, well-educated, and democratic; in other words, for being decent. How can it be, then, that this society is prepared to accept into its very heart material that carries with it the guilt of lost knowledge and the taint of corruption and criminality? How can this happen?

There are several factors in the antiquities trade that combine to disconnect the cultured world of museums and collectors from its antithetical underworld of criminality and destruction. First, all artefacts that are recovered by means of clandestine excavations will not have been seen in modern times, whether in a publication or in a museum's vitrine, so that when they appear on the market they cannot be recognised and identified as stolen. Second, many antiquities were removed from their countries of origin decades or even centuries ago, at a time when it was not illegal to do so. Some of these antiquities are still in circulation today and are therefore legally on the market. In other words, they are licit. Finally, most antiquities (between sixty and ninety percent¹) are sold without provenance, which means that legal and illegal material have become hopelessly mixed on the market. Because most antiquities have not been recorded in any publication or entered into any database, it is difficult to investigate the pedigree of a single antiquity and virtually impossible to prove that any one particular piece has been looted. When asked by a discriminating customer, the vendor will have at hand a comforting homily about the grand tours of the eighteenth century, when European gentlemen travelled abroad and brought back with them antiquities as souvenirs for decorating their country homes. It is nondisclosure of provenance that allows illegal antiquities to infiltrate the market, and nondisclosure is a policy actively defended by dealers on the grounds of commercial necessity (keeping a source secret) or client confidentiality. However, many archaeologists today take the pragmatic view that an artefact with no provenance is most probably looted.

Nondisclosure of provenance also blocks investigations into the nature of the trade, and makes it difficult for outsiders to penetrate the trade's inner workings. Occasionally, however, often fortuitously, the economic and logistical structures of the trade are exposed. One example is the large-scale plunder and subsequent trade of Apulian vases that occurred during the 1980s and 1990s. Apulian vases were of Greek inspiration and made during the fourth century B.C. in what is today the southern Italian district of Puglia. They are to be found in all major collections of ancient Greek art and at auction regularly command prices in the region of

U.S.\$10,000 to \$30,000 each. They comprise an unusual corpus of material in that they have been extensively catalogued (so that any previously unknown piece that arrives on the market is of questionable origin), and their looting and trade have been investigated by academic research and journalistic exposé.

During the 1980s and early 1990s, large numbers of Apulian vases were arriving for sale at Sotheby's auction house in London.² Many of them were consigned for sale by a Geneva-based dealer, who was shown to be acting as a front for an Italian dealer, who allegedly bought the vases directly from tomb-robbers in Puglia.³ The tombs (often dug out with the aid of mechanical diggers) contained many objects of interest, but only the more valuable pieces were passed onto the international market, and many archaeological assemblages were irrevocably broken up, and contexts destroyed.⁴ The vases were probably smuggled out of Italy in refrigerated trucks (customs officers are reluctant to search these trucks thoroughly for fear that their legitimate cargoes might perish), in consignments of modern reproduction ceramics, or in personal luggage (after first having been broken).⁵

In 1997, the Italian dealer was arrested in Italy and the Swiss police seized the contents of his four warehouses in Geneva Freeport. The warehouses were reported to contain around 10,000 antiquities from all parts of Italy, worth in total something like U.S.\$40 million.⁶ Also in 1997, the role played by London Sotheby's in marketing the vases was exposed in a book and on television,⁷ and the company stopped its London antiquities auctions soon after. Sotheby's auctioned 1550 Apulian vases between 1960–98 but only 378 were known before their sale. None had any indication of findspot or context of discovery.⁸

Even when information concerning the findspot of an antiquity is provided in a sales catalogue, it is often ambiguous, using geographical or cultural terms that make historical sense but are of little relevance today. One auction house was quite happy to sell Mayan material from Petén, an area of Guatemala, until the United States imposed emergency restrictions on the import of material deriving from there in 1991. Objects offered for auction were thereafter more likely to be labelled "lowlands," an area encompassing parts of Mexico and Belize as well as Guatemala,⁹ which, perhaps

¹ C. Chippindale and D. W. J. Gill, 'Material consequences of contemporary classical collecting,' *American Journal of Archaeology* 104 (2000).

² R. Elia, 'Analysis of the looting, selling and collecting of Apulian red-figure vases: a quantitative approach,' in N. Brodie, J. Doole and C. Renfrew (eds.), *Trade in Illicit Antiquities: The Destruction of the Archaeological Heritage* (Cambridge, McDonald Institute for Archaeological Research 2001).

³ P. Watson, *Sotheby's: Inside Story* (London, Bloomsbury 1997).

⁴ D. Graepler, *Fundort: Unbekannt. Raubgrabungen Zerstören das Archäologische Erbe* (Munich, Walter Bierung 1993).

⁵ G. Pastore, 'The looting of archaeological sites in Italy.' In N. Brodie, J. Doole and C. Renfrew (eds.), *Trade in Illicit Antiquities: The Destruction of the Archaeological Heritage* (Cambridge, McDonald Institute for Archaeological Research 2001).

⁶ P. Watson, 'The sequestered warehouses,' *Culture Without Context* 2 (1998).

⁷ P. Watson, *supra* note 3.

⁸ R. Elia, *supra* note 2.

⁹ E. Gilgan, 'Looting and the market for Maya objects: a Belizean perspective.' In N. Brodie, J. Doole and C. Renfrew (eds.), *Trade in*

fortuitously, made it more difficult for the U.S. Customs Service to identify material coming from Petén.

