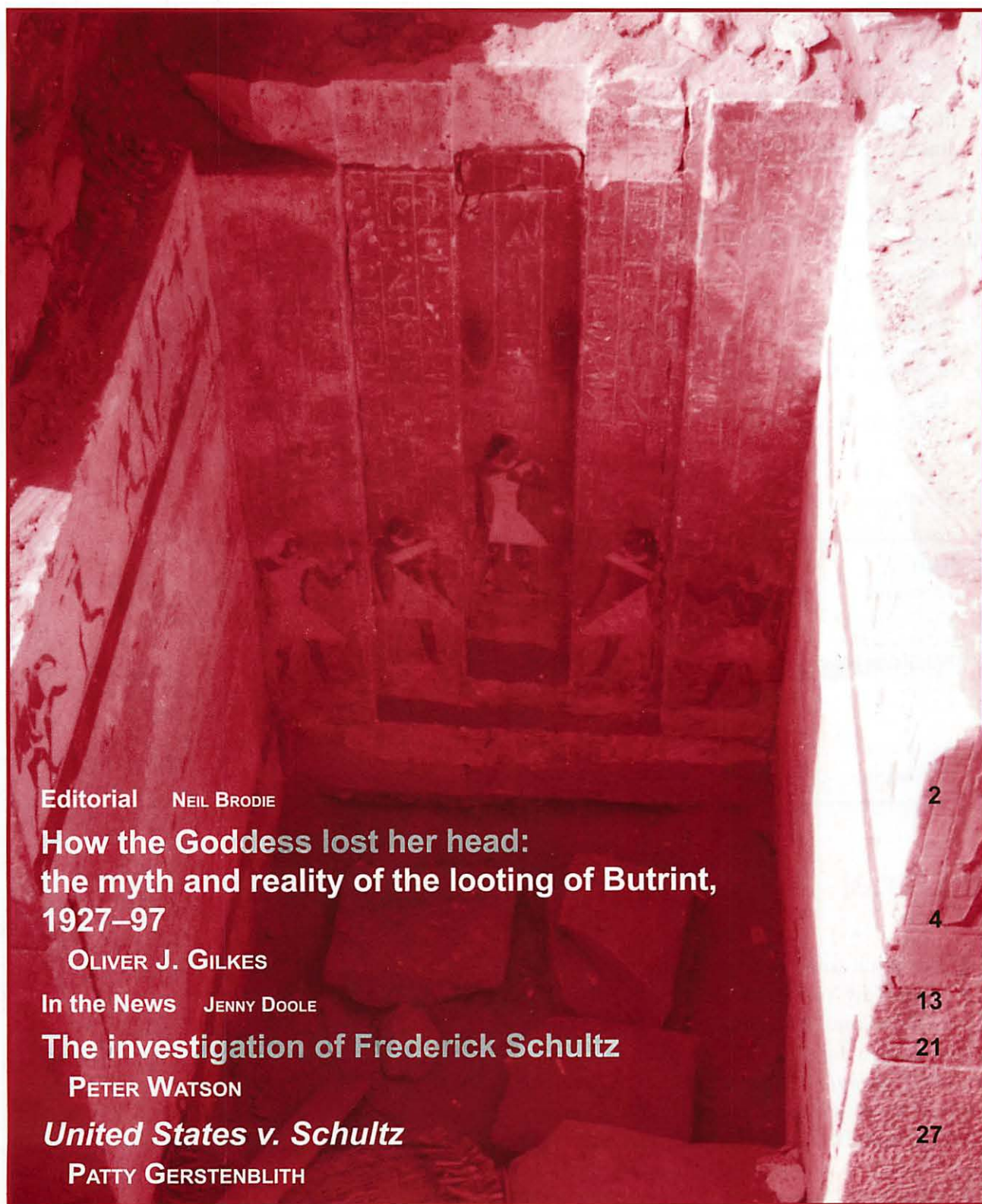


Culture *Without* Context



The Newsletter of the Illicit Antiquities Research Centre

Issue 10, Spring 2002



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The Illicit Antiquities Research Centre is a project of the McDonald Institute for Archaeological Research.

Illicit Antiquities Research Centre

The Illicit Antiquities Research Centre (IARC) was established in May 1996, under the auspices of the McDonald Institute for Archaeological Research in Cambridge, England, and it commenced operations in October 1997. Its purpose is to monitor and report upon the damage caused to cultural heritage by the international trade in illicit antiquities (i.e. antiquities which have been stolen or clandestinely excavated and illegally exported). The enormous increase in the volume of this trade over the past twenty years has caused the large-scale plundering of archaeological sites and museums around the world. The IARC will raise public awareness of the problems caused by this trade and seek appropriate national and international legislation, codes of conduct and other conventions to place restraint upon it.

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Front cover. Inside the tomb of Hetepka, before it was looted, showing the false doors.

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Correspondence relating to all aspects of the legal and illegal trade in antiquities is welcome; we will make an effort to print reasonable, non-libellous letters. No unsigned letters will be printed, but names will be withheld upon request.

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Editorial

The illicit trade is a 'dying dinosaur issue' said New York dealer Frederick Schultz — described as one 'who ensures that his examples do not have a dubious past' — when quizzed by the *Art Newspaper* in January 2000 (p. 65). But even dying dinosaurs can bite, and in February this year Schultz was bitten badly in a New York court when he was convicted of handling archaeological material stolen from Egypt. In this issue Peter Watson provides a colourful account of the

investigation and events that led up to the trial, and Patty Gerstenblith discusses its legal ramifications. Schultz was sentenced to 33 months imprisonment and fined \$50,000.



The Art Fund is the United Kingdom's leading art charity with over 90,000 members. It raises money from membership subscriptions, donations and legacies and in 2001 was able to offer £5.8 million to museums and galleries across the country for the purchase of works of art, including archaeological objects. It has long been the policy of the Art Fund not to sup-

port the purchase of archaeological or ethnographic objects that were not known before 1970, and on 1 May this policy received formal definition. In future, the Art Fund will not support a museum purchase unless there is documentary evidence to show that the object in question was in circulation before 1970, or, in the absence of any documentation, a signed personal declaration to that effect by the vendor.

This new requirement for a signed declaration is a significant move on the part of the Art Fund as it meets head-on the dealers' complaint that it is unrealistic to expect documentary evidence of provenance to survive when an object has been moved out of its country of origin decades or even centuries ago. Perhaps not, but now that written testimony will suffice there is one less reason for ownership histories to be suppressed.

The Art Fund's announcement was made at the launch by the Museums Association of a new Code of Ethics for Museums. The Code requires that museums should only acquire archaeological and ethnographic objects which have a secure documented ownership history that can be traced back to before 1970, unless they are judged by experts in the field involved to be of minor importance and not illicitly traded.

This collaborative launch took place at a press conference held on 1 May in London and highlights the determination of the museums community in Britain to stamp out the illicit trade. It followed closely on the heels of a Ministerial announcement that the UK Government intends to accede to the 1970 UNESCO Convention by July.



In the January/February 2002 issue of *Minerva* magazine its editor Dr Jerome Eisenberg drew attention to the fact that a conversation he had taken part in had been secretly recorded and published on a web site. The same web page also shows e-mails allegedly written by Dr Eisenberg where he calls into question the work of Dr Peter Northover, a leading archaeometallurgist (<http://www.michelvanrijn.com/artnews/artnws-eisenberg.htm>). Dr Northover, who has published widely on the subject of archaeometallurgy, is a Senior Research Fellow at the Department of Materials, University of Oxford. His own web site is at <http://www.materials.ox.ac.uk/peoplepages/northover.html>

although it makes no mention of authentication work carried out for the antiquities trade.

These e-mails prompt a number of questions. First, are they genuine? Dr Eisenberg has admitted that other material attributed to him on the web page is genuine, so there is no reason to think that the e-mails aren't, particularly as the page was concerned with the suspect provenance of an Italian sculpture and the references to Dr Northover were incidental and unnecessary.

Even if the e-mails were not written by Dr Eisenberg, the allegations they contain are still serious. They either cast doubt upon the work of Peter Northover or call into question Jerome Eisenberg's credentials as a fake-buster.

Finally, they imply that Oxford University's Department of Materials is housing a commercial authentication service. If this is the case it is a shame. The Research Laboratory for Archaeology and the History of Art at Oxford has long since stopped offering such a service because of the role it plays in underpinning the market for looted objects. The staff of the Institute of Archaeology in London, too, in 1999 adopted a Policy Statement which forbids the commercial valuation or authentication of archaeological objects of unknown provenance.

The issues raised by the 'Northover e-mails' are serious ones and it is to be hoped that the individuals involved will come forward and give a full and satisfactory account of the statements made.



Starting on page 4 of this issue is an account of the long — though sometimes misreported — history of looting at the site of Butrint, in Albania, which was occupied from the late Bronze Age through to the sixteenth century AD. Oliver Gilkes directs excavations there for the Butrint Foundation, which was established in 1993 to support archaeological research and promote public awareness of the site. The Foundation is a British charitable trust which works in collaboration with the Albanian Institute of Archaeology and Ministry of Culture with the participation of Albanian archaeologists and students. While presently engaged upon a continuing campaign of excavation, it is also collating the archives of previous Italian and Albanian expeditions to create a virtual resource and is preparing

a plan for the future management of the site, which was declared a World Heritage Site by UNESCO in 1992 and is presently encompassed by a protected area of 29 km². The Butrint Foundation aims to resolve the tension that exists between the local need for economic development and the desire to conserve an important part of Albania's natural and cultural heritage, while at the same time continuing archaeological investigations at the site. Further information about the work of the Foundation can be found at: <http://www.butrintfound.dial.pipex.com/>.

In the past, archaeologists working in foreign countries have been concerned primarily with the academic consequences of their work, the contribution it might make to the understanding of past societies, and have paid little attention

to the future prospects of an excavated site beyond its immediate physical consolidation. The long-term presentation, protection or development of sites have been tasks beyond the responsibility competence even of excavators, and with an academic status much inferior to the intellectual process of interpretation and exposition. Times are changing though. In going beyond the ethic of pure research by responding to local concerns while at the same time ensuring the future survival of the site, the Butrint Foundation serves very much as a twenty-first-century paradigm for archaeological research. What might be characterized as dig and run projects should now be a thing of the past.

NEIL BRODIE

How the Goddess lost her head: the myth and reality of the looting of Butrint, 1927–97

OLIVER J. GILKES

A recurrent theme of popular folklore concerning foreign archaeological missions working in the Mediterranean is the illegal removal of finds. Stories of this kind range from the true exploits of larger-than-life characters such as Lord Elgin and his assistants in Greece (St Clair 1998) and Giovanni Belzoni in Egypt (Trigger 1989), through to the activities of well-constituted scientific missions of the 1920s and 30s. In many cases the archaeologists concerned have not helped themselves in this matter. Sir Leonard Woolley, for example, filled his books with a series of stories of how he managed to hoodwink the Italian and Turkish authorities and make off with choice pieces (Woolley 1954; 1962).

The end of colonialism and the politicization of the past have reinforced this idea in the modern era. Many of the archaeologists of the past are seen as opposing in some fashion the



Figure 1. *Three directors of the Italian Archaeological Mission to Albania: Luigi Ugolini (centre) flanked by two of his successors, Pirro Marconi (left) and Igino Epicoco (right) in the acropolis castle at Butrint.*

establishment of local national identities; thus, for example, Elgin is demonized in Greece. In the mind of the general public of those countries actually involved in acquisition this concept has also taken root. Witness the activities of Indiana Jones in securing antiquities for his clients.

Obviously each case must be taken on its own merits. Here I intend to examine the Butrint sculptures from Albania. This is an instance where the myth has obscured the unpleasant reality, and as a consequence has deflected attention

from the present sad situation of theft from museums and archaeological sites.

