

Art Crime

Terrorists, Tomb Raiders, Forgers and Thieves

Edited by

Noah Charney



Art Crime

This page intentionally left blank

Art Crime

Terrorists, Tomb Raiders, Forgers and Thieves

Edited by

Noah Charney

Association for Research into Crimes against Art

palgrave
macmillan



Selection, introduction and editorial matter © Noah Charney 2016
Foreword © Karl von Habsburg-Lothringen 2016
Individual chapters © Respective authors 2016
Softcover reprint of the hardcover 1st edition 2016 978-1-137-40756-6

All rights reserved. No reproduction, copy or transmission of this publication may be made without written permission.

No portion of this publication may be reproduced, copied or transmitted save with written permission or in accordance with the provisions of the Copyright, Designs and Patents Act 1988, or under the terms of any licence permitting limited copying issued by the Copyright Licensing Agency, Saffron House, 6–10 Kirby Street, London EC1N 8TS.

Any person who does any unauthorized act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

The authors have asserted their rights to be identified as the authors of this work in accordance with the Copyright, Designs and Patents Act 1988.

First published 2016 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

Palgrave® and Macmillan® are registered trademarks in the United States, the United Kingdom, Europe and other countries.

ISBN 978-1-349-55370-9 ISBN 978-1-137-40757-3 (eBook)
DOI 10.1007/978-1-137-40757-3

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Art crime : terrorists, tomb raiders, forgers and thieves / [edited by]

Noah Charney.

pages cm

Includes bibliographical references.

1. Art thefts. 2. Art—Forgery. 3. Cultural property—Protection—Law and legislation—Criminal provisions. I. Charney, Noah, editor, writer of introduction. II. Association for Research into Crimes against Art.

N8795.A79 2015

364.16'287—dc23

2015021819

Contents

<i>List of Figures</i>	viii
<i>Foreword</i>	ix
<i>Preface</i>	xii
<i>Acknowledgments</i>	xvi
<i>Notes on Contributors</i>	xvii

Part I Forgers: Fakes and Forgeries

Introduction to Part I <i>Noah Charney</i>	2
1 The Beltracchi Affair: A Comment and Further Reflections on the “Most Spectacular” German Art Forgery Case in Recent Times <i>Saskia Hufnagel and Duncan Chappell</i>	9
2 On “In Praise of Forgery” <i>Blake Gopnik</i>	21
3 Connoisseurship All the Way Down: Art Authentication, Forgery, Fingerprint Identification, Expert Knowledge <i>Simon A. Cole</i>	27
4 The Police Investigation of Art Fraud <i>Vernon Rapley</i>	33
5 The Grape War of China: Wine Fraud and How Science Is Fighting Back <i>Toby Bull</i>	41
6 Fingerprinting Objects for the Control of Illegal Trafficking <i>William Wei</i>	57

Part II Terrorists: Policing, Investigation and Terrorism

Introduction to Part II <i>Noah Charney</i>	78
--	----

7	The Theft, Recovery and Forensic Investigation of Leonardo da Vinci's <i>Madonna of the Yarnwinder</i> <i>Martin Kemp</i>	87
8	Trying to Recover Two Francesco Guardi <i>Capricci</i> Stolen from Russborough, County Wicklow, in 1986 <i>Charles Hill</i>	95
9	The Role of the Police in the Co-Production of Art Security in London <i>John Kerr</i>	105
10	Thieves of Baghdad: And the Terrorists They Finance <i>Colonel Matthew Bogdanos</i>	118
11	Looting of Antiquities: Tearing the Fabric of Civil Society <i>Laurie W. Rush</i>	132
12	The Return of Iconoclasm: Barbarian Ideology and Destruction by ISIS as a Challenge for Modern Culture, Not Only for Islam <i>Francesco Rutelli</i>	143

Part III Tomb Raiders: Archaeology and Antiquities Looting

	Introduction to Part III <i>Noah Charney</i>	152
13	Looting and Passion of Greek Vases from Etruria and Magna Graecia: The Birth of the Great Collections <i>Stefano Alessandrini</i>	159
14	Aramaic Incantation Bowls in War and in Peace <i>Neil Brodie</i>	169
15	Temple Looting in Cambodia: Anatomy of a Statue Trafficking Network <i>Simon Mackenzie and Tess Davis</i>	179
16	Something Is Confidential in the State of Christie's <i>Christos Tsirogiannis</i>	200
17	Polaroids from the Medici Dossier: Continued Sightings on the Market <i>David W.J. Gill and Christos Tsirogiannis</i>	229
18	Illicit Trafficking and Destruction of Cultural Property in Africa: A Continent at a Crossroads <i>George Abungu</i>	240

19	Antiquities Crime as a Policy Problem <i>Lawrence Rothfield</i>	255
Part IV Thieves: Art Law, War and Policy		
	Introduction to Part IV <i>Noah Charney</i>	264
20	Nazi-Looted Art from Kyiv Destroyed in East Prussia – New Hope for More Survivors? <i>Patricia Kennedy Grimsted</i>	281
21	Surviving War and Peace: The Long Road to Recovering the Malevich Paintings <i>Howard N. Spiegler</i>	308
22	What Is Due Diligence? Making the Case for a More Responsible Art Market <i>Christopher A. Marinello and Jerome Hasler</i>	316
23	Outline of the Benefits Coming from a National Prosecution Service in Cultural Heritage Protection <i>Paolo Giorgio Ferri</i>	320
24	A Permanent International Art Crime Tribunal? <i>Judge Arthur Tompkins</i>	327
25	Getting Governments to Cooperate against Looting: Insights from the American and British Experience <i>Asif Efrat</i>	337
	<i>Index</i>	359

Figures

6.1	Roughness measurement/fingerprint of an oil painting	59
6.2	Schematic diagram showing the traditional method for measuring a roughness profile using a phonograph style needle	60
6.3	Schematic diagram showing principle of confocal white-light profilometry using two cones observed from above	61
6.4	μ Surf white-light confocal profilometer developed and manufactured by NanoFocus AG, Oberhausen, Germany	63
6.5	Fingerprint of the glaze of a porcelain cup	65
6.6	Fingerprints taken from two gold bracelets found in the ruins of Pompei	67
6.7	Fingerprints taken of the number 50 on two of the same map from two copies of the same book	69
6.8	Fingerprints taken from two new 2 Eurocent pieces	71
15.1	Map of sites visited and key locations	183
15.2	Trafficking routes in the “Channel 1” network	185

Foreword

Advances in the study of art crime and the importance of protecting and identifying cultural property

The title of this book triggers some questions. Normally when the term *art crime* is used, one thinks about thefts of paintings, sculptures and antiques, or new *objets d'art* or, in the worst case, a work of art that is so ugly or repulsive that some consider it an art crime in itself. But looking at the contents of this book, edited by Noah Charney, I found several chapters dealing with terms such as cultural property, collectable objects, antiquities, cultural heritage, art, archives and libraries. Nevertheless, taking into account the roots of the editor of this volume, namely the Association for Research into Crimes against Art (ARCA) and the criminological background of the majority of the contributing authors, I do understand, in this case, the use of art as the adjective to accompany the crime.

Still, I think that the term “cultural property” covers a broader perspective than just art and, at the same time, provides a legal reference that makes it clear that property cannot be damaged, stolen or completely destroyed without legal repercussions. Apart from that, cultural property does not have to be art, *per se*, and can stand for multiple material and immaterial cultural representations, often directly linked to identities. Of course, this all is food for thought, and we must not forget the international (academic) heritage debate.

Having said this, an important element that all types of art, cultural heritage, cultural properties and cultural resources can suffer from, which consequently then serves as a common denominator, is crime. To combat and prevent crimes related to cultural property, one still has to answer the much-debated question of what one may classify as cultural heritage or property. It should be simple to ascertain here that the scope of how different types of cultural heritage are classified begins and ends with tangible and intangible heritage, but that would be too easy. My aim is rather to reflect and contemplate on what is, in my opinion, a combination of these three types, triggering discussions about overlaps in the nature and identity of art and heritage, as well as the natural and intangible forms of cultural property. If cultural property is adequately identified, it will be easier to find and further develop the appropriate legitimate penal sanctions and legal protection instruments with which to protect it.

At the beginning of 2014, I visited the war-stricken areas of Mali. I traveled with our Blue Shield team, including Joris Kila, Christo Grozev and Siratigui Sogoba, to the town of Timbuktu. The goal was to assess and investigate

damage inflicted on cultural property but, to be more specific, destruction by the Ansar Dine group, a militant jihadist rebel organization that occupied the area. The jihadists were, at the time of the visit, already partly drawn back by French and national Malian troops. We found multiple types of inflicted damages, but I will focus on a form of iconoclasm exercised by the radical jihadists against the local Sufi population. In Timbuktu, we found that the Sufi Sidi Yahya mosque's "sacred door" had been demolished by the militant jihadists, in order to provoke the local population, who believe that the opening of this door would bring bad luck to the city. We also assessed the damage at the Ahmed Baba Institute, where parts of the famous Timbuktu manuscripts were housed. These manuscripts, dating back to the 13th century, consist of African documents ranging from scholarly works to short letters that have been preserved by private households in Timbuktu. The institute's Vice Director Cissé gave us a tour. He showed us the location where the militant jihadists had burned the manuscripts they found: those on display and those being worked on in the restoration studio. Though these incidents classify as forms of iconoclasm, I want to draw attention to the following problem.

In the city's Grande Mosque, several tombs of Sufi saints are embedded in the outside wall of the mosque. These were vandalized by the militant jihadists, some were booby trapped or filled with feces as a means of desecration but, luckily, they did not suffer the same fate as some neighboring Sufi tombs, which were completely demolished. The reason for the iconoclastic outbreak, as given by the radical jihadists, was that, according to Sharia Law, one is not allowed to worship either images of humans or human remains: in this case, the buried holy men of the Sufis, who we call the Sufi saints. Unfortunately, the devastation was not limited to the Sufi cultural properties. The Catholic Church of Timbuktu was completely devastated, and a wooden statue of the Virgin Mary was found lying on the altar, the statue's face totally scratched out – a classic iconoclastic deed, of the sort that has been practiced for millennia. Apart from establishing the return of religious-inspired iconoclasm, after it was already a phenomenon in the early part of the European Middle Ages, another question arises. Taking into account today's understanding that the destruction of cultural property is considered a crime or, in this case, a war crime, of which the perpetrators can be prosecuted and sentenced under national or, if this is not functioning, international criminal law, we have to wonder if human remains are cultural property. For instance, the "plastified" bodies created by German artist and scientist Gunther von Hagens are referred to in the press as "corpse art," but not everyone agrees with that. For instance, a spokeswoman for the British Nuffield Foundation was quoted in *The Observer* as saying, "Human tissue should not be bought and sold or otherwise treated as an object of commerce. Body parts, anatomical specimens or preserved bodies should not be displayed in connection with public entertainment or art" (*The Observer*

17 March 2002). At the same time, we do consider Egyptian mummies on display to be cultural heritage and, in some countries, remains of deceased royals are, in the legal sense, cultural properties owned by their respective governments. Indeed throughout history, human remains were kept and worshipped as relics, and they, too, are considered cultural property. The bodies of my family members, the Habsburgs, are technically considered the cultural property of the Austrian state.

There are good reasons to classify human remains as cultural property (including religious heritage), a combination of material, intangible and natural heritage. The intangible element is, for instance, the memory aspect that we also find in phenomena like traumascapes, narratives and *lieux de memoires*, either material, immaterial or a combination of both. Last but not least, and as said by French historian Pierre Nora, it is all about the link between memory and identity; therefore remembrance days, symbols, persons and even songs can trigger memories of a specific historical event. Consequently, symbolic places of memory are important components of national and local identity, or cultural distinctiveness. It would be very useful if all of these aspects could be topics of multidisciplinary research and debate, for instance between art-historians, legal experts, sociologists and anthropologists.

Apart from the terrible devastation of cultural property in, for instance, Syria, which takes place on a daily basis, there is a (global) safety risk connected with cultural property protection or cultural property destruction. Examples are the fact that fighting factions loot cultural objects to sell on the international markets; profits are used to buy weapons and ammunition, thus prolonging a conflict. In addition, and to illustrate the topicality of the subject, as I am writing this foreword, I heard on the news that the Turkish government is considering taking action in the Syrian conflict, in order to protect an important tomb located in Syria. In the same news broadcast, and according to the *Art Newspaper*, it is reported that Scythian gold and other rare artifacts from the Crimea, on loan to an Amsterdam museum, are in legal limbo after Russia's annexation of the Crimea.

These are reasons for multidisciplinary research on cultural property crimes, of which this book is a fine and important example. One way to begin is the creation of a university chair dealing with cultural property in the event of conflict and occupation. There are many requests from students all over the world that need supervision on this issue. I hope academia feels responsible enough to endow such a chair on shorter notice. Academic books like this one go a long way to promote the study of this relatively new multidisciplinary field, and I am proud to be a part of it.

Karl von Habsburg-Lothringen, LL.M., MBA, MLE

Preface

Terrorists alternately sell looted antiquities for millions, and bulldoze entire ancient cities. A Cambodian statue is put up for auction, then withdrawn when its missing feet are found back at the temple from which it was looted, still attached to a plinth. Tomb raiders plunder Etruscan treasure troves in Italy and all the best material seems to be funneled to major museums through only three notorious dealers, who hold a miniature oligopoly cornering the illicit antiquities market. Thieves steal paintings from Ireland and are chased to Antwerp, in a heist of cinematic proportions, while a crafty detective, teaming up with a reformed gangster and bare-knuckle boxing champion, pursues. An art forger, once caught, launches a career of wealth and celebrity, raising the question of whether he wasn't better off found-out than when he was getting away with his crime.

These are just a few of the stories told and analyzed in this volume of essays on the understudied, yet endlessly fascinating world of art crime. Divided into four parts (Forgers, Terrorists, Tomb Raiders and Thieves), representing looks at fakes and forgeries; terrorism, policing and investigation; the illicit trade in looted antiquities; and law, war and policy as related to art, the collection features the leading scholars and professionals in what is a very small field – indeed, you could count on two hands the true experts *not* included in this volume, which truly represents a who's-who of the study of art crime. The authors are intentionally drawn from a variety of backgrounds, not all of them academic. You will find the former head of Scotland Yard's Arts Unit and a retired undercover detective writing alongside decorated professors, world-renowned lawyers and former Ministers of Culture. This diversity demonstrates the strength in unity against crimes that take advantage of, or worse, damage and destroy, cultural heritage. The voices of professionals who learn critical information in the field are as precious as the theoretical analyses of professors in their university offices, and we all have a common goal: protecting cultural heritage and impeding the progress of organized crime and terrorist groups, both of which benefit from traffic in stolen art and looted antiquities. We have allowed the authors to write in a voice most comfortable to them, which sacrifices some of the normal unity of style that is traditional to academic books like this one, in favor of providing a platform for more writers of various backgrounds. Some essays are conversational, others highly analytical, but all are clear, well-written and present not only interesting stories and analyses, but also concrete suggestions for future improvement, which is often lacking from academic texts that offer problems without solutions.