SCALE OF THE ILLICIT TRADE AND ITS CONSEQUENCES

The monetary value of the illicit trade, or the damage it causes, have rarely been quantified, largely because it takes place in secret. Interpol estimates that in monetary terms, the illicit trade in cultural property ranks third after drugs and weapons. There have been a few surveys of damage on the ground. In 1983, a study showed that 58.6 percent of all Mayan sites in Belize had been damaged by looters.¹⁰ Between 1989 and 1991, a regional survey in Mali discovered 834 archaeological sites, but forty-five percent of them had already been looted – seventeen percent, badly.¹¹ Another survey in one district in northern Pakistan showed that nearly half the Buddhist shrines, stupas, and monasteries had been badly damaged or destroyed by illegal excavations.¹² In Andalusia, Spain, fourteen percent of known archaeological sites have been damaged by illicit excavation.¹³ It is estimated that somewhere in the region of 11,000 graves must have been robbed to produce the number of Greek early bronze age Cycladic figurines that are now in collections worldwide¹⁴ and that several thousand tombs must have been emptied in southern Italy to produce the 13,600 Apulian red-figure vases that have been recorded.¹⁵

ROLE OF MUSEUMS

Some illegal material ends up in museums, although many museums have now adopted acquisition policies that are designed to stop this happening. As long ago as 1970, the Museum of the University of Pennsylvania announced that it would no longer acquire antiquities of unknown pedigree, and it was followed by several other major museums in the United States. Also in 1970, the International Council of Museums (ICOM)¹⁶ issued an influential statement on

the ethics of museum acquisitions, and it has since been at the forefront of the fight against illicit traffic, with publications such as the *One Hundred Missing Objects* series and the Red Lists of African, Latin American, and Iraqi artefacts. Article 2.4 of the most recent (2004) ICOM Code of Ethics states that:

“Museums should not acquire objects where there is reasonable cause to believe their recovery involved the unauthorised, unscientific, or intentional destruction or damage of monuments, archaeological or geological sites, or species or natural habitats. In the same way, acquisition should not occur if there has been a failure to disclose the finds to the owner or occupier of the land, or to the proper legal or governmental authorities.”¹⁷

This article clearly states that a museum should not acquire any object when there is reason to believe that its initial recovery involved damage to an archaeological site or monument. Given that most unprovenanced antiquities have been obtained this way, their acquisition contravenes the ICOM code, and should be avoided. It is important that museums and their representative organisations take a strong stand against the trade in illegal material because they set a moral tone that the public will follow. As noted earlier, museums are seen to embody ideals that lie at the core of Western society. People trust museums, and it is for this reason that their actions should be beyond reproach.

Nevertheless, some museums are still happy to acquire material without provenance, particularly new museums with grand designs. The Miho Museum, which opened in November 1997 just to the north-east of Kyoto, Japan, is one such museum (both literally and figuratively). It is thought to have spent more than US\$200 million on its collection, which has been published in a well-illustrated colour catalogue. However, most of the pieces in the catalogue have no provenance whatsoever, the implication being that they arrived on the market only recently and through dubious channels. This clearly makes archaeologists uncomfortable, and they are likely to decry the loss of context, but there are dangers too for the museum that buys such pieces without provenance – the twin dangers of fakes and stolen pieces.

Within four years of its opening, the Miho Museum had suffered. One of its most eye-catching displays is a collection of what is probably Iranian silver. This silverware is rumoured to be part of what is known as the Western Cave Treasure, a hoard of gold and silver thought to have been discovered by a shepherd in a cave in Iran in the late 1980s.¹⁸ The pieces bought by the Miho Museum were apparently authenticated by a Western academic whose identity has been withheld, but

Illicit Antiquities: The Destruction of the Archaeological Heritage, 82 (Cambridge, McDonald Institute for Archaeological Research 2001).

¹⁰ M. Gutchen, ‘The destruction of archaeological resources in Belize, Central America,’ *Journal of Field Archaeology* 10 (1983).

¹¹ M. Brent, ‘The rape of Mali,’ In K. D. Vitelli (ed.), *Archaeological Ethics* (Walnut Creek, AltaMira 1996).

¹² I. Ali and R. Coningham, ‘Recording and preserving Gandhara’s cultural heritage,’ *Culture Without Context* 3 (1998).

¹³ S. Fernandez Cacho and L. G. Sanjuán, ‘Site looting and illicit trade of archaeological objects in Andalusia, Spain,’ *Culture Without Context* 7 (2000).

¹⁴ D. W. J. Gill and C. Chippindale ‘Material and Intellectual Consequences of Esteem for Cycladic Figures,’ *American Journal of Archaeology*, 624 (1993).

¹⁵ Elia, supra note 2, 151. Many more figures are available in N. Brodie, J. Doole and P. Watson, *Stealing History*, (Cambridge, McDonald Institute for Archaeological Research 2000); and N. Brodie, J. Doole and C. Renfrew (eds.), *Trade in Illicit Antiquities: The Destruction of the Archaeological Heritage* (Cambridge, McDonald Institute for Archaeological Research 2001).

¹⁶ ICOM is a non-governmental organisation that maintains formal relations with UNESCO. It is dedicated to the development and management

of museums and operates globally for the preservation of cultural heritage through its 108 national committees. More information on the organisation can be found at <<http://www.icom.org>>.

¹⁷ ICOM Code of Ethics for Museums, (Paris, ICOM 2004).

¹⁸ D. Alberge and D. McGrory ‘Art mole threatens to turn tables on Yard handlers,’ *The Times* (January 29 2000); E. Bleibtrau, ‘Een verguld zilveren beker van koning Assurbanipal.’ In E. Bleibtrau and H. D. Schneider (eds.), *Ritueel en Schoonheid: Antieke meesterwerken uit het Miho Museum, Japan*, 21 (Milan, Skira Editore 1999).

already the authenticity of one piece has been questioned. It is a gilt silver beaker that carries two inscriptions, both ancient but of different dates and in different scripts. One of the inscriptions is associated with engraved decoration in neo-Assyrian style that covers the outer surface of the beaker in four registers. The U.S. archaeologist Oscar Muscarella¹⁹ has pointed to inconsistencies in the iconography of the decoration and suggested that it might have been added after the beaker's discovery in order to increase its value. On the other hand, it is possible that 2,600 years ago an inscribed beaker changed hands as loot or as a gift and was subsequently engraved and inscribed a second time. Perhaps the truth will never be known, or perhaps scientific examination of the surface will decide. In any case, another deceit of an object without provenance has been exposed—many museum collections containing such material are almost certainly adulterated by fakes.