Butrint 1928: the fifth shore

The Italian Archaeological Mission to Albania was established in 1924 under the aegis of the Italian Foreign Ministry. It was one element of a programme intended to extend Italian hegemony to the eastern Adriatic — the ‘fifth shore’ of Italy — the others being in Italy itself and Libya (Gilkes & Miraj 2000). Political in its conception, the mission also adapted its strategy to embrace the nationalist concepts that had been adopted by the fascist regime, *Romanità* and *Italianità* (Gilkes & Miraj 2000; Petricoli 1990; Zevi 1986). Albania had been a brief *cause célèbre* in the earlier career of Benito Mussolini (Mussolini 1920). Nevertheless the mission’s first director, the young and able Luigi Ugolini (Fig. 1), while a supporter of the regime, clearly had his own agenda which he managed to dovetail with political necessity to pursue a solid programme of high-quality research.

The initial efforts by the Italians, however, were far from promising. To exploit Albanian nationalist sentiment, Ugolini worked at Phoenicë, in the southern prefecture of Gjirokastra, between 1925 and 1927, where it was hoped that prehistoric graves would be discovered that could then be attributed to the Iron Age Illyrians, seen in Albania as the country’s historic ancestors (ASME AP 1919–30; 1924, 723/1). While interesting, the finds themselves were hardly stunning, though Ugolini made major efforts to talk them up by emphasizing the sheer scale of this vast classical site (e.g. ‘One of the largest acropoli of the classical world’, in *Il Popolo d’Italia* 9/11/1933).

In December 1927 it was decided to shift the focus of the mission some 30 km south to the coastal site of Butrint. This beautifully positioned city featured in Vergil’s account of the journey of Aeneas from Troy to Italy, and thus was a more suitable focus for the growing preoccupation with the Roman past. Ugolini was to dig here until his early death in 1936, but his successors, Pirro Marconi, Domenico Mustilli and Iginio Epicoco continued the work until 1943.

Excavations in 1928 focused on a number of points around the site where ancient masonry



Figure 2. Excavations in progress in the theatre at Butrint in 1928, shortly before the discovery of the first statue.

could be seen amongst the tangled vegetation. Whilst work continued in a number of areas, one particular site quickly produced the sort of treasure that would make major headlines. A fine group of marble statues was recovered from the liquefied mud at the bottom of a trench in the theatre (Fig. 2). The discovery was quickly announced to the Foreign Ministry, and a flood of newspaper articles, newsreel films and lectures over the following two years capitalized on the discovery. The full excavation of the theatre would take until 1932 (Miraj forthcoming).

The sculptures that were finally brought to light consisted of eighteen statues, or fragments of statues, most of which must have formed part of the decoration of the theatre complex. Principal amongst these were five large torsos, three female and two of cuirassed males, one signed by the Athenian sculptor Sosikles. A statue of the ‘Grande Ercolanese’ type accompanied these. There were also fine portrait busts of Augustus, Agrippa, ‘Livia’ and a very fine bust of Apollo, the so-called Goddess of Butrint, of the Anzio type (Bergemann 1998; Papadopoulos 1996) (Fig. 3). The fine workmanship and intact nose



Figure 3. *The Goddess of Butrint.*

of this latter piece marked it out as something special. The Italians reconstructed the ruinous castle of the Venetian Captain of Butrint on the rocky acropolis of the city to accommodate these and other finds and a museum was fully open by 1940 (ASME AP 1931–45; 1938 Busta 90/7) (Fig. 4).

Butrint in the 1930s: the myths of Aeneas

The Anglo-Albanian archaeological project at Butrint that was initiated in 1993 is supported by the Butrint Foundation with the aims of researching and preserving Butrint. Its work is closely allied to the question of the fate of the finds made during the interwar period, and has drawn heavily on the research foundation laid by the Italians. However, initially much was doubtful. Only two volumes of the final reports on the Italian work were published before World War II and the remaining manuscripts, notes and drawings were placed in storage and believed lost, until they were rediscovered by an archive research programme supported by the Butrint Foundation.



Figure 4. *Sculpture and smaller finds on display in the museum in the reconstructed acropolis castle.*

Thus much that was supposedly known about the work of the Italians was in fact myth. For example, it was persistently reported that the whole archive had perished with Pirro Marconi in a plane crash in 1938 or that Ugolini had died of malaria contracted at Butrint (in fact Ugolini died of kidney failure). The most persistent myth, however, was that the Italians had made off with the finds from the excavation, and that the supposed donation of the Goddess of Butrint by King Zog to Mussolini was in fact a compromise to cover up an attempted theft. This alleged theft was elaborated in the xenophobic atmosphere of Enver Hoxha's post-war communist government. The 'theft' was well publicized: 'The fascists destroyed the antique sculpture, and stole the marble heads found in various temples before they left the country.' (Commentary from the film *New Albania* 1948, AKF, Tirana.)

Given its prominence as a piece of sculpture and a symbol, the Goddess has taken centre-stage. It is, for example, the logo of the town of Saranda, whose football team is named Butrint United, and has been used on the labels of wine produced at nearby Delvina as well as featuring on bar and hotel signs. This symbol, it is alleged, was coveted by Ugolini and hidden by him in a crate in order to ship it secretly to Italy. Fortunately, the story goes, a zealous customs officer insisted on opening the crate and caught Ugolini in the act. Naturally a major diplomatic incident might be expected to have followed. However, at this time relations between

Italy and Albania were improving. King Zog had ascended the throne with Italian assistance in 1927, and as a consequence, in order to cover up a scandal, Zog 'donated' the Goddess to Mussolini and it was shipped to Italy where it remained until its return in 1982 (Ceka 2001).

This tale has been related to the present writer on a number of occasions, and has been recently used by Albanian journalists (Peza 1999). The episode has even been the subject of a novel by Teodor Laço, *Korba Mbi Mermere (Blackbirds over the Marbles)*, published in 1987 under the communist regime.

The Albanians have a certain justification for their suspicions. Roberto Paribeni, the Director of the National Roman Museum, whilst actually negotiating the archaeological accord with Albania, attempted to convince the foreign ministry to permit him to smuggle a small archaic statuette from the consulate at Vlora to Italy using the diplomatic bag (ASME 1924, Pacco 723/4, 11,14).

Ugolini quickly came under suspicion following the start of excavations at Butrint. In March 1928 the Gendarmerie station at Delvina reported that some finds had been consigned to the government, but they were unsure exactly what as there was no official to check the inventory. Following the 1928 excavation season Ugolini expressed concern for the safety of the finds and arranged for them to be shipped to Tirana (ASME AP 1919–30; 1928, Pacco 768/16). This, however, was effected without the presence of an Albanian official as required by the accord. Criticism appeared in the newspapers (ASME AP 1919–30; 1928, Pacco 768/21; AQS F295 D75 V1928) and the story of the attempted theft was born. Ugolini was exonerated by an official Albanian report on this matter in July 1928 that also recommended him for a medal, while urging that the government send a representative to Butrint for future seasons. Ugolini had clearly tried to be as correct as possible. He had invited the prefect of Gjirokastra and his friends over to Butrint for lunch and a guided tour on 6 July. The report on this visit (AQS F295 D75 V1928/100) noted that the prefect had taken into custody some of the smaller finds, but that they had deliberately left the statues for Ugolini to deal with. The Gendarmerie post at Konispoli,

on the Albanian–Greek frontier, subsequently telegraphed to Tirana in November 1928 that they had heard that 'something' had been stolen from the finds at Butrint by the Italians over the summer and again urged that an official representative be appointed (AQS F295 D75 V1928).

From the Italian side there is merely a file of documents in the State Archives in Rome amongst the papers of Mussolini's private secretary concerning the donation of the Goddess of Butrint, and its consignment to the care of the same Roberto Paribeni. This time there is no suggestion that the acquisition was other than a diplomatic gift, perhaps as the result of a suggestion to Zog by Ugolini (ACDS Papers of the Segretaria Particolare del Duce 5.2.6623).

In 1929 and 1930 Albanian officials did visit the excavations. They reported on the difficulties of living at Butrint, and the official visiting in 1930 was forced to sleep in a grimy shepherd's hut as the Italian quarters were out of bounds to Albanians. His report, however, is generally favourable. He observed crates of skulls being prepared for transport to Italy, indeed Ugolini specifically told him their destination, but he gave no sign that anything was amiss (AQS F250, V1932, D82, F7–12).

In 1931 a regular official was appointed to work with Ugolini. This was Hasan Ceka, a Vienna-trained archaeologist who in the post-war period was to become more or less the founder of modern Albanian archaeology. Ceka visited for extended periods in the 1930s and wrote extensive reports on the Italian activities that have survived (AQS F295 D107 V1932; AQS F295 D170 V1933). Both his surviving accounts incorporate extensive criticisms of the Italians and their methods. Ceka noted that the Italians maintained an exclusive enclave in the castle for themselves; that he was not allowed to inventory finds properly; that the workers were forced to work on feast days, something prohibited by the accord; that the Italians flew Italian flags and generally treated Butrint as part of Italy. The Italians probably did act in what would now be considered a very high-handed and colonial fashion, in common with other foreign missions of this time elsewhere (Wheeler 1954).

The main charge came with the allegations that 'something' had been stolen. Ceka reported



Figure 5. *The head and torso of the Goddess of Butrint briefly reunited in the main hall of the Albanian Pavilion at the 1940 Mostra del'Oltremare in Naples.*

how, in 1933, the director of customs at the port of Saranda had prevented Ugolini from loading crates onto an Italian ship, which he believed would then sail straight to Italy with the finds, and instead insisted that they be sent to Durrës (AQS F295 D170 V1933/3–4). This is clearly the origin of part of the Goddess story. He also reported that the workmen had told him that certain things had been found which could not now be accounted for. He listed numerous items including objects from the cemetery, a bust carved from ‘crystal’ and a marble stele carved with the figure of a victory, the Nike of Butrint. Much of this is merely hearsay. As Ceka reported to Tirana, ‘It is difficult to prove the thefts of the archaeological mission if we rely solely on public opinion . . . everyone has heard that the Italian mission steals the finds, but none has seen it directly . . .’ (AQS F295 V1931 D107 F80). Ceka recounted how the workmen, fearing for their jobs, refused to speak out, or had only heard news of missing items from others (AQS F250, V1932, D82, F7–12). The Prefect of Gjirokastra also reported further suggestions of wrongdoing to Tirana in July 1932. Presumably in the absence of Ceka,

he wrote to the Secret Office of the Ministry of Internal Affairs to say that a specialist was required to assess the value of the objects being recovered, and that in the meantime the local Gendarmes had been requested to ‘keep an eye’ on matters (AQS F295 V1931 C1932 D107 F80).

While it is impossible to control rumour at this distance of time, there are certain elements here which can be checked. The Nike of Butrint had been found in 1930 by the Butrint Channel, and, as Ceka reported, had been purchased by Ugolini from the finder. Ugolini, however, had once again informed the local officials, writing to a Mr Menegou in the prefect’s office on 16 May 1930 to announce the discovery and his intention of moving the stele to Butrint (MCR Ug60 AQS F295 V1928 D75 P5). Regarding the problems with the customs in 1933, an obviously exasperated Ugolini wrote a long letter of complaint to Egrem Bey Dibhova, the Minister of the Royal Household. He listed a number of abuses, including gendarmes at the excavations who were obstructive, and stole bread intended for the workmen, and then excessive checking of the departing missions personnel belongings: ‘they checked our baggage minutely, looked inside our shoes, even unwound our socks’ . . . ‘And all this because the chief of the customs thinks that the mission is carrying away . . . The Treasures’ . . . ‘I make no comment, except to add that . . . to my enquiries the customs officials responded “these are the orders we have received from our superiors”’ (AQS F205 V1933 D209 F61–6).