One thing that all of the authors have in common (as do just about all of the experts whose work is not included in this volume) is a connection with ARCA. ARCA was founded as a non-profit research group in 2007, after the success of a conference held at the University of Cambridge, where I was a student at the time. The conference was apparently the first to bring together police and academics from around the world to discuss art crime. It was covered in *The New York Times Magazine*,¹ and praised as having essentially established a new field of study. I established ARCA with the encouragement of those who attended the conference (many of whom served as the initial trustees), and this book is, in many ways, the fruit of that conference.

At ARCA's core, it is a research group which promotes the academic study of art crime in a variety of ways. We run an annual conference on this subject, held every June in Italy, at which we give out annual awards for those who have distinguished themselves in this field, many of whom are contributors to this volume.² We run what is the first (and to date the only) interdisciplinary academic program on art crime in our annual, summer-long Postgraduate Certificate Program in Art Crime and Cultural Heritage Protection. While students of all ages (our youngest has been 21, our oldest in their mid-60s) and from around the world gather in the beautiful Umbrian hill town of Amelia (about an hour outside of Rome) for ten summer weeks, we bring together experts to teach intensive, 25-hour-long courses in their specialty fields.³ The former head of Scotland Yard's Arts Squad teaches a course in art policing and investigation, while storied professors teach courses in criminology, art and organized crime, art law and so on. This book represents our academic program in miniature, and is likewise a follow-up to ARCA's first book, *Art & Crime: Exploring the Dark Side of the Art World* (Praeger, 2009), similarly a collection of essays. This was followed by *The Thefts of the Mona Lisa: On Stealing the World's Most Famous Painting* (ARCA Press, 2011), a book-length essay on the many crimes involving or related to Leonardo's masterpiece. Like those books, any royalties from this one go directly to supporting ARCA's activities. No authors, nor I as the editor, receive any compensation, so your purchase is in support of a good cause.

In addition to books, conferences and an academic program, ARCA also publishes, twice-yearly, a peer-reviewed academic journal, *The Journal of Art Crime*. Now in its fifth year, this remains the only academic journal dedicated to this subject, and this book is something of a celebration of it. Around half of the chapters here began as articles in the journal, so this book is a sort of best-off from the journal's first years, though each article has been updated by its author. The remaining chapters were specifically written for this book, and are published here for the first time. If you are a student or enthusiast of this subject, we encourage you to subscribe to *The Journal of Art Crime*,

consider attending one of our conferences, or even our academic program. Information may be found at www.artcrimeresearch.org.

Before the book begins, it is useful to define a few terms. Some are confused by the interchangeable usage of fake and forgery. Technically there is a difference: a forgery is a new work, made from scratch, in fraudulent imitation of something else, whereas a fake is an existing work that is altered in some way so that it appears to be something else. But in practice, people tend to use these terms interchangeably, so the technical definitions are somewhat pedantic. Looted antiquities are distinct from “art theft” or “stolen art” in that looting involves the illicit removal of objects that remained buried in the earth (or sometimes the sea), and therefore have never existed before, for modern humans, which means that they will never appear on a listing of stolen works of art, because the last time they were seen was perhaps thousands of years ago. Stolen art, or art theft, tends to refer to stolen art or antiquities taken from extant collections, either public or private, but are known and accounted for, and therefore their loss can be reported. The term “organized crime” is often assumed to mean large international mafias, and it certainly can refer to such groups, but criminologically, it has a much broader definition: any group of three or more individuals working together in criminal enterprises for collective, long-term goals.

No one truly knowledgeable about art crime doubts that terrorist groups are involved in looted antiquities and that most art crime, since the Second World War, has involved organized crime at some level. Therefore, whether or not you are an art lover, it is objectively important to protect art and curb art crime, if you wish to impede the activities of organized criminals and terrorists. In 2005, it was announced at the annual Interpol Stolen Works of Art conference that intelligence efforts since 9/11 had demonstrated the links between stolen art/looted antiquities, terrorist funding and organized crime. It was even suggested that art crime was the third-highest-grossing annual criminal trade worldwide, behind only the drug and arms trades (all of which is discussed in several chapters here). This is the answer to the question that may arise, why should we care? Or, rather, is art crime *really* that serious? The simple answer is yes. This has been underlined in the weeks prior to my writing this introduction, specifically with international organizations confirming that ISIS has made millions selling looted antiquities, when it wasn't destroying them.

Thank you for your interest in art crime. We hope that the impressive essays in this book will be informative and inspire you to explore the field, and ARCA's activities, further.

Noah Charney
ARCA Founder & President

Notes

1. Mueller, Tom “To Sketch a Thief” in *The New York Times Magazine* (17 December 2007).
2. Past ARCA Award winners represented here include Duncan Chappell, Vernon Rapley, Charlie Hill, Laurie Rush, Neil Brodie, Simon MacKenzie, Paolo Giorgio Ferri, Francesco Rutelli, Karl von Habsburg, George Abungu and Howard Spiegler.
3. Past lecturers or professors on the ARCA Program represented in this book include Arthur Tompkins, Lawrence Rothfield, Christos Tsirogiannis, Neil Brodie, Stefano Alessandrini, Laurie Rush and Duncan Chappell.

Acknowledgments

This book is the fruit of a collective effort. ARCA is an organization that I may have founded, but the success of which has little to do with me. Since it was conceived, back in Cambridge, England, in the summer of 2006, I might have hoped, but could not imagine, that it would become an established, internationally recognized authority in this unusual field, bringing together the disparate scholars, police, museum staff, investigators, conservators, lawyers, archaeologists, criminologists and more, who wish to protect art and study those who ill-use it, in order to better protect it in the future. There are too many to thank, and everyone who contributed to this volume and to *The Journal of Art Crime* over the years, its authors and editorial board, should be named, but you know who you are. The dedicated ARCA staff and trustees, led by Lynda Albertson and featuring Crispin Corrado and Monica di Stefano, are warm, passionate people and a pleasure to work with. *The JAC*, as we call it, could not exist without the stylings of Urška Charney, and the assistance of my co-editors, Marc Balcells and Christos Tsirogiannis.

At Palgrave, thanks go to Julia Willan, who saw this project as something special and eased it through the process ably, and to Dominic Walker, who put its intriguing but sometimes wayward pieces together. Meg Lambert and Christine Weirich assisted with Mackenzie and Davis' chapter, and Lauren Zaneikis assisted with proofreading.

This volume is a small gift to readers, and to ARCA, because all the contributors kindly offered to write without compensation for this book, all profits from which go directly to support ARCA's research and education activities.

It is surprisingly exhausting and difficult to establish and maintain a not-for-profit organization. It is inevitably a collaborative effort, even for a tiny organization like ARCA. We have been honored to collaborate with so many incredibly kind, generous, supportive and brilliant people, and so many storied organizations, over the years.

A humble and sincere thank you.

Contributors

George H.O. Abungu is a Cambridge-trained archaeologist and former Director-General of the National Museums of Kenya. He is the founding chairman of Africa 2009, ISCOTIA (the International Standing Committee on the Traffic in Illicit Antiquities) and CHDA, the Centre for Heritage Development in Africa (ex-PMDA), among others. He has been a guest scholar at the Getty Conservation Institute in Los Angeles, chairman of the Kenya Cultural Centre, and is CEO of Okello Abungu Heritage Consultants. He has been a visiting lecturer at a number of universities, including Gothenburg University in Sweden, and the University of Western Cape in South Africa. He has over 60 publications in the disciplines of archaeology, heritage management, and museology, culture and development and has championed the role of the arts and its respect and protection in many of his publications, public forums and in his works as a museum professional, scholar and administrator. He has been an advisor to the Aluka project of the Mellon Foundation, the Global Heritage Fund, and is Vice President of the International Council of Museums (ICOM), a member of the International Jury of the UNESCO Melina Mecouri International Prize for Safeguard and Management of Cultural Landscapes and a board member for the Trust for African Rock Art (TARA), among others. He has sat on the World Monuments Watch panel and was Kenya's Representative to the UNESCO World Heritage Committee, and Vice President of its Bureau (2004–2009).

Stefano Alessandrini has worked for decades with the Archaeological Group of Rome (GAR), with a special focus on looting and the Etruscan necropolis of Cerveteri. In 1996, he became Head of the Office for the Protection of the Cultural Heritage for the Archaeological Groups of Italy, a position he served until 2010. In 2000, the Public Prosecutor's office in Rome appointed Alessandrini to examine the Medici files seized in Geneva, which included photographs of ancient objects. He identified more than 400 artworks illicitly exported to museums and collections around the world. He decided to involve Italia Nostra, the most important Italian Association dedicated to the protection of cultural heritage, in the proceedings and, in 2007, he was appointed to become a member of the Board of Directors of the Rome section of Italia Nostra. As an expert consultant appointed by Studio Legale A. Quarta, Alessandrini examined evidence, conducted research and provided expert advice during the preparation of the criminal trials against Marion True, Robert Hecht, Gianfranco Becchina and in further proceedings against traffickers of archaeological artifacts. He continues to investigate, research and write briefs, articles and reports on looted and/or

stolen artworks, identifying key elements and applicable legislation. Since 2006, he has been a specialist consultant to the Ministero per i Beni Culturali and the Advocate General Maurizio Fiorilli, for the negotiations with the Cleveland Museum of Art, the Ny Carlsberg Museum of Copenhagen and the Princeton Museum. Together with other experts and scholars, he assisted in the preparation of a scientific report on stolen Italian cultural artifacts which are presently stored in a warehouse owned by Robin Symes and now held by Mr. Symes's Receivers.

Colonel Matthew Bogdanos is a homicide prosecutor for the New York County District Attorney's Office. A native New Yorker raised waiting tables in his family's Greek restaurant in Lower Manhattan, he is a former middleweight boxer who joined the U.S. Marine Corps at 19. Leaving active duty in 1988 for the DA's Office, he remained in the reserves, led a counter-narcotics operation on the Mexican border and served in Desert Storm, South Korea, Lithuania, Guyana, Kazakhstan, Uzbekistan and Kosovo. Losing his apartment near the World Trade Center on 11 September 2001, he joined a counter-terrorism task force in Afghanistan, receiving a Bronze Star for actions against al-Qaeda. He then served in the Horn of Africa and three tours in Iraq, leading the international investigation into the looting of Iraq's National Museum. Exposing the link between antiquities trafficking and terrorist financing, and presenting those findings at the United Nations, Interpol, British Parliament and the Peace Palace in The Hague, he received a National Humanities Medal from President Bush in 2005, before deploying again to Afghanistan in 2009. He holds a classics degree from Bucknell University; a law degree, a master's degree in classics and a Recognition of Achievement in International Law from Columbia University; and a master's degree in strategic studies from the Army War College. In addition to dozens of military decorations, he received a 2007 Proclamation from the City of New York, a 2009 Proclamation from the City of Philadelphia and a 2011 Ellis Island Medal of Honor. Returning to the DA's Office in October 2010, he still boxes and continues the hunt for stolen antiquities. All royalties from his book, *Thieves of Baghdad*, are donated to the Iraq Museum.

Neil Brodie is a senior research fellow in the Scottish Centre for Crime and Justice Research at the University of Glasgow. He is an archaeologist by training, and has held positions at the British School at Athens, the McDonald Institute for Archaeological Research at the University of Cambridge, where he was Research Director of the Illicit Antiquities Research Centre, and Stanford University's Archaeology Center. He was co-author (with Jennifer Doole and Peter Watson) of the report *Stealing History*, commissioned by the Museums Association and ICOM-UK to advise upon the illicit trade in cultural material. He also co-edited *Archaeology, Cultural Heritage, and the Antiquities Trade* (with Morag M. Kersel, Christina Luke and Kathryn

Walker Tubb, 2006), *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology* (with Kathryn Walker Tubb, 2002) and *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage* (with Jennifer Doole and Colin Renfrew, 2001). He has worked on archaeological projects in the United Kingdom, Greece and Jordan, and continues to work in Greece. In 2011, he won the Anthony and Eleanor Vallombroso Award for Art Crime Scholarship.

Toby J.A. Bull holds three academic degrees, including a BA (Hons) in fine arts valuation and an MSc in risk, crisis and disaster management. He continued his studies in the arts by becoming a qualified art authenticator, studying at the Centre for Cultural Material Conservation and graduating from the University of Melbourne, Australia. He has extensive knowledge in forensic art authentication methods, as well as in the more theoretical and academic studies surrounding art fraud. His main interests include the topic of fakes and forgeries of Chinese ceramics and the problems of smuggled illicit antiquities emanating out of China. He has subsequently seen his work on this subject published in *Art & Crime: Exploring the Dark Side of the Art Market* (2009), as well as in *Cultural Property Crime* (2014). He also writes an editorial column for the *Journal of Art Crime*. Since 1993, he has worked for the Hong Kong Police Force. His expertise in the field of art crime has also led to him becoming an advisor to ARCA. He has lectured extensively on the art trade and beyond on topics surrounding art crime to the likes of Sotheby's Institute of Art and The World Congress of Forensics, Asia Art Week in London, as well as to the annual ARCA "Interdisciplinary Art Crime & Cultural Heritage Protection Conference" held in Italy. He recently chaired the Forensic DNA Panel at the World Gene Convention, where he presented a paper on synthetic DNA and its applications for the art and fine wine markets in helping to combat fakes. Seeing the disparity between public and private involvement in the field of art crime and its associated spin-offs, he founded TrackArt in 2011 – Hong Kong's first Art Risk Consultancy.

Duncan Chappell is a lawyer, criminologist and former Director of the Australian Institute of Criminology. He is also the chair of the Australian Research Council's Centre of Excellence in Policing and Security. Currently an adjunct professor in the Faculty of Law at the University of Sydney, he has researched and published on art crime as well as acting as an expert in art crime cases. His recent publications include *Crime in the Art and Antiquities World. Illegal Trafficking in Cultural Property* (co-author, 2011). In 2013, he won the Eleanor and Anthony Vallombroso Award for Art Crime Scholarship.

Noah Charney is Adjunct Professor of Art History, teaching at the American University of Rome, Brown University in Rome and the University of

Ljubljana. He is also the founder of ARCA, an international research group. He is editor-in-chief of *The Journal of Art Crime*, and writes regularly for a variety of magazines and newspapers, including *Esquire*, *The Atlantic*, *The Washington Post*, *The Daily Beast*, *Tendencias del Mercado de Arte*, *ArtInfo*, *The Art Newspaper*, *CNN*, *The Guardian* (for which he teaches a Guardian Masterclass called “How to write about art”) and many more. His many books include *The Art Thief*, *Art & Crime: Exploring the Dark Side of the Art World*, *Stealing the Mystic Lamb: The True Story of the World’s Most Coveted Masterpiece*, *The Thefts of the Mona Lisa* and *The Wine Forger’s Handbook*. His latest books are *The Art of Forgery* (2015), and *The Collector of Lives: Giorgio Vasari and the Invention of Art* (co-authored with Ingrid Rowland, 2016).

