

- e) a representative of the place from which the item was removed, or is reasonably suspected of having been removed; or
 - f) a member of the Australian Federal Police, or of a police force of a State or Territory;
17. Resolution 56/83 adopted on 12/12/2001 by the General Assembly of the United Nations [A/RES/56/83 (2001)] 'Takes note of the articles on responsibility of States for internationally wrongful acts, presented by the International Law Commission ... and commends them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action'.

Scholarly Engagement with Collections of Unprovenanced Ancient Texts

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Since 1990, a series of international, proxy and civil wars and associated episodes of civil disturbance throughout the Middle East and North Africa (MENA) region have triggered a wave of looting, theft and vandalism of cultural heritage. The consequent illicit trade in cultural objects is criminally organised and considered detrimental to the wellbeing of civil society. Occasionally there has been fatal violence and there are reports of the trade profiting terrorist and insurgency groups. An unprecedented feature of this looting and trade is the extent to which text-bearing cultural objects have been targeted. Cuneiform tablets and inscribed incantation bowls from Iraq and Syria, birch bark and palm leaf manuscripts from Afghanistan, and most recently and controversially papyri fragments smuggled out of Egypt have all been reported for sale on the market. Most are sold without 'provenance' In other words, they are sold without any documentary proof of previous ownership history. Large private collections of unprovenanced texts have been assembled in North America, Europe, the Middle East and Japan. These private collections often seem destined to end their lives in museums or other cultural institutions, and might be considered as museum collections 'in-the-making'

The private collectors in question are generally concerned to ensure the appropriate curation and preservation of material in their possession and arrange for its study and expeditious pub-

lication by museum- and university-based scholars. The study and publication of these texts is argued to be in the public interest because of the important historical information they can reveal and any moves to restrict study are conceived as censorship and construed as attacks on academic freedom. Large-scale publication programmes have developed, usually hosted by universities, some supported by public funding. However, not all scholars agree that the study and publication of ancient texts is a well-founded or justifiable research exercise. The absence of any information about find circumstances hinders reliable interpretation of the texts, and publication might promote demand and cause further trade and consequent destruction of cultural heritage. Thus a largely unresolved debate has developed within academia about the propriety of scholarly engagement with unprovenanced ancient texts, with both sides claiming to be acting in the public interest.¹ This essay looks more closely at some of the issues raised by this debate.

Three collectors and their collections

The essay focuses on three collections of ancient texts that have been assembled since the 1990s, though others could have been chosen. These particular collections are treated as exemplary because they have been the subject of some controversy, so that something is known of their ownership histories, and about the motives, beliefs and opinions of their owners and of the scholars who study them. The collections in question are Cornell University's Jonathan and Jeannette Rosen Ancient Near Eastern Studies Seminar collection of cuneiform tablets, formerly belonging to Jonathan Rosen; the Schøyen Collection, belonging to Martin Schøyen; and the Green Collection, belonging to the Green family. Each one of these three collections contains a broad range of artefacts from different time periods and a variety of cultures, including, and of interest here, significant numbers of ancient and historical texts from countries in the MENA region.

Jonathan Rosen was collecting artefacts as far back as the

1980s. His special area of interest is the ancient Near East, and by the early 2000s he was being described as 'one of the world's most important private collectors of Mesopotamian art'.² He is said to have underwritten purchases for the Metropolitan Museum and in 1986 donated 452 cylinder and stamp seals to the Morgan Library. In 2000 he donated 1,679 cuneiform tablets to Cornell's Department of Near Eastern Studies, which were accepted after his assurances that the material was legally acquired.³ Cornell established the Jonathan and Jeannette Rosen Ancient Near Eastern Studies Seminar to study and curate the tablets. Its collection now comprises around 10,000 cuneiform inscribed artefacts,⁴ though it is not clear exactly how many were donated by Rosen. Cornell is organising study and publication of material in its possession by scholars from several universities worldwide.

Martin Schøyen collects books, manuscripts and other written materials. According to the Schøyen Collection website, he started collecting seriously in the 1970s, and became interested in archaeological material after the Christie's London 1998 sale of the Erlenmeyer collection of cuneiform tablets. The total size of his holding has not been made public. His website claims 5,000 leaves and fragments of Buddhist manuscripts from Afghanistan, more than 2,700 cuneiform tablets and 654 Aramaic incantation bowls.⁵ Again, his material is being studied by scholars from universities around the world.

