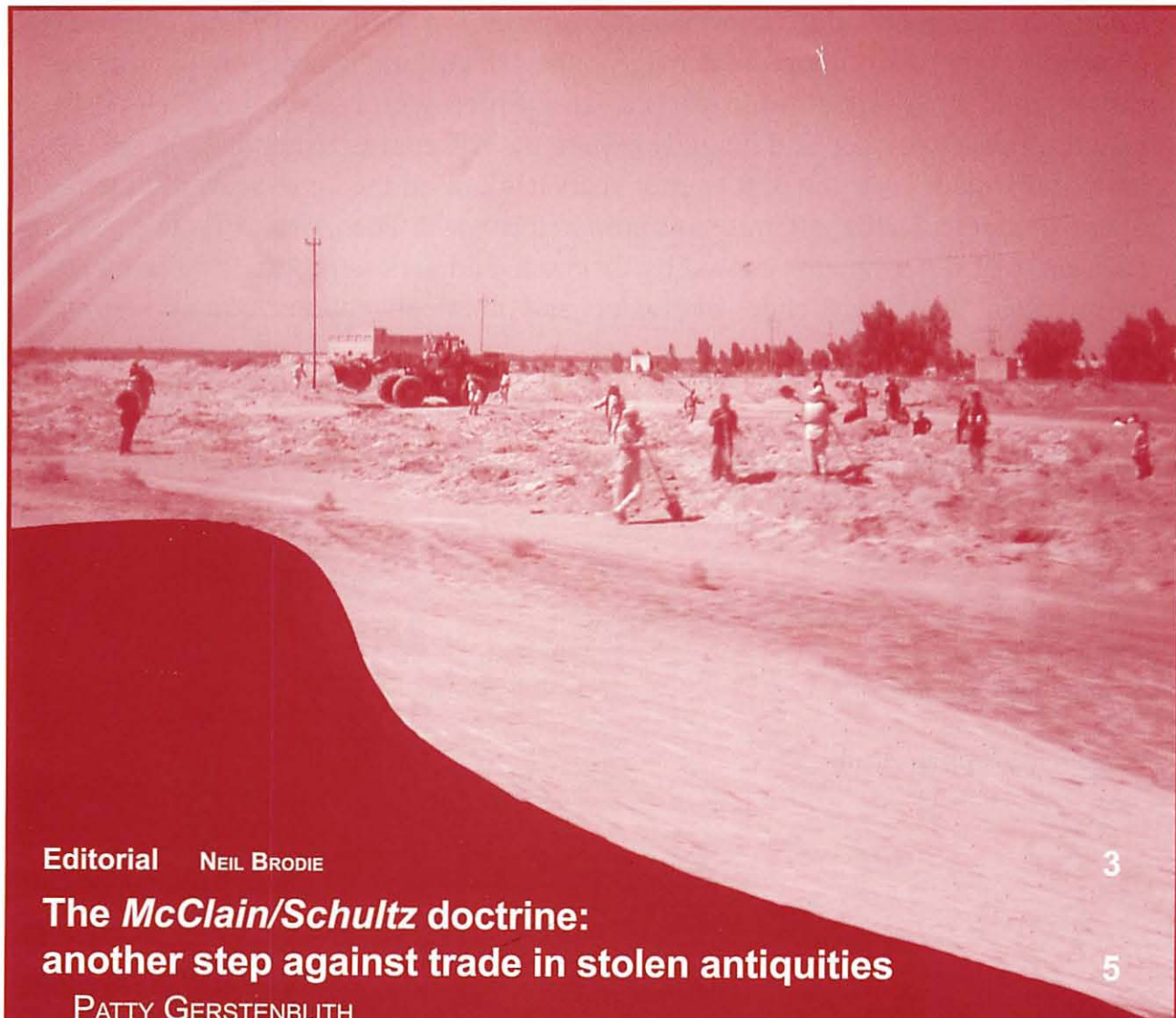


Culture Without Context



The Newsletter of the Illicit Antiquities Research Centre

Issue 13, Autumn 2003



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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.

Culture Without Context is published twice-yearly. The next issue will appear in spring 2004. Subscription details are available from:

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Front cover. *Looting with a bulldozer at al Assaya, Iraq* (Photo: Helen McDonald) (see p. 14).

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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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Printed by BluePrint, Coldhams Road, Cambridge, UK, CB1 3EW.
Tel: +44 (0)1223 472400

Editorial

In December 2003 the Dealing in Cultural Objects (Offences) Act became law in the United Kingdom. It introduces the concept of a 'tainted object', which is defined as a cultural object that has been illegally excavated or removed from a building or monument of historical, architectural or archaeological interest. It is now a criminal offence for a person to acquire or dispose of a cultural object knowing or believing it to be tainted.



Also in December, the UK Parliamentary Select Committee on Culture, Media and Sport published the report of its second enquiry into the illicit trade and restitution of cultural property (*Cultural Objects: Developments Since 2000*),¹ which had been held in order to review progress made by the UK Government in acting upon recommendations made in the Committee's first (2000) report,² and also by the Government's own Illicit Trade Advisory Panel (ITAP).³ While the Select Committee welcomes the ratification of the 1970 UNESCO Convention and the Dealing in Cultural Objects (Offences) Act, it expresses concern over the lack of movement towards instituting a national data base of unlawfully-removed cultural objects.

One obstacle to achieving this goal has been the obvious one of who should pay — the Government or the private sector. Commercial data bases of stolen cultural objects such as the Art Loss Register (ALR) and Trace already exist, but when interviewed by the Select Committee, representatives of the British Art Market Federation (BAMF) stated that a fully-comprehensive commercial data base just isn't a viable proposition. The problem is that small businesses cannot afford to use them. James Ede, speaking on behalf of the BAMF, provided the argument and the figures when he said that

the vast majority of the members of my trade association [International Association of Dealers in Ancient Art⁴] deal in objects that are worth between £1 and £500. It costs £30 to do a check with the ALR. We cannot require our members to check things on that basis. We require them to check anything over £2000.

So, in view of this financial disincentive, the BAMF would like the Government to fund a data base aimed at screening all objects, no matter what their value. But what are these objects, and what form will the data base take? Clearly, some or many of the objects might be illicit antiquities, but a data base of stolen objects is a singularly inappropriate means to intercept such material. Most illegally-excavated objects that appear on the market will not, and indeed cannot, be entered on a data base of stolen objects, almost by definition, as they will not have been previously known or documented, and thus cannot be reported as stolen (unless looters report their activities to the local police, which seems an unlikely turn of events). Indeed, such a data base might exacerbate the problem. James Ede went on to say that a data base 'is not foolproof, but it is cheap and it is effective and it also gives a very clear definition of due diligence — very clear to everybody'. But given the fact that most illegally-excavated objects will not appear on a data base of stolen objects, it is not at all clear how a check on a data base of stolen objects constitutes due diligence when the history of an unprovenanced artefact is being investigated. Indeed, if it is treated as such, it will facilitate the illicit trade.

The problem is that the precise purpose and nature of a database of unlawfully-removed or stolen cultural objects have yet to be established. The ITAP report recommended the institution of a specialist national data base of unlawfully-removed cultural objects, from anywhere in the world. Its primary purpose would be to record objects that have been stolen, illegally excavated or illegally removed from monuments or wrecks. What is important, though, is that ITAP went on to emphasize that these three categories of objects would need to be treated differently. In the case of stolen objects a description and, ideally, a photograph could be recorded. For objects removed illegally from archaeological sites, monuments or wrecks, it was recognized that this would not usually be possible, but no clear guidelines were offered as to what alternative recording procedures might be appropriate. This distinction between stolen objects and illegally-removed objects, however, does not seem to have been picked up by the Select Committee, which regards the terms almost as synonymous.

What is needed for illegally-removed archaeological material is a data base which records descriptions of categories. In other words, it should supply descriptions and images of types of object which are known to be under threat of illegal excavation, or have been in the recent past, and are thought to be circulating on the market. This is the rationale followed by the International Council of Museums in the construction of its Red Lists,⁵ and is the basis of the US State Department's International Cultural Property Protection data base.⁶ However, a data base that records descriptions of objects under threat will make very little impact on the illicit trade unless: (i) the United Kingdom acts to ban the import of specified categories of threatened material, which is not likely happen; or (ii) professional trade associations adopt ethical codes that forbid the sale of threatened material, which is equally unlikely.

So, if the UK Government is to make a large sum of money available to combat the illicit trade in antiquities, the construction of a large data base of stolen objects will be a good way to squander it. The data base will be inappropriate, in that it will not record illegally-excavated or removed objects, and ineffective, in that it will not be supported by any legal or ethical sanction. The money would be better spent reinforcing Scotland Yard's Art and Antiques squad. If, on the other hand, the Government wishes to combat the trade in stolen antiques and paintings, all well and good, but let's not kid ourselves that a data base of stolen objects offers a cheap and effective solution to the trade in looted antiquities — it doesn't.

1. *Cultural Objects: Developments Since 2000* is available from the Stationery Office (ISBN 0215014391) or can be downloaded from: <http://www.publications.parliament.uk/pa/cm/cmcmds.htm#reports>.
2. *Cultural Property: Return and Illicit Trade* (2000) is available from the Stationery Office or can be downloaded from: <http://www.publications.parliament.uk/pa/cm/199900/cmselect/cmcmds/cmcmds.htm>.
3. The report of the *Ministerial Advisory Panel on Illicit Trade* (2000) can be downloaded from: http://www.culture.gov.uk/global/publications/archive_2000/Report_Illicit_Trade.htm.
4. The website of the International Association of Dealers in Ancient Art is at: <http://www.iadaa.org/index.html>.
5. Available at: <http://icom.museum/redlist/>.
6. Available at: <http://exchanges.state.gov/culprop/database.html>.



In the spring 2003 Editorial I pointed out that shortly after the looting of the Baghdad Museum I was able to find 53 inscribed cuneiform tablets and cones for sale on the Internet. By late December 2003 the same websites could muster only twelve between them, four of which were left over from May. It is hard to know whether this reduction in numbers is a chance fluctuation, or a more deliberate response to the negative publicity generated by events in Iraq. For the four British websites which were included in this brief survey, it might be due to the fact that in June 2003 the UK Government passed The Iraq (United Nations Sanctions) Order (SI 1519), in implementation of UN Security Council Resolution 1483, the Iraq (United Nations) Sanctions Order 2003. SI 1519 deals specifically with illegally-removed Iraqi cultural objects and is by far the strongest piece of protective legislation so far enacted in the United Kingdom as it inverts the burden of proof which normally applies in a criminal prosecution.

Under presently established criminal law, before a person can be found guilty of handling stolen material it must be established that he or she had good reason to believe that the material was stolen. In other words, to have bought and sold a cultural object of uncertain provenance is not an offence; in effect, an object is 'innocent until proven guilty'. However, this is not the case under SI 1519. Article 8(3) states that:

Any person who deals in any item of illegally removed Iraqi cultural property shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the item in question was illegally removed Iraqi cultural property.

The requirement for a person to prove that there was no reason to suppose that an object was illegally removed effectively means that a person is obliged to ensure the good provenance of an object before buying or selling it. In other words, an object must be presumed 'guilty' unless proven otherwise.

Some lawyers have opined that SI 1519 may contravene the European Convention on Human Rights, but they can draw solace from the fact that it will be repealed in due course when the political situation in Iraq normalizes, if not

before, and the 'guilty unless proven innocent' principle which it enshrines will go along with it. However, if nothing else, the Order will have provided an interesting experiment that will allow the efficacy of strong legislation to be assessed, both as a facilitator of police action and a deterrent to illicit trade. Already, as we note on page 15 of *In the News*, Scotland Yard have arrested several people suspected of handling stolen Iraqi material.

For breaking news on Iraq see: <http://cctr.umkc.edu/user/fdeblauwe/iraq.html>



Apologies are in order. In the spring 2003 issue of *Culture Without Context* we claimed that the posters shown on page 19 were produced by the Colombian Ministry of Culture. However, Mariana Mould de Pease has kindly pointed out that they are in fact the work of Peru's Institute of National Culture, and we are sorry for any confusion or offence that our mistake has caused.