In this latter statement we may find the true reason for the accusations levelled at the Italian archaeologists. Following 1931, Italo-Albanian relations deteriorated as Zog attempted to free his country from the tightening noose of economic and political control from Rome (Fischer 1984; Vickers 1995). Italian advisers were withdrawn from the country and Albania was left to fend for itself with periodic episodes of ‘sabre rattling’ by the Italians. In this climate it is surprising that the archaeological mission was permitted to function at all, though the cunning Albanian King may have viewed Ugolini and his colleagues as a harmless presence that could be used as a link to rebuild relations if required. In this context, gendarmes, customs and even archaeological representatives may have been

encouraged to find difficulties. These certainly continued for the archaeologists. In 1935 Ceka removed finds from one of the storerooms into his keeping, presumably intending to prevent them from being taken to Italy. The Italians were convinced that this action occurred at the behest of higher authority (ASME AP 1931–45; 1935 Busta 60).

A further and more intangible element may have been a certain conflict of personality between Ceka and Ugolini. Both were strong-willed, ambitious and patriotic men and Ceka was clearly unhappy, as were many other Albanians, with the Italian presence. Some rather caustic comments arising from the 1935 incident, where Ceka was referred to as ‘a type of Albanian archaeologist’ suggest a degree of personal animosity (ASME AP 1931–35; 1935 Busta 60).

The period of frosty relations lasted until 1936, when Galeazzo Ciano became Italian Foreign Minister. He quickly moved to improve contacts between the countries, but this was merely a ruse as he was actively manoeuvring to annex the country, an event that finally occurred in April 1939.

The four years of Italian occupation do not appear to have resulted in any more deliberate looting than had occurred hitherto. Three statues from Butrint — the presumed torso of the Goddess, the ‘Grande Ercolanese’ minus her face which remained in Tirana, and the cuirassed warrior of Sosikles — were loaned to the Albanian pavilion of the *Mostra del'Oltremare* in Naples during 1940. The war prevented their return and in 1943, along with other exhibits, they were ‘completely pulverised’ (Arch. M. R. Zuccaro pers. comm.) as a result of the allied bombardment of Naples (Fig. 5).

Butrint 1992: the end of history

The communist government of Albania lasted for 47 years. During this time Enver Hoxha forged Albania into a united country for the first time.



Figure 6. A party of young pioneers visiting the National Museum of Arms in Gjirokastra c. 1982.

Part of his programme relied firmly on archaeological work to provide a philosophical underpinning of his government, as elsewhere in the Balkans (Bejko 1998; Kaiser 1995). Museums were an integral element of this national programme and they mushroomed in all major towns (Fig. 6).

Underlying Hoxha's programme was the need to create a solid national identity, and a programme was developed in which archaeology was to play a crucial role. To forward this aim he was prepared to build on the tiny cadre of existing Albanian archaeologists and historians, Hasan Ceka, Skender Anamali and Aleks Buda, even overlooking past involvement with Zog's otherwise anathematized regime. The chosen theme was that of Albanian continuity from the prehistoric Illyrians, a hypothesis that had been under discussion as a political and scientific idea since the later nineteenth century (Wilkes 1992). The development of this line of research can be seen in Hoxha's own words, ranging from the tolerant ‘Our country ought to have something to offer its scholars, who must put all their energies into making archaeological research that permits us to illustrate the history of our ancient people’ (Hoxha, extract from the visitors book of the National Museum of Archaeology and Ethnography 1948) to the extreme ‘You scientists, archaeologists, must make accurate studies. What is Illyrian



Figure 7. The bust of Livia. (Photograph: ICAA 2000.)

is Illyrian, what is Roman or Greek is Roman or Greek . . .’ (Baçe & Çondi 1987, 9) which was the official view propounded during a visit to Butrint in 1978. The turning point in this philosophical development happened following the 1961 split with the Soviet Union. Hoxha’s own paranoia led to Albanian archaeologists turning increasingly to nationalist paradigms to feed the party line.

Butrint remained relatively neglected until after 1978. The museum still existed, though some of the finds were in Tirana. Virtually all of the smaller objects found by the Italians that had been displayed in the castle at Butrint had been stolen after 1943 (Dhimosten Budina pers. comm.), leaving the larger sculpture and statues. In 1978, following a visit by Hoxha, the decision was taken to expand the facilities at the site as a tourist destination and to use Butrint as the training ground for new archaeology students who undertook a field school there in 1982. A reconstructed museum was projected, but was not

completed before 1989. New illuminated display cases, with specially made information panels, held a profusion of smaller finds from post-war excavations, whilst the old Italian courtyard was once again filled with statues and sculpture. The new museum was open for barely three years.

In 1990–91 the last communist government fell amidst riots and chaos. Symbols of the state, including offices, factories and collective farms, were smashed or broken up by a nationwide implosion of discontent. Hundreds of thousands of Albanians began to leave the country. Amidst the increasing chaos the country’s cultural heritage suffered. The national ethnographic museum in Tirana was sacked, and lost most of its finely crafted antique furniture and firearms. The Museum of Arms at Gjirokastra was robbed, again for its antique firearms, and the museum at Butrint was selectively looted of a number of pieces of sculpture, notably a number of marble busts. The perpetrators of this theft have never been identified, and while some of the sculpture has been relocated, it remains impounded in Greece for bureaucratic reasons. Some of the other material was subsequently removed to Tirana for safekeeping.

For one stolen item there was a happier fate. The head of ‘Livia’ was one of the original sculptures found by Ugolini in the theatre in 1928 (Fig. 7). It is a fine piece, carved in Luna marble, of a female head, that clearly formed an element of the imperial portrait group that had been displayed in the theatre as part of the Augustan colony founded at Butrint. It had apparently been stored in Butrint since its discovery. While the exact method of its removal from the museum and route out of Albania are unknown, its subsequent history is now comparatively well-documented, for Livia found her way to Switzerland where she was to stay for the next nine years.

Around 1995 Livia was purchased by Mr Robert Hecht, a New York art dealer, who offered the piece for sale. A short catalogue of antiquities *From a North American Collection of Ancient Art* included a ‘Roman marble portrait of Livia (58 BC–AD 29), wife of Augustus’. All the objects in the sale were unprovenanced though they were noted as belonging ‘to a collection formed over the last forty years’. At this point two separate individuals identified the head.

Dr Elizabeth Bartmann in New York has made a study of portraits of Livia and recognized it at once from the catalogue. She wrote straight away to the Albanian Embassy in Washington. At about the same time Mr Hecht offered the head to the Glyptothek Museum in Munich where the Director also recognized it as being the Butrint piece and contacted the German police. On being informed that this was in fact a stolen piece Mr Hecht withdrew it from the market. With the authorities thus alerted, some action to facilitate its recovery might have been expected: in fact, nothing whatsoever occurred. Livia remained in Switzerland and was listed as stolen by Interpol, while the Albanian Embassy and the German police apparently took no action at all.

Matters may have remained thus but for the chance meeting of academics in the United States in 2000, when Professor Richard Hodges was told of Bartman's identification. Thereafter the matter was taken up by Dr Iris Pojani, Director of the International Centre for Albanian Archaeology and other Albanian authorities who contacted Mr Hecht directly. A generous offer to return the head followed and on 3 November 2000 Livia returned to Tirana.

Butrint 1997: the end of a museum

In 1997 there was a further period of civil disturbance, this time prompted by the collapse of pyramid investment schemes. Southern Albania revolted against the government in Tirana, which was perceived as responsible for the loss of people's savings. Once again state enterprises were looted. The museum at Butrint was definitively broken into, its display units smashed, and more finds, including another haul of sculpture that had survived the 1992 efforts, stolen. This material remains missing and four years on the situation of dilapidation and loss remains the same.

Looting has also begun of a number of other archaeological sites. At Phoenicê, the ancient capital of the Epirot League, for example, the steep hillside is pitted with dozens of recently dug holes. A new Italo-Albanian accord to excavate at the site, and the establishment of a small ranger group funded by the George H. and Jane A. Mifflin Memorial Fund, may stabilize the situation. At Butrint there has only been one isolated example of illegal excavation within the city.

Nevertheless it is clear that finds are being made in the vicinity, partly no doubt through the massive increase in building activity in the area, but some perhaps as the results of deliberate prospecting.

Museum collections too continue to suffer losses. British newspapers reported in 1996 and 1997 how visiting VIPs had been given items taken from national collections (e.g. *The Times* 8/3/1997). Interest in this story soon died when its party political relevance was exhausted. During the civil unrest of 1997 the Museum of Arms at Gjirokastra was again targeted, though this time looters were interested in the Second World War small arms that might conceivably be made operational. The curator saved part of the collections by placing them in a room that she concealed behind a large socialist realist painting.

Since the restoration of civil order the depressing condition of Albania's cultural and archaeological sites has been alleviated to some degree. At Butrint a grant from the World Bank International Development Fund has permitted the creation of an effective and functioning national park administration for Butrint and its environs. Butrint is now well publicized within Albania, and is the venue of various cultural events and the destination of ever-increasing numbers of domestic and foreign tourists. An element of this programme has involved the creation of a park ranger service that replaces the civil police who previously maintained watch. This will be sustained for the future by support from the Howard Marks Foundation.

Conclusion

In the case of the Butrint sculptures a myth can be dispelled. There is little or no surviving evidence that Ugolini and the Italian Mission actually stole anything from the excavations at Butrint. Some objects may have been moved across the Adriatic, but what they were and where they are now is unknown. Certainly 'The Treasures' never seem to have left the country other than by legal means.

The Italian invasion of Albania and the suffering and resistance of the country during World War II have, as elsewhere in Europe, left a deep mark on the national psyche. Nevertheless, it is important that the myths of the past do not pre-

vent the proper protection of national cultural heritage and understanding of the problems of the present. Butrint and Albania have suffered a greater loss of archaeological and cultural material in the past nine years than the Italians managed to extract in nineteen. Some matters for considerable concern arise from the events of 1992 and 1997, especially as regards the international policing of the sale of looted but known material. In first place must be the apparent failure of responsible authorities, contacted separately on two continents, to take the necessary and obvious action in this case. Overriding this though, is the necessity to look to the future and to place the events of the past into their full perspective.

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In the News

JENNY DOOLE

Trial of Frederick Schultz

The **high-profile New York trial of Frederick Schultz** (see In The News, *CWC* issue 9), former president of NADAOPA (National Association of Dealers in Ancient Oriental and Primitive Art) ended on 12 February with his conviction. The jury deliberated for four hours before finding Schultz **guilty of conspiring to smuggle and possess looted Egyptian artefacts** (see Gerstenblith and Watson articles this issue.)

On 11 June **Judge Jed Rakoff sentenced Schultz to 33 months imprisonment**. The judge explained an additional **fine of \$50,000** was remarkably lower than the pre-sentencing recommendation of \$575,000 because jail sentences are more of a deterrent for white-collar criminals. There had been some debate over the value of economic damage the case entailed, revolving around the value of the **smuggled head of Amenhotep**, estimated by the US Government at \$2 million and Schultz at \$70,000, even though he had sold it for \$1.2 million. Judge Rakoff decreed the value to be clearly in the \$1.5–2.5 million range but, to the dismay of archaeologists, took no account of anything other than the monetary value of the smuggled objects. Schultz is now expected to appeal.

Celestial disc retrieved

A looted **bronze disc**, with gold depictions of the sun, moon and stars, has gone on display at the State Museum of Prehistory in Halle, Germany. Believed to date from the Bronze Age, it was **stolen in 1998 from a site at Sangerhausen**, in Saxony Anhalt. Two thieves sold the artefact for 15,000 euros (US\$13,000) to a dealer who then unsuccessfully attempted to sell it to Berlin Museum. Police finally retrieved the disc in February 2002 when a **middleman and Düsseldorf teacher** who had purchased the piece (which under German law belongs to the State) met Saxony Anhalt ar-

chaeologist, Harald Meller, to negotiate a sale. Both teacher and go-between were arrested, but not yet charged.