The Green Collection, established by the Green family, believes itself to be one of the world's largest private collections of biblical texts and associated artefacts, with 'biblical texts' interpreted broadly to include texts from Biblical times.⁶ By 2015, according to the collection's own website, it contained one of the largest holdings of cuneiform tablets in North America, a large number of papyri fragments including several previously unpublished New Testament fragments, and the second largest private holding of Dead Sea Scroll fragments, all of which are unpublished.⁷ In July 2012, the Green Collection announced its plans for an eight-storey Museum of the Bible to house its collection. The museum, situated in Washington DC, was sched-

uled to open in November 2017. The Green Collection supports conservation and study of material in its possession by means of the Green Scholars Initiative, which in 2015 had a permanent establishment of 15 curatorial staff complemented by associated scholars in more than 60 universities around the world.

None of the collectors discussed has been accused of breaking any law or of knowingly acquiring stolen or illegally traded material. Nevertheless, despite general assertions of good provenance, by and large they have been unable or unwilling to produce any documentary account of ownership prior to their own. Scholars working with the material have occasionally expressed doubts about provenance,⁸ but equally have produced no hard evidence of wrongdoing. The problem or perhaps the convenience for collectors lies in the commercial secrecy of the market in cultural objects, which is often described as a 'grey' market. Objects are generally transacted without reliable documentation of provenance, so that stolen or smuggled objects can be fed into the market and mixed with those in legitimate circulation as 'unprovenanced'. Each object does have a history, of course, but the deliberate discard or suppression of provenance facilitates the entry on to the market of illicit material, and in passing impedes police investigation and frustrates the good faith of a discriminating customer or the scepticism of an inquisitive researcher.

Thus collectors can acquire 'unprovenanced' texts safe in the uncertainty that clouds questions of origins and title, questions that are further confounded by the lack of coincidence between ancient cultural boundaries and modern political ones. Although cuneiform tablets are mainly found in Iraq, for example, they can also be found in Syria and other neighbouring countries. Rosen summed up the situation when he was quoted as saying: 'You only know what the seller tells you . . . If there is a problem with Iraq, they could tell you it is from Syria or Jordan. There's no real way to know. You don't think of countries, you think of civilizations – and they could span the borders of several modern countries.'⁹ The answer for a good faith collector is to avoid buying any object without a clear account of legitimate prove-

nance. Many collectors, however, including the ones discussed here, have chosen not to follow that course, and regard unprovenanced texts as 'innocent until proven guilty'. Sometimes, when questioned about their actions, they appeal to a higher moral purpose or a public responsibility to 'rescue' material. When challenged about his possession of Buddhist manuscripts from Afghanistan, for example, Schøyen claimed to have saved them from destruction by the Taliban¹⁰ (though his account has been challenged).¹¹

The academic debate over the study and publication of unprovenanced texts

Many scholars argue that unprovenanced texts should not be studied or published. In the first place, the value of the texts as historical documents is diminished by the loss of information caused by the secrecy surrounding their acquisition, trade, previous ownership and, crucially, material find contexts. While a text by itself might contain useful historical information, its potential importance is diminished when nothing is known about where it was found or what was found with it – when nothing is known of its place of discovery, stratigraphical position, architectural context and associated artefacts. Secondly, the study and publication of unprovenanced texts increases their monetary value. By creating monetary value in this way, scholarly engagement is believed to promote demand, thereby causing further theft, destruction and illegal trade. In view of these perceived dangers of debilitated scholarship and market stimulus, some academic journals refuse to publish material that cannot be shown to have a legitimate provenance or one dating back to before 1970, the date of the Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.¹² Many other scholars, however, dispute this analysis of the situation.¹³ Their counter-argument holds that the value of unprovenanced texts as historical documents is only minimally reduced by the absence of contextual information, and that in fact the loss to

historical knowledge will be greater if the texts are not studied and published as they are, but are instead ignored. Nor do the scholars believe there is any evidence that study and publication promotes demand. Furthermore, they defend their actions by maintaining the importance of academic freedom, the idea that scholars must be left free from outside interference to pursue objective knowledge, or truth, which is seen to be a public good. Seen from this perspective, a policy of non-publication is a form of censorship: an infringement of the academic responsibility to produce and disseminate knowledge.¹⁴ Many academic journals and monographs do in fact publish such work.