NEIL BRODIE

The McClain/Schultz doctrine: another step against trade in stolen antiquities

PATTY GERSTENBLITH

In February 2002, prominent New York antiquities dealer, Frederick Schultz was convicted under the United States National Stolen Property Act (NSPA) on one count of conspiring to deal in antiquities stolen from Egypt. Pretrial proceedings had focused on the basic legal issue of whether antiquities, whose ownership has been vested in a nation, are stolen property if the antiquities are excavated and removed from the country without permission. Soon after his conviction, Schultz appealed, based, to a large extent, on this question. On June 25, 2003, the federal Court of Appeals for the Second Circuit, which includes New York City within its jurisdiction, affirmed the conviction, expending much of its written opinion on consideration of whether such antiquities are stolen property under the National Stolen Property Act.¹ In concluding that such antiquities are stolen, the Second Circuit has clearly reiterated that this rule of law applies in the New York area, the heart of the antiquities market in the United States. In light of earlier court rulings that followed the same principle, three of the most prestigious federal appellate courts are now clearly in agreement on this issue, indicating that it is incumbent on the

art market community to conform its conduct to this legal standard.

Frederick Schultz is a prominent antiquities dealer who, until shortly before his indictment, served as president of the National Association of Dealers in Ancient, Oriental and Primitive Art (NADAOPA).² Beginning in the early 1990s, Schultz and his British co-conspirator, Jonathan Tokeley-Parry,³ conspired to remove and resell several antiquities from Egypt, including a stone sculptural head of the 18th Dynasty pharaoh Amenhotep III, a faience figure of a king kneeling at an altar, a pair of wall reliefs from the tomb of Hetepka in Saqqara, and a 6th Dynasty statue of a striding figure.⁴ In 1983, Egypt had enacted Law 117, which, among other provisions, vested ownership of all antiquities discovered after that date in the Egyptian nation. This meant that any antiquities excavated after that date and removed without permission were stolen property under Egyptian law. Tokeley-Parry and Schultz therefore created a fake provenance for several of these items, placing them in a fictitious old collection of the 1920s, dubbed the 'Thomas Alcock collection', and falsifying 'aged' labels.

Following his indictment in July 2001, Schultz moved to have the indictment dismissed based on two main arguments: that Egyptian Law 117 was merely an export control and not an ownership law and that United States law, including the NSPA, does not regard objects taken in violation of a foreign ownership law as stolen property. The trial court rejected both these arguments⁵ and the case went to trial in February

2002. Schultz was convicted and sentenced in June 2002 to 33 months' imprisonment. He then appealed to the Second Circuit. Schultz's appeal was supported by two *amicus curiae* briefs — one filed on behalf of NADAOPA, joined by the International Association of Professional Numismatists, the Art Dealers Association of America, the Antique Tribal Art Dealers Association, the Professional Numismatists Guild, and the American Society of Appraisers. The second brief in support of Schultz was filed by an *ad hoc* group, Citizens for a Balanced Policy with Regard to the Importation of Cultural Property, although authored by the NADAOPA's long-time attorney, James Fitzpatrick. An *amicus curiae* brief was submitted in support of the U.S. government's position by the Archaeological Institute of America, joined by the American Anthropological Association, the Society for American Archaeology, the Society for Historical Archaeology, and the United States Committee for the International Council on Monuments and Sites.

Although it was not an issue explicitly argued by Schultz in his appeal, the Second Circuit appellate court spent considerable time analyzing Egyptian Law 117 to determine whether it was truly an ownership law, rather than an export control 'in disguise'. If the law were more appropriately viewed as an export control, the property could not be characterized as stolen and there would be question as to whether Schultz had violated an American law in conspiring to bring such objects into the United States. The court concluded that Law 117 is a true ownership law based on its clear language and extensive evidence of its internal enforcement presented during a hearing conducted by the trial court. The testimony of Dr Gaballa Ali Gaballa, at the time the Secretary General of Egypt's Supreme Council of Antiquities, and General El Sobky, Director of Criminal Investigations for the Egyptian Antiquities Police, outlined the conduct required when individuals discover antiquities and particularly the government's active enforcement of the law within Egypt, including the prosecution of individuals for violating Law 117. The court concluded that 'Law 117 is clear and unambiguous, and that the antiquities that were the subject of the conspiracy in this case were owned by the Egyptian government'.⁶

The court then responded to a series of arguments presented by Schultz that amounted to the notion that these objects, even if owned by Egypt under Egyptian law, should not be considered owned by Egypt for purposes of United States law and enforcement of the NSPA. The court responded that the NSPA covers objects stolen in foreign countries as well as objects owned by foreign governments. The court then proceeded to analyze three of Schultz's primary arguments as to why the NSPA did not apply to his conduct.

First, the court focused on the status of an earlier decision, *United States v. McClain*,⁷ which affirmed the conviction of several dealers for conspiring to deal in antiquities stolen from Mexico. As in the case of Egypt, Mexico vests ownership of antiquities pursuant to a national ownership law. In *McClain*, the Fifth Circuit Court of Appeals struck a balance by clearly distinguishing between, on the one hand, illegal export and, on the other hand, application of the NSPA to protect a foreign nation that has clearly vested ownership of antiquities in the same way as it protects any other owner whose property has been stolen.

Second, the court addressed Schultz's argument that the prosecution under the NSPA was contrary to United States policy. Much of this argument rested on Schultz's contention that Egyptian Law 117 was an export control, rather than an ownership law. The court summarily rejected this argument, returning to its earlier analysis of Egyptian law and citing also to the different penalties provided for smuggling and for theft or concealment of an antiquity.

Schultz's next argument was that enactment of the Convention on Cultural Property Implementation Act (CPIA)⁸ was inconsistent with Congressional intent concerning the meaning of the NSPA. The CPIA provides a mechanism by which other nations that are party to the 1970 UNESCO Convention may request the United States to impose import restrictions on designated categories of archaeological and ethnological materials. The CPIA also prohibits the import into the United States of stolen cultural objects that have been documented as part of the inventory of a museum or other public institution. Schultz argued that the CPIA provides the only mecha-

nism by which the United States deals with antiquities in the international arena and that, in particular, the notion of stolen archaeological objects should be restricted to those covered by the CPIA — that is, those that are stolen from a public institution.

In rejecting these arguments, the court cited to the legislative history of the CPIA in which Congress stated that the CPIA ‘affects neither existing remedies available in state or federal courts nor laws prohibiting the theft and the knowing receipt and transportation of stolen property in interstate and foreign commerce’.⁹ In response to Schultz’s restrictive interpretation of ‘stolen’, the court pointed out that the NSPA would surely apply equally to cultural objects stolen from a private home abroad, even though such objects are not covered by the stolen property provisions of the CPIA. Finally, the court emphasized that the CPIA and NSPA differ in that the CPIA is a civil, import law, while the NSPA is a criminal law. Even though both laws might, at times, pertain to the same conduct, such overlap is not inappropriate and is not a reason to limit the scope of the NSPA.¹⁰

While Schultz raised several other arguments, these are generally not of interest to the concerns of archaeological preservation.¹¹ In a summary of its analysis, the court stated:

Although we recognize the concerns raised by Schultz and the amici about the risks that this holding poses to dealers in foreign antiquities, we cannot imagine that it ‘creates an insurmountable barrier to the lawful importation of cultural property into the United States’. Our holding does assuredly create a barrier to the importation of cultural property owned by a foreign government. We see no reason that property stolen from a foreign sovereign should be treated any differently from property stolen from a foreign museum or private home. The mens rea requirement of the NSPA will protect innocent art dealers who unwittingly receive stolen goods, while our appropriately broad reading of the NSPA will protect the property of sovereign nations.¹²

The *Schultz* decision clarifies the law applicable in the New York region and sets a precedent that is likely to be persuasive to any American courts that confront these issues in the future. Future legal cases will likely move away from argumentation concerning the underlying legal principles and focus more on the factual circumstances of

each case. These factual issues will include the specific conduct of the parties involved and the law of foreign nations. Nations that want to protect their archaeological heritage need to be sure that their laws, particularly those that vest ownership of antiquities in the nation, are written clearly enough so as to give notice to Americans of the conduct that they prohibit and distinguish between ownership and export controls. Such laws will need to stand up to scrutiny in an American court and must be domestically enforced within any country that asserts national ownership. The Second Circuit’s extensive discussion of Egyptian law underscores the importance of these points. Clarity and domestic enforcement will also have the advantage of directly diminishing the looting of sites by punishing and inhibiting the actual looters.

Finally, the *Schultz* decision adds a significant disincentive to the looting of sites by discouraging individuals from engaging in the market in undocumented antiquities by bolstering the likelihood of criminal prosecution in appropriate circumstances. In combination with the Customs laws, it will assist in prohibiting the import of stolen antiquities. These legal consequences provide a powerful disincentive to market demand which, in turn, will discourage the looting of archaeological sites. The *Schultz* decision is another element in the recognition that the preservation of archaeological sites throughout the world is of value to the American public and is another positive step taken by the American government toward the goal of world-wide archaeological heritage preservation.

Notes

1. United States v. Schultz, 333 F.2d 393 (2d Cir. 2003). The National Stolen Property Act is codified at 18 U.S.C. §§ 2314–15.
2. The factual and legal background of the case is presented in Peter Watson, The investigation of Frederick Schultz, *Culture Without Context* 10, 21–6 (2002), and Patty Gerstenblith, United States v. Schultz, *Culture Without Context* 10, 27–31 (2002).
3. Tokeley-Parry was convicted and served three years in jail. R. v. Tokeley-Parry, [1999] Crim. L.R. 578.
4. Watson, *supra* note 2, at 24–6.
5. 178 F. Supp. 2d 445 (S.D.N.Y. 2002).
6. 333 F.3d at 402.
7. 545 F.2d 988 (5th Cir. 1977). The United States is divided into several federal circuits (or regions), each with an appellate court. The decisions of one appel-

late court are not directly binding on the courts in other circuits, although they often carry persuasive authority. While the *McClain* decision is over 25 years old, the Second Circuit had not directly addressed whether these legal principles were binding in its region. Much of the significance of the *Schultz* decision is that it is now clear that the *McClain* doctrine applies in the New York area. Only the United States Supreme Court, which rejected Schultz's petition to review this decision, 147 L.Ed 2d 891 (2004), can bind all the federal courts in the United States. The *Schultz* court's references to *McClain* and an even earlier decision of the Ninth Circuit located in California, *United States v. Hollinshead*, 495 F.2d 1154 (9th Cir. 1974), indicate that the regions with the most active markets in antiquities are now clearly encompassed within the *McClain/Schultz* doctrine's interpretation of the National Stolen Property Act.

8. 19 U.S.C. §§ 2601 *et seq.* The CPIA was the means by which the United States implemented the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.
9. S. Rep. No. 97-564, at 22 (1982).
10. The court also put to rest two other arguments raised by Schultz. The court rejected the notion that the definition of 'stolen' is restricted to the common law definition; rather, the NSPA reaches 'a broader class

of crimes than those contemplated by the common law'. 333 F.3d at 409–10. In terms of the relationship between the CPIA and *McClain* doctrine, it has frequently been stated that enactment of the CPIA precluded the *McClain* court's interpretation of the NSPA in reliance on Senator Moynihan's view that passage of the CPIA was supposed to be linked to a compromise which included amendment of the NSPA. The court concluded that Senator Moynihan's understanding and his attempts to amend the NSPA (which never succeeded) underscored the fact that enactment of the CPIA did not affect the *McClain* interpretation of the NSPA.

11. The court did affirm the jury instruction given by the trial court based on 'conscious avoidance'. Its evaluation of the form of the instruction was affected by procedural issues, but its affirmance of the use of a conscious avoidance instruction is significant because it indicates that anyone who avoids gaining actual knowledge, because there was a high probability that foreign law vests ownership of antiquities in the nation, may be subject to criminal liability.
12. 333 F.3d at 410.