Then there are stolen pieces. In April 2001, the Miho Museum announced that it was returning (of its own volition) a stone Buddha to the People's Republic of China. The Buddha, which stands nearly forty-eight inches high, had been stolen in 1994 from a public garden in Shandong Province before being bought by the Miho Museum from a dealer in London.²⁰

In the United States, art museums are probably the largest collectors of antiquities. In an art museum, an antiquity is displayed as an art object, and little or no information is provided about its history, function, or significance. The object is left to "speak for itself." Thus, the acquisition and display of an antiquity that has been divorced from its context of discovery presents no challenge to the art museums' philosophy of purpose and preferred mode of display. Most art museums in the United States that collect archaeological material were incorporated in the late nineteenth or twentieth centuries, and since then have actively enlarged their collections, so that as the twentieth century wore on, art museum demand for antiquities grew progressively more acute. Unfortunately, for the museums, over the same period, most countries of the world placed their archaeological heritage under some kind of state control, which in most cases severely limits or completely bans the export of antiquities. Thus, the flow onto the market of legitimate material slowed at a time when demand was increasing, and the resulting shortfall was made good by looted material offered without provenance. Any museum that chose to enlarge its permanent collection (rather than embark upon a more ethical and economically advantageous programme of international loans and exhibitions) was forced to acquire unprovenanced material. The damaging effect of this continuing policy of indiscriminate acquisition could be demonstrated in almost any country of the world, but Nepal offers a well-documented example.

Art insiders suggest that demand for Nepalese religious sculpture dates back to the 1964 Art of Nepal exhibition held at Asia House Society in New York.²¹ The exhibition attracted the attention of U.S. private collectors and museums, and in the decades that followed, they acquired large quantities of bronze devotional images and, when the supply of bronzes began to dry up, stone sculpture.²² Over the same period, it is reported that Nepal lost more than half of its religious sculpture, and by 1998 most bronze images had been removed.²³ This sad synergy between the museum and the market has now almost ended Nepalese ownership of Nepalese heritage, and the pattern is one that has been repeated for many other countries in Asia²⁴ and, no doubt, for most other countries of the world. It is exactly this type of destructive collecting that the ICOM Code of Ethics is designed to prevent. Unfortunately, experience shows that all too often the ICOM Code is ignored. Comparable codes formulated by U.S. museum organisations are demonstrably weaker.

For example, the American Association of Museum's (AAM)²⁵ statement on the ethics of acquisition is briefer than ICOM's, and far less specific:

"Acquisition, disposal and loan activities are conducted in a manner that respects the protection and preservation of natural and cultural resources and discourages illicit trade in such materials."²⁶

There are no direct recommendations in the AAM's statement, although in the introduction to its code the AAM does ask that museums comply with applicable international conventions, which would include the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, implemented in the United States in 1983 as the Convention on Cultural Property Implementation Act (CCPIA), and in the afterword it emphasises that individual museums should frame their own individual codes of ethics, which should be in conformance with the AAM code and expand on it through the elaboration of specific guidelines.

In 2004, the Association of Art Museum Directors (AAMD)²⁷ published its "Report of the AAMD Task Force on the Acquisition of Archaeological Materials and Ancient Art,"²⁸ which contains seven guidelines to assist museums in

¹⁹ O. Muscarella. *The Lie Became Great: The Forgery of Ancient Near Eastern Cultures* (Groningen, Styx 2000).

²⁰ C. Sims. 'Japanese agree to return a stolen statue to China,' *New York Times* (April 18 2001).

²¹ P. Pal, *American Collectors of Asian Art*, 7 (Bombay, Marg 1986).

²² N. Brodie and J. Doole, 'The Asian art affair: US art museum collections of Asian art and archaeology.' In N. Brodie and C. Hills (eds.), *Material Engagements: Studies in Honour of Colin Renfrew*, 101. (Cambridge, McDonald Institute for Archaeological Research 2004).

²³ J. Schick, *The Gods are Leaving the Country* (Bangkok, White Orchid 1998).

²⁴ N. Brodie and J. Doole, *supra* note 21.

²⁵ The AAM represents the interests of US museums and other cultural institutions. It currently has 3100 institutional members. More information can be found at <<http://www.aam-us.org/index.cfm>>.

²⁶ AAM Code of Ethics for Museums (1993).

²⁷ The AAMD represents the interests of art museums in the United States, Canada and Mexico through its membership of up to 200 museum directors. More information can be found at <<http://www.aamd.org/>>.

²⁸ AAMD Report on Acquisition of Archaeological Materials and Ancient Art (2004).

the preparation or revision of acquisition policies as regards antiquities (AAMD 2004).

The AAMD guidelines, too, ask that art museums conform to the law, but contain nothing to discourage the acquisition of material when there is reasonable cause to believe that its original recovery involved the destruction or damage of an archaeological site or monument (as under the ICOM code). Indeed, on the face of it, the requirement in Guideline D that member museums should not acquire any archaeological material or work of ancient art "known to have been 'stolen from a museum, or a religious, or secular public monument or similar institution'" or "known to have been part of an official archaeological excavation and removed in contravention of the laws of the country of origin" seem carefully (or carelessly) worded to allow the acquisition of material from excavations that are not official – in other words, antiquities from looted sites.

For a museum, an antiquity without provenance is a potential time bomb. It may have been in circulation for decades, which would make it a legitimate acquisition. It may have been first obtained secretly through clandestine excavation, which would make it unidentifiable and therefore a safe, if unethical, acquisition. However, it may also have been stolen from a preexisting collection, which would make it traceable. At any moment, new evidence may come to light that exposes the true nature of a piece. Public embarrassment, and possibly financial loss, will follow when the museum is forced to return the piece to its country of origin. In the United States, at least, by law, museum trustees have a fiduciary responsibility towards the institutions they serve, and it has been argued that they are in breach of this responsibility if they do not ensure acquisitions policies and diligence procedures that guard against such eventualities.²⁹

ROLE OF PRIVATE COLLECTOR

Museums are not the only acquirers of unprovenanced antiquities. At one time or another, most antiquities pass through private hands, either in collections or as interior decorations. Like museums, though, the largest private collections provide the market with some kind of social legitimacy and an aura of respectability, even though they are often composed largely of antiquities with no provenance – even more so than museum collections.