The financial impact of scholarly work

It is not often acknowledged perhaps, but it seems self-evident that scholars must advise collectors about possible purchases. It is inconceivable given the textual nature of the collections in question, encompassing exotic, archaic and even extinct languages and scripts, that the collectors would possess the specialist knowledge needed to assemble them themselves. They must have secured some kind of expert advice at point of purchase. Until 2010, for example, the Green Collection was working with Scott Carroll,¹⁵ who claims to have mastered several ancient languages including Akkadian, Aramaic, Classical Egyptian, Coptic, Ge'ez, Hebrew, Greek, Latin and Syriac.¹⁶ Many scholars disapprove of and disassociate themselves from direct market involvement of this type, but are nevertheless prepared to work with collectors towards publication of unprovenanced material once it has entered private ownership. It is collaborations of this latter sort that are at issue here, the claim being that scholarly work increases the monetary value of privately-held material, and in so doing fosters demand and encourages further trade and destruction of cultural heritage.

The commodifying effect of scholarship is becoming increasingly apparent. Scholarly expertise is essential for identifying and establishing the rarity or importance of a text, and for assuring its authenticity. Identification allows monetary valuation

and authentication assures material confidence, both conditions necessary for the formation and maintenance of an efficient market. Thus private owners of studied texts can expect to derive a profit from future sales or donations of material in their possession. Potential monetary profits offer a clear financial inducement for collectors to acquire unprovenanced texts, and so in this way scholarly work can be seen to create demand and cause further theft and illegal trade. The Cornell cuneiform collection offers a good example.¹⁷ These tablets were first brought to Cornell's attention in 1997 by a scholar who was at the time working to curate Rosen's collection, and who had recognised the presence there of an important archive dating to the late third millennium BC.¹⁸ Cornell and the curator entered into collaboration and they had already been working on the tablets for three years by the time Rosen decided to donate them to Cornell in 2000, and continued to study them for a further seven years before producing the definitive publication in 2007. Rosen claimed a \$900,000 tax deduction for his donation of 1,679 tablets, which had cost him \$50,000 to purchase sometime during the 1990s.¹⁹ The appraised value of his donation and its startling appreciation in monetary value must have reflected the earlier scholarly input. From being an undifferentiated accumulation of anonymous ancient texts, it had become a previously unknown and important historical archive recording the administration of a royal estate. This example demonstrates quite clearly that 'publication and study' can entail a prolonged period of collaboration between the scholar and the collector, and how the added scholarly value of identification and interpretation can enhance the monetary value of the collection to the financial benefit of the collector. The collectors are all astute businesspeople and must have at least one eye on the resale value of their collections. Rosen's tax affairs have already been touched upon. Schøyen looks forward to directing the proceeds of his collection's future sale and placement in a public context to the Schøyen Human Rights Foundation, which aims 'to give emergency aid and fight poverty in emerging nations, and to promote Freedom of Speech and Human Rights worldwide'.²⁰

Commodification is not the only route to unlocking the financial possibilities of ancient texts. Scholarly work also creates intellectual property, a capital asset that has the potential to generate longer-term income. The owner of a text will typically collaborate with a scholar to produce a published output, which will be protected by copyright signed over to the text's owner, allowing financial benefit to be drawn from the original scholarly work. The profitability of such entrepreneurial arrangements can vary enormously depending upon the nature of the material studied and the commercial intentions or acumen of the collector. One only has to look at the example of the Gospel of Judas to understand what is possible, where a Coptic text smuggled out of Egypt sometime during the 1970s has generated millions of dollars for its owners through copyright agreements.²¹ In mitigation, it must be said that the example of the Gospel of Judas is an extreme one. The level of public interest in its content and hence its profitability is unusually high. Cornell, for example, is not likely to make anything approaching those sums of money from publication of cuneiform texts in its possession. Nevertheless, the opportunity is there. The Green Collection looks set to exploit the potential long-term financial benefits of scholarship through exhibition at the Museum of the Bible and supporting media products.