Status of International Conventions

- At the end of January, the **French government** made moves towards adopting the **1995 Unidroit Convention** when an initial reading of the bill to ratify was adopted by the Assemblée Nationale (lower-house). It was noted that any ratification (not expected until autumn at the earliest) would have to be accompanied by legislation to ensure that the terms of the Convention do not contradict France's constitution. At a Press Conference on 3 October 2001, the **Syndicat National des Antiquaires** (National Dealers' Association of France) had already pointed out that Chapter 3 of the convention contravened the European Convention of Human Rights and the French Constitution. President and Oriental dealer Dominique Chevalier also noted that, should the Unidroit Convention become law, **museum curators fear** that collectors will be too scared to lend objects to French museums, and said that major donations to the Musée Guimet had been suspended while donors awaited the government's decision. The Syndicat, which has signed recent agreements with TEFAF and the British Art Market Federation to fight ratification of the Convention in its present form and vowed that if it were to become law in France they would support and encourage challenges to its legality in the courts, announced themselves very satisfied that the government had noted problems they felt to be inherent in the Unidroit text.
- *January:* The **Cambodian government** announced that it has **ratified the 1995 Unidroit Convention** following a unanimous vote in favour in the national assembly.
- According to reports in the Japanese press,

the **Japanese government is making moves** towards signing the **1970 UNESCO Convention**. Some changes in Japanese law and other amendments must first be completed before the terms of the Convention could be met, including a change in the statute of limitation on claiming return of stolen property (from 2 years to 10 years), stricter import and export controls, and the creation of a list of cultural heritage. Japanese diplomats have indicated that the issue is a top priority and it is hoped the ratification will be approved during the current session of the Japanese parliament.

- In March, Tessa Blackstone, UK Arts Minister, announced that the **UK government will sign up to the 1970 UNESCO Convention** by July. Legal issues relating to the form of UK accession to the Convention have now been resolved.
- During the November 2001 **World Trade Organization Ministerial Summit**, in Doha, Qatar, at which countries agreed a working agenda on trade negotiations which will be negotiated over coming years, the notion of '**cultural exception**' was upheld in principle. Under the terms of the first General Agreement on Tariffs and Trade (GATT) 1948, indirect restriction or discrimination in international trade is not permitted, but special exceptions have been allowed regarding measures intended to promote or protect national cultural interests and values.



Museum ethics

- Hershel Shanks, writing in *Biblical Archaeology Review* (September/October 2001), reflects sadly that stricter museum policies are causing loss of knowledge, because artefacts of scholarly importance are now more likely to be sold to a collector 'who would keep them a secret lest he be vilified by the archaeological establishment'. He cites as an example one of two **collections of eulogiai** (enigmatic ancient Greek-in-

scribed tokens associated with early Christian pilgrim shrines) which was purchased on the antiquities market by the British Museum in 1973 — a purchase which the Museum confirmed would no longer be possible as their acquisition policy now requires that, except in exceptional circumstances, that unprovenanced antiquities must have documentation to show they left their country of origin before 1970.

- Geoffrey Lewis, Chair of the Ethics Committee of ICOM (International Council of Museums) reports that **six alleged violations of the ICOM Code of Ethics** were discussed during between 1998–2001, including acquisition or display by museums of allegedly illicitly exported material, a senior museum worker contributing to the catalogue of an exhibition which contained stolen artefacts, and issues surrounding public valuation services by an art dealer at a major museum event. ICOM's Code of Ethics has, after consultation with the membership, been thoroughly revised and is available on ICOM's WWW site at <http://icom.museum/>.
- The **National Museum of Taiwan**, Taipei faced criticism from national legislator Chen Chin-jun, who declared it a disgrace that in 50 years the museum still **hasn't finished inventorying its collection**, and made public his belief that some museum staff had been working with antiquities traders to **steal and sell museum pieces**. Chen said that, based on current museum lists, at least a **thousand objects are missing** from store-rooms and checks indicated that some had been substituted by modern reproductions. A representative from the Council for Cultural Affairs announced that a working group would be assigned to look into the matter, while museum director James An added that inventory work should be complete within the next two years, which could confirm whether or not museum workers have been involved in any illegality.



Nok resolution

January: French Minister for European Affairs, Pierre Moscovici, announced that under the terms of **an agreement between the governments of France and Nigeria**, three apparently **illegally exported Nok terracottas** currently on display in the Louvre (see In The News, *CWC* issues 6 & 7 and Red Alert in Nigeria issue 6), will **remain in France**. Nigeria's legal ownership of the pieces is confirmed, but they will be kept for a 25-year, renewable term at the future museum of ethnography at Quai Branly, Paris. ICOM welcomed the agreement.

Latin American meeting

In April 2002 the Ministry for Culture of Colombia hosted the **Third Regional Workshop Against Illicit Traffic of Cultural Heritage**. As part of the four-day meeting, archaeologists, museum and heritage professionals from around the world began the process of developing an **ICOM Red List for Latin America**, using as an inspiration the highly effective format of the Red List for Africa produced in 2000.

Looting in Java

According to *The Art Newspaper* (April 2002), **Javanese cultural heritage is under increasing threat**, especially since the fall of the Suharto government in Indonesia in 1998.

- Widespread looting is taking place of medieval **Majapahit sites** in East Java, and **shipwrecks in the Java Sea**.
- Spectacular **Hindu-Buddhist temple sites** like Borobudur and Prambanan in Central Java, have apparently been **looted out** since the 1960s. Many heads and even whole figure have allegedly been stolen, smuggled out and replaced with excellent replicas produced by local stone masons.
- During the 1980s, shipwrecks were legally, though allegedly dubiously, excavated by marine archaeologists under the auspices of Admiral Sudomo of the Ministry of Stabil-

ity, and objects removed from Indonesia.

- The **Tek Sing horde** of 350,000 Qing dynasty ceramics, excavated off the coast of Sumatra with the help of Indonesia officials, found its way to the **Nagel salesrooms** in Stuttgart after being smuggled in container loads via an Australian beach. **Auctioned in November 2002** the collection made \$10.1 million, and the Indonesian government eventually managed to claw back one third of the profits.
- Javanese artefacts often end up on sale in **Singapore**, which imposes few controls over art sales. Magnificent, unprovenanced East Javanese sculptures have been seen for sale in **Tanglin Mall**, and Majapahit items are offered in magazines like ***Orientations and Arts of Asia*** by an anonymous seller, with only a yahoo.com e-mail and Singapore fax contact number.

Begram ivories adventure

Oriental dealer **Johnny Eskenazi** describes in *The Art Newspaper* (January 2002) how, following a two-year search and a tip-off from one of his regular middlemen in Peshawar, he finally located **107 Begram ivories** in 1996 in the possession of a powerful **Pakistani official**. The ivories, looted from Kabul Museum when it was destroyed during the Afghan civil war in the early 1990s, had apparently been smuggled into Pakistan by mujaheddin commanders and sold, probably for not very much to Pakistani politicians who then found the pieces too hot to tempt Western collectors. Eskenazi describes how he was taken in disguise and at dead of night to a rich house and the treasures were presented to him in three large suitcases, wrapped in pink toilet paper. The ivories were apparently beginning to crumble. Eskenazi laments that 'political correctness' (or a general unwillingness in the West to sponsor looting by buying looted antiquities) prevented him from saving them, and concludes that they should belong to anyone willing to look after them for future generations.

Tales from USA

- Archaeologists in Utah, USA reacted angrily to a scheme run by a San Juan County landowner which, for **\$2500 per day**, offers members of the public the **chance to dig** for relics at the 1000-year-old, **Anasazi site of Montezuma Village** which contains nearly 100 house mounds. The business, called **Anasazi Digs**, is legal, since state antiquities laws do not apply to private land with the exception of burials. Howard Ransdell, whose family have owned the property since the 1950s, said that only areas in danger from erosion would be offered for commercial excavation, under the supervision of anthropology graduate Daniel Thomas, and that the idea was to give people the opportunity to dig in an undisturbed site.
- Archaeologists in **Texas** continue to push for **stronger grave protection laws** and better enforcement in the light of extensive pot-hunting for prized **Caddo ceramics** in the State. But opposition from amateur archaeologists and private landowners is strong: Bob McWilliams, founder of Texas Amateur Archaeological Association, quoted in *The Knight Ridder Tribune*, argues that private citizens have the right to use private property as they see fit.
- Concerns that widespread looting was destroying an unexcavated **ancient shell mound at Hooker Key in Pine Island Sound**, Florida, led to archaeological rescue excavations at the site in 2000. Artefacts and radiocarbon dates from samples taken from areas damaged by looters' holes up to 9-feet deep, have proved that the midden was occupied from 500 BC to AD 100 — much earlier than archaeologists previously believed. A two-year restoration project has now been completed to **restore the gaping pits** in the sides of the mound.
- Robert Hicks of the Virginia Department of Criminal Justice Services (see Time Crime: Looting in the USA, *CWC* issue 9) told a

conference on Indian Affairs that, when a sheriff organized members of a local Cherokee tribe to **patrol a Native American cemetery** in Tennessee which was frequently targeted by grave robbers, **looting there stopped**.



Austrian antiquity decision

The Austrian Supreme Court ended a lengthy legal dispute when it **awarded ownership** of a 2000-year-old **statue of the Greek goddess Hekate** to a kebab shop owner who purchased it from a German customer in 1980 for £1000. In 1997, the Turkish Embassy had obtained an injunction to stop the piece being auctioned for more than a million pounds at **the Dorotheum auction house in Vienna**, claiming that it must have been looted and smuggled from **eastern Anatolia**. The kebab shop owner proved good faith with a written purchase agreement.



Chinese dilemma

Archaeologists continue debating the wisdom of opening the 1200-year-old **mausoleum of Qianling**, tomb of Empress Wu Zetian and her husband Emperor Li Zhi, the only Tang dynasty tomb not to have been looted. Authorities say they have found evidence of **eight recent failed robberies** there.



Israeli issues

- *December 2001*: Officials of the Israeli Antiquities Authority, acting on a tip-off, detained a **group of scuba divers** from coastal kibbutz Neveh Yam, on **suspicion of stealing artefacts** — including amphorae, coins and architectural pieces — from the sea near the Roman port of **Caesarea**. The alleged thieves face up to three-year prison sentences.
- Officials in the Antiquities Authority's Unit for the Prevention of Antiquity Theft warn that probable **budget cuts will hamper their abil-**

ity to protect the estimated 30,000 ancient sites under their jurisdiction in the country.

- Three young Palestinians were caught in February attempting to **break into an ancient tomb in Gai Ben-Hinnom**, a steep ravine circling the west and south of the Old City of Jerusalem and the site of a wealth of unexcavated caves in which high-ranking ancient citizens were buried. Amir Ganor head of the Unit for the Prevention of Theft of Antiquities blames economic suffering caused by the unrest for the **recent rise in grave robbing and antiquities thefts** by Palestinians, particularly along the Green Line.

French windfall

December 2001: French museum authorities took possession of a **selection of more than 100 Italian antiquities**, which had originally been **confiscated in 1992** by French customs officials at Thionville, in eastern France. The objects, worth as much as \$11,000 each, included bronze necklaces, bracelets (some with fragments of ancient bone inside), spearheads, and pins, along with Etruscan busts and Roman vases, and dated between the seventh and eighth centuries BC. They were found roughly packed in newspaper at the bottom of large suitcases carried by two train passengers en route from **Milan to Brussels**. The bronzes were looted from tombs in the **Basilicata region**. According to the Louvre, which will add some of the pieces to its permanent collection, Italian authorities declined to take steps to recover the artefacts, probably because of a surplus of similar objects within Italy and the complicated legal process repatriation would have entailed.

Sybaris antiquities returned

November 2001: About **500 antiquities** were returned to the **Museum of the Archaeological Park in Sibari**, Southern Italy from the **J P Getty Museum in California** and the **Institute for Classical Archaeology at the**

University of Bern, Switzerland. The terracotta and bronze pieces had been acquired as donations between 1976 and 1983 but have been the subject of negotiations since 1993, when an archaeologist recognized them as having come from the ancient Greek city of **Sybaris**.