One such collection was that of Barbara and Lawrence Fleischman, which was acquired by the J. Paul Getty Museum in 1996 by a mixture of gift and purchase. A catalogue of the collection was published in 1994. The dust jacket claims that "most of the objects have never before been publicly shown," and closer study has shown this claim to be true. The catalogue contains entries for 183 objects of which only thirty percent had been previously published and the remaining seventy

percent were unknown. Worse still, there was an indication of the findspot in the case of only three of the objects.³⁰

Inevitably, questions have been asked regarding some of the Fleischman pieces.³¹ For example, Item No. 126 in the catalogue is a fragment of a fresco from a first century B.C. Roman house. No information about its provenance is provided, but the entry does reveal that the piece "matches precisely the upper portion of a fresco section in the Shelby White and Leon Levy collection . . . and is from the same room . . ."³² But where was the room, and in what state is it today? What was found in the room? From the style of the paintings, a Pompeian provenance is suggested, but otherwise these are questions that the catalogue is sadly unable to answer.

Six months before acquiring the Fleischman collection, the Getty Museum had announced a new acquisitions policy whereby it would no longer collect pieces without provenance. However, the Fleischman collection was deemed to have a provenance because it had been published (by the Getty Museum!) before the November 1995 cut-off date.³³ But the time bombs are ticking. By 1999, the Getty Museum had already returned one of the Fleischman pieces – a Roman head – to Italy, where it had been stolen from an excavation storeroom.³⁴

Museums may set the moral tone, but it is fair to say that the largest private collectors set the financial pace. The "collectors" themselves do not constitute a community, however. They are not unified by a common set of intellectual, aesthetic, or ethical dispositions, nor by social or economic circumstances. Although most antiquities collectors profess to be collecting ancient "art," it is clear that this is not always their true motivation. Many collectors collect antiquities as an easy (and relatively inexpensive) means to acquire the appearance, though not perhaps the substance, of connoisseurship that allows entry into the gala world of museum receptions and gallery tours. Thus, antiquities provide a source of cultural capital. Other collectors see antiquities as an investment opportunity, or as the latest "must-have" in chic interior decoration. But not all private collectors can be disparaged as social climbers. Some do take a genuine scholarly interest in the material they collect, and deplore the damage that indiscriminate collecting causes to archaeological heritage. It is interesting to recall that, as long ago as 1913, Charles L. Freer, whose collection formed the foundation of the Smithsonian Institution's Freer Gallery of Art, recognised the problem and lobbied the U.S. Government to ban the import of Chinese antiquities of uncertain provenance.³⁵

²⁹ P. Gerstenblith, 'Acquisition and deacquisition of museum collections and the fiduciary obligations of museums to the public,' *Cardozo Journal of International and Comparative Law* 11 (2003).

³⁰ C. Chippindale and D. W. J. Gill, *supra* note 1, 474.

³¹ C. Renfrew, *Loot, Legitimacy and Ownership*, 28 (London, Duckworth 2000).

³² M. True and K. Hamma (eds.), *A Passion for Antiquities: Ancient Art from the Collection of Barbara and Lawrence Fleischman*, 251 (Malibu, J. Paul Getty Museum 1994).

³³ J. E. Kaufman, 'Getty decides publishing equals provenance,' *Art Newspaper* 61, 17 (1996).

³⁴ D. Lee, 'Getty returns three stolen works,' *Art Newspaper* 90, 1, 3 (1999).

³⁵ W. I. Cohen, *East Asian Art and American Culture*, 58 (New York, Columbia University Press 1992).

The fact that some collectors understand the value of archaeological context and the desirability of a legitimate and ethical trade has led to the notion of the "Good Collector".³⁶ The Good Collector is also committed to making his or her collection available as an educational resource, and to supporting initiatives that aim to benefit the archaeology and archaeological institutions of countries whose heritage is being badly depleted by the market.

LOOTING DURING WARTIME

Events since the 1992 Soviet withdrawal from Afghanistan and the 1991 Gulf War in Iraq have shown once more how vulnerable archaeological heritage is in times of war. Monuments and historic buildings can be accidentally damaged or destroyed, and some might be deliberately targeted for religious or political reasons. But although in 2001 the world was shocked by the demolition of the Bamiyan Buddhas for what were ostensibly ideological reasons, in both Afghanistan and Iraq, most destruction has been wrought by gangs (that are often armed) searching for antiquities that can be sold on the international market. Archaeological sites around Afghanistan have been wrecked, sometimes with the help of bulldozers.³⁷ The situation in Iraq is no better. Archaeological sites have been continually attacked since the end of the 1991 Gulf War, and as the security situation has deteriorated through 2004, archaeological sites in the south of the country are being plundered on an unprecedented scale.

The reasons for widespread looting during wartime are obvious. As livelihoods are lost and public order breaks down, archaeological sites and monuments are left unprotected and offer a ready source of income. Unfortunately, there is evidence to suggest that much of the money made from the sale of looted antiquities is siphoned off by powerful political figures or warlords.³⁸

What is happening in Iraq and Afghanistan is hardly a surprise. In recent times, archaeological looting has been a regular accompaniment of war,³⁹ but then cultural "treasures" and fine art works were long considered legitimate spoil for victorious or conquering armies. The difference today is that the international community has outlawed expropriation, so that now it is an activity of criminal rather than military organisations (though it is not always clear where to draw the line).

Legislative attempts to protect cultural heritage in wartime can be traced back to the 1863 Lieber Code of the U.S. Federal Army, and were given force by the first Hague Convention of 1899. Today, the international disposition towards looting in wartime is determined by the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and, for movable heritage in particular, its 1954 First Protocol and 1999 Second Protocol. The Convention and its Protocols oblige a military force not to destroy or expropriate items of cultural heritage, but also require that it offers protection to enemy cultural heritage when possible.⁴⁰ Neither the United States nor the United Kingdom have ratified the Hague Convention, though both have signed it. The United Kingdom announced its intention to ratify the Convention and both Protocols in 2004.

The vulnerability of archaeological heritage during wartime and its attractiveness to thieves was highlighted by the ransack of Iraq's National Museum in April 2003. Before war broke out, staff had done what they could to protect the museum's collections, moving some into safe storage and protecting the larger or more fragile pieces *in situ*. Eventually, however, staff were forced to abandon the museum on April 8 as fighting closed in. Gangs of thieves broke in on April 10 and were not chased off until April 12, when the staff returned. It was not until four days later, on April 16, that U.S. troops were dispatched to guard the museum.