Thus the relationship between the scholar and the collector is not just an academic one – it has financial implications. Having said that, it is not at all certain that the collectors themselves are always motivated by financial gain. They are wealthy people and they are wealthy in spite of rather than because of their collections. They also seem willing as benefactors to spend money supporting scholarly research into their collections. Rosen, for example, has funded research and technical support at Cornell.²² Likewise, the Green family support the Green Scholars Initiative. So, even if as successful businesspeople they seem unlikely to reject the chance of turning a profit on their collections should such an opportunity arise, the need to profit monetarily does not seem to be uppermost in their minds. They are different from dealers in that respect, and the intention of

scholarly collaborations with the collectors discussed here is different to those of collaborations with more mercenary collectors and with dealers, though the outcome might be the same – market inflation. This is not the place to speculate upon the collectors' motives for collecting ancient texts, but their attraction does seem broadly scholarly in that they are interested in the historical or religious interpretations of the artefacts they collect. The Green Collection's mission, for example, is to tell the story of the Bible through study of the texts and other artefacts in its possession.²³ Given that scholarly disposition, it must be questionable whether the collectors under discussion would spend large sums of money acquiring ancient texts if there was no possibility of scholarly collaboration – if the scholars were unwilling to study them. Thus the commercial synergy of scholar and collector can go beyond simple commodification, and extend to creating a demand nexus – a confluence or network of interests and resources able to participate decisively in the market as an agent of demand. From that perspective, scholars are not simply exerting an appreciating effect on the market as arbiters or creators of value, they are an integral part of market demand. As such, they must bear some responsibility for the consequences of that demand, which will include material damage to cultural heritage caused by market-induced looting, but also, as is becoming increasingly clear, a range of social harms.

Social harms of the illicit trade in cultural objects

The criminal repercussions of the illicit trade in ancient texts and cultural objects more generally are never fully explored and are not widely understood. Yet the opinion that in human terms the illicit trade is a victimless crime can no longer be sustained. At the very least, corruption and tax evasion divert money away from legitimate economies and undermine civil society. But there is worse. Not surprisingly in the conflict zones of the MENA region, there have been many murders associated with the looting and trade of cultural objects. In 1998, for example,

in Amman, Jordan, over a period of several weeks and in a series of armed encounters, 13 people were killed when an Iraqi gang fell to fighting over the proceeds of a smuggled object.²⁴ Ten of the victims were innocent bystanders. In 2001, it was reported from Iraq that six archaeologists had been killed or injured during fighting at sites.²⁵ At least one looter was killed – at Warka by a site guard. In November 2003, a suicide bombing killed 13 Italian carabinieri who were present in Iraq for archaeological site protection and associated capacity building.²⁶ In 2005, eight Iraqi customs officers were ambushed and shot dead while transporting several arrested dealers and confiscated artefacts to Baghdad.²⁷

Terrorist financing adds a further dimension. In 1998, it was reported that the Taleban government of Badghis Province in north-west Afghanistan was exacting a 10 per cent tax on 'well-organised networks' of diggers and traders working to supply the market with cultural objects.²⁸ Rumours and reports of insurgency and militia groups in Iraq, Syria and Lebanon profiting from the sale and trade of cultural objects persisted,²⁹ until materialising in more concrete form in September 2015 when the US Department of State released internal Isis tax receipts seized during a US special forces raid on the Syrian headquarters of senior Isis commander Abu Sayyaf.³⁰ The receipts purport to show that over a four-month period, starting in December 2014, Isis collected \$265,000 in tax revenue. The picture emerging from this accumulating evidence of terrorist financing is one of organisation and institutionalisation. Guerrillas or other kinds of oppositional militias are likely to engage in the looting and selling of cultural objects for money to buy food or guns, as are displaced or economically-deprived civilians. Illegal though de facto state entities such as the Taliban and Isis go one step further. In need of funding for military expenditure and basic public provision they implement strategies of taxation or expropriation aimed at deriving income from all economic activity in controlled territory, including the trade in cultural objects. Thus, if scholarly engagement is implicated in creating and maintaining a nexus of demand for unprovenanced texts, then

it must, even at some remove, be held responsible for some of the corruption and violence associated with the illicit trade that coheres to meet the demand. In 2003, in Iraq, a digger on the ancient site of Umma explained that he was hoping to find 'something with some writings on it that will be sold very fast for USA dollars'.³¹