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The Schøyen Collection in Norway: demand for the return of objects and questions about Iraq

CHRISTOPHER PRESCOTT & ATLE OMLAND

In issue 11 (autumn 2002) of *Culture Without Context* we reported from the ongoing debate concerning the Schøyen Collection (Afghanistan's cultural heritage in Norwegian museums?). The Schøyen Collection, named after its owner, contains 12,500 manuscripts from the whole world, spanning 5000 years of human history. Our focus was on 1400 fragments, probably from Buddhist monastery libraries, for the most part smuggled out of Afghanistan during the Taliban regime and sold in London. Since then there have been some interesting developments.

Schøyen turns down 110 million USD bid from 'Muslim country'

In the wake of the media coverage (January to March 2002) of the Schøyen Collection it seemed that a sale was imminent. In retrospect, the impression of urgency seems to have been created as part of a campaign to persuade the Norwegian government to buy the collection.

In the following year there was little mention of selling the collection. On March 29, 2003 *Dagens Næringsliv* announced that Schøyen had received an offer of 110 million USD for the collection. Schøyen declined to say who had made the offer, simply stating it was a 'Muslim country'. When asked whether his actions were based on a concern for the Christian manuscripts he said:

Yes, and all the other religions, too. I've put together a collection that represents all the world's religions and cultures precisely to create understanding across borders. In the long term one can

never know what will happen in the Muslim states.
(All translations by the authors)

He went on to state that a stable country, e.g. in the west or Japan, would be a suitable buyer, and that he intends to sell while he still has his health. He also says that he has received offers from museums in Europe.

The Schøyen Collection under fire: Egyptian demands

The Schøyen Collection returned to the media's interest in the summer of 2003 in the wake of a passage in an article in the Egyptian on-line newspaper *Al Haram* (May 22–29 2003). The article was concerned with the Egyptian Supreme Council of Antiquities' success in securing the repatriation of stolen objects to Egypt, and also '... set for retrieval, according to Hawass, are 17 items from Norway...'. This sent a number of Norwegian museums scrambling to deny that their Egyptian objects were stolen and that they, anyway, would not return them voluntarily. After a couple of days the Egyptian consul Dr Hesham Khalil clarified the matter in the Norwegian newspaper *Nationen* (August 7, 2003): The Egyptian art treasures were in the Schøyen Collection. 'We've been involved in this process for some time, and we've asked Schøyen to hand the objects back. He's refused, and asserted that there is no legal foundation for the claim'. Khalil was also very clear in his statement about the Norwegian authorities' handling of the case:

The Norwegian authorities refused to help us last time. If you are set on not doing anything, you will always be able to twist and turn and interpret treaties of this kind [the UNIDROIT 1995 Convention] so you do not have to do anything. It all depends on whether you actually want to do something. If the Norwegian authorities want to assist, they can manage to do so.

Questions about the objects from Iraq

In an article in the upcoming issue of *Museumsnytt* (4/5-2003), Leif Anker reports on the status of certain Iraqi objects in the Schøyen Collection. Catalogues for a substantial part of the collection are not available to the public; however Anker found several catalogue numbers, at least one not publicly accessible, for objects from Iraq that were acquired after August 1990.

In August 1990 the UN imposed an embargo on Iraq, and in May 2003 the UN Security Council reaffirmed its concern for Iraq's cultural heritage (resolution 1483) and requested member states to assist in the return of illegally exported objects and implement legislation to counteract trade in such objects. The UN resolution was followed up in Norwegian legislation through provisions of May 25, 2003 that state that it is illegal to trade, export or import objects when there is reasonable cause to believe they were removed from Iraq after August 6, 1990. According to police lawyer Hans Tore Høviske-land, the trade in such objects after May 2003 is punishable with imprisonment.

In his comments on the article, Schøyen cannot positively rule out that the objects have turned up on the market in violation of the UN embargo. Although admitting that both Christie's and Sotheby's have been caught selling illegal antiquities, and that provenience information is often inadequate and objects sold anonymously, he maintains that sales through renown auction houses should guarantee that everything is legal. The Iraq material underlines the problematic nature of Schøyen's collecting practices. This material should also warrant a more active stance from Norwegian authorities, at least to secure the collection from being sold until the circumstances around the collection can be ascertained.

The Afghan authorities get involved

In September 2003 the Afghan Minister of Culture, Sayed Makhdoom Raheen, sent a letter to the Norwegian minister, Valgerd Svarstad Haugland, and asserted that the Buddhist manuscripts from Afghanistan were illegally taken out of the country. According to the Afghan minister the manuscripts belong to Afghanistan, and he requested Norwegian cooperation and assistance to recover the manuscripts:

In this regard, I should like to bring your attention 'Law on the Preservation of Historical and Cultural Heritage' of Afghanistan. In its Article 1, the law stipulates that 'the historical and cultural heritage of Afghanistan belongs to the people of Afghanistan'. Article 2 defines cultural and historical heritage as 'any product of mankind, movable or immovable, which has an outstanding historical, scientific, cultural value and is at least one hundred years old'. Thus, the Afghan authorities

consider the manuscripts as belonging to the people of Afghanistan. Knowing Norway's moral and legal commitment to the prevention of illicit traffic of cultural property and to its return to the country of origin, I hope that your authorities will inform Mr Martin Schøyen about our position, and initiate a dialogue with him that would facilitate the return of the manuscripts to Afghanistan.

The claim for restitution of the manuscripts was made known for the public in an article in the newspaper *Dagens Næringsliv* (Oct. 15, 2003). In this article Schøyen responds to the Afghan claim:

Of course they had to have a go at it, but this changes nothing. The manuscripts hardly have any ties to Afghanistan, apart from the fact that they were found there. Most of them were written on palm leaves in India — and as everyone knows there are no palms in Afghanistan. Furthermore, there was no Afghanistan when they were written. The country has also changed religion from Buddhism to Islam. Buddhism isn't very relevant there anymore.

Schøyen further argues that Afghanistan always has been embroiled in conflicts and the manuscripts will not be safe there. To justify his ownership of the manuscripts Schøyen also refers to a legal loophole concerning the UNESCO 1970 Convention: '... Norway [was] not a member when the manuscripts were rescued out of Afghanistan'.

Given the coverage the Schøyen Collection has received in the course of the last two years, Schøyen has had ample opportunity to come forth with a credible explanation of how the manuscripts were 'found' in Afghanistan and later came to be bought by him in London. In light of this, his response to the Afghan request can be interpreted as admission that he is not the rightful owner.

The Norwegian ministry's response

In October 2003, when Afghanistan's letter became publicly known, the Norwegian Ministry of Culture seemed slightly taken aback by the request. This is surprising since the ownership and a return of the Buddhist manuscripts has been debated in the press for two years, and the Egyptians stated in August that they would demand the return of Egyptian objects. One would there-

fore have assumed it was simply a matter of time before a formal request from Afghanistan arrived, and expected the Norwegian authorities to have been more prepared. The Minister's secretary, Yngve Slettholm, said to *Dagens Næringsliv* (Oct. 15, 2003) that the ministry would look into the matter, but he followed up by stating that the government has neither formal nor indirect means of exerting influence.

All in all it is remarkable that the Norwegian government remains so indifferent to the grey trade in antiquities. This passive attitude projects an image of Norway as a haven for the criminal trade in cultural artefacts and a nation indifferent to the destruction of archaeological sites outside of Norway.

Norway has one of the strictest national antiquities legislations in the world, while international efforts to halt the damaging antiquities trade has long been a priority among archaeologists and others concerned with the cultural heritage of humanity. It is therefore distressing to observe how politicians, administrators and organizations who should be fundamentally committed to stopping the illicit trade in antiquities and the destruction of sites, either remain passive or fall for temptation and seek to purchase objects with a dubious provenience. Norwegian museums and authorities have seldom been seriously involved in questions concerning the illicit international trade, and it is sad to see their response when put to the test.

Resolving the issue in the near future

Much of the defence for Schøyen's collecting practice seeks to create the impression that the issue is pragmatically about whether the objects should be immediately shipped back to Afghanistan or kept safely in Norway. This is a gross distortion of the argument. Any solutions should be based on two premises. The first is that Schøyen has not demonstrated that he is the rightful owner, and therefore it should now be acknowledged that the Afghan authorities are the proper owners. From this it follows that Schøyen has no right to trade in the Afghan manuscripts, and he should not be allowed to do so. The manuscripts should be returned to Afghanistan when conditions permit.

The second perspective is based on the fact

that conditions in today's Afghanistan do not warrant the return of the manuscripts. It therefore follows that the manuscripts should be deposited at an institution that can guarantee their safekeeping. The Schøyen Collection is for obvious reasons not a candidate. Indeed, in light of the unethical and curious positions taken by Norwegian bureaucrats, politicians and museum leaders, the manuscripts cannot be deposited in that country without raising suspicions about the motives.

The only satisfactory intermediate solution is that an UNESCO-designated institution takes on the responsibility of looking after the manuscripts until they can be returned to Afghanistan. For the sake of Norway and Schøyen's reputation this process should be initiated by a voluntary donation of the manuscripts by Schøyen. This turn in the Schøyen case — a return of the manuscripts that does not involve more financial transactions — might make a positive contribution to the international campaign against the destruction of archaeological sites and the theft of artefacts.

Ethical dilemmas for museums and researchers

Although professor Jens Braarvig, the primary specialist on the manuscripts in the Schøyen Collection, has previously stated that ethics, legal issues and questions of ownership do not concern him (*Museumsnytt* 1-2002), the initial enthusiasm for acquiring the collection, seems to have cooled among others. Directors at the National Library have confirmed the library's commitment to uphold international agreements, and explicitly stated that the Schøyen Collection is private and has nothing to do with the Library (*Museumsnytt* 1-2002). In a recent radio debate the director of the University Museum of Cultural Heritage, Oslo, Egil Mikkelsen, now stated that the museum would have to implement investigations before considering acquiring the Schøyen Collection.

In light of this, both the National Library and the University of Oslo seem to be in conflict with themselves. The National Library has issued press statements about their involvement, have developed and run the collection's web site, and

have the collection in their index. Parts of the collection are reportedly stored at the Library. The University of Oslo is involved through employees who seem to be working for the Schøyen Collection through a semi-private institute 'The Norwegian Institute of Paleography and Historical Philology (PHI)'. This institute rents facilities from the Norwegian Academy of Science and Letters. The Centre for Advanced Study has previously hosted research projects on the Buddhist manuscripts from Afghanistan. The centre was established by the Academy and the Council for Universities and Colleges and is *inter alia* funded by the government, the Universities, the Academy, and the Research Council of Norway. According to a press release from the National Library¹ the University of Oslo hosts six major research projects dealing with materials from the Schøyen Collection.

Although we do not necessarily believe that the material in the Schøyen Collection should be put in 'quarantine', the ethical and political questions concerning the collection are serious enough to warrant a conscious attitude from the involved institutions, if for no other reason than out of concern for their own reputations. Combating the looting, smuggling and trade driven by a greedy antiquities market that leads to large-scale destruction of our common cultural heritage should be a major priority for all cultural and academic institutions. A necessary measure in restricting the market side is to implement strict guidelines — and force institutions to follow them.²

We hope the involved Norwegian institutions carefully consider their responsibilities — and in all decency: Shouldn't the authorities in Afghanistan be consulted before any agreement is made?

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Notes

1. http://www.nb.no/html/pressemelding_schoyen.html.
2. See Colin Renfrew at <http://www.dailypennsylvanian.com/vnews/display.v/ART/2003/10/22/3f962db730a27>).

In the News

JENNY DOOLE

News from Italy

- It is hoped that an **amnesty system** being introduced **in Italy** may help authorities trace thousands of works of art, including objects stolen from public sites. Those handing over illegal items may be allowed to keep them in return for public access arrangements. Future law breakers face jail sentences of up to six years.
- *July*: Following clues obtained during a robbery of historic frescoes from a Rome hotel in October 2001, Italian police have now carried out around 20 searches which have uncovered about **100 archaeological items** stolen from Cerveteri, Marino, Zagarolo, Bari, Bitonto and Padua.
- A preliminary hearing will be held by the Public Prosecution Service in Italy in December, to decide whether to proceed with legal action against **Marion True**, formerly curator of antiquities at the J Paul Getty Museum, Los Angeles. It is alleged that Dr True bought approximately 30 items for the museum knowing that they had been consigned by Italian dealer **Giacomo Medici**. Medici has been under investigation since Italian police seized a hoard of antiquities in his possession at Geneva Freeport in 1997 (See *CWC* Issue 2, Spring 1998).
- Officials at the Roman site of **Pompeii** in Italy plan eventually to 'remove everything that is not nailed down and replace them with **good copies**' (The *Telegraph*, 16 November 2003) in an effort to protect the archaeology from thieves apparently operating from Naples. The scheme, already underway, follows a **series of thefts**, the most recent involving removal of the stonework of a first-century well, weighing 150 lbs from an ancient house, its entrance

(along with two other house doors), having been forced open. Originals will be moved to secure museums for safekeeping.