In the immediate aftermath of the museum's looting, wild estimates began to circulate of how many artefacts might have been stolen. A figure of 170,000 missing objects was frequently mentioned, although this figure was nothing more than a guess, based on the size of the museum inventory. Nevertheless, it was frequently quoted by the media as a true assessment of loss. Once staff and military investigators gained access to the museum, more sober assessments of the damage began to circulate, which triggered a reaction to the early sensationalist reporting. At a press briefing on 20 May, for example, the U.S. Secretary of Defense Donald Rumsfeld, keen to downplay U.S. culpability, announced that the theft at the National Museum was probably an inside job and that only an estimated 38 objects were confirmed as missing.⁴¹ The situation has now been clarified by the report of the official U.S. investigation into the theft, led by Colonel Matthew Bogdanos. On 10 September 2003, he revealed that at least 13,515 objects had been stolen, of which 3,500 had been recovered – more than 1,700 returned under an amnesty and 900 through raids within Iraq. A further 750 had been recovered abroad. This figure of 13,515 is a minimum,

³⁶ R. T. McIntosh, T. Togola and S. K. McIntosh, 'The Good Collector and the premise of mutual respect among nations,' *African Arts* 27 (1995); S. K. McIntosh, 'Proposition,' *Public Archaeology* 1 (2000).

³⁷ A. W. Ferozi and Z. Tarzi, 'The impact of war upon Afghanistan's Cultural Heritage,' available at <<http://www.archaeological.org/webinfo.php?page=10242>>, accessed December 14 2004; see also the web site of the Society for the Preservation of Afghanistan's Cultural Heritage at <<http://spach.info/>>, accessed December 10 2004.

³⁸ M. Garen, 'The war within the war,' *Archaeology*, 30 (July/August 2004); T. McGirk, 'A year of looting dangerously,' *Independent on Sunday* (March 24 1996).

³⁹ N. Brodie, 'Introduction.' In N. Brodie and K. W. Tubb (eds.), *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, 6–8 (London, Routledge 2002); N. Brodie, 'Spoils of war,' *Archaeology* (July/August 2003).

⁴⁰ P. J. Boylan, 'The concept of cultural protection in times of armed conflict: From the crusades to the new millennium,' in N. Brodie and K. W. Tubb (eds.), *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, (London, Routledge 2002); P. J. O'Keefe, 'The First Protocol to the Hague Convention fifty years on,' *Art, Antiquity and Law* 9 (2004).

⁴¹ 'US Department of Defense DoD News Briefing – Secretary Rumsfeld and Gen. Myers.' (2003). On line at <<http://www.defenselink.mil/transcripts/2003/tr20030520-secdef0207.html>>. Accessed 14 August 2004.

however, and might rise as recovery work in the museum progresses.⁴²

Whether or not the sack of the Baghdad Museum could have prevented by the U.S. military is still a matter for conjecture. In January 2003, archaeologists and museum representatives had visited the U.S. Department of Defense and provided the locations of 4,000 (later increased to 5,000) archaeological sites that should be protected from military action in the event of war, and emphasised the danger that looting would break out afterwards.⁴³ By March 2003, the National Museum was in second place behind the Central Bank on a Pentagon list of places to be secured by U.S. forces to forestall looting, although this obviously never happened. Clearly, in the event, conditions on the ground were difficult and dangerous. U.S. troops were engaged in heavy fighting with Iraqi militia who had taken up positions in the museum's grounds. Nevertheless, the feeling persists in some quarters that a high-level decision not to offer protection was politically expedient because the museum had no direct economic importance. To some, it smacks of a conspiracy designed to leave the museum unguarded for the purpose of allowing looters to fulfil "orders" placed by rich U.S. collectors.

The need to protect the museum might not have arisen had it not been for the thriving black market in Iraqi antiquities. Throughout the 1990s and into the 2000s, a lot of material from Iraq (and Afghanistan) – presumably plundered – was flowing through London. This trade was carried on despite the fact that, under the 1990 UN Security Council Resolution 661, the export of material from Iraq was illegal. For all intents and purposes, the Resolution was simply ignored. However, soon after the outbreak of the current Iraq conflict, in June 2003, the UK Government implemented UN Security Council Resolution 1483 by the Iraq (United Nations Sanctions) Order (SI 1519), which specifically targets cultural material. This instrument has proved controversial because it abrogates the usual requirement in criminal law to prove guilty intent. Instead, anyone caught holding an Iraqi cultural object without verifiable proof that it was exported before August 1990 is in breach of the law, and should turn the object over to the police. Nevertheless, the law is effective. By late 2003, material that is identifiably Iraqi in origin had virtually disappeared from open sale on the London market,⁴⁴ thus confirming that most Iraqi objects offered for sale before June 2003 without provenance had not been from old collections, but in all probability had been looted. If strong enforcement of UN sanctions had been adopted sooner, sometime during the 1990s, it is at least arguable that by 2003 the market for Iraqi

antiquities would have been much reduced, and the looting not so severe.

ARCHAEOLOGICAL RESPONSE

Proponents of the antiquities trade often argue that it is the responsibility of countries to protect their own heritage and to police their own borders, thereby implying that any material that slips out onto the market is fair game. Archaeologists are generally sceptical of this argument, because most countries whose archaeology is under threat are usually poor and cannot afford to enforce their heritage laws when they are threatened by powerful outside interests. Even a rich country like the United Kingdom has problems. In contrast, archaeologists and museum professionals have, for the past 30 years or so, been calling for the market to be made more transparent by means of statutory or voluntary regulation, so that illicit material can be more readily recognised. They have also been developing more ethical standards of professional behaviour with regard to their own activities.

Some professionals – individuals rather than representative organisations – continue to sell their expertise on the market. Two of them have already been quoted: the specialist who authenticated the Miho Museum's beaker (a former university professor) and the expert who wrote the catalogue entries for the Roman fresco fragments (a museum curator). It is the participation or, some might say, the collusion of these individuals that ostensibly keeps the market free from fakes and stolen artefacts. They are the guarantors of market confidence. (Dealers are often sceptical of this "expert" knowledge, but acknowledge the reassurance that customers feel when they see a signed certificate decorated with an academic qualification.) Although such behaviour may have been accepted in the past, today it contravenes the codes of practice that professional bodies have developed in recognition of the potential for destructive synergism that exists between the market and the professions. Two such codes of practice are mentioned here, but they are representative of many others.