Greek round-up

- **274 artefacts** stolen from **Corinth Museum** in Greece in **1990**, and recovered by the FBI in Miami in 1999 (see In The News, CWC issues 5, 6, 7 & 8) were due to be **returned to display** once more at the museum on December 1. Security at the site has been improved.
- In September 2001, archaeologists investigating **illegal excavations in Macedonia**, Northern Greece found a previously unknown, archaeologically significant **2300-year-old tomb** near the ancient route to the oracle of Zeus at Dodona.
- More than **100 ancient vases, vessels, pottery fragments and statues** were confiscated in January from the **Athens home** of retired economist George Gerogiannis. Gerogiannis was arrested for illegal possession of the antiquities, which date from early prehistoric to late Byzantine eras.
- *January 2002:* Argiris Argiriou was arrested in **Thessaloniki** after police found in his possession around **1000 allegedly illegal antiquities**. The objects, including gold coins, statuettes, amphorae, belt buckles and swords, mostly from burial sites — are believed to have been obtained from **black market dealers in Greece, Macedonia, Bulgaria and Turkey**. Argiriou produced Greek owner's permits for some of the objects.

- *February 2002:* **Hundreds of ancient Egyptian and Greek artefacts** — including an Egyptian necklace, 411 bronze and silver coins, 200 Archaic, Classical and Hellenistic period bronze amphorae, clay

lamps, statuettes, swords, jewellery items, arrowheads and belt buckles — were found and seized during a search of a house in **Serres**. **Nikolas Laoutidis** will be charged with **theft of antiquities**.

- *February 2002:* Athenian police intercepted **5 men negotiating the sale** to a foreign buyer of **19 illicit antiquities** for 440,000 euros. The collection of Classical period pieces included terracotta, bronze and marble artefacts and a 20-cm-wide golden wreath in the shape of a bent oak twig with leaves and acorns.
- In February 2002, police in the Southern Greek town of **Kalamata** **confiscated two ancient statues and 16 Byzantine coins** from the home of **Pandelis Semertzidis**, who they believe **intended to sell them**.
- In February 2002 **Michalis Halkitis**, a goatherd from the Greek island of **Kalymnos**, his family and three neighbours, were given a **294,000 euro reward** for reporting to the Central Archaeological Council the **discovery of 37 marble statues and fragments** in a field near the early Christian basilica of the Jerusalem Christ. The statues, found when a cistern was being dug, date between the third and first centuries BC and may have been connected with a nearby temple of Apollo.
- *March 2002:* **Giorgos Krambokoupis**, owner of a bulldozing firm in **Agrinio**, was arrested following the discovery by police of **17 Archaic, Classical and Roman bronze, marble and clay antiquities** in his home in **Neapolis**. He had attempted to negotiate a sale and was charged with **illegal trading in antiquities**.

News from Egypt

- An **Egyptian citizen** ceded a collection of **17,000 antiquities** to the Egyptian Culture Ministry. Officials said that the pieces, of Pharaonic, Graeco-Roman, Coptic and Is-

lamic date, were assessed and moved into official stores.

- **Five inscribed-stone architectural elements** stolen by night from the **Ramses II fort at Om El Rakhm in Mersa Matrouh**, have been recovered by the Supreme Council of Antiquities. The identity of the thieves was not revealed.

Pakistani seizure

A steel box containing **18 second-century AD Buddha statues**, destined for **Dubai**, was seized by Pakistani officials at **Peshawar airport**, close to the Afghan border.

Puglia artefacts recovered

February 2002: Italian police filed complaints to magistrates against **21 people in connection with a crime ring** alleged to have been stealing archaeological artefacts to order for Italian collectors. During a three-month operation, about **500 items looted from Puglia**, southern Italy and dating from 400 BC to AD 200 were recovered (including black figure vases and ancient helmets) often from open display in peoples' homes. The pieces were sold via a middleman in Milan to well-to-do clients, like medics, architects and lawyers, who had **commissioned the thefts** and, according to police chief **Sergio Banchellini**, knew perfectly well that what they were buying was illegal.

Bond Street raid

A Bond Street, London **antiquities dealer** offered a **£22,000 reward** for information leading to the safe recovery of **Cambodian, Indian and Tibetan artefacts** worth up to £250,000 **stolen** from his shop in December 2001. Half of the foot of a 6-foot tall, £110,000, thirteenth-century wooden Buddha had apparently been broken off during the robbery and was found near a window on a fire escape the thieves used to make

their getaway. Many even more valuable pieces were ignored by the robbers during the raid, leading police to believe they were disturbed or ignorant of the value of the objects and probably sold them on for a pittance.

Indian discovery and arrest

- *January 2002:* A stunning 800-year-old **statue of the Hindu god Vishnu**, weighing over 50 kilograms and decorated with gold alloy, was **discovered in a police stolen property store in Roop Nagar**, New Delhi during a routine stock check. A police officer unaware of its worth seized the piece five years ago from a man named **Bhatti**, who had tried to sell it in a central Delhi restaurant. The sculpture, worth £2.8 million, will now go on display in a museum.
- A long police investigation in **Bangalore, Mangalore and Nellore**, India led to the arrest in May 2001 of **two men for alleged involvement in the theft** of three valuable idols from the **Sri Chanakeshvaswami temple in Chitlure village, Nellore**, Andhra Pradesh, Southern India. The pieces — **Vijaynagar period sculptures** of Hindu deities Vishnu, Sridevi and Bhudevi, which had been stolen at the end of September 1999 — were seized at the Ardarsh Hotel, Mangalore in February 2000. It is alleged that M Jagdish Rao, who owns the hotel, was in regular contact with Rakesh Dhiman who procured antiquities for him from a thief and a middleman, both of whom remain at large. Delhi's Central Bureau of Investigation are awaiting clearance from local government to catch the **other members of the a Nellore-based gang** involved in stealing antiquities.

Euro question

Responding to a **question by a Greek Euro-deputy**, the **European Commission** said they will **call on the Turkish authorities** to adopt

the EU Council of Ministers Regulation on the export of cultural good and respect the Directive for the return of cultural goods that have been removed illegally from an EU member-state.

Illegal metal-detecting in Ireland

Archaeologists excavating at **Cullenmore Bends of Ashford in Wicklow**, Ireland have had problems with **illegal metal-detectorists trespassing** on sites in the area following a newspaper article which, according to the archaeologists, falsely stated that a Bronze Age jewellery industry may have been located there.

Gold Museum up-date

The **Gold Museum of Lima**, Peru is appealing against a **government fine of around \$17,700**, imposed when it was discovered that many of the **objects in its collections are modern creations** and some not even made from precious metals (see In The News, *CWC* issue 9). Following scientific investigations, Peruvian consumer protection agency INDECOPI concluded that **27 per cent (about 4200 items) were fakes** and these are reported to have removed them from display. Victoria Mujica, daughter of the museum's founder, emphasized that the museum has now put the scandal behind it and is now modernizing its presentation and planning a series of international exhibitions.

Afghan up-date

- During a visit to UNESCO headquarters in Paris in March 2002, **Hamid Karzai**, interim leader of Afghanistan, **urged the United Nations and Afghanistan's neighbours** to help stop widespread smuggling of Afghan cultural heritage. He stressed that his country does not have the resources to prevent looting and smuggling of archaeological material and portable antiquities, and referred to numerous stories of **business-**

men organizing the looting of archaeological sites and graves for material to sell on the black market.

- On the same visit, Afghan Culture Minister Raheen Makhdoom signed **an agreement for UNESCO help** to reopen, or possibly build anew, Kabul's destroyed **National Museum** to provide a home for artworks now looted which the nation hopes to retrieve.
- IWPR (Institute for War and Peace Reporting) reported on afghanweb.org (17 April 2002) that **looting is on the rise in post-Taliban Afghanistan**, with authorities powerless to stop or prioritize policing the plunder:

The number of **illegal excavations** has **more than doubled** in recent months.

- Best locations for digging are well-known: ancient sites in the Eastern provinces of **Nangarhar, Laghman and Kunar**. Illegal excavations are also mentioned in the districts of Sherzad, Pacheer and Agam, Surkh Road, Rodat and Haskamina.
- A Pakistani owner of a shop in Andarshar bazaar, Peshawar, who gave his name as Mohammad Zareef, has **two ongoing illicit excavations** on hills near **Wazeer and Zaviee** villages which, he believes (having studied maps of ancient Gandhara) will yield Buddhist artefacts. He pays the locals before work begins and does not view the digs as illegal since he says the villagers regard material found on their land as theirs.
- Two **1.5-metre-high Gandharan sculptures** are the latest find from unlicensed digging by locals near the villages of **Tutu and Nari Taba**, Sherzad.
- At **Baloch village**, Surkh Road, villagers had been **digging for 10 days** with no major finds, but remained optimistic saying they heard every day of someone who struck lucky, and of the money they made.
- A digger in **Laghman** said he had made **more than 100,000 rupees**, adding that although he knew it to be illegal he had **no other way** to make the money to feed

his large family.

- Maulawee Anwar ul-Haq, head of the information and culture department for Hangarhar admitted that although they **were informed of illegal excavations** it was difficult to act since smugglers had often **bribed local armed militia** commanders for protection, and authorities are tied up with political matters.
- *Archaeology* magazine devotes much of its May/June 2002 issue to '**The Race to Save Afghan Culture**', reporting the concept and struggles behind the creation of the **Afghan Museum in Bubendorf**, Switzerland (see In the News, *CWC* issue 6 and Editorial, issue 8). Founder of the museum, Swiss architect **Paul Bucherer-Dietschi**:
 - explains why he felt compelled to create a **safe-house for looted and smuggled Afghan cultural material**, to be returned to the country when the time is right — a project which he began in the 1990s;
 - describes his **relations with UNESCO** (who eventually, in 2001, established a policy on saving Afghan cultural heritage following the destruction by the Taleban of the Bamiyam Buddhas: see *CWC* issue 8) as difficult. According to Bucherer even a last-ditch official edict from the recognized president of Afghanistan, allowing him to take objects out of the country to safety, was not acceptable to UNESCO;
 - believes that **criticism from scholars**, who suggest that buying looted antiquities means buying into the looting process, is motivated by professional jealousy;
 - recalls that the only point of common agreement amongst warring factions within Afghanistan was often a **desire to save cultural heritage**.

The museum now houses and displays mainly ethnographic material, often donated by Europeans and Americans who purchased them while working or travelling in Afghanistan, with some donations from antiquities dealers and collectors. The enterprise also stores in safe bank

vaults some **archaeological items of considerable importance.**

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The investigation of Frederick Schultz

PETER WATSON

The investigation into Frederick Schultz began way back in May 1994 when Detective Sergeant Richard Ellis, of Scotland Yard's art and antiques squad, was notified by Dr Jeffrey Spencer of the British Museum Department of Egyptian Antiquities that 27 Egyptian papyri sent to the museum to be translated and assessed had been identified as stolen from a government store in Egypt. A colleague of Spencer's, Professor Henry Smith, had actually discovered the papyri in the Sacred Animal Necropolis, North Saqqara in Egypt in 1966–67, and had personally supervised the numbering and storing of them in Magazine Number 8 of the Egyptian Antiquities Organisation. Smith had last seen them in the magazine when he visited Egypt in 1986.

According to a 1983 law, all antiquities in Egypt are the property of the state and the unlawful removal of them from the country subsequent to that date is theft.

Initial inquiries revealed that the papyri had been sent to the museum by a certain Andrew May, who lived in a large manor house near Barnstaple in Devon, England. Further inquiries showed that next to the house was a cottage and barn and that the previous summer, 1993, the occupier of the cottage, Jonathan Tokeley-Parry,



Figure 1. Jonathan Tokeley-Parry inside his workshop.

had reported a burglary to the police in Barnstaple. Tokeley-Parry alleged that an Egyptian stone head, valued at £100,000, had been taken.