Simon A. Cole specializes in the historical and sociological study of the interaction between science, technology, law and criminal justice. He is the author of *Suspect Identities: A History of Fingerprinting and Criminal Identification* (2001), which was awarded the 2003 Rachel Carson Prize by the Society for the Social Studies of Science. He teaches courses in forensic science and society, surveillance and society, miscarriages of justice, the death penalty, historical criminology, and science, technology and law, and is co-editor of the journal *Theoretical Criminology*. He is Director of the Newkirk Center for Science & Society and is affiliated with the Department of History and the University of California–Irvine School for Social Ecology.

Tess Davis is an affiliate researcher in the Scottish Centre for Crime and Justice Research at the University of Glasgow. She comes to this project from the Lawyers’ Committee for Cultural Heritage Preservation – a not-for-profit institution based in the United States – where she was Executive Director until 2012. She previously worked for the nongovernmental organization Heritage Watch in Cambodia, first as Project Coordinator, and finally Assistant Director. Her career began at the Archaeological Institute of America. For the past decade, she has devoted herself to fighting the pillage of ancient sites and trafficking of artifacts, particularly in Southeast Asia. She has conducted extensive research on the illicit trade in Cambodian antiquities. She also conceptualized and implemented a number of exciting projects in the country, including an exhibition at Angkor Wat about threats facing the temple, a hotline for the public to report archaeological discoveries or looting, and a children’s book on preservation entitled *If the Stones Could Speak*. More recently, she spearheaded the creation of a heritage law database, as well as a legal internship program there. Due to this and her other work, she has been interviewed by *CNN*, *The New York Times*, *The Los Angeles Times*, the Public Broadcasting Station (PBS), Voice of America (VOA), the Australian Broadcasting Corporation (ABC), *The Phnom Penh Post* and *The Cambodia Daily*, among other national and international media outlets. While at the University of Glasgow, she aims to better comprehend the laundering of

antiquities, by tracing their journey from the ground in Cambodia, through the illicit and licit markets, to their stopping point in private and public collections. She will focus on a single style of statuary from a single site, Koh Ker, the brief capital of the Khmer Empire. Due to its remoteness, the temple complex was only “rediscovered” in the late 19th century and remained largely untouched until 1970, when Cambodia plummeted into decades of civil war, genocide and foreign occupation. During that time, throughout the turn of the millennium, the site was heavily plundered. For these reasons and others, it presents an opportunity to supplement other studies in the field, ask broader questions about trafficking and seek to answer them. Tess graduated magna cum laude from Boston University with a Bachelor of Arts in Archaeology and she holds a juris doctor degree from the University of Georgia School of Law. She now serves on the Advisory Board of Heritage Watch and the Ocean Foundation and is vice chair of the American Society of International Law’s Cultural Heritage and the Arts Interest Group. She is admitted to the New York State Bar, Third Department, and is a member of the New York State Bar Association. Tess is the research lead on “From Illicit to Licit: The Laundering of Looted Antiquities into Legitimate Artworks.”

Asif Efrat is Assistant Professor of Government at the Interdisciplinary Center (IDC) Herzliya, Israel. He holds a PhD in government from Harvard University and has taught at Cornell Law School. He is the author of the book *Governing Guns, Preventing Plunder: International Cooperation against Illicit Trade*.

Paolo Giorgio Ferri is a former Italian State Prosecutor and recipient of the 2011 ARCA Award for Art Policing and Recovery.

David Gill is Professor of Archaeological Heritage and Head of the Division of Humanities at University Campus Suffolk. He was a Rome Scholar at the British School of Rome and a Sir James Knott Fellow at the University of Newcastle upon Tyne. He was subsequently part of the Department of Antiquities at the Fitzwilliam Museum, University of Cambridge, and Reader in Mediterranean Archaeology at Swansea University. He has published widely on archaeological ethics with Christopher Chippindale. He has recently completed a history of British archaeological work in Greece prior to the First World War.

Blake Gopnik, a longtime art critic at *The Washington Post* and *Newsweek*, is now working on a biography of Andy Warhol for HarperCollins. He is critic-at-large for Artnet News, and his Daily Pic appears there and at BlakeGopnik.com.

Patricia Kennedy Grimsted is a research associate at the Ukrainian Research Institute at Harvard University and an honorary fellow of the International Institute of Social History, Amsterdam. She holds a PhD in Russian history from the University of California, Berkeley (1964) and has taught at several universities, including American University and the University of Maryland in the Washington area. She has received many fellowships and awards; she was a fellow at the Center for Advanced Holocaust Studies of the United States Holocaust Memorial Museum (2000–2001), and in 2002 she received the Distinguished Contribution to Slavic Studies Award from the American Association for the Advancement of Slavic Studies. She is the West's leading authority on archives of the former Soviet Union, the Russian Federation, Ukraine and the other Soviet successor states. She is the author of several historical monographs, documentary publications and a series of directories and many other studies on Soviet-area archives, including the comprehensive *Archives of Russia: A Directory and Bibliographic Guide to Holdings in Moscow and St. Petersburg* (Russian edition, 1997; English edition, 2000). She has written widely on World War II displaced cultural treasures (see below). Her numerous other activities include direction of ArcheoBiblioBase, a collaborative electronic directory project with data from the Federal Archival Service of Russia and the National Committee on Archives of Ukraine, maintained by the International Institute of Social History, Amsterdam. She is currently consulting for the Conference on Jewish Material Claims against Germany, assisting in the preparation of a virtual reconstruction of remaining dispersed fragments of the wartime records of the Einsatzstab Reichsleiter Rosenberg (ERR), in cooperation with the Bundesarchiv (German Federal Archives).

Karl von Habsburg-Lothringen has been President of the Association of National Committees of the Blue Shield (ANCBS) since 2008. He is a former member of the European Parliament for Austria and has specialized in international humanitarian law and intangible cultural heritage protection. A former air force pilot, he is still serving in the reserve of the Austrian armed forces as a key Cultural Property Protection Officer. He is Vice President of the Austrian Society for the Protection of Cultural Heritage and a founder member of Blue Shield Austria. In addition to being a frequent lecturer, he is an author of several publications on the subject of intangible cultural heritage protection and military cultural property protection and has carried out multiple documentation missions in conflict zones. In 2012, he won, jointly with Joris Kila, the ARCA Award for Art Protection and Security.

Jerome Hasler specializes in strategic communications and reputation management for Art Recovery Group. He oversees the company's press office and external relations and advises clients on their media engagement. Upon graduating from the Courtauld Institute of Art, London, he spent two years

as a strategist within Bell Pottinger's Geopolitical division, working on international political and corporate accounts. He advised clients on communications for political campaigns, foreign direct investment, litigation, stakeholder relations and crisis management for clients in Europe, Africa and the Middle East.

Charles Hill is a former Detective Chief Inspector in the London Metropolitan Police. He served in Vietnam in the 173rd Airborne Brigade, US 51668287, and graduated from George Washington University with a BA in history. He was a Fulbright scholar at Trinity College Dublin. In retirement, he has worked as a sole trader, art crime researcher and security consultant. In 2010, he won the ARCA Award for Art Policing and Recovery.

Saskia Hufnagel is Lecturer in Criminal Law at Queen Mary University London. She previously worked as a research fellow at the Australian Research Council Centre of Excellence in Policing and Security, Griffith University, Australia, and was a Leverhulme Fellow at the University of Leeds. During the completion of her PhD, she taught at the ANU College of Law, and between 2009 and 2011 she held a permanent teaching position at the University of Canberra. Her main research areas encompass law enforcement cooperation in Asia, North America, the EU and Australasia, comparative constitutional and human rights law with a focus on terrorism legislation and the policing of art crime. She has widely published on national and international police cooperation, security, comparative constitutional law and art crime.

Martin Kemp is Emeritus Research Professor of the History of Art at Oxford University. He has written and broadcast extensively on imagery in art and science from the Renaissance to the present day. He speaks on issues of visualization and lateral thinking to a wide range of audiences. Leonardo da Vinci has been the subject of a number of books, including *Leonardo* (2004). He has published on imagery in the sciences of anatomy, natural history and optics, including *The Science of Art: Optical Themes in Western Art from Brunelleschi to Seurat* (1992). He was trained in Natural Sciences and Art History at Cambridge University and the Courtauld Institute of Art, University of London. He was British Academy Wolfson Research Professor (1993–1998). For more than 25 years, he was based in Scotland (University of Glasgow and University of St Andrews). He has held visiting posts in Princeton, New York, North Carolina, Los Angeles and Montreal. He has curated a series of exhibitions on Leonardo and other themes, including "Spectacular Bodies" at the Hayward Gallery in London, "Leonardo da Vinci: Experience, Experiment, Design" at the Victoria and Albert Museum in 2006 and "Seduced: Sex and Art from Antiquity to Now," Barbican Art Gallery,

London, 2007. He was also guest curator for “Circa 1492” at the National Gallery of Art in Washington in 1992.

John Kerr is Lecturer in Criminology at the University of Roehampton, London. Until 2012, he was based at City University, London, and also lectured at London South Bank University.

Simon MacKenzie is a professor in the School of Social and Political Sciences at the University of Glasgow and a member of the criminological research staff at the Scottish Centre for Crime and Justice Research. He is a socio-legal criminologist with a law degree from Edinburgh followed by several years of legal practice, an MPhil in criminological research from Cambridge and a PhD in criminology from Melbourne. He is the author of *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (2005), which won the British Society of Criminology book prize in 2006. With Penny Green, he conducted an ESRC-funded evaluation of the Dealing in Cultural Objects (Offences) Act 2003, with the results published in their edited collection *Criminology and Archaeology: Studies in Looted Antiquities*, Oñati International Series in Law and Society (2009). He has held grants and research contracts from bodies including the ESRC, AHRC, UNODC, European Commission, UK Home Office, and in the case of the Trafficking Culture project, the European Research Council. As well as coordinating the Trafficking Culture project, he is Programme Director for SCCJR’s MSc in Transnational Crime, Justice and Security, an associate editor of the *Howard Journal for Criminal Justice*, a member of the editorial board of the *British Journal of Criminology* and sits on the Arts and Humanities Research Council’s Peer Review College. His main research interests are in white-collar crime, organized crime, policing and regulation, and transnational criminal markets. In 2014, he won the Eleanor and Anthony Vallombroso Award for Art Crime Scholarship.

Christopher A. Marinello is one of the world’s foremost experts in recovering stolen, looted and missing works of art. A lawyer for over 28 years, Chris began his legal career as a litigator and became uniquely proficient in negotiating complex title disputes between collectors, dealers, museums and insurance companies. He has recovered stolen and looted artwork valued at over \$350 million. In 2013, he founded Art Recovery Group – providing professional, authoritative due diligence and recovery services for the international art market and cultural heritage sectors. Art Recovery Group has also developed the ArtClaim Database – a new, technologically advanced system for the identification and cataloging of issues attached to works of art. As an adjunct professor at New York University, he has taught law and ethics in the art market and has recently co-developed an annual conference on art crime in London and New York City.

Vernon Rapley is Security Director at the Victoria & Albert Museum, London, UK. He is also founder and chairman of the National Museum Security Group, the UK lead for Tourism on the Cross-Sector Security and Safety Communications Group and a member of the ACPO (Association of Chief Police Officers) Heritage and Cultural Property Crime Working Group. Before joining the V&A in 2010, he served as a police officer for 24 years, the last ten years as the head of the Art & Antiques Unit at New Scotland Yard. During that time, he overtly and covertly investigated all manner of art and cultural property crime. He formed a number of long-lasting community partnerships, including the creation of ArtBEAT, a unique use of expert volunteers, drawn from the art community to assist the police. Toward the end of his police career, he organized two exhibitions of Fakes & Forgeries, the last one in early 2010 attracted 30,000 visitors in just three weeks. In 2009, he won the ARCA Award for Art Policing and Recovery.

Lawrence Rothfield is founder and former Faculty Director of the Cultural Policy Center at the University of Chicago. He has written or edited books and reports that have impacted policymaking on topics ranging from censorship and public funding of museums to the economic impact of urban cultural “scenes.” Rothfield’s main policy focus, however, is on heritage protection, in particular the problem of protecting archaeological sites and museums from looting. Publications on that topic include an edited volume, *Antiquities under Siege: Cultural Heritage Protection after the Iraq War*, and a book on the disastrous failure to secure Iraq’s sites and museums from looting in the wake of the 2003 US invasion, *The Rape of Mesopotamia: Behind the Looting of the Iraq Museum*.

Laurie W. Rush is an anthropologist and archaeologist who has served as a US Army civilian for 16 years managing Cultural Resources at Fort Drum, NY. She has a BA from Indiana University Bloomington and an MA and a PhD from Northwestern University, and is a fellow of the National Science Foundation and of the American Academy in Rome. Her research specialty is Native Americans of northeastern North America, and she serves as Native American Affairs Coordinator for the 10th Mountain Division and Fort Drum. She was the military liaison for return of the Mesopotamian City of Ur to the Iraqi People in 2009, represented US Central Command at Environmental Shuras in Kabul in 2010 and analyzed cultural property protection lessons learned from the Iraq and Afghan conflicts for the US Central Command Environmental Program. She is serving on an international panel writing cultural property protection policy and doctrine for NATO. She lectures widely to both military and civilian audiences on the importance of identification of and respect for cultural property on the battlefield. Educational materials developed by her team in partnership with Colorado

State University have reached over 150,000 US military personnel and are also being used by UNESCO, Blue Shield International and foreign allies. She has been recognized by her peers as a US Committee of the Blue Shield Board Member, with the Register of Professional Archaeologists Special Achievement Award, the Advisory Council for Historic Preservation Chairman's Award for Federal Achievement in Historic Preservation, many Army and DoD awards and the Booth Family Rome Prize for Historic Preservation. She is the editor of the recent book *Archaeology, Cultural Property, and the Military*, and author of numerous articles and book chapters concerning the importance of military education and planning for cultural property protection in crisis areas. She has also been recognized in the national media as a modern "Monuments Woman" and is featured in the new book *Lives in Ruins*.

Francesco Rutelli is an Italian politician, currently serving as President of Associazione Priorita Cultura and Honorary President of the Institute for Cultural Diplomacy, Berlin. He is the co-chairman of the European Democratic Party. He is the founder and President of the Centre for a Sustainable Future (a nonpartisan think-tank on climate change and environmental issues). He is also the co-chairman of the steering committee of the Silk Road Cities Alliance (a multilateral forum aimed at fostering cultural and economic cooperation along the historical Silk Roads from China). He was Deputy Prime Minister and Minister of Culture and Tourism of Italy (2001–2008); he was the first Mayor of Rome (1993–2001) directly elected by the citizens. In 2009, he won the ARCA Award for Art Security and Protection.