Risks to scholars

Using the term 'unprovenanced' to describe these ancient texts is misleading. Most recently assembled collections of texts from the MENA region are viewed with suspicion. The facts that they are previously unknown and that they derive from countries suffering from extensive looting encourages a belief that they have reached the market through illegal means. They have most likely been stolen from a private, religious or state owner and illegally exported from a country of origin. These are criminal acts with the potential to criminalise subsequent transactions and engagements. Nevertheless, suspicions and allegations of theft or illegal trade are one thing, proof of theft or illegal trade is something else. Occasionally, however, evidence does come to light that a text has been stolen or in some way transacted unlawfully. Given the greyness of the market, and the general absence of provenance, such occurrences are infrequent but do seem inevitable. Steve Green of the Green Collection, for example, has been quoted as saying: 'We do what we can, but there is a risk that after the fact, you find out that it wasn't appropriate for us to buy it.'³² He was talking with regard to a shipment of between 200 to 300 cuneiform tablets addressed to the Green Collection, which was seized in 2011 by US Customs in transit from Israel on suspicion of illicit import.³³ The Green Collection is not the only one to be caught out. In 2005, for example, the Schøyen Collection agreed to relinquish ownership of 50 manuscript fragments discovered to have been stolen from the National Museum of Afghanistan sometime prior to their acquisition.³⁴ The following year, the Schøyen Collection rejected the conclusion of a University College London (UCL)

committee of enquiry that its 654 Aramaic incantation bowls had been illegally exported from Iraq after 1990.³⁵ In 2013, it was reported that according to an Iraqi government official Cornell University had agreed to return 10,000 cuneiform tablets to Iraq.³⁶

In cases such as the Afghan National Museum one, when a text or group of texts is shown to have been stolen or illegally traded, it is usually returned to its lawful owner, most often the country of origin. The return of a demonstrably illicit object, however, raises questions about the possible risks posed to scholars who engage with such material. In 2009, UCL implemented its Cultural Property Policy, which established mandatory guidelines for acquisitions of cultural objects and for university staff working with cultural objects. It draws attention to the reputational risks facing scholars who choose to engage with unprovenanced cultural objects, though has nothing to say about possible financial and legal risks. Yet the legitimacy of scholarly work conducted on a stolen text is questionable. Study and publication is made possible in the first instance through access provided by the text's possessor, who is discovered retrospectively not to enjoy ownership. Thus the possessor was not entitled to offer access or publication rights to a collaborating scholar. There are potential legal consequences of this unlawful dispensation. First, if the possessor and scholar were negligent in their duty to establish rightful ownership, their actions in publishing and profiting from the text might constitute a civil tort or delict. Scholars are certainly negligent in that respect when they agree to study and publish unprovenanced material without demanding real proof of good title (as they do). The legal owner of the text might claim to have suffered a financial loss through their negligence and wish to claim redress. Second, if the possessor or scholar had good reason to believe that the text in question was in fact stolen, they might be guilty of a criminal offence. Most countries have now enacted wide-ranging money-laundering laws that criminalise the realisation of monetary value in stolen property. The general principles are contained in the 2000 UN Convention against Transnational

Organised Crime (Palermo Convention), which establishes that profiting from the use of proceeds of crime is a criminal offence and that income obtained from proceeds of crime is open to confiscation. Civil or even criminal liability is not the only hazard facing scholars who choose to engage with collections of unprovenanced texts. When publishing material, scholars benefit from the moral right of authorship, a form of cultural or intellectual capital that is realisable financially through professional advancement. It is questionable whether or to what extent a moral right should be sustained or recognised when it has been secured through an agreement that in retrospect is shown to have been invalid. Thus proceeding without secure knowledge of provenance might put scholars at risk of accusations of wilfully disregarding any possibly harmful consequences of their work, and of claims for compensation or of loss of professional credit. These risks seem not to be generally understood, and they are certainly not considered by scholars who defend academic freedom and write about their public responsibility to rescue knowledge.