The Society for American Archaeology (SAA)⁴⁵ adopted eight Principles of Archaeological Ethics in April 1996. Principle No. 3, "Commercialisation," reads in part:

"Whenever possible [archaeologists] should discourage, and should themselves avoid, activities that enhance the commercial value of archaeological objects, especially objects that are not curated in public institutions, or readily available for scientific study, public interpretation, and display."

Article 5.1 of the 2004 ICOM Code of Ethics for Museums includes the paragraph:

"Where museums provide an identification service, they should not act in any way that could be regarded as benefiting from such activity, directly or indirectly. The identification and authentication

⁴² M. Bogdanos, Iraq Museum Investigation: 22 Apr–8 Sep 03 (2003). On line at <<http://www.defenselink.mil/news/Sep2003/d20030922fr.pdf>>. Accessed October 14 2004.

⁴³ M. Gibson, 'From the prevention measures to the fact-finding mission.' *Museum International*, 219/220 (2003); A. Lawler, 'Mayhem in Mesopotamia.' *Science* 301 (2003).

⁴⁴ N. Brodie, 'The plunder of Iraq's archaeological heritage 1991–2004 and the London antiquities trade,' in N. Brodie, M. Kersel, C. Luke and K. W. Tubb (eds.), *Transforming Values: Archaeology and the Antiquities Trade* (Gainesville, University Press of Florida, in review).

⁴⁵ The SAA is an international association of more than 6,600 archaeologists and other heritage professionals dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. More information on the organisation can be found at <<http://www.saa.org>>.

of objects that are believed or suspected to have been illegally or illicitly acquired, transferred, imported or exported should not be made public until the appropriate authorities have been notified."

Codes of practice are all very well, but the trick is in the enforcement. In 1998, the British Academy adopted a resolution on the illicit trade in antiquities that states in Article 7(d):

"Written certificates of authenticity or valuation (appraisals) should not be given for objects of doubtful provenance, and opinions on the monetary value of such objects should only be given on official request from museums or competent legal, governmental, or other responsible public authorities. Where there is reason to believe an object has been stolen the competent authorities should be notified."

Nevertheless, one Fellow of the British Academy has for a long time put his name to statements of authenticity. In the absence of any mechanism for enforcement, the resolution can function only as a set of guidelines, not a binding code of practice.

However, the powerful effect that professional archaeologists and museum curators may exert on the market goes beyond direct authentication or valuation because the study and publication of material without provenance will, in itself, provide a provenance of sorts: an academic pedigree. Once material is accepted into the validated corpus, its academic significance might translate into monetary value and provide a spur for further looting.

One response of the archaeological community has been to stop the study and publication of material that has no verifiable provenance. However, archaeological opinion is divided on the effectiveness of this tactic, for a variety of reasons.⁴⁶ In the first place, scholarly research on nonlooted material may also increase the market value of looted material: as more becomes known about a particular body of material, it becomes more collectable (and also harder to fake). In contrast, it has been argued that publication in the academic literature has little effect on the market. After all, who reads the academic literature? Then there is what Wylie⁴⁷ calls the "salvage principle." This principle asserts that some objects are of importance in themselves, even out of context, and that their importance is such as to warrant their study, so that some information at least is saved for posterity. A case in point is the large number of inscribed clay tablets that have appeared on the market since the 1991 Gulf War, in all probability extracted from sites in Iraq. The sale of these tablets would appear to be illegal, and in violation of trade sanctions, although once again this would be difficult to prove in each individual case. These tablets could arguably derive from Syria or other Middle Eastern countries, but they contain information about ancient administrations and economies. They are

perhaps not as useful as tablets recovered through controlled excavation, but they are valuable nevertheless. Should these tablets simply be ignored? A related problem faces professional conservators. Without expert treatment, these tablets might deteriorate and be lost forever, yet their conservation supports the black market and may even encourage further looting.⁴⁸

While the practicalities and ethics of working with looted material continue to tax archaeologists, they also help to reorient archaeological concerns. For a long time, U.S. and European archaeologists working in foreign countries were able to excavate, study, and (eventually) publish with little thought for the future of the sites, the sensibilities of local communities, the governments within whose jurisdictions they worked, or even the public at home, whose tax money had in many cases funded their research. However, it is increasingly accepted that archaeological research must have a public as well as an academic aspect, that it is the responsibility of archaeologists to ensure that their methods and aims are more widely understood – the stereotype of the archaeologist as treasure hunter still persists – that results should be widely publicised and that, where appropriate, archaeological sites should be prepared for public presentation, so that they can be incorporated into educational curricula and tourist itineraries. When this happens, local communities are included in the archaeological process and the sites in question fall under their protection. Archaeologists should also be prepared to support infrastructure development in host countries by training programmes aimed at archaeological, museum, and other heritage-related personnel.

Unfortunately, this is still largely abstract rhetoric. In Mexico, for example, there is only one case of research headed by a foreign institution that has concluded with the restoration of the site in question.⁴⁹ Archaeological expeditions still conform to the research ethic: the production of hard data followed by evaluation and interpretation in the academic literature. This ethic is structured by the debilitating symbiosis of professional expectations and funding constraints. Generally speaking, funds for the conservation or presentation of sites or for training programmes are not available from 'traditional' sources (usually government agencies or private foundations). Instead, such funds are available from organisations outside the "research" sector, but it is difficult to identify and approach them because doing so requires a type of knowledge, more commercial than academic, that is not offered to archaeologists during their professional training.

This is not to say that Western archaeologists working abroad have consistently failed their host countries. There are a number of large international projects of the kind

⁴⁶ A. Wylie, 'Archaeology and the antiquities market: The use of "looted" data.' In M. J. Lynott and A. Wylie (eds.), *Ethics in American Archaeology: Challenges for the 1990s* (Washington DC, Society for American Archaeology 1995).

⁴⁷ Wylie, *ibid.*, 18.

⁴⁸ K. W. Tubb, 'Focusing beyond the microscope: ethical considerations in conservation,' *Art, Antiquity and Law* 2 (1997).