Howard Spiegler is the co-chair of Herrick, Feinstein's International Art Law Group, which handles all aspects of commercial art matters. He has been involved in several well-known litigations brought on behalf of foreign governments and heirs of Holocaust victims and others to recover stolen artwork or other cultural property, including the settlement of the long-standing litigation brought on behalf of the Estate of Lea Bondi Jaray to recover a Schiele painting confiscated by a Nazi agent in Austria in the late 1930s, which resulted in the recovery of the full value of the painting by the Estate. Howard was also involved in the recovery by the heir of the famous Jewish art dealer Jacques Goudstikker of 200 Nazi-looted artworks from the Dutch Government; recoveries on behalf of the Republic of Turkey of numerous valuable antiquities; and the action brought on behalf of the heirs of Kazimir Malevich to recover Malevich artworks from the City of Amsterdam, which resulted in the recovery by the heirs of five Malevich paintings. He holds a JD degree from Columbia University School of Law. He regularly writes and speaks around the world on issues relating to art

law. In 2010, he won a Lifetime Achievement in Defense of Art Award from ARCA.

Arthur Tompkins was appointed a District Court Judge in New Zealand in 1997. He holds general and jury trial warrants, and is a Panel Convenor of the New Zealand Parole Board. He is also a Judge of the Supreme Court of Pitcairn Island. Prior to his appointment as a judge, he was in private practice in Auckland, New Zealand, as a commercial barrister. He holds a BA in law from Canterbury University, Christchurch, New Zealand (1983), and an MA in law from Cambridge University (1984). He teaches “Art in War,” part of the annual Postgraduate Certificate in Art Crime and Cultural Heritage Protection Studies, presented by ARCA, Amelia, Italy.

Christos Tsirogiannis, a Greek forensic archaeologist, studied archaeology and history of art in the University of Athens. He worked for the Greek Ministries of Culture and Justice (1994–2008) and voluntarily cooperated with the Greek police Art Squad (2004–2008). He was a member of the Greek Task Force repatriating looted, smuggled and stolen antiquities from the Getty Museum, the Shelby White/Leon Levy collection, the Jean-David Cahn AG galleries and others. Since 2007, he has been identifying illicit antiquities from the confiscated Medici, Becchina and Symes-Michaelides archives in museums, galleries, auction houses and private collections, notifying the relevant government authorities. In 2013, he won the annual Award for Art Protection and Security from ARCA. He holds a PhD from the University of Cambridge (2013), and his thesis was on the international illicit antiquities network viewed through the Robin Symes–Christos Michaelides archive. He has a regular column, “Nekyia,” in *The Journal of Art Crime* and has published various cases of previously undetected illicit antiquities. Since May 2014, he has been a research assistant in the Scottish Centre for Crime and Justice Research at the University of Glasgow.

William Wei is a senior conservation scientist in the conservation science department of the Cultural Heritage Agency of the Netherlands (RCE), and program manager for the RCE program “Sustainable Heritage.” He conducts research into the effects of aging, cleaning and treatments of objects on their appearance, including paintings, photographs and outdoor sculpture. He is also investigating the effect of vibrations on objects in order to provide practical solutions for their protection. The “Sustainable Heritage” program is helping owners and managers of historic buildings and museums find a balance between technologies for energy efficiency on the one hand, and maintaining cultural heritage value on the other. One of his major interests is how conservation decisions are influenced by major differences in how cultural heritage and its value are perceived by different cultural heritage

professions, related industries and the general public. He has trained as a Socratic dialogue moderator and, over the past three years, has organized dialogues on a number of controversial issues in conservation ethics and perception, in order to bring participants to a better understanding of each other's views.

Part I

Forgers: Fakes and Forgeries

Introduction to Part I

Noah Charney

American art forger John D. Re, recently convicted of fraud, having forged and sold scores of paintings, since 2005, ostensibly by the likes of Willem de Kooning and Jackson Pollock, for a total of around \$1.9 million, was not trying to be subtle.¹ With the fruits of his illicit labors, he bought a submarine, docked it at a public marina and invited *The New York Times* to profile him. You'd almost think that he was asking to be caught.

As a professor specializing in art crime, having for many years taught a postgraduate course on art forgery (and having recently published a book on it, *The Art of Forgery*),² I've studied the cases of dozens of forgers whose careers span thousands of years. Re is the first to have used his ill-gotten gains to buy a submarine. This was not a very good idea on Mr. Re's part, if he wished to continue his lucrative criminal career in secret. But my extensive research into the minds of art forgers tells me that he very likely did not. For most known art forgers, from Michelangelo (yes, *that* Michelangelo) to Elmyr de Hory, triumph, fame and fortune actually came *after* they were caught.

The ostentatious submarine was not ultimately Re's undoing, though his flamboyant high profile suggests a level of hubris ill-advised for professional criminals who wish to remain under the radar (or perhaps, in this case, sonar). He was finally found out because one of the buyers sent a purported Pollock for authentication, and was told that it contained materials that had not yet been invented when Pollock was painting. In criminological parlance, these are referred to as "time-bombs": anachronisms that can give away a forgery. The buyer then sent 45 paintings, all acquired from Re and supposedly by Pollock, and received word that not one was authentic, all containing time-bombs, such as the use of a paint that was not available

This chapter comprises the original content of an article first published in *The Journal of Art Crime* (Spring 2012), together with an update that references more recent publications by the authors on the topic as well as additional observations as a postscript.

when the work was supposedly created. This may seem like a careless error on Re's part, or a brash assumption that no one would forensically examine his forgeries. But, in the case of quite a few famous forgers, these time-bombs were knowingly inserted. For the remarkable thing about the psychology of so many art forgers is that they *wish* to be caught.

The majority of the hundred-odd forgers whom I have studied share a remarkably consistent motivational profile. Most began as failed artists, whose original works were somehow dismissed by the art world. They turned to forgery to act out a sort of passive-aggressive revenge against the art community, which they perceive as a collective entity that has conspired to deny their talent, and which they will "show up" by creating works that will be praised and accepted, as their originals were not. Passing off a forgery provides a twofold sense of artistic fulfilment. On the one hand, if a forger's work is taken to be that of a great master (Picasso, for example, who is the most-forged artist in history), then the forger considers that they are just as good as Picasso. On the other, the forger demonstrates the fallibility or foolishness of the so-called experts, who cannot tell their forgery from an original – the implication by extension being that these experts were foolish to dismiss the forger's original creations in the first place.

But both of these victories are private. Unless the forgery is revealed as such then, for all intents and purposes, to the world at large, the work in question is authentic. It is only when the forger is caught and speaks out about their fraudulent oeuvre that the experts are shown to have erred, and the forger is praised publically for his talent. The media loves art forgers, seeing them as congenial, quirky pranksters, more than criminals. To be fair, many are, and they are certainly less damnable than art thieves and antiquities looters, with their links to organized crime and even terrorism. Art forgers tend to work alone or in pairs (a forger and a front man who passes off the works as authentic through one of a series of confidence tricks, usually far more ingenious than Mr. Re's superficial story about stumbling across 70 abstract expressionist masterpieces). Without the connections to organized crime, art forgers rarely wreak havoc beyond their immediate victims (wealthy collectors or institutions), and their income does not fund the drug and arms trades, as can be the case with stolen and looted art. Their relative harmlessness, on the grand scale of criminal activity, and their undoubted ingenuity and occasional real talent, means that the media and general public alike see them as admirable, Robin Hood types, pulling the wool over the eyes of the wealthy elite (with the implication that the wealthy elite deserve to have their wool pulled by a working-class prankster). Numerous forgers have gone on to achieve riches and fame after serving a minimal prison sentence, welcomed by the general public. Wolfgang Beltracchi has best-selling memoirs and is a sought after speaker. John Myatt has his own TV series on Sky Arts in which he teaches amateur painters how to forge, and George Clooney bought the film rights to his life story – he now sells

“original fakes,” signed with his name but in the style of famous artists, for six figures. This type of crime, it seems, can pay.

With little disincentive, in terms of harsh sentences and public condemnation, even if you are caught, and with a measure of personal revenge successful only if you are caught, it stands to reason that some forgers would not mind going public, while others, even if at a subconscious level, might actually wish to be found out. Many have intentionally come forward. Michelangelo allowed his biographer to tell the story of his teenage career as a forger of “ancient Roman” statues, which sold for much more than his originals would, before he had made a name for himself by sculpting his *Pieta*. Ken Perenyi recently released a fine memoir, *Caveat Emptor*, that describes his decades-long career as a forger – before his book came out, few had heard of him; suddenly he was profiled in *The New York Times* as perhaps America’s greatest forger. The Santa Clausian British forger, Tom Keating, coined the term “time-bombs” and inserted them intentionally (such as the use of titanium white pigment in works purported to have been painted centuries before it was invented) for several reasons: to have something obvious to point to that experts missed (so as to show them up), to protect himself (unsuccessfully, it turned out) against accusations of fraud (he assumed that such an obvious anachronism would shift the blame away from him and onto the authenticator for making such an error), and in order to be able to reveal himself as the artist, should he wish to do so. Like John Myatt, he was awarded with a popular TV series on ITV in Britain, in which he forged on-camera. Icilio Federico Joni fooled the greatest connoisseur of Renaissance art, Bernard Berenson. Rather than being upset, Berenson determined to meet the artist whose “Sienese Gothic” altarpiece had taken him in, and the two became friendly. Joni took to intentionally planting his latest forgery so that Berenson would be called in to authenticate it. And the German post-war forger, Lothar Malskat, was outraged when no one believed that he had painted what seemed to be newly discovered medieval frescoes in a German church. Even when he pointed out the time-bombs he had inserted (a painting of a turkey which, being indigenous to North America, had not been seen in Europe in the Middle Ages, and a portrait of Marlene Dietrich, who definitely had not been seen in Europe in the Middle Ages), no one believed him. So he took the dramatic step of suing himself, in order to have the public, courtroom stage in which to demonstrate that the frescoes were indeed his own, and not centuries-old.

Until he comes out with a memoir, or some equivalent, we will not know whether John Re fits into this psychological profile of so many of history’s most successful art forgers. But with his conspicuous consumption, particularly involving his submarine (which was written up in 2007 in *The New York Times*, under the headline “A Sea Toy James Bond Would Envy”),³ suggests that he was either foolhardy or, at some level, was willing to be caught. For only then could this part-time painter, who liked to dabble in the

abstract expressionist style, achieve recognition for having fooled a number of collectors, who genuinely thought that he painted as well as Pollock.⁴

This first part looks at fakes and forgeries, which are technically different: forgeries are wholesale objects, made from scratch in fraudulent imitation of something else, whereas fakes are pre-existing objects that are altered in some fraudulent way to increase their value. This is the technical, criminological definition, though in practice, the terms are often used interchangeably. Fakes and forgeries tend to be quite distinct from other categories of art crime because, in the main, they do *not* involve organized crime, but are perpetrated by individuals or pairs – art theft and antiquities looting is generally the realm of organized criminal groups, and therefore is more “serious,” because it funds and fuels their other activities, including the drug and arms trades. They are, however, a serious fraud crime unto themselves (for a great deal more detail, see Noah Charney *The Art of Forgery*), and raise fascinating issues, both artistic and philosophical.

The voice of art critics tends to be underrepresented in scholarly and professional publications, and this is a great shame. Critics are “in the field,” as it were, in the art market, among galleries, museums and collectors. The theoretical insight about art, and the ranking of aesthetics, is of particular interest when it comes to questions of authenticity and forgery. For this reason, **Blake Gopnik’s** thoughtful and introspective essay is of great value. Gopnik has been one of New York’s leading art critics for several decades, and is known for writing that is part philosophy, part art criticism, part art history, but always lucid, intelligent and compelling. In his chapter, Gopnik revisits his most controversial piece of writing, a *New York Times* op-ed called “In Praise of Forgery.” By looking back on his past work (something that we authors rarely have the opportunity, or humility, to do), he plumbs deeper and unearths some fascinating ideas, such as the concept that the art market did not “spur the discipline of art history,” as is commonly thought, but the other way around: that art history helped to influence the art market, but did so before it was established as a scholarly field. This is something that I discuss in my book on the influence of Giorgio Vasari, to whom we owe a great many things, among them the way we value art, how we categorize it historically and stylistically, and how museums are curated. Gopnik’s essay, which would find a happy home in a book on the philosophy of aesthetics, also breaks ground by discussing the artwork itself as a mere material memento of a creative moment, an idea – meaning that it was the idea that was important, with the resulting artwork of secondary interest. This borrows theory from 20th century conceptual art, with Joseph Beuys wandering a gallery with timber wolves as the act, and the only “collectible” element being photographs and videos of the performance, and applies it to all art, from ancient through the Renaissance and beyond – a truly eye-opening idea.

Criminologists **Duncan Chappell** and **Saskia Hufnagel** examine one of the highest-profile, and most flamboyant of recent forgers, Wolfgang

Beltracchi. Beltracchi and his gang passed off dozens of forged paintings, and made international headlines when actor Steve Martin ended up with one of his paintings. Beltracchi and his wife are not only unrepentant but have thrived on their post-arrest publicity, penning a pair of best-selling memoirs. This chapter provides a concise case study of the Beltracchi Affair and its place in the pantheon of forgery schemes.

Simon Cole examines the similarities between fingerprint analysis as a means of identifying a person, and art connoisseurship as a means of identifying the authorship of an artwork. To do so, he finds a case in which the two meet: that of Peter Paul Biró, whose story was famously told in a 2010 *New Yorker* article by David Grann. While we tend to think that finding a fingerprint is cut and dried evidence of someone's presence (at a crime scene or in making a work of art), Cole shows that even experts consider it much more subjective than we might believe, more akin to an art expert's fallible estimation of who made a given painting than a hard-edged, objective fact. Indeed, as he states, "virtually all legal scholars and forensic scholars now agree that all forensic evidence is inherently probabilistic," which will come as a surprise to many viewers of *CSI* and the like.