- In October, **2700 Roman coins** (discovered in 1998 in Piazza Risorgimento) were **stolen from the Trinci Palace** in Foligno. It is possible that the robbers disarmed an alarm system.



Call for UK action

Suffolk farmer, John Browning, has called on police, local magistrates, and English Heritage to provide **protection for archaeological sites from illegal metal detecting**. He told *Minerva* magazine (July/Aug 2003) that nighthawks had dug his land (the scheduled ancient site of Icklingham, from which 16 Romano-British bronzes were looted in 1982) eight times over several weeks, and destroy £2000–3000 worth of harvest a year, but receive only low fines from courts when caught. Browning would like to see English Heritage excavate and study the archaeology that remains.



Egyptian round up

- The **Egyptian Supreme Council** of Antiquities is working to create a **WWW site** which will publish photographs and details of objects known to have been smuggled abroad or recovered.
- Mohamed Abdul-Maksoud, general manager of the Lower Egypt Antiquities Department, will lead a **committee pursuing possible legal actions** to secure the return of objects. Abdel Karim Abu Shanab, who was appointed to this task last year was arrested in January, charged with allegedly accepting bribes from a dealer smuggling material to Spain (see In The News *CWC*, Issue 12).

- **September:** The **Italian Foreign Ministry returned to the Egyptian Supreme Council of Antiquities seven pharaonic statues** discovered in the home of a woman in southern Italy, who failed to prove legal possession.
- In August, a court in Alexandria **jailed 14 people**, including two police officers and French architect Stephane Rousseau, for between 2 and 10 years for **smuggling more than 300 antiquities** from Egypt. Rousseau, who worked for the French archaeological mission, was arrested at Alexandria airport in possession of 144 coins and a number of ushabti figurines which he claims he bought thinking they were modern copies.
- In September, **Switzerland agreed to supply Egyptian authorities with details of artefacts**, including 280 statues, masks and 2 mummies, found at Geneva Freeport. Swiss and Egyptian police are working together on a criminal enquiry into a number of people, including **Tarek Al-Sweisi** (a senior official now expelled from the ruling National Democratic Party), thought to have carried out illegal excavations at several sites, culminating in the alleged smuggling and sale of large numbers of artefacts. Some were said to have been smuggled from **Switzerland to France**. Prosecutors said that fifteen Egyptians and one Lebanese citizen have been arrested, and twelve others are sought, including two Swiss, two Germans, a Canadian and a Kenyan. Customs officials, senior police officers and Supreme Council of Antiquities employees from the Luxor region have also been arrested in connection with the case. Swiss authorities have been asked to freeze suspects' bank accounts.

A **committee of Egyptian archaeologists** has been appointed to maintain and restore the objects and a judicial committee was expected to receive them from Swiss authorities in November.

- A **senior Egyptian official and six fellow**

Agriculture Ministry employees were arrested in October for trying to sell a mummy, which they are believed to have illicitly excavated from Beni Suef, south of Cairo. They were trapped by an undercover officer posing as a dealer.



Israeli collector under suspicion

It was reported in *Archaeology* magazine (September/October issue) that in March **Israeli collector Oded Golan was arrested** on suspicion of forging the inscription on a controversial ossuary alleged to have held the remains of James, brother of Jesus, and of fabricating from scratch an inscribed tablet referring to the ninth-century BC King Jehoash. Police were said to have found engraving tools and partly forged objects in his possession, although Golan himself in *Biblical Archaeological Review* (September/October issue) said the claims made against him were 'ridiculous'. The ossuary and tablet were declared fake in June after investigation by a panel of expert epigraphers and material scientists appointed by the Israel Antiquities Authority under order from the Israeli Ministry of Culture. The motive for faking objects is believed to be monetary gain, since the ossuary was once valued at \$1–2 million.



Iraqi update

- **Col Matthew Bogdanos**, responsible for US investigations into looting of the **National Museum, Baghdad**, reported in July that:
 - The most likely markets for looted Iraq antiquities were the UK and USA, but that Italy, Russia, Japan, Jordan and Syria might also feature in investigations.
 - When identified, couriers would be allowed to deliver illicit antiquities then 'squeezed for their sources' as in drugs investigations.



Looting with a bulldozer at the Partho-Sassanian site of al Assaya, southeast of Najaf, Iraq. (Photographs: Helen McDonald.)

- Losses from the museum are now estimated at around 13,000 objects, including: 30 objects from display cases, 169 from restoration stores, 236 from Heritage Room, 2703 from the old storeroom and 9666 small items from basement storerooms (cylinder seals, jewellery, and pottery — believed to have been taken in an inside job during which thieves dropped their keys, curtailing their raid).
- **Damage to, and losses from, other museums in Iraq** was still being assessed in June.
 - At least 34 artefacts are missing from **Mosul Museum**, including 30 bronze panels from the Assyrian city of Balawat, ripped from a replica gate and three cuneiform tablets from Khorsabad, (attached to museum walls with clamps which were removed using heavy duty equipment). Many more pieces were

damaged and two storage rooms looted.

- **Seizures of looted Iraqi material** have been reported although published details are often sketchy:
 - *May*: Fawwaz Khreisha, Director General of the Antiquities Department, **Jordan**, said that 163 ethnographic and archaeological artefacts from Iraq had been seized.
 - *June*: The **Warka Vase** was anonymously returned to the National Museum, Baghdad, amid speculation that it was too 'hot' to dispose of.
 - Also in June, **Kurdish security forces** arrested three Iraqi men for allegedly trying to sell 28 objects from the National Museum. They were released without charge after three days' detention and one expressed the hope that the stolen items would be returned to the museum.
 - *July*: **Jordanian customs officials** seized 40 smuggled Iraqi antiquities, including Sumerian statues and artefacts at the Karama border crossing.
 - *July*: Ancient Sumerian artefacts (including figurines, a skull and a clay bowl), wrapped in towels in a rice bag, were **confiscated by US troops** from a suspected smuggler, as were 12 pieces from the National Museum. They were discovered alongside automatic weapons, grenades and several thousand dollars worth of Iraqi currency. Two potential buyers were arrested.
 - *August*: US writer **Joseph Braude** (author of *The New Iraq: Rebuilding the Country for its People, the Middle East and the World*) was **arrested by customs officials in New York** carrying three cylinder seals with National Museum inventory numbers, apparently purchased in Baghdad for \$200.
 - **Unpublicized confiscation** (probably in June), believed to comprise more than 600 small artefacts, including cylinder seals and jewellery, believed to be from raided basement stores in Iraq museum. Thought to have passed through **London**.

- In September, the **Warka Mask**, one of the most high-profile objects stolen in the April looting of the National Museum, was found by US troops, **buried in a field** outside the city following a tip-off to museum staff. The investigation led first to a youngster, then an older man and finally the culprit and involved weeks of negotiations. It is believed that the mask changed hands several times after the theft.
- *November:* Part of an inscribed **bronze statue and the Nimrud brazier**, also stolen from the National Museum in April, and smeared with grease for protection, were recovered by American forces from a **cesspit in the city**.
- *November:* **London Metropolitan Police** confirmed that artefacts stolen from Baghdad Museum had been **seized by the Art and Antiques Squad**. Several men were arrested in connection with allegations of handling stolen goods. One was said to be a 76-year-old, in whose central London gallery was found a sculpture, part of a frieze from the ancient palace of Nimrud, apparently stolen before the current Iraq War.
- *November:* **Jordanian customs officials** confiscated more than 500 Iraqi artefacts and paintings, including ancient material from Iraqis and other nationals at border posts of Karameh, King Hussein Bridge, Amman International Airport and Queen Alia International Airport.
- Artefacts (often cylinder seals and cuneiform tablets) reportedly confiscated at a **French airport** (500), in **Kuwait**, from a dealer in **Sardinia** (33), in **Rome** and other unpublicized locations outside Iraq.
- Experts have expressed increasing concern about **looting of archaeological sites in Iraq**.
 - Donny George, director of research for Iraq State Board of Antiquities, says armed thieves have been **looting dozens of partially excavated ancient sites in southern Iraq** for months and selling off untold quantities of archaeological ma-



Looted Partho-Sassanian cemetery, southeast of Najaf, Iraq. (Photographs: Helen McDonald.)

terial. (Agence France-Press via ClariNet 29 September 2003)

- McGuire Gibson of the University of Chicago said the international **market for Mesopotamian antiquities is booming** while some sites will be so badly destroyed archaeologists will not go back to them.
- Cultural experts from the Netherlands, operating as part of the **Dutch mission** currently administering **al-Muthanna province in southern Iraq**, are expected to put forward recommendations for protection of the important Sumerian site of **Uruk** to the Dutch Ministry of Defence. Outgoing US forces, who occupied the province until August, did not list protection of Uruk as a responsibility and the fact that the site has not been plundered like so many others in the area is thanks to the **efforts of a local Bedouin family** who have been guarding it, despite lack of water and transport (*Art Newspaper* November 2003).
- Pietro Cordone, senior advisor for culture to the **Coalition Provisional Authority** (CPA) in Iraq, reports in *The Art Newspaper* (Oct 2003) that the CPA is presently **unable to do much to protect** important archaeological sites from looting. Helicopter surveillance and patrols by US armoured vehicles have been instigated at around 40 sites, but looters simply wait for patrols to move on.

In the city of Baghdad itself, he has relied on **appeals by religious leaders** to encourage looters to return material stolen from the museum, while museum staff and US personnel **discreetly search flea markets**, shops and galleries.

- *December*: 820 objects, mainly cylinder seals, were returned to Baghdad by the Iraqi-Italian Institute of Archaeological Sciences.



Museum ethics

- The ethical dilemmas of displaying and publishing unprovenanced antiquities were discussed in an article by Martin Gottlieb and Barry Meier in *The New York Times* (2 August 2003), who used examples from the Metropolitan Museum of Art's exhibition, *Art of the First Cities: The Third Millennium BC from the Mediterranean to the Indus*, to highlight issues. In particular they investigated the history of a **limestone fragment**, with a rare depiction of Akkadian king Naram-Sin seated beside Ishtar, which was discovered (and later published) by archaeologist Donald P. Hansen in **Jonathan P. Rosen's extensive collection** of Near Eastern antiquities. Rosen refused to answer any queries about the stone or about two other unprovenanced items lent to the Metropolitan. His lawyer, Harold M. Grunfeld, told the authors his client never talked publicly about his collection and that the items had been **bought via 'highly reputable dealers** in Europe', adding that as a lawyer he was satisfied with their provenance and legality. No answers were forthcoming regarding dates of purchase or ownership histories. Philippe de Montebello, director of the Metropolitan, argues that the museum is obligated to 'put these objects forward' but said that stricter rules were applied to acquisitions than to loans.
- Reporting on the success of June antiquities sales in Europe, *Antiques Trade Gazette* (16 August 2003) remarks that the Metropolitan's *First Cities* exhibition has **encouraged a 'surge of interest'** in pieces from Bactria, Baluchistan and other areas classified as 'Western Asiatic'.
- Meanwhile, David D'Arcy, in the *Art Newspaper*, scrutinizes the **significant tax deduction** (based on current market values) Jonathan Rosen allegedly accrued when he donated 1500 cuneiform tablets, assumed to be Iraqi in origin, to the Department of Near Eastern Studies at Cornell University

in Ithaca, New York. Yale University was said to have declined them because of the lack of published provenance.