Conclusion

The debate over scholarly engagement with unprovenanced ancient texts has to date focused upon questions of damage to cultural heritage, research quality, commercial impact and academic freedom. It has failed in any open and informed way to take account of how scholarship might be distantly responsible for some of the violence and corruption that accompanies the trade, or of the possible risks that such engagement might pose to scholars. Thus there is a clear need for some ethical accounting and guidance, although it is not immediately clear how the materially damaging and harmful consequences of the illicit trade can be weighed against the more nebulous but nevertheless tangible public benefits of scholarship. A start can be made by requiring scholars to ask more questions about the provenance and methods of acquisition of material they agree to study. All too often it seems that scholars turn a deliberate blind

eye towards uncomfortable questions of provenance, perhaps out of respect for the owner, a desire not to press on what might be seen to be a personal matter. But it is convenient too for the scholar not to enquire too closely about provenance in case an emerging story of illegal and violent trade comes to intrude upon the quiet contemplation of a text. It would seem an ethical priority for appropriate due diligence to be demonstrated and documented for provenance research prior to any decision about engagement with unprovenanced texts. The 2009 UCL Cultural Property Policy requires that before entering into collaboration with a private collector, a scholar should establish that the material to be studied has not been acquired in, or exported from, its country of origin, or any intermediate country, in violation of the originating country's laws, or illicitly traded in any other way.³⁷ If that requirement cannot be met, the proposed collaboration would be regarded as 'imprudent'. Any failure by UCL staff to adhere to the policy can result in disciplinary action, though the possibility is left open that the risks of engagement might be outweighed by some other significant factor, and that in such a case more guidance should be sought.

Ethical accountability must extend beyond the actions of individual scholars or institutions. Much scholarly work is publicly funded, either through the paid employment of scholars at universities or similar educational institutions, or through receipt of directed funding from national or international agencies charged with disbursing public money in support of scholarly research. Sometimes, public research funding is awarded for the study and publication of unprovenanced texts. In 2009, for example, in the UK, the British Academy awarded funding for the study of Aramaic incantation bowls in the Schøyen Collection, the same incantation bowls that the 2006 UCL report concluded had most likely been taken illegally out of Iraq in the early 1990s, and for a project that the 2009 UCL Cultural Property Policy would expressly prohibit. Given the problems of harmful consequences and risks already described, there are questions to be asked about the propriety of public funding for

such research. It would seem prudent and desirable for funding applications to be subject to regulation requiring at best an appropriate standard of provenance and at worst demonstrable due diligence as regards provenance research.

Finally, remembering that these collections might be regarded as museum collections in-the-making, it remains to consider museum ethical guidelines for the acquisition of unprovenanced culture objects. Such guidelines are quite clear in their advocacy of clear and legitimate provenance. Article 2.3 of the 2013 ICOM Code of Ethics for Museums, for example, like the UCL policy, states categorically that 'Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in, or exported from its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item since discovery or production.'³⁸ Thus any museum acquiring one of the collections discussed in this essay would place itself outside the generally accepted ethical orbit of the museums' world.

Notes

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Thieves of Baghdad and the Terrorists They Finance¹

MATTHEW BOGDANOS

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As the head of the investigation into one of the greatest art crimes in recent memory – the looting of the Iraq Museum in 2003 – I have spent more than a decade attempting to recover and return to the Iraqi people their priceless heritage.²

I have also spent a significant amount of time in three parallel pursuits. First, I have attempted to correct the almost universal misconceptions about what happened at the museum in those fateful days in April 2003. Second, I have tried to highlight the need for the concerted and cooperative efforts of the international community to preserve, protect, and recover the shared cultural heritage of all humanity. And, finally, I have sought to increase awareness of the continuing cultural catastrophe that is represented by the illegal trade in stolen antiquities that is funding terrorism. Toward these ends, in more than one hundred and fifty cities in more than twenty countries, and in venues ranging from universities, museums, and governmental organisations to law-enforcement agencies, Interpol (the International Criminal Police Organisation), and both houses of the British Parliament, I have urged a more active role for governments, international organisations, cultural institutions, and the art community.

I have done so knowing that most governments have few resources to spare for tracking down stolen artefacts; that many