Like Matthew Bogdanos and Charlie Hill (whose chapters feature in the next part), **Vernon Rapley** is one of those rare professionals in the field of art investigation who is also a great thinker, in theoretical terms, and a fine writer. He ran Scotland Yard's Art and Antiques Squad for many years, before shifting gears to run security at the Victoria & Albert Museum in London. His tenure at Scotland Yard was so successful that it saw a tremendous drop in the number of art thefts perpetrated, and so he spent much of the latter part of his time leading the Art Squad hunting forgers. In the midst of this period, he assisted in curating a hugely popular exhibition at the V&A Museum on fakes and forgeries. As a didactic note, it should be mentioned that, criminologically speaking, there is a difference between fakes and forgeries (although in practical terms, people use them interchangeably). A forgery is a new work of art, made from scratch, in fraudulent imitation of something else (of higher value), whereas a fake is an existing work of art that is altered in some fraudulent way to increase its value. So Han van Meegeren made forgeries of Vermeer: he began with nothing but raw materials and ended up with a painting in imitation of another artist. But 18th century trickster William Sykes was a faker: he bought an authentic 15th century anonymous Flemish painting and added an inscription to the back suggesting that it had been painted by Jan van Eyck, as a gift for King Henry V, and portrayed Thomas Becket – none of which was true. But forgers and fakers use the same tricks of the trade, and are investigated in the same way. Rapley focuses on the distinction that often confuses the general public: that police investigate crimes, not the fakes and forgeries themselves. In fact, one can make a forgery without actually committing a crime (as in the famous case of Mark Landis, who passed off at least 40 forgeries but never defrauded anyone out

of money, and so technically never committed a crime). It is a great gift that Rapley has presented, here, his successful methods, from which police and researchers can learn for years to come.

Toby Bull's chapter introduces an esoteric world: that of wine fraud, and specifically its lucrative abundance in the enormous but young wine markets of China and Toby's native Hong Kong. He is particularly strong in explaining how mass-market wine is just as likely to be faked as rare bottles, and he lays out clearly the technological advances that can protect against fraud.

William Wei's chapter looks at a quite incredible piece of technology of which he is the co-inventor. It is a form of "art fingerprinting" that uses extremely high quality cameras to take photographs and map the topography, the texture, of surfaces. The level of detail is such that even surfaces that seem entirely smooth, like bullets, can have the subtle intricacies of their texture mapped. The results are uniquely identifiable portraits of sections of objects, as small as one square millimeter. This has diverse potential uses, but foremost is the ability to uniquely identify art objects (which can be tricky, as in the case of stolen Ptolemaic maps from the Biblioteca Nacional in Madrid – multiple versions of these early printed maps exist, and the library had great difficulty proving that the one that came up for sale in Australia was indeed their version, recently stolen). This technology is also forger-proof, capturing a level of detail that is physically impossible to replicate (for would it be worth a forger's while to try?).

1

The Beltracchi Affair: A Comment and Further Reflections on the “Most Spectacular” German Art Forgery Case in Recent Times

Saskia Hufnagel and Duncan Chappell

On 27 October 2011 the four persons accused of the “most spectacular” art forgery case in German post-war history were sentenced to jail terms ranging from 21 months to 6 years.⁵ The accused were Wolfgang Beltracchi (61), the painter of the forged works; his wife Helene Beltracchi (53) and her sister Jeanette Spurzem (54) who helped him in various ways; and the “logistical expert”⁶ in the case, Otto Schulte-Kellinghaus (68).⁷ Considering the financial damage the forger group had caused, the embarrassment of buyers, dealers, experts and auction houses, as well as the considerable publicity the trial incurred, this seemed a remarkably mild verdict. However, observing the way in which art forgers at large appear to be dealt with by the justice systems of various countries, it could be said that the case just confirms a reoccurring pattern of lenient sentencing.⁸

For at least 15 years the accused had fooled the art world with their counterfeit “masterpieces” of classical modernity.⁹ Police were mainly alerted to the case by two art experts. One of these experts had doubted the authenticity of several works she had been given to review by Otto Schulte-Kellinghaus, while the other suspected a forgery based on a faked sticker on the back of a painting purporting to be from the “Collection Flechthem.” As is indicated in more detail below this pre-war German collector was known never to issue such stickers as proof of the provenance of paintings in his collection. Suspicion was also raised when a picture that had been chemically tested was found to contain “titan white” paint which was not a color available at the time the picture was claimed to have been painted.¹⁰

The accused allegedly amassed a profit of about 16 million Euros from the fake paintings that were the subject of charges at the trial, but it seems reasonable to assume that this amount may well only be the tip of the profit

iceberg.¹¹ While the accused were only charged with 14 counts of (aggravated) fraud in conjunction with forgery of documents (11 completed and 3 attempted), German police and prosecutors are still investigating 33 additional cases in a separate action.¹² A further 15 cases of fraud that had been uncovered had already exceeded the statute of limitations and were therefore not included among the charges which proceeded to trial or remained under investigative scrutiny. According to German criminal law, and more specifically §78 III 3. Strafgesetzbuch (StGB), offenses with a maximum 10 year jail sentence expire within ten years. All crimes committed in the 1990s could therefore not be pursued within the German criminal jurisdiction.¹³

The scale of the forgery

Conflicting accounts exist as to the precise numbers of fraudulent art works produced by Beltracchi which have entered the art market. One source reported that about 50 cases of fraud were uncovered during the investigation in the Beltracchi case which fell within the statute of limitations period; 21 more cases were discovered that dated back to the 1990s; and a further 25 as yet unidentified fake pictures were believed by police to have been sold all over the world, leading to about 100 cases in total.¹⁴

The assumption that more pictures are still on the international market was supported by the recent discovery of a “Beltracchi” in Japan.¹⁵ One expert even suggested that nearly 200 forgeries produced by the accused could have entered the licit art market.¹⁶ Other expert sources contended that at least 47 forged paintings had been placed on the market through auction houses, galleries and dealers.¹⁷

Latest reports, based on a presentation made on 27 January 2012 by the principal police investigator in the Beltracchi affair, Chief Inspector René Allonge, at the Art Crime and Art Restitution Conference in Berlin suggest that 53 forged paintings with a value of 35 million Euros were discovered, which were clearly attributable to Beltracchi and his colleagues; 20 more forgeries from the 1990s were identified, which could not yet be attributed to the Beltracchi gang, and in total about 100 pictures were assumed to have been forged by the group.¹⁸ The latter figure is probably the most accurate estimate given to date.

Trial and sentence

The trial officially started on 1 September 2011.¹⁹ Although the trial was estimated to run until March 2012, it was settled swiftly by a deal between the defense attorneys and the prosecution before the presiding Cologne trial judge. On the third trial day the accused were offered reduced sentences if they admitted to the charges and the main accused, Wolfgang Beltracchi, was the first to make a full confession. Unlike the situation in the art market,

“deals” are (at least officially) a relatively new measure in German criminal procedure and are formally called “proposals for settlement” (“Vorschlag zur Verfahrenserledigung”).

The statutory variants (“serious cases”) of § 263 (Fraud) and § 267 (Forgery) of the German Criminal Code (“Strafgesetzbuch”) applicable in this case prescribe a maximum of 10 years imprisonment for each case of fraud/forgery.²⁰ As both forgery and fraud are the result of the same criminal act there could not be a separate sentence for the two offenses. Thus each criminal act (14 were charged) would carry a combined (fraud/forgery) sentence of up to 10 years imprisonment. However, under German Law this means that while the highest sentence has to be considered in full (10 years) all other cases would be halved (five years maximum each). The absolute theoretical maximum would therefore be 75 years. The Court offered Wolfgang Beltracchi a maximum of six years imprisonment, his wife Helene Beltracchi up to five years, her sister Jeanette Spurzem up to two years and the “logistical expert” Otto Schulte-Kellinghaus a maximum of five years if the accused agreed to the “deal” and gave a full confession. They finally received sentences of imprisonment of six, four, one year and nine months (suspended) and five years respectively.²¹

The Court therefore did not vary significantly from the upper limits they set in the original “deals.” In fact, only Jeanette Spurzem received a lower than the maximum agreed sentence. Whether the lawyers did their clients a favor by concluding these “deals” remains questionable. It seems that it would have been very hard to prove that the accused actually committed the offenses, or at least which parts of the offenses were committed by whom. A trial might also have led to the possible exclusion of some of the counts, resulting in much lower sentences. However, as is often the case in the German criminal justice system the accused were not prepared to run the risk of failure. Further, had the accused not confessed, the trial would have become exorbitantly expensive. Up to 160 witnesses and ten expert witnesses would have been summoned to give evidence (ibid.).²² The defense lawyers would have to be paid as well as the Court fees. Even if some of the charges had been dismissed, the overall trial costs are only covered by the state if the accused are found “not guilty,” and rarely when only some charges are dismissed.²³ It was therefore a safer course of action to agree to the “deals.”

***Modus operandi* and allied matters**

The art of deception

In relation to the actual *modus operandi*, the accused applied a spectacular array of “forgery strategies” to turn the fake paintings of the principal accused, Wolfgang Beltracchi, formerly known as Wolfgang Fischer, into gold. Most prominently, Beltracchi painted works of art of the 20th century

that had gone missing during the Second World War (WWII), including paintings by Max Pechstein, Heinrich Campendonk, Kees van Dongen and Max Ernst.²⁴ However, he also painted “new” pictures in the styles of these artists that he claimed should have been part of their oeuvre.²⁵ To convince the art world of the authenticity of Beltracchi’s work, the forger group invented an impressive and elaborate story around their origins. They claimed that Werner Jägers, who had died in 1992 and was the grandfather of the two accused sisters, had bought the pieces before WWII from the gallery owned by Alfred Flechtheim, and hidden them in the German Eifel region during the war. Jägers was said to be a friend of the master tailor Johann Wilhelm Knops, the grandfather of the accused Schulte-Kellinghaus, who himself was said to be an art collector. In fact, both men had never collected art, nor had they been particularly interested in art during their lifetimes. However, both the “Jägers” and the “Knops” collections became famous as the legend of provenance of the forged works of art and the four accused underlined their authenticity by occasional sales of real works of art pretended to originate from these collections, and some purchases of real art by the “inheritors” of the fictional collections.²⁶

The accused also had a sophisticated way of distributing tasks among the group. While Wolfgang Beltracchi copied the missing paintings (or painted new works in the style of the famous artists), Otto Schulte-Kellinghaus established contacts with renowned art experts, some of whom, like Werner Spies, gave him appraisals for the pieces examined.²⁷

The wife of Beltracchi posed as the owner of most of the art works and actively traded on the art market with the help of her sister. Additionally, the Beltracchi couple faked photographs to highlight the authenticity of the paintings. Wolfgang had photographed his wife Helene disguised as her own grandmother in their house in France sitting in front of several forged paintings from the “Jägers Collection” which were later sold as originals. The black and white photo had been printed on pre-war developing paper and was slightly out of focus. They even cut a zigzag pattern around the edge of the picture to make it look authentic, but only distributed scans rather than the original so as not to raise suspicion.²⁸

While the inconsistencies that were discovered during the criminal investigation into this matter were substantial and might ultimately have led to the conviction of the accused without confessions, they were not uncovered by experts and auction houses during the approximately 15 years the forger group was conducting its operations. After the above-mentioned experts had pointed out inconsistencies with regard to several works and thereby sparked investigation, the main evidence that the pictures subject to the charges were forged came eventually from the frames. Beltracchi had bought the frames close to his house in France at antique markets.²⁹ Some of the frames were made of the same wood, or at least wood from the same region, which was very suspicious considering that the painters worked in different countries.³⁰

The frames were also all fabricated after the French model, which was considered to be rather unlikely for the pictures claimed to be by other than French artists.³¹ Another major piece of evidence for police was the fake sticker of the “Collection Flechtheim.” The accused had put these stickers on several paintings as proof of provenance. Alfred Flechtheim had been a renowned German art dealer in the 1920s. However, he had never produced these, if any, stickers to mark paintings in his collection.

Further points that raised suspicion were that the paint did not have small fractures, characteristic for old paintings and that the “titan white” used for the pictures actually did not exist at the time the pictures were dated.³² Stickers from galleries had been tainted to look old, but had been glued to the pictures with a type of glue that did not yet exist at the time the paintings were claimed to be created.³³ Many more clues were found, as Chief Inspector Allonge put it, “after the fact.” In an interview in late 2011, he stated that it was much easier to find evidence once it was clear that a piece was a forgery. Finding out whether a work of art is in fact a fake is rather more difficult.³⁴

Major problems and vulnerabilities in the determination of provenance of works of art exist due to the lack of complete and comprehensive catalogs. This does not only relate to catalogs relating to the works of one artist, but also to the catalogs of galleries and museums.³⁵ The accused exploited this vulnerability to their advantage. They forged the stickers that indicated the gallery the picture had been obtained from and relied upon the fact that there existed few catalogs relating to the forged works or the gallery, and if they did exist they did not contain photographs or reproductions of the faked pictures.³⁶

Déjà vu

The *modus operandi*, but also the life story of Beltracchi, show striking similarities with those of many other “famous” forgers, and in particular Han van Meegeren who was specialized in works of Vermeer.³⁷ Like van Meegeren, Beltracchi played on the secret longings of art collectors to find previously unknown or lost works of famous artists. While van Meegeren “completed” Vermeer’s work by adding religious paintings, a type of work so far unknown by Vermeer but always suspected to exist, Beltracchi gave the art world paintings that “should have been painted by the artist” and were highly desired by collectors. One painting by André Derain in particular, displaying Matisse painting at Collioure, was highly desired as it supposedly proved that Derain and Matisse had been working at the same time at the artist village of Collioure. Specializing in “rare” paintings and styles by artists, van Meegeren and Beltracchi relied on the fact that the more desired a work of art is, the less its authenticity is going to be doubted by experts, dealers and auction houses.

It is also interesting to observe that both van Meegeren and Beltracchi were rather successful as artists in their own right, and both would probably have been able to make a living from painting without resorting to forgery. Similarities also become apparent with regard to their alleged and actual motives: Both claimed to have forged to fool critics and the art world, but they also loved living a “high life” and needed more and more money to support their extravagant habits. Their works similarly ended up in major galleries, museums and private collections.

With regard to their *modus operandi*, both forgers were extremely attentive to detail and studied very thoroughly the generality of works of the artists they forged. This fastidious behavior was probably a recipe for their considerable and long-standing success. Both were also very careful not to get in direct contact with buyers and relied on accomplices to introduce the paintings to experts and the art market. However, unlike Beltracchi van Meegeren was not known to involve his family, and his wife in particular, in his criminal activities.

Unlike most forgers, van Meegeren and Beltracchi made millions from their work and it can be assumed that many of their paintings are still being admired as originals in major museums, galleries and private collections. Even so, while Beltracchi now faces serving a quite substantial custodial sentence, van Meegeren was only sentenced in 1947 to one year in custody and died before the sentence could be put into effect. This is a major difference between the otherwise very similar cases and could lead to the conclusion that art crime is now taken more seriously than it seems to have been during much of the 20th century.³⁸

The victimized market players

The Art Newspaper has published a full list of the 53 “fakes” attributed to date to Beltracchi, and according to James Roundell, the director of London- and New York-based dealers Dickinson Gallery, Beltracchi’s fakes have been passed through the hands of major auction houses such as Sotheby’s and Christie’s; art dealers; experts in their field, like Werner Spies; and distinguished and knowledgeable private collectors like the Hilti Art Foundation.³⁹ Many civil law disputes have therefore emerged in recent months. For example, Trasteco Limited, a Maltese firm, is suing the Cologne Auction House Lempertz for damages as they bought a fake Heinrich Campendonk *Red Painting with Horses* from the Gallery for nearly 2.9 million Euros. Only after a chemical analysis of the painting was it confirmed that the picture had indeed been a fake.⁴⁰ According to the Director of the Cologne Auction House Lempertz, Henrik Hanstein, the Auction House has since invested in a 70,000 Euro Thermo Scientific Niton x-ray fluorescence analytic machine.⁴¹ However, had the forger used the right pigments, even these machines would not have been able to uncover the crime.