Return to Nepal

In an October ceremony in Kathmandu, the **Austrian government returned to Nepal a 400-year-old, one-metre tall, bronze and copper mask** of Dipankar Buddha, which had disappeared from an office in Lalitpur district, south of the city, two years ago. A German citizen had tried to sell the mask to an Austrian museum for \$200,000, but museum staff contacted the authorities. Nepalese archaeology department officials admit they have **no inventory of existing antiquities** in the country or those which have been smuggled out, although photographs and police reports were available in this case. One heritage professional alleged that the mask had been stolen by locals, sold by Nepalese middlemen and exported with the help of government officials, since it had proper export documentation from the Department of Archaeology. No arrests have been made.

Looting in the USA

- Between early spring and mid-June, looters struck at the remote **BA Cave Rockshelter, Black Mountains, Wyoming**. Archaeologist Mike Bies said the robbers removed as much or more dirt than his archaeological project had in 10 years, and estimated that the damage could have been done in a single day, depending on how many people were involved. Site reference markers were destroyed and a 970-year-old hearth dug through. Cost of reparation and repairs is estimated at a minimum \$1.9 million, and of lost artefacts (for which there is a thriving black market) at \$4.8 million. A **\$20,000 reward** is offered for information leading to the arrest and conviction of

those responsible and much of the site has now been covered in rocks to discourage further attacks.

- Experts believe that looting of Native American sites like **Chaco Park and Mesa Verde** has increased markedly over the last couple of years. They blame increasing numbers of visitors compared to decreasing numbers of staff, sharing of information about archaeological sites, particularly via the Internet, and the potentially handsome prices that looted antiquities will raise (between \$5–500 for more than 600 artefacts, such as arrowheads, beads and pottery on Ebay) on the market (VOA news, 10 September 2003).
- Federal agents in Phoenix, Arizona are investigating how a **large boulder carved with ancient petroglyphs**, which they believe was stolen from the **Lake Pleasant area**, came to be under a tree in the garden of Eric Zoller's Phoenix home. Zoller claims he was given the rock by a person he helped in a road breakdown, but will not name them. The Bureau of Land Management said the agency is looking into the case as a possible violation of the 1979 Archaeological Resources Protection Act (ARPA).
Four or five violations of ARPA were investigated from the US Attorney's Office in Phoenix in 2002. Looting is a particular problem in Arizona because land is open and not obscured by vegetation, and whole sites have been destroyed. The problem will grow worse as cities expand closer to public lands.

Afghan finds

- One of the greatest archaeological treasures of Afghanistan, the **Bactrian hoard** (excavated in 1978 by Soviet archaeologist Viktor Ivanovich Sarianidi at Tilya Tepe), over the years said variously to have been sent to Moscow, taken by corrupt officials, stolen by thieves or destroyed by the Taliban, has

now been **found safe**. In addition, important pieces from the collections of Kabul Museum, previously believed to have been looted, have been discovered. The objects were packed in trunks and moved to the vaults under the presidential palace for safe-keeping under the orders of president Dr Najibullah in 1989, as the security situation in Afghanistan worsened.

Staff at the British Museum said they would be delighted to help in identifying and cataloguing objects, while the National Geographic Society and the Musée Guimet in Paris have expressed their interest in arranging touring exhibitions of the Bactrian gold treasure.

- Following reports in *Le Temps* (17 Oct 2003) that an anonymous antiquities expert has seen **parts of the Bamiyan Buddhas** (blown up in 2001 by the Taliban) in a warehouse in **Geneva Freeport**, Afghanistan's culture ministry has requested that they be returned to Afghanistan as soon as possible.
- Osmund Bopearachi, a French expert, was shown **in London a Bronze Age bowl** which a private collector had bought in good faith but was in fact stolen from Kabul. It is now hoped that it will be displayed by agreement between the archaeological museum in Lattes, near Montpellier, and UNESCO, until it can be returned.
- **Scotland Yard have seized several hoards** of recently excavated illicit antiquities from Afghanistan, including stone sculptures, bronzes and terracottas possibly from temple sites.
- Police in Afghanistan have **recovered seven clay Buddha heads** illegally excavated in **Logar province**, probably from the 19-square-mile site of Kharwar which has never been scientifically excavated.
- Sayed Raheen, Information and Culture Minister, said that smugglers recently contacted him offering, for the **price of \$1**

million, a 1600-year-old painting on ivory of a nude woman surrounded by servants. He believes Afghanistan is presently at 'one of the worst stages of our history in terms of historic artefacts' (*Pakistan Tribune*, May 22, 2003).

- Omar Khan Musudi of the National Museum, Kabul, said in June that **more than 400 artefacts have been seized from looters** but many more have been smuggled to Pakistan. He called for international peacekeepers to extend their missions beyond Kabul.



Chinese news

- *June:* **Li Haitao**, head of security at the Waibamiao museum complex, Chengde is said by Chinese police to be responsible for the **theft of 158 artefacts**, which he removed in sacks, one at a time. Some were sold on the black market (and subsequently appeared in the salerooms of Christie's, Hong Kong), others were found in his home, which police said looked like a museum.
- *September:* **Two men**, Huang Xiaojun and Li Meisheng, **were executed** for robbing three tombs belonging to a national museum in Guo, Henan province. They sold objects from the tombs for \$72,000 to Hou Jinhai, who is on the run.
- At an October conference on protection of cultural heritage, Shan Jixiang, director of the State Administration of Cultural Heritage said:
 - **Since 1998, eight cases have been uncovered** involving several museum workers and 268 smuggled antiquities.
 - Stone sculptures and objects in temples are **particularly vulnerable** since they are widely scattered in unprotected and sometimes rural locations.
 - Thieves are motivated by big profits and increasingly employ **modern communication and transportation equipment**.

- In 2001, police arrested **20 looters in Sanmenxia Gorge, Henan Province**, who had dug a 400-metre-long, 1.2-metre-deep and .70-metre-wide tunnel into an ancient tomb.



Yemeni antiquities identified and returned

- A third-century **alabaster plaque**, depicting Dat-Hamim, goddess of fertility and estimated to be worth \$20–30,000 was **withdrawn from sale at Sotheby's New York**, when a member of their staff recognized the piece in a 1977 publication. It had been stolen from the Aden Museum in Yemen during civil unrest between 9–11 July 1994, and was consigned for sale by **Phoenix Ancient Art of Switzerland**. Following a request for help from Yemeni officials, the US federal government has seized the plaque and paper have been filed in US District Court in Manhattan in order to arrange a return.
- In July, **three statues** (two of a man, one of a lion on a pedestal inscribed with archaic southern Arabic) were **returned from Jordan to Yemen**. They were confiscated in 2000 by authorities at Queen Alia International Airport from the luggage of a Yemeni national en route for Europe where it is presumed the pieces would have been sold.



Pre-Columbian artefacts: returns and rescues

- *June:* **Christie's Paris** broke new ground when they **auctioned 186 lots of Pre-Columbian material**, hoping to capitalize on interest generated by the opening of the Musée du Quai Branly. A storm of protest erupted in Colombia when the French Government paid out €228,250 for a gold Tairona pendant.

- **279 Pre-Columbian artefacts, smuggled into the US** by Ohio businessman Douglas Hall and Guatemalan accomplice Tulio Monterroso Bonilla, were returned to **Honduras** in September. Hall was convicted in June 2002 and sentenced to 18 months in prison and a fine, Monterroso Bonilla pleaded guilty in August 2002. Hall had bought the Mayan figurines, bowls and pottery, for \$11,000 in 1998 and shipped them to Miami with a declared value of \$37 for sale in the shop he co-owned.

- **146 small Mayan artefacts were returned to Guatemala** from the USA in November. They were seized from a Spanish citizen, travelling from Guatemala to Spain, when he stopped in Houston. He had claimed they were worthless replicas and was not charged.

- A **Mayan altar was saved from looters** by local villagers, police, and archaeologists in Guatemala, in October.

The 600 lb altar, carved with hieroglyphs and with a depiction of Mayan king Taj Chan Ahk Ah Kalomte, was uncovered during heavy rain in the ruins of **Cancuén** and stolen by looters who tried to sell it to local drug traffickers. It then became an object of dispute and violence between members of the gang and their rivals, and was eventually **sold on the border with Belize** (the location of potentially lucrative antiquities markets). Villagers and archaeologists, including Arthur A. Demarest of Vanderbilt University, director of excavations at the site, spent six months tracking the looters, four of whom were arrested by Guatemalan undercover agents when the altar was finally recovered buried underground, about 18 miles from Cancuén.

Police believe this may be the **first time an entire chain** of looters and dealers of Mayan artefacts has been exposed.

- *September:* 74-year-old **Taddeo Barchitta pleaded guilty in a Virginia federal court** to a charge of selling illegally-exported Peruvian artefacts, ranging in date from AD

800 to AD 1400. He was arrested after US Customs had mounted an undercover operation.



Turkish seizure

Turkish financial branch police, acting on information that ancient artefacts were being hidden in a house in Istanbul, seized around **212 Hittite, Roman and Seljuk artefacts** (thought to be worth \$2 million), probably stolen from the area of Van. One person was taken into custody, while a businessman was mentioned as ringleader in connection with the case.



Greek developments

- A farmer from **Apsalos, northern Greece** was re-arrested when on bail after he buried artefacts police had not previously discovered. He was arrested first time round for possession of around 2000 illicit antiquities of neolithic through to Byzantine dates found hidden in his home, his farmland and a disused railway depot. After his release, police kept **Nikos Angelidis** under surveillance and in renewed searches found a further **5900 ancient coins, as well as 2000 artefacts**, including jewels, tool and figurines, in the farm's cesspit. Police believe many were **destined for sale abroad**.
- A 78-year-old resident of **Thessaloniki**, northern Greece, identified only as V.I. was released due to health problems after being charged with **illegally trading in antiquities**. Dozens of ancient artefacts from Hellenistic, Roman and Byzantine periods were found in his country home.

This, and other recent seizures of illicit antiquities from the area highlight **disturbing trends and developments** (*The Art Newspaper*, September 2003):

- Authorities believe the area between **Dion, Vergina and Pella, is now being systematically searched by looters** using metal detectors as illicit activity has shifted from the Cyclades in the 1960s, to less exploited sites in the north.
- When material is illegally excavated it is photographed, reburied in caches and the **photographs sent to middlemen** who approach potential foreign buyers.
- Dimitris Grammenos, director of Thessaloniki Archaeological Museum, said that **illicit trade in archaeological material sustains entire villages** in this part of northern Greece.
- A **police department** recently set up specifically to deal with illicit antiquities issues is not in touch with parallel departments in other Mediterranean countries.



African initiatives

- In June the **government of Angola began investigations** into the theft of objects from the local museum of Dundo, northeastern Lunda-Norte province, which holds archaeological and palaeontological artefacts. The deputy culture minister was also expected to check organization of the cultural sector in the area.
- Barth Opoku Acheampong, Public Relations Officer for the **Museums and Monuments Board of Ghana** called on the government enable the Board to send staff to **check for illicit trafficking** of cultural heritage over national border points by handicraft exporters. Such checks were stopped in 1997 because the Ghana Export Promotion Council believed they were hampering export activity.



Important Indian arrest

Antony Barnett, reports in the *Observer* (6 July 2003) that the June arrest of rich and powerful Indian antiquities dealer **Vaman Ghiya** may result in an **international police investigation** into dealings at Sotheby's. The arrest followed a six-month investigation, Operation Blackhole, in which undercover police posing as beggars and rickshaw drivers outside unguarded Indian temples arrested four men stealing ancient idols. Police believe thieves like these would routinely steal from unguarded temples, Ghiya would buy the items through middlemen, label them as handicrafts and smuggle them abroad through companies in Mumbai, Delhi and also allegedly laundering them through sale and resale by companies in Zurich.

During a search of Ghiya's home **many Sotheby's catalogues** were discovered and it is alleged that he received commissions from the auction house, paid from accounts of different names. Sotheby's admitted to dealing with Ghiya in the past, but say they have had **no dealings in recent years** and were 'unaware' of payment of commission.

A twelfth-century sandstone sculpture offered for sale at Sotheby's in New York for \$35,000 in September 2002 had been reported stolen from Vilasgarh temple in September 1999. Police say Ghiya purchased it for 1 million rupees (£13,000) and smuggled it out of the country.