Tokeley-Parry, who was in his mid-forties and boasted a degree in moral sciences from Cambridge University, England, described himself as



Figure 2. *The tomb of Hetepka, at Saqqara.*

a restorer of antiquities (Fig. 1). But Ellis immediately suspected that he was in fact the man responsible for acquiring the antiquities and that he had used May to obtain an expert opinion from the British Museum to distance himself from the objects should they be recognized.

Search warrants were obtained for both Andrew May's manor house and the cottage and these addresses were raided on 28 June. Dr Spencer was present to give an expert opinion on any objects found.

During the raids, a large number of antiquities were seized as well as numerous files and many photographs. The barn adjacent to the cottage was found to be a workshop, where an assistant confessed that Tokeley-Parry had explained how he camouflaged antiquities in Egypt to look like modern tourist trinkets, so they could be smuggled out. A favourite method was to cover the objects in liquid plastic, paint them over in garish colour then, when they had arrived in Britain, dip them in acetone, so the plastic was removed.

Ellis also discovered that Tokeley-Parry had quarrelled with May and moved out of the cottage, though he still kept his workshop in the barn. Later that day, therefore, another search warrant was obtained for Tokeley-Parry's new address, at Iddesleigh in Devon, and that too was raided. More antiquities were found, together with hundreds of photographs showing exactly how Tokeley-Parry disguised the objects he intended to smuggle.

While Ellis and his colleagues were still at the cottage, completing their search, Tokeley-

Parry himself arrived back, having just returned from a trip to Egypt. He had on him an antiquity, which he admitted to having 'picked up in the desert', and a journal, with a written account of his recent travels. As a result of these events, Tokeley-Parry was arrested for the dishonest handling of stolen antiquities, as was Andrew May.

In subsequent months, as Ellis delved deeper into the documentation, and the copious photographic records which

Tokeley-Parry kept, the nature of the illegal traffic became clear. In the words of one Scotland Yard report, Tokeley-Parry operated on 'a wide scale and clearly on an international basis'.

The documentation showed that Tokeley-Parry's accomplices included the Farag family in Cairo (two brothers and the father), and Frederick Schultz, a dealer in New York. The restorer also had an accomplice in Barnstaple, who couriered objects out of Egypt, via Athens. Other goods were sent by the Farags to Switzerland, where they were given false documentation by yet another accomplice to make it appear they had come from Germany, before being forwarded to London.

Ellis' investigations eventually led to four criminal trials, two in Britain, one in Cairo and the recent proceedings in New York.

* * *

Events prior to and during Tokeley-Parry's first trial, in January 1997, were both farcical and sinister. In 1996, he applied to the court for the return of his passport, which had been confiscated when he had been charged, so that he could, in the words of one Scotland Yard report, 'travel to Switzerland to comfort a former fiancée whose mother had apparently died'. This request was refused. Undeterred, Tokeley-Parry went to the passport office in Petit France and applied for another passport in the name of Jonathan Foreman (which was in fact his original name; Tokeley-Parry was a later invention).

The Swiss visit was not the compassionate 'mercy dash' it seemed. According to a witness statement which Ellis later signed, 'Enquiries

with the Swiss Police revealed that no such death had occurred and no such address existed . . . The passport was granted enabling Tokeley-Parry to travel abroad and to hinder the investigations which were then being made . . . with the Swiss authorities'. In short, he closed down bank accounts which would have revealed money transactions between him and various accomplices. (Tokeley-Parry was later convicted for this passport offence.)

In a final bizarre twist, before the prosecution could conclude their case, Tokeley-Parry, in breach of his bail conditions, returned from Knightsbridge Crown Court to Barnstaple where he admitted himself to the psychiatric unit of the North Devon hospital — and took hemlock. This unsuccessful suicide attempt prevented police from arresting him for breach of his bail and, due to the temporary paralysis brought on by the hemlock, the trial had to be aborted.

The suicide attempt, and the hemlock, were in keeping with Tokeley-Parry's extraordinary personality. Besides his elaborate name change, he claimed to have been a cavalryman, when inquiries showed that he had been in the Territorial Army; he possessed no fewer than 40 hand-made suits, and at the time of his arrest was trying to sell the idea of the Puffin, a small aircraft for covert operations, to the armed services. According to Scotland Yard documents, he 'modestly claims to be the best restorer of Egyptian antiquities in the world' and was so convinced he would be acquitted that he had prepared a Press Release based on that result even before the trial started.

In the summer of 1997, however, a second trial took place. Press release or no press release, Tokeley-Parry was found guilty on two counts of dishonestly handling antiquities and one of making a false statement to procure a passport. He was sent to jail for six years.

Among the objects which Tokeley-Parry had handled were a pair of false doors said to have come from the tomb of Hetepka at Saqqara. Saqqara is a famous ancient cemetery west of the Nile, behind Memphis, near Cairo (Figs. 2 & 3). Hetepka was a royal hairdresser (memorably described in the London trial as 'The Vidal Sassoon of the Pharaohs'). A part of the false door had been



Figure 3. Inside the tomb of Hetepka, before it was looted, showing the false doors.

found under Tokeley-Parry's bed in his cottage. Other pieces found in the workshop were also identified as having come from this tomb, together with academic articles written about the tomb.

In late 1994, Ellis travelled to Egypt, with another Scotland Yard officer, Anthony Russell, and together with Colonel Abdul Hafiz of the Egyptian Antiquities police, they went to Saqqara where, on the 19 November, they broke the seals of Hetepka's tomb and entered it. The insides had been completely destroyed and what hadn't been destroyed had been removed (Fig. 4). Interrogation of the local staff established that the tomb had been broken into in December 1991. Records showed that Tokeley-Parry had visited Cairo in both December 1991 and January 1992.

* * *

The full nature of the collaboration between Tokeley-Parry and Frederick Schultz was not disclosed at the British trial and was revealed for the first time only in New York. Most revealing perhaps was the routine correspondence between the two men. Tokeley-Parry often referred to Schultz as '004^{1/2}' and signed himself '006^{1/2}'.

Tuesday I'm going south . . . ask for Mr Johnson (that's me) or leave a message with Makhmoud Ibrahim (Ali's brother). Talk Italian, or veiled speech.



Figure 4. *Inside the tomb of Hetepka, after the looting.*

What a year was 1991! Two major pieces (and an 'also ran'). Now that Ali and I are making fewer blunders, and can afford to buy things, and have our new source I'd reckon to turn up another two major finds this year, as well as good marketable stuff. If you can put down deposits so as to keep me in funds, I'll be able to turn everything over to you — on consignment or sales, as preferable. I'm looking forward to 1992. As you say, when we aren't playing f***** bankers and insurance salesmen, it really is fun, this great game. (Have you read Kipling's 'Kim'?)

There is also, from the same tomb, a pair of wooden Striding Figurines with bases, and another complete limestone, but smaller. I am trying for all of these, and whether I get them depends on how soon you can get some money over to me . . . I spoke with Ali about the pair of Reliefs, and he assured me that the Tomb is completely unknown to the Government . . . I am certain there will be no problems about these pieces. I am sufficiently content about this to send over some Thom Alcock labels for them. [see below]

By his own admission, Tokeley-Parry smuggled some 2000 antiquities out of Egypt. According to a report which Ellis prepared for the Organized Crime Group at New Scotland Yard, and which was specifically drawn up for the FBI,

Schultz received at least eight important pieces from Tokeley-Parry. The report states: 'It is clear from documents discovered that Schultz is a co-conspirator in the theft and dishonest handling of these antiquities and has been a main source of both finance and disposal. Key objects have been sold through him in the USA.' And, elsewhere, 'The principal contact [was] Frederick Schultz . . . who was sent the pickings of Tokeley-Parry's stolen antiquities.' According to a second report for the US authorities, Schultz was a 'knowing receiver', from Tokeley-Parry, of antiquities stolen from Egypt and issued with a false provenance and 'the main outlet for the sale of stolen antiquities' supplied by Tokeley-Parry. 'Schultz would appear to be the principal banker who has been pay-rolling much of the other criminal enterprises operated by Tokeley-Parry.'

Evidence concerning three specific antiquities formed the backbone of the case.

The first example concerns a piece known as 'The Offerer'. Some time after Tokeley-Parry was arrested, Ellis received a phone call in his office on the fifteenth floor at New Scotland Yard. It was Schultz in New York. He had obviously heard about Tokeley-Parry's arrest and said that one of the pieces Ellis had seized belonged not to the Englishman but to him. This was a faience figure of a king kneeling at an altar, adorned by three gods known as the Theban Triad.

Ellis told Schultz that if he could send him some documentary proof that the figure was his, he would see what he could do. Sure enough, a few days later, Ellis received a letter from Schultz enclosing a receipt which showed that he had bought 'The Offerer' for \$25,000 from another dealer in New York, Joseph Gerena, on a particular date during the previous year.

Despite this, Ellis held on to 'The Offerer.' It was partly instinct but by then he had begun to work his way through Tokeley-Parry's seized files and it was emerging that Schultz was a major player and partner in Tokeley-Parry's operation. This documentation showed that Schultz provided much of the funds for Tokeley-Parry's activities. For example, towards the end of 1994 Tokeley-Parry faxed a letter to Schultz in which he said that some builders were 'obviously sitting on a temple site that covers some span of time' and had a number of stelae for sale and

wanted an initial payment of £25,000. The following month Schultz wired \$25,000 to a bank in Zurich and, according to the indictment laid down in New York, recorded in his ledger for Frederick Schultz Ancient Art as follows: '\$25,000 wired in from FL [Florida, where he had another office] and then wired back out to Ali Farag who is a close associate of Jonathan Tokeley-Parry as a down-payment on Egyptian collection'.

As part of his investigation, as we have seen, Ellis visited Egypt in 1994. There, he discovered from the Egyptian antiquities police that Tokeley-Parry's local accomplice, Ali Farag, had registered a collection of antiquities, as Egyptians are required to do under the 1983 law. Parts of the collection, however, including 'The Offerer' figure, had been replaced by replicas intended to fool the antiquities police.

Documentation, including photographs, found at Tokeley-Parry's workshop, showed that 'The Offerer' had been brought to Britain where, in Barnstaple, Tokeley-Parry had had a mould made, by the craftsman who had created the prostheses for the film, 'The Elephant Man'. This man, Stephen Grassby, who gave evidence at Tokeley-Parry's trial, confirmed that he had made moulds for several pieces for Tokeley-Parry, including 'The Offerer', and had produced replicas. The documentation showed that the replicas had been sent to Egypt, while the original had been sent on to Schultz in New York. Schultz had sent it back to be further restored.

Given all this, Ellis decided to call on the New York dealer who claimed to have sold 'The Offerer' to Schultz when he was in Manhattan a few weeks later, tidying up some loose ends of the Tokeley-Parry investigation. He turned up unannounced at Gerena's gallery on 86th Street, together with a colleague from the FBI. Gerena was out but returned soon after. Wrong-footed by this unannounced visit, he immediately admitted that, though the receipt for \$25,000 for 'The Offerer' figure was his, he had never seen the piece, never owned it, and never sold it.

Why then, Ellis asked, did he produce it? Because Schultz asked for it, replied Gerena. 'As a favour.' In other words, the receipt was phoney.

Next, Ellis cold-called Schultz. The dealer wasn't pleased by the visit and refused to talk

without a lawyer present. A meeting was arranged for the following day, between Ellis, the FBI, Schultz and his attorney. Schultz never showed.

* * *

The second antiquity was a head of Amenhotep III, the most powerful pharaoh of the 18th Dynasty of Egypt (1580–1304 BC). This was described by Tokeley-Parry as 'the most stunning piece' he had ever handled. He put a value on it of £850,000.