Further civil law suits have been directed against the art historian Werner Spies, currently being sued for damages in a Court in Nanterre, France.⁴² Christie's and Sotheby's have agreed outside of the courtroom to compensate several buyers and the Hilti Art Foundation has asked the Dickinson Gallery to compensate them for the forged Derain they had bought for 4.5 million Euros.⁴³ Contrary to the criminal charges in the German jurisdiction, the civil claims can in some countries and under certain circumstances not fall within a 10 year statute of limitations and it therefore seems likely that the battle for compensation will be lengthy.⁴⁴

Extent of damage

Determining the true extent of art crime can be a very difficult if not impossible business because so many offenses of this type are believed to either go undetected or unreported. In the Beltracchi affair the nature and extent of the police operation that brought all of the accused to justice (at least for part of their offenses) is still not clear. It is possible that some of the works of Wolfgang Beltracchi might have been discovered to be fakes well before the case became a matter of notoriety and law enforcement investigation, but this information was concealed by those affected as "victims" because of the potential financial loss and embarrassment involved in revealing their misfortune. This veil of silence on the part of victims represents one of the biggest problems in the field of investigating and preventing art crime and no doubt explains in part why this criminal group was able to function with such brazen success and profitability for so many years. Even when reported such offenses rarely attract the attention of police and prosecutors who have any expertise in the area of art crime – a situation which may have prevailed initially in the Beltracchi investigation, although those involved seem to have overcome any such deficiencies and secured the conviction of some of the most sophisticated art forgers to surface in recent European history.

Greed and gullibility

The attribution of blame in these types of art crime cases is obviously a tricky and often messy issue. According to the main villain involved, Wolfgang Beltracchi, the art market and the "greed and dishonesty of the trade" are largely responsible for this sorry state of affairs.⁴⁵ He might not be entirely wrong in expressing such a viewpoint although the considerable financial advantage and the high flying life-style he supported from his misdeeds suggest he is far from meeting his own self-description of being a cynical "Robin Hood."⁴⁶ We intend exploring further his motivations and *modus operandi* as part of ongoing research into the Beltracchi affair.

Postscript

In his recent autobiography, *Self-Portrait*, Beltracchi describes the reasons for his deeds as “the need to always present his art in new styles,” and “the freedom to not be limited by the necessity to create recognizable works that are required by an artist in the licit market.” He enjoyed the productivity he had in common with the greatest artists in the world and enjoyed the risk and excitement in his life.⁴⁷ Seeing copying or painting in the styles of others as a “freedom” is a rather euphemistic interpretation of forgery and the enjoyment of the risk of a possible jail sentence is equally hard to understand. However, he was indeed productive and if he was only remotely as productive as he claims there will be many other pieces of his art out there in museums and galleries for the world to see.

Regarding the future of Beltracchi after his time in jail – he was released in January 2015 – he remains very realistic about the recognition of his art in the market. In the recent movie about his work,⁴⁸ Beltracchi is asked whether he thinks that his original works or his fakes (signed “Beltracchi”) will be more successful in the market. He agrees with the interviewer that his “fakes” will probably be more successful. Asked whether this makes him sad or disappointed, he convincingly responds “no,” explaining that he enjoys producing art, but his relationship to art is more pragmatic and distant. This is one of the most insightful comments he makes in his interviews. He today appears as seeing himself more like a gifted artisan, rather than the disappointed artist he claims to have been at the beginning of his career as a forger.

Since the original 2012 article this chapter is based on, and which is updated here, Beltracchi and his wife did not only write jointly one, but two books on their lives. They even reveal some more forgeries which made it onto the market in *Self-Portrait*. The second book is the publication of the letters they wrote to each other in prison – “an insight into a multifaceted and fast life” according to readers.⁴⁹ There have furthermore been two books published in German by others on the topic, one co-authored publication by two prominent German journalists in the field⁵⁰ and an edited interdisciplinary collection on the Beltracchi case and the effect on experts and authenticity research.⁵¹ He is hence far from forgotten even years after his arrest and continues to earn money from his criminal past. So perhaps we also need to add the title of “businessman” to that of “gifted artisan.” This seems particularly true if he manages to sell his “fake” paintings for approximately 25,000 Euros a piece. This is the amount he expects to earn, for example, with a fake Max Ernst, according to an interview in the movie. However, half of everything he earns now goes to the people he conned, according to a Channel 4 interview with Beltracchi.⁵²

As to the original investigation against Beltracchi and his co-defendants, no more charges are to be expected. The Beltracchi case has so far been put

to rest. However, if new forgeries by him were discovered in museums and galleries around the globe that are not subject to statute of limitations, this could change. So far, this has not been the case.

According to the lead investigator of the case, René Allonge, things have changed since Beltracchi and the case had a considerable impact on the market. Art dealers, museums and galleries used to be completely closed to the police regarding suspected fakes and forgeries ranging in millions of Euros in price. Only if they could not receive compensation from sellers, would they report cases to the police. This has changed today and auction houses do now inform the police if they have a suspicion about a particular work. Furthermore there is more case law today that forces the art market to behave in certain ways if they want to avoid civil liability, such as the Cologne judgment against the Lempertz Gallery cited below. Examples for changes through case law are the requirement to check provenience, the obtaining of expert opinions on style and even technical expertise on color etc. if a painting is very valuable.⁵³

Considering the civil law suits, one of the civil trials that ensued as a result of the Beltracchi case was brought against the Lempertz Gallery by the company that had purchased the *Red Picture with Horses* painting, attributed to Campendonk. The case was settled and the company received 2.8 million Euros in compensation.⁵⁴ Similarly, the Paris Gallery Cazeau-Beraudiere had to settle a lawsuit brought against it by Daniel Filipacchi who had purchased from it a painting attributed to Max Ernst. Werner Spies, the Max Ernst expert who had authenticated a number of paintings for extensive sums of money was sued in Nanterre, France, for writing an authentication certificate on the back of a photograph of the fake Max Ernst painting *Tremblement de Terre* by Beltracchi. The Court decided in the first instance that Spies and the Geneva Gallery which sold the painting had to pay 652,883 Euros compensation (each 50% of the sum) to the buyer.

Werner Spies has not been prosecuted for this conduct even though by authenticating this painting from a photograph by writing on its back, he received a considerable percentage of the actual price paid by the future buyer. However, it seems that all of this is now past history and Spies is back on his feet this year having organized an important Max Ernst retrospective.⁵⁵ While the criminal responsibility ceases after ten years for aggravated fraud, the civil law responsibility remains. It is hence surprising that so few civil lawsuits are known about in the Beltracchi case.

Beltracchi also continues to keep the art market under suspense as he from time to time “drops a bomb” regarding paintings that he claims have been painted by him rather than the prominent artists whose signatures are on the pictures. In February 2014, for example, he claimed that a Max Pechstein painting (*Akt mit Katze*) in the Albertina in Vienna was his work⁵⁶ and, in February 2015, Beltracchi announced in a TV interview that a painting in the Albertina’s Max Ernst retrospective was equally his, without specifying the

actual painting.⁵⁷ Whether Beltracchi's allegations as to his authorship are true or just clever media hype is not yet known, and further investigations may follow. Thus there are still many unanswered questions surrounding Germany's most famous contemporary art forger, which will likely justify another sequel to our chapter.

Notes

1. <http://easthamptonstar.com/Lead-article/2014623/East-Hampton-Ex-Con-Arrested-19-Million-Art-Fraud>.
2. Noah Charney, *The Art of Forgery* (Phaidon 2015).
3. <http://www.nytimes.com/2007/11/18/nyregion/nyregionspecial2/18colli.html>.
4. This opening text originally appeared in a slightly different version in *The Atlantic* as Noah Charney "Why So Many Art Forgers Want to Get Caught" (<http://www.theatlantic.com/entertainment/archive/2014/12/why-so-many-art-forgers-want-to-get-caught/383915/>), and is published here with permission.
5. Michael Sontheimer, "A cheerful prisoner: Art forger all smiles after guilty plea seals the deal" *Spiegel Online* (27 October 2011) <http://www.spiegel.de/international/germany/0,1518,794454,00.html>.
6. According to the prosecution brief, Otto Schulte-Kellinghaus established the contacts to galleries in Paris, brought most of the paintings onto the market and received a commission of 20% per painting sold. He also established contact to the renowned art historian Werner Spies, self-proclaimed expert on the works of Max Ernst, who subsequently authenticated a fake Max Ernst produced by Wolfgang Beltracchi. Dorothea Hülsmeyer, "Fälscher blamieren Experten" *Westdeutsche Zeitung* (2 September 2011); Sven Röbel and Michael Sontheimer, "Forgery Scandal Embarrasses International Art World" *Spiegel Online* (13 June 2011).
7. Author unidentified "More about German art scam – High life ends for couple who conned art world" *NZ Herald News* (27 October 2011).
8. See for an outline of major art forgery cases throughout history: Susanna Partsch, *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene* (C.H. Beck, 2011). She considers a jail sentence of 4 years and 8 months, like the sentence that was received in the United Kingdom by Shaun Greenhalgh in 2007 for forging in particular a "Faun" in the style of Paul Gauguin and the legendary "Amarna Princess," as very high in the sphere of art forgery sentences (see at page 169).
9. Dorothea Hülsmeyer, "Fälscher mit Wissenslücken" *Westdeutsche Zeitung* (29 August 2011).
10. Author interview with police investigator, LKA Berlin (23 March 2012).
11. Deutsches Presse Amt, "Prozess um millionenschwere Fälschungen beginnt in Köln" *Monopol Magazin* (31 August 2011).
12. *Ibid.*
13. However, other national jurisdictions have different limits and the accused might still face charges there.
14. DPA, "Weltweite Suche nach gefälschten Meisterwerken" *Westdeutsche Zeitung Newsline* (27 January 2012).
15. *Ibid.*

16. Michael Sontheimer, "A cheerful prisoner: Art forger all smiles after guilty plea seals the deal" *Spiegel Online* (27 October 2011) <http://www.spiegel.de/international/germany/0,1518,794454,00.html>.
17. Dorothea Hülsmeier, "Fälscher mit Wissenslücken" *Westdeutsche Zeitung* (29 August 2011).
18. Markus Huth, "35 Millionen Euro Schaden" *mz-web.de* (27 January 2012).
19. Focus Online, "Kunstfälscherprozess in Köln – Millionen mit falschem Max Ernst" *Focus Online* (1 September 2011).
20. The cases were considered to be "serious" under § 263 III 1 and § 267 III 1 as they were committed on a commercial basis by members of a gang.
21. Christiane Meixner, "Freispruch für den Kunstmarkt – Zu den Urteilen im Kölner Fälscherprozess" *Der Tagesspiegel* (28 October 2011).
22. *Ibid.*
23. See §§ 153, 153 a, 154, 154 a, 170 II of the German Code of Criminal Procedure (Strafprozeßordnung).
24. Nicolette Feiler-Thull, "Gewieft Fälscherbande – Prozess um Kunst-Skandal in Köln" *3Sat Kulturzeit* (12 September 2011).
25. Gisela Friedrichsen, "Eulenspiegen oder Künstler" *Der Spiegel* (2011) 43, 148, 149.
26. Claudia Herstatt and Angelika Kindermann, "Etikettenschindel" *Art – Das Kunstmagazin* 12 September 2011.
27. Michael Kohler, "Sammlung Jägers" *Art – Das Kunstmagazin* 28 September 2011.
28. Tony Paterson, "High life ends for couple who conned art world" *New Zealand Herald* 27 October 2011.
29. *Zeitung Heute*, "Tadellos das Gemälde ist" *Der Tagesspiegel* (31 December 2011).
30. DAPD, "Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter" nachrichten.yahoo.com (28 January 2012); Gabriela Walde, "Wie man Kunstfälschern auf die Schliche kommt" *Berliner Morgenpost* (2 February 2012).
31. *Zeitung Heute*, "Tadellos das Gemälde ist" *Der Tagesspiegel* (31 December 2011).
32. DAPD, "Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter" nachrichten.yahoo.com (28 January 2012); Gabriela Walde, "Wie man Kunstfälschern auf die Schliche kommt" *Berliner Morgenpost* (2 February 2012); Eckhard Hoog, "Beltracchi: Wie viele Bilder des Fälschers sind im Umlauf?" *Aachener Zeitung* (31 December 2011).
33. DAPD "Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter" nachrichten.yahoo.com 28 January 2012.
34. *Zeitung Heute*, "Tadellos das Gemälde ist" *Der Tagesspiegel* (31 December 2011).
35. Susanna Partsch, *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene*, 2011.
36. Joachim Hauschild and Ute Thon, "Henrik Hanstein – Interview: Die Experten sind mitverantwortlich" *Art – Das Kunstmagazin* (19 May 2011).
37. See in general Jonathan Lopez, *The man who made Vermeers* (First Mariner Books, 2009).
38. This section is predominantly based on Susanna Partsch, *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene* (C.H. Beck 2011) 116–127 and an author interview with the principal investigator in the Beltracchi case, LKA Berlin, (23 March 2012).
39. Julia Michalska, "Charlotte Burns and Ermanno Rivetti" *The Art Newspaper*, Issue 230, (5 December 2011).
40. Eckhard Hoog, "Beltracchi: Wie viele Bilder des Fälschers sind im Umlauf?" *Aachener Zeitung* 31 December 2011.

41. Charlotte Burns, "Knoedler forgery scandal grows" *The Art Newspaper*, Issue 231 (9 January 2012).
42. Julia Michalska, "Charlotte Burns and Ermanno Rivetti" *The Art Newspaper*, Issue 230 (5 December 2011).
43. Ibid.
44. See for example § 199 III 2. Bürgerliches Gesetzbuch (German Civil Code).
45. Michael Kohler, "Sammlung Jägers" *Art – Das Kunstmagazin* (28 September 2011).
46. Ibid.
47. Helene und Wolfgang Beltracchi, *Selbstporträt* (Rowohlt 2014) p. 231.
48. Arne Birkenstock, *Beltracchi – The Art of Forgery* (Senator Film 2014).
49. Verena Paul, "Besprechung im Doppelpack: Die Autobiografie und die Gefängnisbriefe von Helene und Wolfgang Beltracchi, erschienen im Rowohlt Verlag 2014" *Portal Kunst-geschichte* (10 November 2014).
50. Stefan Koldehoff and Tobias Timm, *Falsche Bilder – Echtes Geld* (Galiani 2012).
51. Henry Keazor and Tina Öcal (eds) *Der Fall Beltracchi und die Folgen: Interdisziplinäre Fälschungsforschung Heute* (De Gruyter 2014).
52. Paraic O'Brien, "Portrait of an artist as a conman" *Channel 4 News* (16 April 2014).
53. Sabine Deckwerth und Andreas Kopietz, "Mord verjährt nicht, Kunstraub schon – Interview mit Kriminalhauptkommissar Allonge" *Berliner Zeitung* (29 December 2014).
54. Stefan Koldehoff and Tobias Timm, *Falsche Bilder – Echtes Geld* (Galiani 2012) 139, 253.
55. Julia Michalska, "Werner Spies rehabilitated with Max Ernst show in Vienna" *The Art Newspaper* (28 January 2013) www.theartnewspaper.com/articles/Werner-Spies-rehabilitated-with-Max-Ernst-show-in-Vienna/28493 accessed (5 September 2013).
56. Olga Kronsteiner, "Beltracchi in der Albertina" *Der Standard* (21 February 2014).
57. Anonymous author, "Max-Ernst-Fälschung in der Albertina" *Der Standard* (25 February 2015).