Police are also said to have identified in Sotheby's catalogues dating from 1997–9, four more objects, stolen from Taneshwar temple, Udaipur in the 1960s but unconnected with Ghiya.

Eastern European concerns

- *Bulgaria:* After allegations on Darik Radio that **Georgi Getov**, head of the national police department for crimes relating to historic and cultural artefacts, was **involved in illegal export of antiquities** in collusion

with **directors of archaeological museums** and other law enforcement officials, he was moved to a different department. The allegations have been denied.

In September 2002 Getov said that police believed around **200,000 to 300,000 people in Bulgaria** are involved in illegal trading in architectural and historical artefacts and fell into three main groups: treasure hunters, who dig for loot; middlemen, buying directly from the looters; and 20–30 large-scale dealers running the smuggling operations and supplying international collectors.

- President Vladimir Putin is backing a proposal by Mikhail Piotrovsky, director of Russia's State Hermitage Museum for the **creation of a federal archaeological protection service**. Piotrovsky says the illegal sale and export of cultural artefacts is a growing problem in Russia.

Jomon theft

June: A 20-centimetre-tall **Jomon bowl** was **stolen** from an open-topped display case in the Fujimi Municipal Mizuko Kaizuka Museum by a visitor, during opening hours. The thief rearranged the order of nine other pieces in the display to disguise the loss.

New York sale postponed

An auction of 2000-year-old antiquities including Chinese porcelain and pottery retrieved from a shipwreck off the coast of the Philippines, to be held at **Guernsey's in New York** has been **postponed** due to an investigation into whether salvager Phil Greco had the **right to excavate the site**. Greco maintains that his company, Stallion Salvage, had legal permission from the Philippine National Museum to carry out the excavation and that objections to the sale are not due to criticism of his excavation techniques, but rather the re-

sult of jealousy of the money he will reap from the sale (*The Mercury News*, 5 August 2003). The National Museum denied that Greco had been given permission to excavate and demanded that the porcelain be returned.

Vietnamese antiquities in danger

- Archaeologists, previously denied permission to excavate shipwrecks off the coast because of worries about inadequate technology and expertise, have now **begun a salvage programme**, since local fishermen have been looting the wrecks.

Five shipwrecks have been salvaged yielding tens of thousands of ceramic and porcelain pieces and providing information on the strategic importance of Vietnam waters for international trade routes.

- Meanwhile, authorities are also struggling to stem **looting on the ground**:
 - June and July saw a rash of **thefts of statues** and antiquities from Buddhist pagodas in **Ban Giang**.
 - On 24 July six 300-year-old statues were removed from **Duc La pagoda**, east of Hanoi. Thieves left two statues at the gate because their lorry was already overloaded.
 - In July, seven large statues were stolen from 400-year-old **Quang Thuong pagoda**, while two other pagodas in Ban Giang were burgled earlier in the year.
 - Customs officials reported that around 7000 antiques and antiquities are seized from potential smugglers at Vietnamese border points every year.

Indian Buddha theft

An important **Buddha sculpture** was found to be missing during a routine check by De-

partment of Archaeology guards in September. Police believe at least six people would have been needed to lift the 200 kg statue from the site of Pahnigiri, Nolgonda District, and that about a dozen people must have been involved, possibly with insider collusion. Efforts are now being made to **remove other antiquities** from the site to safer locations.

Asian report: Cambodia and looting of Chinese royal tomb

In a **detailed report on looting in Asia** (*Time Asia*, October), Hannah Beech uncovers many interesting facts, including:

Cambodia:

- Early in 2003, Michel Tranet of Cambodia's Ministry of Culture and Fine Arts, stopped a **Frenchman from bribing Cambodian customs** officials to let him leave the country with an eighteenth-century Buddha stolen from a pagoda in Posat Province.
- Tanet sees **smuggling via foreign diplomats** as a constant threat, especially alleged smuggling by one particularly powerful Western diplomat.
- In March **looters reached the remote jungle site of Kbal Spean** where rocks are carved with eleventh-century bas relief. They used electric saws to remove the faces of Vishnu (estimated initial selling price in Bangkok, \$50,000) and Lakshmi (which shattered while being removed, the remains were found nearby). No arrests have been made.
- The country's chaotic political history and current climate, corruption and bribery and severe lack of resources and trained staff are highlighted.

China:

- The Chinese National Cultural Relics bureau says that over the past five years at least **200,000 ancient tombs** have been broken into.

- Beech recounts the adventure of tomb raider Feng who, for \$45 payment, with his uncle and another villager, over a few nights, broke into and **looted a Tang dynasty tomb** of five terracotta animals (worth about \$10,000 in the West).
- **Middlemen and dealers are rarely caught** and prosecuted while looters pay a heavy price. Feng says one fellow raider who was executed made \$70, while the statue he stole resold for \$18,000 in New York.

The **looting of the tomb of Empress Dou** near Xi'an city is described.

- Five villagers (paid \$60 or more for a night's work), used crude digging and probing tools to locate the tomb and dynamite to break in.
- When they were arrested the tomb was left poorly protected and soon looted of at least 200 valuable items including **terracotta figures** like one of a painted female worth about \$80,000 in a Western saleroom.
- In February 2002, local dealer Wang Cangyan was arrested having shipped the 32 figurines to Hong Kong, hidden in trucks of modern ceramics. He is currently serving a reduced jail sentence for co-operating with authorities, while the figurines were returned from a Hong Kong dealer in return for keeping his identity secret.
- Other figurines from the **Empress Dou's tomb** believed by police to have reached New York via Switzerland within a month of the theft, were offered for sale at Sotheby's in March 2002 as 'the property of various owners'. Diana Phillips, spokesperson for Sotheby's said the auction house had a written warranty of good title from the owners, and the pieces were not recorded as stolen in the Art Loss Register. They were eventually pulled 20 minutes before the sale following a written request from the Chinese ambassador.
- The statues were returned to China in a June ceremony and are now on display in a Xi'an museum.

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The Battle for the Past

EDWARD KROWITZ

A reasonable assessment of the health of the patrimony is that we are losing the battle to preserve the edifice of history. From the uprooting of Maya stelae from the jungles of Central America to the dismantling of the statuary and friezes of Angkor in Southeast Asia, humanity's patrimony is fast disappearing. Worse still, in its place, the manufacture and acceptance of newly minted history are thriving and distorting the perception of the past, no less a fiction than a Disney remake of history or an Oliver Stone documentary.

If we accept any of the above statements as valid, then we cannot also hold the view that the present mechanisms for controlling the theft and trade in smuggled antiquities are working. Despite the few instances of incarcerated malfeactors and some items repatriated, the system of legal redress has been unable to stem the clear-cutting of the cultural past. We must conclude therefore that the network of enforcement systems comprised of international repatriation agreements, the civil and criminal punishment codes of nations, and international treaties has proved insufficient to protect the past.¹ History is rich in successful prosecutions beginning with Cicero's prosecution of Gaius Verres in 70 BC, for his rapacious looting of Greek art and statuary while Roman proconsul of Sicily. The nineteenth-century Lieber Code regulated the behaviour of military forces in protecting cultural works. Subsequently, there are the divergent approaches taken by local laws, exemplified by the application of the US National Stolen Property Act of 1934 to the illegal antiquities trade and the many international conventions such as the 1954 Hague Convention (for the Protection of Cultural Property in the Event of Armed Conflict), the 1970 UNESCO Convention (on Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property), and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. All have attempted but collectively failed to stem the tide. All were to have transcended the

particularisms of national regulations, but were unable to foil the private appropriation of the collective patrimony. The missing antiquities columns of this newsletter are an eloquent testimony to that sad fact.²

The simple faith in nations and institutions to act contrary to their economic and financial self-interest can hardly be tempted to think itself out of its box. Despite the legal superstructure, the 'cultural heritage of all mankind' (as cited in the preambles to both the 1954 and the 1970 UNESCO Conventions) is disappearing. What is agreed to be collectively owned is being appropriated for the private consumption of individuals and institutions. In that process, the story of the past, embedded in the context and find-sites of artefacts, is erased through the rush to own and display. But without a voice to raise in the marketplace, future generations who are also part-owners of the patrimony have been quite literally robbed of their property and history.

To understand why our legal and international framework of laws and treaties has been ineffective in stemming the tide, one has to investigate why these systems have failed and what might be done. For that, we must understand the marketplace which facilitates the trade in these objects.

If there is one characteristic that distinguishes economists from mere mortals, it is their understanding and admiration of how markets work. Energized by unfettered self-interest, we are all motivated to produce and acquire what meets our desires. Prices move the process along efficiently. A person desiring a gizmo can buy it at a price, which after the trade reflects the satisfaction of both buyer and seller with the transaction. It is tautologically true that under these conditions, the total sum of satisfaction of all parties is at the highest level in unfettered, unconstrained trade. Otherwise, unsatisfied sellers would wait for higher prices and buyers would sit on their hands awaiting lower prices. From this emerges an enduring principle: when individuals pursue their own aims and interests in a market, the outcome measures the benefits and welfare of all, and in certain cases it is the highest amount of welfare that society as a whole can achieve — a so-called Pareto optimal condition. Although the idea is still controversial among the

religious, morally positive outcomes emerge from unrestrained individual pursuit of self-interest.³

Two blemishes mar this garden of perfection. First, markets work but only if the rules of the game are set and everyone abides by them. Second, some goods belong to no one and everyone at the same time, so-called public goods: the ocean fisheries, unpolluted air and water, national defense, the electro-magnetic spectrum, and, for some, the cultural heritage, both in its material and aesthetic manifestations. The question immediately arises, whether these goods also should enter the marketplace to be traded like other goods, particularly as not all owners are able to participate in the bidding. Here the two imperfections converge.⁴

The marketplace is not a morally free zone. It is a mechanism to allow people to efficiently satisfy their wants. But some wants are considered bad by some people while others are, at best, indifferent. Some countries diligently monitor the illegal trade in antiquities and do their best to quash illicit trading, while others neither sign international treaties nor erect national barriers to the trade. Moral constraints are needed regulating these 'immoral' markets, it is argued, to prevent bad behaviour and to achieve universal happiness: security of one's property, enforcement of contracts, and deterrence of false trading, among other evils. Can all these conditions be met without a moral and punitive legal enforcement system for those who would do bad things? And if so, who sets the rules and what system of enforcement is fair, honest, and deters rule breakers?

If the heritage was like any other private asset, its integrity could be assured by the tort and criminal law systems already in place. Property owners would have an interest in financing protective security arrangements and could also take transgressors to court. But since the cultural heritage is uniquely a public trust, a so-called public good, it is endowed with attributes that make its protection problematic and solely dependent on the state as its defender and protective rule maker. Like other public goods, the patrimony has unique characteristics: firstly its non-excludability — the enjoyment of the cultural heritage is wide spread, enjoyed by multiple consumers without detracting from enjoyment by anyone else; secondly, its non-rivalness — con-

sumer access and benefits are difficult to deny others once the good has been provided. The highways and the court and judicial systems are classic examples of public goods, as are national defense and education. The benefits of a well-educated work force spread beyond the improved welfare of the individuals concerned, increasing the productivity of society as a whole.