Tokeley-Parry admitted in court that he had come across this piece, known as 'AIII', when he had been out in Egypt, in Ali Farag's shop in Cairo, when some men had arrived, to say they had uncovered the object at a building site in the Egyptian capital: it was still covered in dirt. (Tokeley-Parry's defence at his trial was bold to the point of being brazen. He freely admitted he had smuggled looted antiquities out of Egypt but claimed that that's where his criminality stopped, that it is no crime in the UK to import looted objects into Britain.)

Tokeley-Parry had hand-carried AIII out of Egypt himself and, when he got it back to the UK, he cleaned it up, had a replica made, and then made a number of alterations 'to give it a better line'. But he also restored the piece to convey the impression it had come out of Egypt in the nineteenth century (i.e. well before the 1983 law). One of the things he did was to create some false labels to make it appear it came from the collection of one 'Thomas Alcock', which had been put together in Britain in the 1920s. He then sent photographs of this piece to Schultz, prior to shipping the piece itself.

Schultz had offered 'AIII' around, to a museum in Texas and another in Cleveland, where he described it as owned 'by the heirs of Thomas Alcock, who collected Egyptian art in the 1920s, and that it had been in possession of the heirs since that time'. In fact, though, he found no takers in the US and instead sold 'AIII' to a South African dealer, Gawain MacKinley, who in turn had sold it on to a London dealer, Robin Symes, whose gallery was in Ormonde Yard, just off Jermyn Street. The piece therefore had to be sent not across the Atlantic, but just across London.

Robin Symes is himself a controversial dealer. In 1997, in an exposé of Sotheby's, he was shown to be heavily involved in selling

unprovenanced antiquities at least one of which had been smuggled out of Italy.

Symes told Ellis that he had bought 'AIII' for \$1.4 million. He had had Thomas Alcock checked out and discovered that it was a fictitious collection and had discarded the bogus plinth that Tokeley-Parry had concocted, along with the fake 'Thom Alcock' labels, all of which Symes gave to Ellis. None of that appeared to matter, however, for Symes also said he had sold the piece to a London collector. He refused to say who.

At this point, February 1999, after 30 years in the police, Ellis retired from the Yard. His successor, not best pleased by Symes' non-cooperation, was preparing to apply for a warrant to search Symes's premises when an extraordinary coincidence rendered that unnecessary.

After leaving the Yard, Ellis had gone to work for the international auction house, Christie's, in their security department (he now works for *Invaluable*, a magazine and website which records stolen art). One day not long after he joined Christie's, a fax was received from Citibank listing a number of objects being held at the auction house on their behalf, as security against loans, and which the bank wanted re-appraised. And there, halfway down the list, was 'Head of Amenhotep III'. Far from selling the head to a private collector, as he had told Ellis, Symes had borrowed money against the head.

The third set of objects comprised a pair of wall reliefs taken from the tomb of Hetepka in Saqqara. These are the reliefs from the tomb which Ellis and his colleague, Anthony Russell, opened up with the General Hafiz, of the Egyptian Antiquities Service.

The documentation shows that Schultz was angry with Tokeley-Parry for having sent these to him in New York and he returned them. He did not return them directly to Tokeley-Parry, however, but to a friend nearby who had been persuaded to accept them. This was to avoid disclosing a direct link between himself and Tokeley-Parry.

The case against Schultz here was that he knew exactly where these reliefs had come from, and that they were looted, but that instead of returning them to their rightful owners, the Egyptian government, he sent them back to his business partner. This, the prosecution argued, was not the act of an honest man. Moreover, Schultz was doubly culpable because this was the second time he had done this. The documentation Ellis discovered showed that, in 1991, Schultz had handled a 5th-Dynasty stone relief and had shown it to Edna Russmann, research associate at the Brooklyn Museum. She had researched the object and discovered that it was stolen. She had told Schultz which tomb it had been taken from (Hetepka) and, moreover, informed him that two other pieces, stolen from the same tomb, and offered to a museum in San Francisco, had been returned by that museum direct to the Egyptian government.

On being told this, Schultz returned 'his' piece — once again not to Egypt, but 'whence it came'. Ellis checked this out with the shippers used by Schultz and discovered that the relief had been delivered to a vault in a Zurich bank. That vault was owned by the Farag family. Therefore, Schultz had known since at least 1991 that the Farags had been smuggling loot out of Egypt, yet had continued to send them funds to support their activities.

* * *

Ellis could have had no way of knowing, when he first went down to Barnstaple, on that June day in 1994, that this is where his investigations would lead. And had Tokeley-Parry not been so vain, and cockily written everything down, the antiquities trade would not be facing such a sea change in its fortunes.

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United States v. Schultz

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During the early 1990s, a British restorer, Jonathan Tokeley-Parry, smuggled numerous antiquities (in fact, reportedly over 3000) out of Egypt. One way in which Tokeley-Parry achieved this was by covering the antiquities to make them look like cheap reproductions. For example, he dipped a head of Amenhotep III, later valued at over \$1 million, in a clear liquid plastic, then covered it with gold leaf and painted on crude black stripes to make it look like a cheap, modern 'King Tut' replica. New Scotland Yard, however, eventually apprehended him. Tokeley-Parry was convicted in 1997,¹ and he subsequently served three years in jail. The antiquities that Tokeley-Parry handled included a granite, life-sized head of a queen, probably Nefertari, several papyrus scrolls, the head of Amenhotep III, a 6th-Dynasty statue of a striding figure, and several sculptural relief panels from a tomb. After smuggling the antiquities out of Egypt, Tokeley-Parry restored them and then attempted to sell them on the international art market.

Tokeley-Parry had arranged to sell some of these antiquities to a New York dealer, Frederick Schultz, the owner and president of Frederick Schultz Ancient Art Gallery, located on East 57th Street in Manhattan. These included the head of Amenhotep III, which Schultz purchased for \$900,000, tried to resell in the United States for \$2.1 million and ultimately resold to another dealer in London for \$1.2 million. He also tried to sell the 6th-Dynasty limestone figure for \$825,000.

Schultz deals in Classical, Egyptian, Near Eastern and Asian antiquities and is considered by the art trade to be one of its most prominent and respected dealers,² who, until shortly before his indictment, was the president of the National Association of Dealers in Ancient, Oriental and Primitive Art (NADAOPA). This association of dealers has been active for more than twenty-five years in representing the interests of dealers, particularly in opposing the United States' ratification and implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of

Ownership of Cultural Property and in criticizing what has become known as the *McClain* doctrine — the central legal issue in the case against Schultz.

One of the most ingenious aspects of the Schultz/Tokeley-Parry scheme was the creation of an 'old collection', dubbed the Thomas Alcock Collection. The Alcock Collection was said to have been created in the 1920s (the real Thomas Alcock was a relative of Tokeley-Parry) and was now for sale by his heir. However, the existence of this collection seems to have been a complete fabrication for the purpose of making it appear that the antiquities had left Egypt before enactment of its current antiquities law in 1983. Correspondence between Schultz and Tokeley-Parry indicates that they discussed which specific objects should be 'placed' in this collection and thus given a fake but saleable provenance. The labels for the collection were aged by soaking them in tea and baking them in an oven. These facts not only indicate that Schultz was intentionally trying to evade the 1983 law, but it gives significant support to what some scholars have suggested in the past — that 'old' collections are fabricated for the purpose of evading both domestic and foreign law and giving antiquities what seem to be legitimate provenances.

In July 2001, Schultz was indicted by the United States Attorney for the Southern District of New York on one count of conspiring to receive, possess and sell stolen property between 1990 and 1996 in violation of the United States' National Stolen Property Act.³ The stolen property specified in the indictment was Egyptian antiquities, illegally removed from Egypt after the 1983 enactment of Egypt's current antiquities law.⁴ This law vests ownership of all undiscovered antiquities in the national government. The unauthorized excavation and removal of such antiquities is therefore theft. The theory of the United States government's charge was based on a case decided in the late 1970s, *United States v. McClain*.⁵ In *McClain*, several dealers were prosecuted under the National Stolen Property Act for dealing in Mexican antiquities. Prior to the time of the prosecution, Mexico had enacted a series of laws, gradually increasing control over unexcavated antiquities. The court found that only Mexico's most recent law, passed in 1972,

was sufficiently clear in vesting ownership of undiscovered antiquities in the national government. While acquitting the defendants on the substantive counts because it was not certain whether the antiquities they were selling had been taken before or after 1972, the Fifth Circuit affirmed the defendants' conviction on the conspiracy count of continuing to conspire to deal in stolen antiquities.

The *McClain* case is very important for establishing the principle that foreign laws that vest ownership of undiscovered antiquities in the national government create ownership that is recognized by United States courts. The *McClain* decision also established several requirements for the doctrine to apply: first, the national vesting law has to be sufficiently clear so as to give notice to United States citizens of what conduct is prohibited, particularly in a criminal prosecution; second, the antiquities involved must have been discovered after the effective date of the statute (that is, the statute has only prospective effect), and, third, the antiquities must have been found within the modern borders of the nation, as the vesting statute is not given extraterritorial effect.

Over the past twenty-five years, several courts in the United States have confronted the *McClain* doctrine in a variety of legal contexts. None has ever disapproved of the underlying legal principles, although the factual outcomes have varied. The national vesting law of Turkey was recognized in two prominent cases, both of which were ultimately settled out of court — that involving the Lydian hoard, a large collection of objects that had been purchased by the Metropolitan Museum,⁶ and a case involving a hoard of 1750 coins, also from southwestern Turkey.⁷ The *McClain* doctrine was also applied to return a group of Pre-Columbian artefacts from Guatemala.⁸ In two other cases, however, the claim was unsuccessful because not all of the requirements of the doctrine were satisfied. In *Peru v. Johnson*, the court held that Peru's national vesting law was not clearly an ownership law,⁹ and in both that case and the case of the Sevso Treasure,¹⁰ the claimant-nation could not establish that the antiquities had been found within the modern borders of the country.

The last case before the Schultz trial to address the *McClain* doctrine involved the illegal importation into the United States of a fourth-

century BC gold phiale from Sicily that was purchased by New York collector, Michael Steinhardt.¹¹ When the phiale was brought into the United States, both its value and its country of origin were misstated on the import forms. Because these misrepresentations were held to be material, they formed the basis for the United States government to seize and forfeit the phiale, which was subsequently returned to Italy. However, the trial court held that a second basis for the phiale's seizure and forfeiture was that it was property stolen from Italy, which also vests ownership of undiscovered antiquities in the national government. The appellate court found it unnecessary to address the phiale's status as stolen property because the material misrepresentations on the import documents by themselves were a sufficient basis for the forfeiture. The status of the *McClain* doctrine in the federal appellate court that includes New York City was thus left uncertain.

While presenting the same legal issue that the Second Circuit side-stepped in deciding the Steinhardt phiale case, in many significant ways the *Schultz* case is considerably more difficult. The Steinhardt case was a civil forfeiture — once the government established a *prima facie* case, the burden of proof shifted to the possessor of the property to disprove the government's case. On the other hand, in a criminal case, like *Schultz*, the government bears the full burden of proof and must establish the defendant's guilt beyond a reasonable doubt. In addition, the government not only needed to establish that the Egyptian law is truly a property ownership law but that the law is sufficiently clear so as to give an American citizen sufficient notice, thereby complying with the United States' constitutional guarantees of due process.

This group of cases based on the *McClain* doctrine also demonstrates the different legal situations in which the status of antiquities as stolen property can arise. For example, *Schultz* and *McClain* are both criminal cases in which the defendant is charged with dealing (or conspiring to deal) in stolen property. The Sevso case, *Peru v. Johnson* and the two cases involving Turkish antiquities were both civil replevin actions — that is, cases in which the country of origin claims to be the true owner of the property and, entering into court as would any owner, attempts to recover its stolen property. The case of the Gua-

temalan Pre-Columbian artefacts and the Steinhardt phiale case are both situations in which the United States government seized and forfeited the stolen property (which can be done as either a civil or criminal forfeiture action); the U.S. government, if successful, then returns the stolen property to the original owner (the country of origin).