2

On “In Praise of Forgery”

Blake Gopnik

Here’s a dog-bites-boy announcement: forgeries can look strikingly like the artworks they copy or imitate. Since our interest in visual art seems to be all about the look of things, maybe we shouldn’t care too much about the distinction between the original and the forged. Why not just call them equivalent, at least on all important aesthetic and artistic dimensions, and declare the issue closed?

A while ago, I published an essay called “In Praise of Forgery” in the opinion pages of *The New York Times* that made some such argument.¹ Forgeries, I claimed, could be an art lover’s best friend. Forgers give us more of a good thing, I said, by providing works of art that the genius artists never got around to making. I also argued that, because forgers can copy the physical products of art-making, but cannot match the actual inventive capacities that led to those products, they wake us up to the essentially conceptual, rather than manual or material, nature of all great art. And I praised forgeries for helping to pop a market bubble that has distorted all our culture’s artistic values, and that relies on the pseudo-knowledge of connoisseurship to prop up its absurdities. If forgeries prove that the expert attributions of connoisseurs are not to be trusted, as they have again and again, then the market built on those attributions may be cut down to size.

Almost nothing I’ve written in two decades as a critic has had as strong a reaction as my piece in *The Times* – and that, alone, should have told me that there was more at stake than my argument allowed. It might be true that originals and copies are functionally equivalent in terms of how they *look*, but the appearance of an artwork, I’ve since realized, has a surprisingly small part to play in how it functions in a culture. Fakes and forgeries aren’t to be valued (or disparaged) for what they look like: the very distinct pleasures (and vexations) that we get from contemplating and considering them, comes from far deeper inside their status as objects.

When I wrote that “if a fake is good enough to fool experts, then it’s good enough to give the rest of us pleasure, even insight,” I ought to have realized that the object seems to give such pleasure and insight only before it

is discovered as a fake at all – when it is, in fact, functioning transparently as an original. Once we realize a fake is a fake, it becomes an entirely different kind of object from what it was when its essence was previously hidden. This is a central human concern, and therefore a central concern in, and for, works of art. Mimesis, cited as vital to art's appeal since at least Aristotle's time, needs to be seen as including forgers' and copyists' "representations" of other artists' works.

In a book called *In Praise of Copying*, the scholar Marcus Boon writes about what seems to be an almost universal value and quality he calls *copia*, referring to a love of "copiousness," made possible by the freewheeling reproduction of objects.² Boon begins his book by asking, "What if copying, rather than being an aberration or a mistake or a crime, is a fundamental condition or requirement for anything, human or not, to exist at all?"³ He ends it by wondering, even more grandly, if "one possible and provisional answer to many of the problems that plague humanity today, particularly those predicated on scarcity, is simply to make more copies and distribute them freely – as in the story of Jesus and the feeding of the five thousand."⁴ Along the way, he talks about "the joy of copying and the way it opens up to us the mysteries of play,"⁵ whether that play is the act of compiling our favorite songs into a mixtape to be shared with a friend, or of sampling old tunes in new hip-hop tracks. When museum goers turn out to be fascinated by the fact that an artwork is a copy, they are exploring issues of *copia* that are essentially "artistic" – as essential to what it is for an object to be art as when they contemplate a work's color, touch or iconography. In our encounters with art, formal or semantic qualities don't have priority over qualities that have to do with origins, uniqueness and reproduction – even when those are invisible in the surface of a work.

Classical antiquity and the Middle Ages knew how to take pleasure in the joys of reproduction and the "copiousness" it allows.⁶ With statues, and then icons, endlessly copied and recopied, more or less faithfully, "the more the better" seemed to be a crucial artistic principle. This is why the concept of forged art barely existed in that more distant past.⁷ Beginning around 1500,⁸ with the development of the art market and the discipline of art history, the principle of *copia* was pushed out of the fine-art mainstream, and into various subcultures (discussed and praised by Boon), and only came to the fore again with the arrival of avant-garde appropriation, in the 1970s. Appropriation, you could say, is all about the old-fashioned joy of copying, but revived in, and for, an age of market anxiety.

Strangely, however, the classic pleasures of copious reproduction can, themselves, imply a model rather similar to the one I was adopting in my article in *The Times*, since it is built on the notion that all the versions of one artwork can be seen as substituting for each other, in the pleasures and effects they provide. Could our culture's extreme anxiety about copies and fakes (the anxiety I slighted in my op-ed) make clear that Boon's *copia* doesn't

exhaust the “virtues,” or at least the central cultural qualities, of forgeries? Our hatred of fakes can reach the level of a taboo, and that alone ought to flag their larger importance in our conceptions of art – an importance that transcends the Boonian, reproductive function of forgeries.⁹

The world of the art market, where most fakes are born and (sometimes) die, can seem the most aesthetically conservative of places, married to tired old Romantic ideas of the exquisite object that could only have come direct from the hand of a genius *auteur*. But fakes help us realize that, in some ways, the market is opposed to such purely “perceptual” readings. In its obsession with authenticity and originals, the market proves that it isn’t really as invested as it pretends to be in the qualities of the object and the aesthetic achievements of its maker – all of which might be transmitted just as well by a copy. What the market really cares about is a quite disembodied idea of a past act of bravura creation, valued *as* an act of bravura creation rather than for the object it produces. The market, that is, seems to buy the classic conceptualist argument about art objects, which I made in my piece in *The Times*, which claims that the innovative notions behind a work of art can matter far more than any actual objects produced thanks to those notions: “The idea itself, even if not made visual, is as much a work of art as any finished product,” in the famous words of the pioneering conceptualist, Sol LeWitt.¹⁰ The market only values the “authentic” object because it provides a certifiable historical link to the act of imaginative creation, via a causal chain borne out of a series of physical contacts over time. A series of material “touches,” that is, passes authentic knowledge of the moment of creation from the artist’s hand, through the hands of a series of owners, and finally into the hands of an auctioneer or dealer.¹¹ So what the market is actually investing in isn’t the classic “hand of the artist,” visible in the material work of art (and also, as it happens, in its very best copies and fakes), but in a placeholder for a quite art-historical, almost conceptual idea of a great moment in past creativity – the way the market also invests in autographs of dead presidents because of their certifiable links to past moments of political greatness.

In other words, the market for art, though seemingly based in very special objects, is really about purely immaterial, symbolic values – values very like those attached to currency and other tokens of exchange. It just so happens that the symbolic values of the market for great artworks are pegged to the culture’s larger notions about who and what has mattered in the history of art. The standard idea that the birth of the art market helped spur the discipline of art history may get the story backward: once art history established a set of relatively stable notions about which creative acts had mattered in the past, a new market could piggyback on those notions to assign value to tradable objects uniquely linked to each of those acts.¹²

In its commitment to a vanished past, and to tokens of it surviving in the present, the market is, in fact, built on ideas the rest of us share. Fakes

threaten, or seem to threaten, the crucial, non-perceptual role of the artwork as a verifiable link to certain historical moments, and to the people who lived in them. A certain Hipolito Hernanz, commenting on the online version of my article in *The Times*, wrote about how he feels that sometimes “the art itself is only a vehicle for a more personal connection with the author.”¹³ He speaks of how “in music, if somebody ‘found’ Chopin’s Ballade #5 and it turned out to be even greater than his last (#4), I might be moved to tears of sheer joy. I might even spend long hours learning to play it. If it was later determined that it was a fake, created by some unknown musical genius, I would probably feel betrayed, almost as if he or she had made a mockery of Chopin.” In other words, that reader – like the art market – wants artworks that function as true relics of a maker and his making, not as aesthetic and perceptual stimuli.¹⁴

The extreme efforts that have been taken to assess the authenticity of the “Guelph” portrait of Shakespeare, an object without art-historical or aesthetic interest, give some sense of how much pictures can matter as mementoes. But whereas with relics it’s the saint that matters, not the bone that stands for him, I think we value artworks less for the things and moments to which they link us, than for the very fact that they are linked to the past at all, for their basic and simple status as authentic links. We love them as truth-telling objects, as much as for the truths they convey about the past. Conversely, it’s the sheer *inauthenticity* of fakes that we hate about them – we hate fakes for their lies, not their looks.

After the death of the forger Eric Hebborn, the philosopher Dennis Dutton lamented that “Hebborn’s handiwork has altered our understanding of the history of graphic representation, just as surely as a document forger’s skill might alter our understanding of the history of ideas.”¹⁵ Yet I’m not sure that it’s the corrupted “understanding” that he and the rest of us are so anxious about. After all, for most forgeries to work at all well, most of their features must map onto ones already acknowledged from authentic works, so the effect on the historical record is likely to be slight. Forged art objects that have managed to truly alter our understanding of the past may exist, but they are a tiny exception to the norm. Where a document forger wants to make facts exist that once didn’t, the majority of art forgers want and need to carry old realities forward. It is very rare for them to add works to a known artist’s canon in new styles the artist wasn’t already known for.¹⁶ A fake misleads us more about its own past than about the past it pretends to come from; as with the lies told by our loved ones, the betrayal of our trust hurts us more than the misinformation. Dutton may be taking Hebborn’s deceptions so much to heart, because great artworks feel almost like family.

The old saw that says that every fake will out because it betrays the era of its making, cited against my piece in *The Times* by the *New Yorker* art critic Peter Schjeldahl,¹⁷ almost certainly doesn’t hold water: it asks us to believe that no long-standing forgeries survive undetected in our museums, and it ignores the fact that many fakers are contemporaries of that which they

fake. Regardless of the cliché's cogency, however, it betrays an important act of wishful thinking about art – it wants to paint a picture of an ideal world where art objects *cannot* lie, because their lies will always be discovered.¹⁸

Yet it could be that this comes closer to being true for works of art (understood by me, as we'll see, as including their copies and fakes) than it could ever be for celebrity autographs, and that this may be a part of art's special, non-perceptual appeal. We can think of art objects as historically self-certifying, as constitutionally unable to lie about their own origins, because they demonstrate a link to the past within their own surfaces. This is because the glorious art-historical event that we want them to link us to is all about the creation of a certain new visual product. The very fact that the artwork transmits a record of that product reveals and seals its link to its moment of creation. Michelangelo's *David*, that is, is necessarily, among other things, a visible record of the historical moment when that sculpture was carved – its "beauty" acts as a celebration and declaration of the labors attending its birth. A Lincoln autograph produced at Gettysburg, banal and interchangeable with all his other signatures, cannot play this necessarily commemorative, self-certifying trick – the autograph commemorates a famous oration, not a famous flourish of the Lincolnian pen.

The one exception among art objects ought to be a forgery, which of course seems to link to a past moment much earlier than that of its own actual making: The look of a fake van Gogh from, say, 1950 "certifies" its origins in a moment of invention from the 1880s when, in fact, it was made decades later. This exception disappears, however, if we are willing to entertain the possibility that every fake's true birthday is the same as that of the model or models it apes. If we value Titian's "invention" of the visible brushstroke, that is, or Manet's revelation of a new view of modern life, then forgeries point back to them as well as originals do. Forgeries don't so much lie to us, that is, as plagiarize from other objects' truths: hate the forger, not the forgery.

When the ancients copied and recopied the statues of their beloved Praxiteles, they weren't slighting or ignoring the importance of singular authorial achievements, as some critics of my piece in *The Times* seemed to think I was doing. They were celebrating the irresistible force of invention, bound to survive across generations of duplicates. The fecundity of a great work of art, as seen in its many offspring, may still be worth thinking of as one of its virtues.

My article in *The Times* was built on the notion that forgeries prove their worth when they look most like originals, because they do such a good job as perceptual stand-ins. I want to amend that, now, by claiming that bad forgeries and copies that somehow pass muster, even for a little while, are the ones most worth praising and attending to. When a forgery does a lousy job of duplicating the aesthetic experience of its model, and yet still seems to point back to it, it demonstrates how hard it is to erase genius from view. That six-inch plastic cast of *David*, made in China in 2014, is the object

that truly registers the greatness of Michelangelo's Renaissance marble, and conveys our devotion to it.

Notes

1. 3 November 2013, page SR5.
2. Marcus Boon, *In Praise of Copying* (Harvard University Press: Cambridge, MA, 2010).
3. *Ibid.*, p. 3.
4. *Ibid.*, p. 246.
5. *Ibid.*, p. 127.
6. *Ibid.*, p. 63, similarly talks about how, "the evolution of book printing in both India and China was connected with the merit to be gained from producing multiples of the Buddhist scriptures, and a mechanical or even mathematical relationship was established between quantities of books and quantity of merit."
7. See Alexander Nagel and Christopher S. Wood, *Anachronic Renaissance* (Zone: Brooklyn, 2010) on the ability of one artwork to substitute for a similar one in pre-Renaissance Europe.
8. Maria Loh has studied a moment in Italy circa 1600 when imitation and originality were still in intense competition as artistic principles. See her "New and Improved: Repetition as Originality in Italian Baroque Practice and Theory," *Art Bulletin* 86 (2004): 477–504.
9. See Boon 97–98, for an interesting discussion of our "taboos" on reproduction, and their roots in our deeper desire to stabilize a world in endless transformation, so that (p. 135) "we can live in a world where everything is what it appears to be, where deception never occurs, and where no one is ever deceived by anybody or anything."
10. Sol LeWitt, "Paragraphs on Conceptual Art," in *Conceptual Art: A Critical Anthology*, ed. Alexander Alberro and Blake Stimson (Cambridge, MA: MIT Press, 1999), p. 14, originally published in *Artforum* 5, no. 10 (1967): 79–83.
11. Newman and Bloom, "Art and Authenticity," suggest that art viewers are invested in the original maker's moment of "performance" as a great artist.
12. Our market culture's utter devotion to authenticity over artistic effects may in fact be quite surprisingly recent. Keats, p. 57, cites early 20th-century examples of an interest in copies, and of arguments in defense of fakes as being "just as good as" the originals they mimic.
13. Accessed on February 15, 2015 at www.nytimes.com/2013/11/03/opinion/sunday/in-praise-of-art-forgeries.html?comments#permid=10428274.
14. Newman and Bloom, "Art and Authenticity," suggest that art viewers are affected by an almost-magical idea of "contagion," whereby a work of art links us to its maker by virtue of having been extensively touched by him or her – much as is the case with medieval "contact" relics. See Nagel and Wood pp. 231–233.
15. Dutton, "Death of a Forger" *Aesthetics Online* (1996). Retrieved from www.aesthetics-online.org/articles/index.php?articles_id=2
16. See Keans pp. 67–83 on the unusual forgeries of Han van Meegeren, who created early Vermeers for which there were few precedents.
17. www.newyorker.com/culture/culture-desk/fakery, accessed on 16 November 2014.
18. See Boon pp. 123–124.