These characteristics have major implications. For a rational consumer, since benefits can be enjoyed and not easily denied, spending to secure the public good can be skipped without loss of benefits. The United States perennially complains of its 'unfair' share of the costs of NATO defense while treaty partners enjoy the treaty's protective umbrella without increasing their own defense spending. For similar reasons, expenditures on education and the judicial system can be expected to fall below optimal levels. It is not surprising therefore that funds for protecting the heritage are in short supply. Also not surprisingly, preventative expenditures fall below the level needed to deter illegal trade. Deterrence then falls to punishment meted out by the judicial system. But judicial punishment is a weak and infrequently invoked power.⁵

As with the protection of other public goods, prosecutions will fall sharply below the level needed to deter potential wrongdoers as long as the returns to enforcement agencies fall below the cost of prosecutions. Similarly, offenders can be expected to take advantage of insufficient enforcement efforts. As long as the profitability of the trade remains strong, the possibility of punishment will be ineffective in deterring new entrants to the unseemly business. Some level of crime and plunder seems to be acceptable, reflecting society's unwillingness to either increase the likelihood of conviction or its severity — the two deterrents of crime. 'Hang them all' is unlikely to receive unreserved endorsement from the general populace.⁶

A rational actor balancing the probability of punishment and potential enrichment will most likely view the threat from an under-funded enforcement effort as less likely than the probability of making large gains from loosely secured heritage sites. The corrective remedies of return and restitution provide relief only in cases of the highly valuable and most renowned, such as the

'Lydian Hoard', the 'Steinhardt gold phiale', and high profile statuary, e.g. the Theban Triad returned to Egypt and the Phanomrung lintel returned to Thailand. These, however, are the exceptions. In the case of the 'Sevso Silver', restitution was unsuccessful despite lengthy litigation. The expense of legal proceedings, arduous legal manoeuvrings, and the practical difficulties involved in applying complicated and conflicting antiquities law and determining the true national origins of artefacts deter litigation for all but a few items of dazzling beauty and fame. But even when repatriated, no court-made remedy can replace the context lost in looted artefacts.⁷

Thus, the most efficient policy is one to diminish the profitability of the looting enterprise. At the same time, to alter the balance of forces favoring rule breakers, the strength of private self-interest can be enlisted to strengthen the security of archaeological sites. The policy issue thus becomes one of devising incentives to redress the imbalance.

To put a brake on the debilitating consumption of resources in other areas of public goods, regulators have sold entitlement rights enabling private parties to use these goods at a price. Previously, relatively costless exploitation has depleted fishery stocks and allowed acid rain to destroy waterways.⁸ Auctioning access to public goods raises the cost of use, moderating consumption of the resource and providing a new revenue source for conservation efforts. Bidding for these entitlements has: 1) provided an incentive for private parties to secure rights of access against infringement from non-payers; 2) reduced the overall amount of consumption; and 3) provided additional revenues to the state.

As an example of the third rationale, proceeds from the auctions in 1995 and 2000 for third-generation mobile phone licenses in the US and Europe provided large revenue windfalls for the governments involved. Tradeable property rights for exploitation of fishery resources are proliferating throughout the world's fisheries (Iceland, New Zealand, Australia, the Netherlands and Norway) and for power plant emissions in the US. These policies led to sustainable levels of fishery harvests and a reduction in sulphur dioxide emissions (a main culprit in acid rain) from

power plants in the American Midwest.⁹

Similarly, the looting of the heritage, now going unmonitored and unregulated, can be refashioned into responsible excavation practices. Here, potential archaeological sites are the resource at risk and its exploitation is the helter-skelter looting of the artefacts. The proposition is straight forward: the state opens to auction the limited excavation rights to potential archaeological areas under the supervision of state-employed professional conservators to record and preserve the context of finds. The reward to auction winners is the property right to own what is found subject to the state's pre-emptive right to retain or bid for finds of prime interest. Various potential sites come to mind in the American Southwest, Central America, the Middle East, and Southeast Asia, as well as the usual treasure lands of the Mediterranean littoral.¹⁰

Essential here, and not present in the other examples, is the need to record and preserve what is uncovered. Some finds are kept by auction winners; others retained by the state. The methods employed can be restricted by legal covenants and the excavation process itself overseen by professional archaeologists. Successful bidders would abide by contractual agreements in order to maintain access to subsequent auctions. To preserve the value of their rights, they would also have an incentive to monitor site integrity to exclude free booters. State regulators would then have financial resources not previously available to supervise the process, record the historical context now lost under present conditions, and preserve what is uncovered. With revenue proceeds, the state could also bid for finds which are considered an essential part of the national patrimony.¹¹

Under the new process, larger numbers of artefacts would find their way to the marketplace with their context intact. Pieces without a find-site tag coming onto the market would become *prima facie* suspect with would-be sellers bearing the burden of proof of authenticity. With protection comparable to copyright and patent law, auction winners cloaked with the imprimatur of a state-authorized property right could enlist the courts to prevent the dilution and potential loss in value of their permit holdings from the marketing of fake and unauthenticated pieces by

invoking the power of injunction and indemnity.

Much hard work lies ahead to devise details appropriate to the problem: determining the structure of the auction mechanism appropriate to the geographic nature of each site, the character of the market, the monitoring and supervision process, the process of selecting items pre-empted by the state for retention, and recruiting a core of supervisory archaeologists.¹² With a mechanism available, however, there is now less reason to watch helplessly as the past vanishes.

Notes

1. For the latest volumes documenting the extent and seriousness of the problem see Brodie *et al.* (2000) and Brodie *et al.* (2001).
2. An extensive recitation of existing national laws and international treaties is found in Mackenzie (2002), 129–36, and Brodie *et al.* (2000), 31–42. An earlier outline of legal protection for cultural property in the US is also described in Gerstenblith (1995) and Gidseg *et al.* (1999). Both articles also reveal the legal loopholes. Mackenzie's conclusion echoes the findings of other legal experts:
In this field [illicit antiquities trade], law seems to be creating problems rather than solving them. Ineffective prohibitions by source States combined with complex and hugely expensive civil mechanisms for recovery of looted artefacts, all amount to a system of legal governance which is demonstrably failing to stop the plunder (Mackenzie 2002, 160–61).
Corroborating the inadequacy of the legal mechanism is Spiegler & Kaye (2001, 131), who note the prohibitive costs of legal redress and Borodkin (1995, 399–405) who cites among other difficulties the costs of lengthy and drawn-out court proceedings which deter redress through the law.
3. The welfare theorem of economics (as amended by Coase) says that if everything is tradeable then no action is possible to improve consumers' welfare, a so-called Pareto-efficient outcome. See Farrell (1987), 113–14.
4. According to the Coase theorem, if property rights are assigned clearly, individuals have an incentive to work out efficient economic arrangements. The 'Tragedy of the Commons', such blights as depletion of non-renewable resources, excessive grazing of common land, excessive fishing in international waters, pollution of the environment, etc. result from the failure to assign property rights. See Stiglitz (1994, 11). Stiglitz also cautions that the absence of property rights may not always be the central problem (Stiglitz 1994, 12). Two other factors, imperfect information and high transaction costs are implicated in inefficient outcomes.
5. See Pastore (2001) for both the inadequacy of resources

for preventative security measures and insufficient deterrence of punishment: under the Italian penal code, 'the theft of archaeological artefacts from the subsoil is punished as simple theft, less serious than theft from the supermarket' (Pastore 2001, 155).

6. Polinsky & Shavell (2000) cite the low likelihood of arrest for the following crimes (1997 data): burglary, 13.8%; automobile theft 14% and arson 16.5% (71, n. 77). They conclude that these low rates reflect the higher costs that more intensive policing would involve. More generally, see Ehrlich (1996) and Friedman (1999) for the market theory of crime and crime control strategies. A mechanism explaining why a State may rationally choose to adopt a policy of tolerating illegal trade and collusion with mafias is modelled in Anderson & Bandiera (2003).
7. For some of the legal difficulties inherent in proving restitution, see Pastore (2001, 155). *Contra* Gerstenblith's assertion (2001, 245) that repatriation is an effective means of deterrence, see Mackenzie (2002, 130–31) for its ineffectiveness. Spiegler & Kaye (2001, 121) emphasize the obstacles in pursuing such cases even under a (US) court system and well developed body of law favouring recovery of stolen property. These hurdles, they conclude, make legal restitution a problematic resolution of the looting problem.
Greenfield (1996, 198) also expresses scepticism on the effectiveness of restitution. Among other problems, she cites difficulties in establishing criminal jurisdiction, extradition and lack of judicial cooperation in penal matters (Greenfield 1996, 258–9). One of the more egregious cases demonstrating the inadequacy of legal redress for restitution was the refusal of the House of Lords to enforce New Zealand export laws when the authorities attempted to recover looted Maori carvings from Sotheby's London and the defendant dealer, George Ortiz, despite the Lords' acceptance that the Maori Taranaki panels were indeed stolen. See also Mackenzie (2002, 130–31).
8. Official endorsement of this policy was sanctioned in the Council of Economic Advisors, *Economic Report of the President for 1998*. Academic endorsement is found in Sagoff (1998), Brown (2000), Hahn & Hester (1989) and Klassen (1996). Nausbaum (1992) describes one of the earliest applications in reducing lead additives in gasoline. A general and expansive treatment is in Tietenberg (1994) and Krautkraemer (1998).
9. A description of the successful outcome of the program for curtailing acid rain emissions is in Ellerman *et al.* (1997), Ellerman *et al.* (2000), and Joskow *et al.* (1998). Other endorsements are in Schmalensee *et al.* (1998), Stavins (1998), and Stavins & Whitehead (1997). Qualified dissents on income equity grounds are raised by Palsson (1998), Gustafsson (1998), and Helgason & Palsson (2001). Suggested application to curbing global warming is proposed in Intergovernmental Panel on Climate Change (2001), and McKibben & Wilcoxon (2002). One of the most recent applications of the mechanism by the US Government is its approval of leasing and trading in

radio spectrum licenses by wireless companies (see Labaton 2003, A1).

10. Some of the earlier arguments for an auction system are found in Borodkin (1995) and Perlstein (1996). The inefficiency and counter productiveness of current practices is found in Sax (1999, 166–7). The deleterious result of the present system of quasi-exclusive licensing is exemplified by the free-for-all battle between rival palaeoarchaeological teams and the imprisonment in Kenya of members of the team which had uncovered the oldest homind fossil yet found in Africa. See Balter (2001a,b), *Nature* (2001), and Pickford & Gitonga (2001).

11. A recent example of the successful application of the procedure for the control and supervised sale of cultural material with context and find site information intact is the Hoi An Hoard of Vietnamese ceramics dating from the fifteenth century with styles spanning a 150 year period. See Alder & Polk (2002, 51–2).

The Hoi An shipwreck was discovered by fishermen in the early 1990s off the coast of Central Vietnam. It is described as the most important find in Vietnamese ceramics to date. See Guy (2000) and Fay (2000). Soon after discovery, looters dragged steel nets along the sea bottom to dislodge pottery pieces and these began to turn up in markets worldwide. In mid-1997, the Vietnamese government authorized a local company, VISAL, in cooperation with a Malaysian salvage company, SAGA, to locate and search the wreck. They were given exclusive rights to excavate. Together with MARE, the Oxford University Maritime Archaeological Unit, the consortium retrieved 244,000 artefacts of which 150,000 pieces were intact. In exchange for their efforts and costs of approximately \$4 million, SAGA received 40% of all duplicate objects and shared with VISAL the proceeds of the auction of materials in the US. The Vietnamese government retained all ‘unique’ pieces and another 10% were selected for distribution to other museums in the country. See Fay (2000, Part One: The Excavation.)

12. See Klemperer (2002) for some of the difficulties in designing an appropriate auction mechanism.

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The Battle for the Past: Comment

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Krowitz's *The Battle for the Past* presents an analysis of the current state of cultural patrimony protection from the perspective of an economist. He asserts that we are losing the battle to preserve the world's cultural heritage, despite myriad international laws, treaties, local and national efforts, civil and criminal punishments and glo-

bal enforcement systems. His solution centres on auctioning the right to excavate sites, with some finds becoming property of the excavator, and others remaining in the country of origin. This proposal is tantamount to legalizing the trade in antiquities, rather than thwarting it, thereby opening up a legitimate market for the benefit of those wishing to purchase items with a secure provenience (see also Merryman 1995).¹ The aim of this comment is to discuss some of the key issues raised by his article.

Krowitz doubts the effectiveness of current laws aimed at protecting cultural patrimony, but we would like to highlight some of the positive effects such legislation has had on stemming illicit traffic of antiquities (see Coggins 1995; 1998; Gardiner in press; Gerstenblith 2001; Hersher 1989; Luke 2003; Renfrew 2000a). The 1972 Pre-Columbian Monumental or Architectural Sculpture or Murals Statute,² which prohibits the import of such material into the United States without a permit issued by the country of origin, has been an effective tool in diminishing its trade at the major auction houses. Recent customs cases document the success of the 1986 Convention on the Cultural Property Implementation Act³ in the United States among other regulations,⁴ and a number of major court cases have alerted looters, dealers, collectors and museums that they can be held accountable for purchasing, trading and/or exhibiting illicit antiquities.⁵ The recent conviction of Fredrick Schultz (Gerstenblith 2002; Lufkin 2003a,b), for example, is expected to have a profound impact on the illicit trafficking of antiquities. New efforts by Interpol, the Art Loss Register and Object ID have focused on art and artefact registration and recovery of stolen items. Finally, the recent ratification of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property by Japan (2002), the United Kingdom (2002) and the implementation by Switzerland (Swissinfo 2003) in October 2003 — all major markets and, in the case of Switzerland and the United Kingdom, key transit countries — will change the international market for antiquities.