⁴⁹ E. Nalda, 'Mexico's archaeological heritage: A convergence and confrontation of interests.' In N. Brodie and K. W. Tubb (eds.), *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, (London, Routledge 2002).

described earlier, such as Butrint in Albania.⁵⁰ Angkor Borei in Cambodia,⁵¹ the Mirador Basin in Guatemala,⁵² and others, but at the present time it is probably true to say that most initiatives of this kind are home-grown. Since 1993, for example, there has been a great effort in Mali to win over the general public through the establishment of cultural missions and museums throughout the country. As a result, looting has now been virtually halted around the town of Djenne, site of the medieval town of Jenné-jeno, where the looting of terracotta statuettes produced between 400 and 1,000 years ago took on critical proportions in the late 1980s.⁵³

One of the better-known developments of this kind has been at the spectacular site of Sipán in northern Peru. The archaeological site itself is a small complex of three eroded mud-brick pyramids located one kilometre outside the town. In the spring of 1987, a rich tomb of the Moche culture (early first millennium A.D.) was discovered in one of the pyramids and emptied by looters. Since then, the archaeologist Walter Alva of the Museo Nacional Brüning de la Región, has carried out a prolonged campaign of excavation – sometimes at great personal risk when disgruntled looters tried to resume their activities – and conservation at the site and has taken great pains to present his findings to the general public. What has been revealed at Sipán to date is a series of Moche royal tombs (three so far), the first to be discovered intact and undisturbed by looters, and their study has provided some unexpected insights into the previously obscure world of the Moche.⁵⁴ The results of the research have been made widely available through a range of media, including museum exhibitions, scholarly publications, a CD-ROM, a Web site, a series of popular publications, and even a comic book. The material from the excavations is now exhibited in a new purpose-built museum at the nearby town of Chiclayo, where it can be viewed by local people and tourists alike.

In 1993, building on the success of Sipán, the Museo Nacional Brüning de la Región established a programme of protection for archaeological sites in its area. Today, it has 350 volunteer members who help to watch over archaeological sites, and who are supported by the local media. It is

thought that this programme has contributed to the collapse of local smuggling networks and a significant reduction in instances of looting.⁵⁵

Another successful initiative in Peru was implemented at the first millennium B.C. site of Kuntur Wasi in the northern Andes. In 1994, with the help of archaeologists from Tokyo University, local villagers opened a small museum and educational centre, to which a library was added in 1996. Archaeological investigations continue at the site, which also remains free from the unwanted attention of looters.⁵⁶

Local efforts in Mali and Peru were helped by bilateral agreements signed with the United States within the framework of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The U.S. implementation of this Convention, the 1983 CCPIA, specifically emphasises the importance of local measures in the field of education and protection.⁵⁷

TOURISM

The positive impact of initiatives in Peru and Mali has been attributable in part, to the economic benefits that accrue from the increased tourist potential of curated and well-presented archaeological finds. Tourism has, in the past, been regarded by archaeologists as something of a mixed blessing. Tourist revenues are good, insofar as that the local people and governments that benefit are more likely to commit resources to site protection and conservation, but tourists themselves can be bad, especially in large numbers, because their endless propensity to touch and feel or simply walk about constitutes a relentless attack on the actual fabric of sites and monuments and can be a major cause of physical deterioration.

In 1999, the International Council on Monuments and Sites (ICOMOS)⁵⁸ adopted a new International Charter on Cultural Tourism. In its introduction, it states:

“Tourism should bring benefits to host communities and provide an important means and motivation for them to care for and maintain their heritage and cultural practices. The involvement and cooperation of local and/or indigenous community representatives, conservationists, tourism operators, property owners, policy makers, those preparing national development plans and site managers is necessary to achieve a sustainable tourist industry and enhance the protection of heritage resources for future generations.”

It has been estimated that foreign tourists coming to see the site and the excavated finds at Sipán spend something like

⁵⁰ R. Hodges, ‘Rejecting reflexivity? Making post-Stalinist archaeology in Albania.’ In N. Brodie and C. Hills (eds.), *Material Engagements: Studies in Honour of Colin Renfrew* (Cambridge, McDonald Institute for Archaeological Research 2004).

⁵¹ M. T. Stark and P. B. Griffin, ‘Archaeological research and cultural heritage management in Cambodia’s Mekong Delta: The search for the “Cradle of Khmer Civilisation.”’ In Y. Rowan and U. Baram (eds.), *Marketing Heritage. Archaeology and the Consumption of the Past*. (Walnut Creek, AltaMira 2004).

⁵² R. D. Hansen, ‘Marvels of the Ancient Maya,’ *Archaeology* (September/October 2001); see also <<http://www.miradorbasin.com/>>.

⁵³ S. K. McIntosh, ‘Reducing incentives for illicit trade in antiquities: The US implementation of the 1970 UNESCO Convention.’ In N. Brodie and K. W. Tubb (eds.), *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, (London, Routledge 2002); T. Togola, ‘The rape of Mali’s only resource.’ In N. Brodie and K. W. Tubb (eds.), *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, (London, Routledge 2002).

⁵⁴ W. Alva, W. and C. B. Donnan, *Royal Tombs of Sipán* (Los Angeles, University of California, Los Angeles 1994).

⁵⁵ W. Alva, ‘The destruction, looting and traffic of the archaeological heritage of Peru.’ In N. Brodie, J. Doole and C. Renfrew (eds.), *Trade in Illicit Antiquities: The Destruction of the Archaeological Heritage*, 95 (Cambridge, McDonald Institute for Archaeological Research 2001).

⁵⁶ Y. Onuki, ‘Kuntur Wasi: Temple, gold, museum . . . and an experiment in community development,’ *Museum International* 51(4) (1999).

⁵⁷ McIntosh, *supra* note 48, 243.

⁵⁸ ICOMOS is an international non-governmental organisation that acts as UNESCO’s principal advisor in matters concerning the conservation and protection of the world’s historic monuments and sites. It has national committees in over 100 countries.