In September 2001, Schultz filed a motion to dismiss the government's indictment, essentially on the basis that it did not accord with U.S. law and, secondarily, that the Egyptian law is not really an ownership law. A coalition of the two leading dealer organizations (NADAOPA and the Art Dealers Association of America), joined by Christie's and the International Association of Professional Numismatists, filed a brief in support of Schultz's motion. The major museum organizations in the United States, which had supported the collector in the Steinhardt phiale case, chose to sit this one out. On the other hand, the Archaeological Institute of America, with the support of the Society for American Archaeology, the American Anthropological Association, the Society for Historical Archaeology and U.S./ICOMOS, filed a brief in support of the United States government's position. This brief focused on the value to the United States and to all nations of the scientific excavation of archaeological remains and the role of national vesting laws in helping to protect that heritage for future generations.

Many hours of oral argument and testimony and many pages of briefs later, the judge ruled in early January 2002 to deny Schultz's motion,¹² holding that the *McClain* doctrine represents a valid legal doctrine, the Egyptian law is an ownership law and not an export control law, and it is sufficiently clear, at least as applied to the antiquities mentioned in the indictment, to satisfy constitutional concerns. The case went to trial soon after and in mid-February, Schultz was convicted.

The instructions that the judge gave to the jury are of particular interest. The government had the burden of proving, beyond a reasonable doubt, that Schultz intended to participate in the conspiracy and that he knew or believed that at least one of the objects was stolen from Egypt. Schultz claimed that the government had failed to prove that he knew or believed that he was engaging in theft. In response to this question of how the government could prove knowledge or

intent, the judge instructed the jury that

a defendant may not purposefully remain ignorant of either the facts or the law in order to escape the consequences of the law. Therefore, if you [the jury] find that the defendant, not by mere negligence or imprudence but as a matter of choice, consciously avoided learning what Egyptian law provided as to the ownership of Egyptian antiquities, you may [infer], if you wish, that he did so because he implicitly knew that there was a high probability that the law of Egypt invested ownership of these antiquities in the Egyptian government. You may treat such deliberate avoidance of positive knowledge as the equivalent of such knowledge, unless you find that the defendant actually believed that the antiquities were not the property of the Egyptian government.

Thus the judge's instruction concerning conscious avoidance would seem to include those who are aware of the law but profess ignorance, such as sophisticated dealers who choose to do business by entering into the market for antiquities from countries with national ownership laws, yet who claim not to be aware of the laws pertaining to undiscovered antiquities. Such individuals often disagree with these types of laws and do not believe that they should serve as the basis for legal action in the courts of the United States. The judge's instructions make clear that this does not equate to a lack of knowledge or awareness of such laws.

The two main arguments on which Schultz relied to attack the *McClain* doctrine in his motion to dismiss the indictment are also worth examining in some greater detail. His first argument was that the *McClain* doctrine allows U.S. courts to enforce foreign law and this is against U.S. public policy. The second point is that the *McClain* doctrine was preempted by the enactment of the Convention on Cultural Property Implementation Act (CPIA)¹³ the law by which the United States implemented its ratification of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Schultz's argument concerning the enforcement of foreign law is wrong for two reasons. First, the claim that the *McClain* doctrine represents the enforcement of foreign law is simply not correct. The law that is being enforced is the United States National Stolen Property Act. This law defines the crime of theft and the elements

that the government must establish for a successful prosecution, although local law, in this case Egyptian law, defines the nature of property ownership. The ability to define what constitutes 'property' and the ability to draw the boundaries between private and public (or national) property are inherent attributes of sovereignty. Therefore the United States recognizes Egypt's sovereign authority to enact legislation that defines all newly-discovered antiquities as belonging to the national government.

In responding to Schultz's argument concerning Egyptian law, the trial judge wrote:

As for defendant's second argument — to the effect that American law does not, or should not, recognize the kind of 'special' property interest created by 'patrimony' laws like [Egypt's] Law 117 . . . — it should first be noted that [the National Stolen Property Act], which expressly refers to foreign commerce, has consistently 'been applied to thefts in foreign countries and subsequent transportation into the United States': an implicit recognition of the interest of the United States in deterring its residents from dealing in the spoils of foreign thefts. In effectuating this policy, why should it make any difference that a foreign nation, in order to safeguard its precious cultural heritage, has chosen to assume ownership of those objects in its domain that have historical or archeological importance, rather than leaving them in private hands? If an American conspired to steal the Liberty Bell and sell it to a foreign collector of artifacts, there is no question he could be prosecuted under section 2315. *Mutatis mutandis*, the same is true when, as here alleged, a United States resident conspires to steal Egypt's antiquities.¹⁴

Second, the application of the *McClain* doctrine to stolen antiquities is not contrary to United States public policy. National ownership laws have been enacted by many countries, as early as the late nineteenth century. The United States itself passed the Antiquities Act in 1906, which vested ownership of antiquities found on public land in the national government.¹⁵ Most foreign laws differ in that they apply to antiquities found on both public and private land, but this distinction is not one that is inherently contradictory to United States public policy. Regardless of the extent to which such laws may have been an expression of nineteenth-century nationalism, today these laws, often in tandem with export controls and other types of archaeological and historic pres-

ervation laws, are an important tool in the fight to preserve archaeological sites for future scientific excavation and exploration. It is clearly in the public interest of the United States to join other nations in combating the pillage of sites and stemming the flow of looted antiquities into this country.

The second argument used by Schultz to discredit the *McClain* doctrine focused on the effect of the enactment of the United States' Cultural Property Implementation Act (CPIA). The CPIA is the United States' domestic legislation that implements the 1970 UNESCO Convention, the primary international agreement for the protection of archaeological sites. The United States adopted only two sections of the UNESCO Convention — Article 7(b) that deals with stolen cultural property and Article 9, which calls on States Parties to join in a concerted effort to prevent the import of looted archaeological and ethnographic objects.

Article 7(b) requires nations to prohibit the import of stolen cultural property and the CPIA does so by empowering the United States Customs Service to seize such stolen cultural objects at the border. According to both Article 7(b) and the CPIA, 'stolen cultural property' is defined as stolen objects that had been inventoried as part of the collection of a museum, religious or other secular institution. Schultz attempted to argue that since this definition does not include newly-discovered antiquities (which obviously have not been inventoried), United States law should not regard such antiquities as stolen property.

The implementation of Article 9 represented a more significant departure from existing law because it provided a mechanism by which the United States would grant recognition to the export controls of other nations. The United States established a procedure by which other nations could request the United States to impose import controls on certain categories of archaeological and ethnographic objects. These controls require that for any such designated objects to enter the United States they must be accompanied by an export license or must have left the country of origin before the effective date of the import controls. While the CPIA's implementation of Article 9 was a significant step forward, particularly because the United States was the only significant market nation to join the UNESCO Convention at the time, the situation in the rest of the world has

since changed dramatically. In addition to the United States, several other market nations, including Italy, France, Australia and Canada, have all joined the UNESCO Convention and it is likely that the United Kingdom and Switzerland will soon do so.

Schultz argued that the CPIA is the complete embodiment of the United States' policy toward cultural heritage issues, at least on the international level. In other words, the only remedy available to a country that wishes cooperation from the United States is to seek a bilateral agreement recognizing the country's export controls under the CPIA. The judge quickly dismissed Schultz's preemption argument because the legislative history of the CPIA states that it does not preempt any other federal or state law or remedies. Furthermore, such an interpretation would mean that the United States' law enforcement would be limited to the narrow category of stolen cultural objects specified in Article 7(b) of the UNESCO Convention. Because the CPIA is only a civil Customs statute, other types of theft would go unpunished (including thefts from private collections) — a result that Congress would not have intended without explicitly so stating.

In June 2002 Schultz was sentenced to 33 months in prison, fined \$50,000, and ordered to return a relief still in his possession to the Egyptian government. Shortly after sentencing he filed his appeal with the Second Circuit. Because New York City is located within the jurisdiction of the Second Circuit, this appeal should determine whether the *McClain* doctrine will become the applicable law for the heart of the United States art and antiquities market. It is still too early to complete the story of the *Schultz* case — but it is clear that the *McClain* doctrine and questions of foreign ownership of undiscovered antiquities, both their practical effect and the public policies which they embody, will continue to play an important role in the courts of the United States and in the world-wide effort to protect archaeological sites.

Notes

1. *R. v. Tokeley-Parry*, [1999] Crim. L.R. 578.
2. Steven Vincent, 'Fred Schultz found guilty', *Art & Auction*, May 2002, 20–24.
3. The National Stolen Property Act, 18 U.S.C. §2315, makes it a crime to 'receive[], possess[], . . . sell[], or dispose[] of any goods, wares, or merchandise . . . of the value of \$ 5,000 or more, . . . which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to

have been stolen, unlawfully converted, or taken . . . '.

4. Law 117 declared all antiquities to be public property and forbade their private ownership, possession, transfer and trade. The law does allow antiquities that were in private possession before the act's passage to remain so subject to various restrictions. The law defines an antiquity to be any movable object with 'archaeological or historical value or significance as a relic of one of the various civilizations that have been established in the land of Egypt . . . '.
5. 545 F.2d 988 (5th Cir. 1977); 593 F.2d (5th Cir. 1979). The defendants' first conviction was reversed because of questions as to exactly when the antiquities were taken from Mexico. The defendants' second conviction on the conspiracy charge was affirmed on appeal. The *McClain* cases were actually preceded by the conviction of a dealer for the theft of part of a Maya stele from Guatemala, *United States v. Hollinshead*, 495 F.2d 1154 (9th Cir. 1974). The United States is divided into twelve federal appellate court geographical regions (called circuits). The rulings in one particular appellate court are only binding on those federal trial courts located within the particular region. Thus, the Fifth Circuit's decision in *McClain* has only persuasive authority in other circuits. New York is located in the Second Circuit.
6. *Republic of Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990). See also Lawrence M. Kaye & Carla T. Main, The saga of the Lydian hoard antiquities: from Uşak to New York and back again and some related observations on the Law of Cultural Repatriation, in *Antiquities Trade or Betrayed: Legal, Ethical and Conservation Issues* 150 (Kathryn Walker Tubb ed., 1995).
7. *Turkey v. OKS Partners*, No. 89-3061-WJS, 1994 U.S. Dist. LEXIS 17032 (D. Mass. June 8, 1994). See also Anne E. Kornblut, In Settlement, Koch to Return Coins to Turkey, *Boston Globe*, March 5, 1991, A1.
8. *United States v. Pre-Columbian Artifacts*, 845 F. Supp. 544 (N.D. Ill. 1993).
9. 720 F. Supp. 810 (C.D. Cal. 1989), *aff'd sub nom.*, *Peru v. Wendt*, 933 F.2d 1013 (9th Cir. 1991).
10. *Lebanon v. Sotheby's*, 167 A.D.2d 142 (N.Y. App. Div. 1990); *Croatia v. Trustees of the Marquess of Northampton* 1987 Settlement, 203 A.D.2d 167 (1994), *appeal denied*, 84 N.Y.2d 805, 642 N.E.2d 325 (1994).
11. 991 F. Supp. 222 (S.D.N.Y. 1997), *aff'd*, 184 F.2d 131 (2nd Cir. 1999).
12. *United States v. Schultz*, 178 F. Supp. 2d 445 (S.D.N.Y. 2002).
13. 19 U.S.C. §§2601–13.
14. 178 F. Supp. at 448–9.
15. 16 U.S.C. §§431–3m. As applied to archaeological sites and objects, the Antiquities Act has been largely superseded by the Archaeological Resources Protection Act of 1979, 16 U.S.C. §§470aa–470mm.

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