Krowitz's solution to protecting archaeological context is to auction the right to excavate sites in source countries, with the excavations pro-

ceeding under the supervision of professional archaeologists.⁶ He argues that auctioning sites as potential treasure troves for artefacts will diminish the profitability of the looting enterprise. Krowitz considers the archaeological heritage to be an economic resource akin to the fishing industry, and that it can be managed accordingly. We take issue with his proposal in three ways. First, fish are a renewable resource, while archaeological context and artefacts are not. Second, auctioning archaeological excavation rights places an economic value not only on objects, but also on sites, further commodifying cultural assets (see Frey 1997). Third, auctioning the right to excavate sites and demanding known provenience and provenance of every cultural artefact assumes an exhaustive inventory of sites on the landscape as well as all antiquities⁷ — Herculean tasks.

Implications that the looting of cultural property is currently unmonitored are false. As field archaeologists are well aware, the vast majority of source nations have established and now enforce stringent protective policies and regulations to combat illicit digging and to monitor ongoing legitimate excavations. In many Central American countries (e.g. Belize, El Salvador, Guatemala, Honduras, and Nicaragua) and Mexico, archaeologists applying for an excavation permit must be trained to MA level, and often to PhD, with several years' excavation experience. Obtaining a permit requires a well-developed plan outlining excavation goals and methods. In addition, archaeologists are required to address long-term conservation and care of the site and finds, and often to be involved in planning and identifying funding support for the development of sustainable tourism projects. Archaeologists from the respective ministries of culture (or similar organizations) monitor all excavation and museum research. In several countries, a national partner may be required before excavation can proceed and a percentage of the project's budget is often paid directly to the respective ministry of culture (or equivalent governmental body). In Turkey, for example, each foreign archaeologist requesting an excavation permit must have a PhD, five years' excavation experience in Turkey, and an institutional position. If an excavation permit is granted the archaeologist must provide proof

of funding for at least five years work, and pay for all excavation costs, storage of finds and site security. Furthermore, a professional Turkish archaeologist, paid by the foreign project, must be present on site at all times to represent the Turkish Ministry of Culture. In all of these countries, and most others, an interim report of all excavation and finds must be filed within a year of the respective excavation season.

These examples demonstrate that source countries do have professional archaeologists and contractual arrangements for monitoring the excavation of cultural patrimony, and that they do profit monetarily as well as culturally through the revenue and educational opportunities that accrue from site conservation, site protection and the development of sustainable tourism. And, foreign archaeologists stand to learn a great deal and enrich their projects through collaborative efforts with local communities, archaeologists and museums.

Krowitz suggests that by approaching the problem of illicit looting and trafficking from a monetary perspective we can legalize the market and at the same time satisfy demand, preserve context, and keep profits in the country of origin. He focuses on the naughty looters — those individuals who physically plunder sites and destroy context (Kennedy 2003). Yet while looters may cause the actual destruction, they do so because they have contacts in the 'market' (see Kirkpatrick 1992; Özgen & Öztürk 1996), and there is demand (Brodie & Doole 2001). The antiquities market is now so reliable that subsistence diggers, frequently out of extreme poverty, pillage in order to earn money to cover basic needs, such as housing and food for their families (see Matsuda 1998; Paredes 1998; Politis 2002). Collectors argue that by legalizing the market pillage would be reduced; archaeologists reply that the market has become so strong that pillage would continue at an increased rate with a larger market.

What is lacking from these analyses is serious research into collecting, particularly over the last thirty years, the period in which collectors and archaeologists have been confronted by new regulations and ethics regarding the traffic in antiquities (see Fagan 2000). A comprehensive study of market countries, taking into

consideration both transit points and major destination points (such as auction houses and galleries) as well as the general collector ethos has yet to be undertaken.⁸ Market countries, particularly European countries, often function as locations where illicit objects are laundered; that is, where title is transferred and provenance created prior to launch on the U.S. market (Kersel 2003; Alder & Polk 2002).⁹ Collectors contend that artefacts with a known context are more valuable and sought after, but we are unable to find reference to a true archaeological context (horizontal and vertical) in any major auction catalogue for antiquities. Hence, we pose a question to Krowitz: if a true microeconomic analysis with a focus on auctioning artefacts with context is to be the best model for dealing with the trade in antiquities, where is the data on which to base our framework? Economic supply-and-demand driven models support Merryman's statement: 'collectors are necessary to the market because they provide the bulk of the demand, a demand that, if not met in the licit market, will continue to be supplied by the black market' (Merryman 1995, 29). But by objectifying human agency as 'demand', collectors and dealers escape accounting for the contribution made by practices to the destruction of archaeological landscapes, and historically they have not placed great importance on professional archaeologically documented provenience when purchasing antiquities. Krowitz's model suggests archaeologists, countries of origin, and local communities should embrace the auctioning of archaeological sites and the eventual sale of cultural patrimony in the marketplace under the guise of helping them (i.e. source nations and local communities) protect and preserve their archaeological past. He suggests that the source nations can use the proceeds of their excavation auctions to buy back 'essential parts of the national patrimony'. Presumably this means that nations can purchase items that were taken long ago and not those pieces sold as a result of his proposed excavation auction!

A fundamental difference in attitude and perspective is reflected in Krowitz's approach. To those trained in archaeology, whether in an anthropological, classical or historical tradition, the focus is on the association of artefacts with each other and their contexts. Krowitz's sugges-

tion that artefacts should be separated and scattered across the globe underscores an important misunderstanding of the international protection enterprise. His suggestion regards individual artefacts as intrinsically valuable, with sites reduced to artefact repositories, and the importance of maintaining the integrity of artefact assemblages for future analysis or examination is not considered. In contrast, archaeologists focus on the context of features and artefacts, maintaining assemblage integrity, preservation of the archaeological landscape, and public access to all finds (see Chippindale 2000; Chippindale & Gill 2001; Coggins 1995; 1998; Elia 1993; Gill & Chippindale 1993; Hersher 1989; Pendergast & Graham 1989; Reents-Budet 1994; Renfrew 2000b). Supply-and-demand models also ignore the historical, symbolic and spiritual meanings that are at the heart of the antiquities trade and tourism for many source countries and archaeologists (see Frey 1997; Mason 1999; Pyburn & Wilk 2000; Silverman 2002; Warren 1989; Watkins *et al.* 2000) and highlight the number of different and sometimes conflicting ways of evaluating cultural heritage. As Gloria Hasemann has argued 'cultural significance cannot always be *understood* by outsiders, even when it can be *recognized*' (1996, 2, emphasis original).

Until we can answer questions concerning the size and scope of the current antiquities market, the importance of provenience to the collecting community,¹⁰ and what existing examples of legalized markets tell us about the benefit of such a system (Hollowell-Zimmer 2003; Kersel 2003), protection efforts must continue to focus on international and national legal frameworks for cultural property protection. It is also important that collectors, dealers, archaeologists, ministries of culture, museums and the public begin a more informed dialogue on how best to achieve protection of this precious non-renewable resource (see Hersher 1989; Messenger 2000). Rather than continuing the commodification of cultural patrimony, collaborative projects with local populations focused on both education and scientific research goals (see Brodie 2002; Pyburn & Wilk 2000) and long-term loan exchanges (see Gardiner 2003a) are essential to our mutual understanding and respect of these so-called public goods. True integration and partnerships focused

on preserving, investigating and interpreting the past can be achieved only if every stakeholder comes to the table with the desire to preserve archaeological heritage, free of personal and political agendas.

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Notes

1. We define provenience as an artefact's context and provenance as the artefact's recent history.
2. 19 U.S.C. 2091–5.
3. The Convention on Cultural Property Implementation Act implements articles 7b and 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in the United States.
4. A few of the most recent cases have dealt with seizures and returns of material from El Salvador (Gardiner in press; Ortiz-Cañas 2001), Honduras (Mayhood 2002; VOA 2003), Guatemala (Green 2003; Ramírez 2003), Bolivia (El Diaro 2003), Peru (Bardwell 2003; KUHF 2003; Associated Press 2003). The *McClain* doctrine, *Schultz* case and *United States v. Pre-Columbian Artefacts* have focused on violations under the United States' National Stolen Property Act.
5. *Republic of Turkey v. The Metropolitan Museum* (Özgen & Öztürk 1996); *McClain* case (*United States v. McClain* 1979); Sipan (Kirkpatrick 1992); Getty Kouros (Renfrew 2000a, 40–42).
6. Nowhere does Krowitz state that those receiving the rights to excavate sites should be trained archaeologists themselves, only that their activities should be supervised by professional archaeologists. He also implies that such professional monitoring is not currently protocol in most countries.
7. Krowitz implies that under his proposed model those selling antiquities (or forgeries) not vetted by the respective country of origin could be prosecuted for infringement on the auction winners' rights; thus, any new legislation would have to be retroactive. He offers little guidance, however, on how to accomplish the global task of inventorying all items in excavation depots, museums and private collections.
8. The antiquities business supposedly runs to \$5 billion a year (see Bowen 2003).
9. Ongoing research by Kersel of Israel's antiquities market — one of the few countries with a legally sanctioned market and a clear destination and transit point for material from the Middle East — will address the question of how a legal market impacts the looting of archaeological sites.

10. A growing number of studies point to direct connections between the loss of context and pillage of specific artefacts due to the market (see Luke & Henderson 2003; Roosevelt & Luke 2003; Gilgan 2002; Elia 2001; Wylie 2000; Özgen & Öztürk 1996; Vitelli 1984).

The Battle for the Past: Reply

EDWARD KROWITZ

Kersel and Luke (hereafter K&L) are right on one point and wrong on most others. They're right: we don't know the extent of the problem; but K&L won't even consider alternative solutions without exhaustive research studies. Until they get perfect knowledge, they want to rely on legal restraints and moral persuasion. If not knowing the extent of the problem is to stop remedial efforts, vaccines would never get produced to fight infectious outbreaks for instance (think SARS). Sufficiency not certainty should be the watchword.

Markets. K&L confound the role of markets. They approvingly cite studies blaming markets for the loss of antiquities (their note 10) — akin to blaming the moon for tidal erosion. My concern is to stop the erosion of the cultural heritage. Engaging the moon or other heavenly bodies or, as they suggest, stakeholders in an educational improvement dialogue has not solved the problem in the past and is unlikely to do so in the future.

How much is too much? K&L pronounce themselves delighted with the Schultz conviction and the current legal structure on which they predicate a rosy future of a loot-free international market. Where is the evidence that the Schultz case, for instance, has alerted anyone to desist? Since K&L profess themselves ignorant of the amount of looting, how will they be able to measure improvements to deterrence? K&L follow the sure fire formulae for successful predictions: omit quantities or a timeframe.

A more profound objection: they say source nations have established and enforce stringent anti-looting regulations. At the same time they assert villagers turn to looting to convert their caches to cash because 'the antiquities market is

now so reliable'. K&L cannot have it both ways: the present enforcement framework is either adequate or looting is still a serious problem.

If thought adequate, it is hardly effective. For example, in the US, the serious crime most likely to result in arrest is arson, with only a 16.5 per cent arrest rate (my note 6). Translating this to detecting looting means that over 80 per cent of looting crimes will go unpunished at best. In the real world, archaeological theft in Italy is treated as a less serious crime than supermarket theft (my note 5).

Solutions. K&L recommend education and dialogue. As the presiding judge in the Schultz case observed, the defendant may be a good family man, with many testimonials from pillars of society to his outstanding character. What education program do they recommend for Mr Schulz? In reality, he, like the subsistence villagers cited by K&L, is motivated by financial self-interest. Change the incentive structure — don't try to reform moral character — and the illegal antiquities business can be deterred.

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