U.S.\$14 million a year in the area, which provides a welcome boost to the local economy.⁵⁹ However, this effect is moderated somewhat by the fact that, although some shops and cafes have appeared in the area of the site itself, the major beneficiary of the increase in tourism appears to be the nearby town of Chiclayo, which is located about ten kilometres away and handles all tourist arrivals and stopovers.⁶⁰

Some tour operators have acted independently to protect threatened archaeological sites. The so-called Nazca lines in southern Peru are ground drawings or "geoglyphs" that were carved into the surface of the desert during the first millennium A.D. The individual glyphs take the form of giant naturalistic or geometrical figures, up to four-hundred metres across, that are visible in their entirety only from the air. They are a big tourist attraction, and it is estimated that the number of foreign tourists visiting the town of Nazca itself has tripled since 1995 to 70,000 a year. However, the geoglyphs, which are found scattered over an area of about two-hundred sq km, are increasingly under threat from looting, infrastructure development, and even the weather. Tomb robbing, in particular, has become a major problem in recent years, eroding glyphs and leaving ugly scars across the landscape. The problem is now so acute that the future survival of the Nazca lines is in doubt. In response, the Peruvian airline *Aero Condor* has established a joint protection programme with the local police and will mount airborne patrols to track thieves.⁶¹

TRADE RESPONSE

Several associations have been established to represent the interests of the trade, and they state publicly that their members are required to adhere to certain standards of behaviour, which are sometimes formulated as codes of ethics or practice. The existence of these codes allows the trade to argue that it is self-regulating and that therefore statutory control is unnecessary, an argument with political resonance in the ostensibly free-trade jurisdictions of North America and Europe, where most of the end trading goes on. Unfortunately, it is questionable to what extent the codes are respected or enforced. In February 2002, for example, Frederick Schultz, a top Manhattan antiquities dealer and former president of the National Association of Dealers in Ancient, Oriental and Primitive Art, was convicted after appeal for trading in antiquities he knew to be stolen from Egypt.⁶² Schultz may have been an exception. Most dealers are not criminals, but then they have no need to be. For reasons set out earlier, it is conveniently difficult to acquire knowledge of the illegal origins of unprovenanced antiquities. But professional codes of

practice profess to offer a stronger standard of protection than is strictly required by law, by requiring that members show some degree of diligence when investigating the history of a piece. In the United Kingdom, for example, there are two trade associations (Antiquities Dealers Association and International Association of Dealers in Ancient Art), each of which has a code of ethics containing an identical Article 2:

"The members of . . . [ADA/IADAA] . . . undertake not to purchase or sell objects until they have established to the best of their ability that such objects were not stolen from excavations, architectural monuments, public institutions or private property."

Unfortunately, what might constitute necessary diligence is not defined, and there is evidence to suggest that this article is often ignored, or at least only weakly respected. For example, large numbers of cuneiform tablets and other objects, probably from Iraq, have been offered for sale over the past ten years or so with a certificate of authenticity and translation provided by an Emeritus Professor of Assyriology at a top British University. Presumably, if a cuneiform tablet needs authenticating and translating in this way, it is because it has not previously come to the attention of the scholarly community, and therefore is probably fresh on the market. The professor has said as much himself. When interviewed by the *New York Times* in April 2003,⁶³ he was quoted as saying that when he authenticates an object he does not necessarily know where it comes from, and he suspects that very often the dealers themselves don't know either. Nevertheless, the high probability that these objects have been removed destructively and illegally from Iraq has not prevented their enthusiastic sale and collection. In 1999, UNESCO adopted its International Code of Ethics for Dealers in Cultural Property.⁶⁴ To date, however, this code has attracted little trade attention.

Although many archaeologists (and, indeed, museum curators, conservators, lawyers, and law enforcement officers) see the fundamental problem of the antiquities trade to be indiscriminate demand, among many proponents of the trade there is a strong opinion that many of its problems are an outgrowth of overregulation. This type of argument can be traced back to Paul Bator,⁶⁵ at least, who suggested that attempts to stifle the antiquities market by means of strong trade controls are futile because the controls will inevitably be circumvented by criminal means. Then, not only are archaeological sites offered no protection, but society is forced to suffer the adverse consequences of criminalization. The alternative strategy is to release more antiquities on to the market. An increased supply of legitimate antiquities would ameliorate demand, thereby removing the incentive to despoil

⁵⁹ P. Watson, 'The lessons of Sipán: Archaeologists and huaqueros,' *Culture Without Context* 4, 16 (1999)

⁶⁰ *Ibid.*, 18.

⁶¹ A. Faiola, 'Ancient history imperiled in Peru,' *Washington Post*, A20 (May 20 2001).

⁶² P. Gerstenblith, *United States v. Schultz*. *Culture Without Context* 10 (2002).

⁶³ M. Gottlieb and B. Meier, 'Of 2,000 treasures stolen in Gulf War of 1991, only 12 have been recovered,' *New York Times* (April 30 2003).

⁶⁴ Available at <<http://portal.unesco.org/culture/>>, accessed December 16 2004.

⁶⁵ P. M. Bator, *The International Trade in Art* (Chicago, University of Chicago Press 1981). Paul M. Bator served as a member of the US delegation to the UNESCO Special Committee that negotiated and drafted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

archaeological sites, and discourage the involvement of criminals. The antiquities to be released would be duplicates, or redundant, and either already exist in museum storage or be provided through future excavation. Unfortunately, there are many objections to this solution: stockpiles of objects might not exist, duplicates would not appeal to collectors, excavations do not routinely recover saleable objects, the release of legitimate material would further commercialise the market and act to increase rather than assuage demand, and more besides.⁶⁶ These objections have never been confronted.

CONCLUSION

The problems caused by the trade in unprovenanced antiquities will only be solved when it becomes possible to discriminate between antiquities that are on the market legitimately and those that are not. Self-regulation on the part of the trade has demonstrably failed, and so the answer seems to lie with museums. Museums can act by (1) acquiring only material acceptable under article 3.2 of the ICOM Code of Ethics, and (2) making public their accession records to facilitate provenance research.⁶⁷ The challenge for archaeologists is to develop more socially inclusive research strategies, and to recognise their responsibilities to the public that both funds and validates their activities.

QUESTIONS FOR DISCUSSION

1. What standard of provenance should be regarded as acceptable for a museum intending to acquire a cultural object?
2. Should the fiduciary responsibilities of museum trustees impact upon the acquisition policies of museums as regards unprovenanced cultural objects?
3. Should private collectors receive tax benefits for donating unprovenanced cultural objects to museums or other cultural institutions?

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