3

Connoisseurship All the Way Down: Art Authentication, Forgery, Fingerprint Identification, Expert Knowledge

Simon A. Cole

How do you know whether a painting is really painted by a particular person, or a fingerprint is made by a particular finger? You ask an expert. But, in the case of the painting, what kind of expert should you trust?¹ An art historian, a forensic art expert, or a fingerprint examiner with expertise in detecting fingerprint forgeries? This question has been raised in disputes over art authentication since as early as the 1930s.² An engaging article by David Grann (2010) in the *New Yorker* updated a story that I have been following and writing about for several years that raises interesting questions about the production and evaluation of expert knowledge.³

A truck driver from Costa Mesa named Teri Horton bought a painting at a yard sale in the Inland Empire region of California, for \$5, around 1992. Friends told her it resembled a drip painting by Jackson Pollock, which might place its value over \$10 million. The International Foundation for Art Research (IFAR), which was the primary organization that authenticated Pollock paintings, denied authentication on a variety of grounds, including its lack of provenance, physical details about the painting, and connoisseurs' judgments about the quality and authorship of the painting.

Eventually, the painting was analyzed by Peter Paul Biró, an art expert who had pioneered the use of forensic scientific techniques in art authentication. Biró found a fingerprint on the canvas that he eventually concluded derived from the same source as a fingerprint found encrusted in paint in Pollock's Long Island studio, which has been preserved as a historic site. IFAR, however, still denied authentication.

As I have discussed in my article entitled "Jackson Pollack, Judge Pollak, and the Dilemma of Fingerprint Expertise" (2004) the dispute presented a fascinating juxtaposition of expert knowledges: art connoisseurship and forensic science. Even more interestingly, the art market appeared to be an

area in which the outcome of this battle of knowledges defied expectation: seemingly “soft” art history trumped seemingly “hard” forensic science. Of course, this theme reappears throughout disputes about art authenticity, and there have been other disputes in which fingerprint evidence has been deployed, such as one over disputed van Gogh paintings in the 1930s.⁴ New disputes about other purported Pollocks have arisen, pitting connoisseurs against other forensic techniques, such as hair and fiber identification.⁵ However, I also pointed out the uncanny and unexpected *similarities* between these seemingly disparate forms of knowledge. Contrary to what one might expect, the term “connoisseurship” actually applies rather well to fingerprint identification also – and the title of my article was a reference to a federal judge (coincidentally named Louis Pollak) who, in a widely publicized decision, compared fingerprint experts to “appraisers of art.”⁶

Like art connoisseurs, fingerprint examiners (and forensic scientists from several other disciplines as well) do not have a set of hard rules or strict quantitative measurements that determine when their visual assessment of two print images leads them to reach a conclusion that two images derive from the same “hand.” Instead, like art connoisseurs, fingerprint examiners’ conclusions are characterized as expert judgments that are vouched for by long experience looking at print images. As David E. Bernstein has noted, “Much of ‘forensic science’ testimony is actually connoisseur testimony disguised as science.”⁷

A film, *Who the \$#!& Is Jackson Pollock?*, directed by Harry Moses in 2006, tells the story of Teri Horton and her efforts to authenticate the disputed painting. I wrote a more popular account of the dispute for *The New York Times*, in which I also discussed claims that Leonardo da Vinci’s fingerprint had been found, and claims to have determined the ethnicity of his mother from this print.⁸ However, by this time, allegations were circulating which claimed that Biró had forged the prints he had located in the Horton Pollock and another disputed Pollock. So we now have a third form of expertise added to the mix: the ability to distinguish between whether a fingerprint was deposited naturally by a human finger or “forged” – placed there by some artificial means, a form of expertise that few fingerprint examiners even claim to possess. This form of expertise is connoisseurship, too. The report claiming that forgery relies heavily on observations about the print that, based on the examiner’s experience, “are inconsistent with latent fingerprints deposited in a normal fashion but are consistent with forged fingerprints.”⁹

After *The Times* piece was published, I was contacted by Peter Paul Biró, and we had some friendly discussions. We shared the common ground of having experienced the wrath of the fingerprint community.¹⁰ (I should add that one of Biró’s principal antagonists, Pat Wertheim, and I have now mended fences. And, when people allege that fingerprints have been

planted, I refer them to Wertheim.) Like Grann, apparently, I also received a number of emails that cryptically warned me not to trust Biró.

The *New Yorker* article takes on the story of another painting, an alleged Leonardo, upon which Biró also found a fingerprint. Grann masterfully uses this sequence of events to craft a story that, in the best tradition of non-fiction journalism, sets up the reader's expectations and then undermines them. Grann begins with the conventional story of the blue-collar Horton defying the hoity-toity art establishment. Biró emerges as the hero, who uses hard science against soft connoisseurship, and art connoisseurs seem pretentious and possibly fraudulent. But, the beauty of Grann's article is that he has foreshadowed that there is something not quite right about Biró and, in the second half of the article, he uses the forgery accusations to pull the rug out from under the reader, turning the reader's expectations on their head. By the end of the article, Biró is portrayed as a confidence artist and possibly a forger (the notions of art forgery and fingerprint forgery are brilliantly drawn together), while art connoisseurs – though perhaps unlikable – possess true knowledge, and the rest of us *hoi polloi* are victims of our own wishful thinking in siding with blue-collar Horton out of a quintessentially American secret desire for someone to take down the wealthy, effete, artsy establishment.

This is a compelling theme, nicely articulated, and it is a terrific article. Grann engaged in extensive and thorough investigative reporting that has added to the stock of information about the case, and I take no position here on the relative truth of various cross-cutting truth claims and accusations (including some that are not mentioned in the *New Yorker* article). Biró is not that reticent. He sued the *New Yorker* and a number of other media outlets. The lawsuit was dismissed in federal district court, but as of my writing this chapter, Biró is appealing.¹¹ However, the article's treatment of the relationship between the expert knowledge of art connoisseurship and forensic science seems peculiarly out of step, not only with what scholars like Bernstein and I have argued, but now with the position taken by the National Academy of Science in a highly publicized report on forensic science released little over a year ago.¹²

Grann observes that Biró shifts his characterization of fingerprint evidence from "absolute objectivity" and "infallibility," to something that sounds more like connoisseurship.¹³ But, paradoxically, the NAS report now agrees with what scholars have long been saying: that "the assessment of latent prints from crime scenes is based largely on human interpretation," that the "method does not specify particular measurements or a standard test protocol, and examiners must make subjective assessment throughout," that "the threshold for making a source identification is deliberately kept subjective," and, in short, that "subjectivity is intrinsic to friction ridge analysis."¹⁴ It further states "the interpretation of forensic evidence is not infallible. Quite the contrary. This reality is not always fully appreciated or accepted by many

forensic science practitioners, judges, jurors, policymakers, or lawyers and their clients.”¹⁵

Similarly, Grann faults Biró for the ambiguity with which his conclusions about the fingerprints are phrased. Biró’s characterization of the Leonardo print as “highly comparable,” rather than “the term ‘match,’ as is standard among law-enforcement analysts” it is implied, seeks to shroud the purported forgery behind the vagueness of the conclusion. In contrast, Grann notes, “real” fingerprint experts testify in black and white terms, to “only a positive or negative identification, and [a fingerprint examiner] is prohibited from speculating on probabilities.” One FBI examiner mocks Biró’s formulation: “what does that *mean*? *Homo sapiens* and bull mastiff – are they ‘highly comparable’? Give me a break.”¹⁶

What is remarkable about this is that it is precisely for this insistence upon rendering conclusions in such binary terms, that the discipline of fingerprint identification has been criticized by numerous scholars and the NAS. Virtually all legal and forensic scholars now agree that all forensic evidence is inherently probabilistic. While fingerprint examiners once claimed that fingerprint evidence was a form of non-probabilistic evidence, that view has now been effectively demolished by a variety of different scholars.¹⁷

The NAS has now taken a similar position, expressing discomfort with the “standard” term “match” for its vagueness, for its connotations of absolute certainty, and for being unsupported by evidence.¹⁸ Instead, the NAS has echoed the calls of many scholars for precisely the sort of probabilistic approach to evidence that Grann notes is “prohibited” for “real” law enforcement fingerprint examiners.¹⁹ Four days after the publication of Grann’s article, the International Association for Identification, the world’s largest professional organization for fingerprint examiners, passed a resolution rescinding a 30-year-old ban on “probabilistic” testimony.²⁰

Indeed, for all the seeming clarity of their opinions – fingerprint experts either report that two prints *must have* come from the same source or that they don’t know, but never that they *might have* come from the same source – the *basis* for these opinions remains, essentially, connoisseurship. How does a fingerprint expert know that two prints come from the same source? They look at the two images and form an opinion based on their training and experience.

This is not to say that Biró, in saying “highly comparable,” was seeking to convey the value of the fingerprint evidence in probabilistic terms. Nor is it to say whether he is right or wrong about the print. But it seems paradoxical that he was criticized for offering a non-categorical conclusion at the very moment that the fingerprint establishment was being criticized by the NAS for *only* offering categorical conclusions. Likewise, it seems paradoxical that Biró is implicitly criticized for backing off his earlier characterizations of fingerprinting’s “absolute objectivity” and “infallibility,” at the very moment

that the NAS is criticizing the fingerprint discipline for invoking those very terms.

What is curious about the Grann article is that it ends up being a defense of connoisseurship as expert knowledge. It ends by suggesting that there is ultimately “something about” those pretentious art connoisseurs so vilified in the film and the conventional narrative – that they do experience images “in a way most of us can’t.”²¹

But whether art connoisseurs see art – or fingerprint examiners see fingerprints – differently than the rest of us is only part of the question. Undoubtedly, they do.²² However, asserting that these experts see differently, or better, is quite a different matter from supporting claims of the sort they are making in cases such as these. To claim that one can determine, just by looking, even experienced looking, the “authorship” of a painting or a fingerprint – or whether a print is natural or forged – requires an entirely different level of empirical support than simply showing that one has an experience-based way of seeing.

Again, the moral of Grann’s tale seems paradoxically at odds with the reforms urged by the National Academy of Sciences (NAS). Even as he defends connoisseurship, the NAS is urging that forensic scientists “develop rigorous protocols to guide these subjective interpretations.”²³

While readers may be tempted to read this latest installment of the drama as a mystery solved – viewing Biró as master forger – the mystery to me remains more open-ended. The entire episode, much like Grann’s earlier celebrated article on the Willingham arson case, seems to speak less to the correctness of one version of “the truth,” than to the limitations that all forms of expert knowledge, whether “hard” or “soft,” have in producing what we tend to think of as truth.²⁴

Notes

1. An earlier version of this chapter was published on the blog “Suspect Identities” at <http://blogs.uci.edu/scole/2010/07/23/connoisseurship/>. Thanks to Peter Paul Biró, Martin Kemp, and Teri Horton for their comments. For comments and encouragement on this editorial, I am grateful to Jonathan Kahn, Mona Lynch, Stefan Timmermans, Brian Williams, David E. Bernstein, Douglas Berman, Kevin Cole, Maurice Possley, David Kaye, Gary Edmond, Errol Morris, and Jonathan Lopez.
2. Henk Tromp, *A Real Van Gogh: How the Art World Struggles with Truth* (Amsterdam: Amsterdam University Press, 2010). Print.
3. David Grann, “The mark of a masterpiece” *New Yorker* (12 July 2010).
4. Tromp, p. 152.
5. Patricia Cohen, “A real Pollock? On this, art and science Collide,” *The New York Times* 24 November 2013.
6. Simon A. Cole, “Jackson Pollack, Judge Pollak, and the Dilemma of Fingerprint Expertise.” *Expertise in Regulation and Law*, ed. Gary Edmond (Aldershot, UK:

- Ashgate, 2004), United States V. Llera Plaza. 179 F. Supp. 2d 492. E.D. Pa. 2002. (vacated and withdrawn).
7. David Bernstein, "Expert witnesses, adversarial Bias, and the (Partial) failure of the *Daubert* Revolution" *Iowa Law Review* 93, 2008, 129.
 8. Harry Moses , "Who the \$#%& Is Jackson Pollock?" documentary film (2006); Simon A. Cole , "A little art, a little science, a little 'Csi'" *The New York Times* (31 December 2006).
 9. Pat A. Wertheim, *Scientific Examination Report: Fingerprint Forgery Case* (Phoenix: Global Fine Art Registry, 2008).
 10. Brendan Koerner, "As the Whorl Turns" *Village Voice* (26 March 2002).
 11. Sydney Smith, "Libel lawsuit against New Yorker dismissed" *iMediaEthics* (8 August 2013): http://www.imediaethics.org/index.php?option=com_news&task=detail&id=4076.
 12. National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (Washington: The National Academies, 2009).
 13. Grann, "*The Mark of a Masterpiece*" p. 71.
 14. National Research Council, p. 139.
 15. *Ibid.*, 87.
 16. Grann, 71.
 17. Christophe Champod and Ian W. Evett, "A Probabilistic Approach to Fingerprint Evidence" *Journal of Forensic Identification* 51, 2, 2001.
 18. National Research Council, pp. 87, 141.
 19. *Ibid.*, 141; Grann, p. 71.
 20. International Association for Identification, "Resolution 2010–2018," Standardization II Review Committee (Spokane, Wash: 16 July 2010), Available: http://www.swgfast.org/Resources/100716_IAI_Resolution_2010-18.pdf.
 21. Grann, p. 71.
 22. Thomas A. Busey and Itiel E. Dror, "Special Abilities and Vulnerabilities in Forensic Expertise," *The Fingerprint Sourcebook*, ed. Scientific Working Group on Friction Ridge Analysis Study and Technology (SWGFAST) et al. (Washington, DC: National Institute of Justice, 2011).
 23. National Research Council, p. 8.
 24. David Grann, "Trial by Fire" *New Yorker* (7 September 2009).

4

The Police Investigation of Art Fraud

Vernon Rapley

Art fraud is certainly not a new phenomenon. Art fraudsters have operated through history, probably with the same basic criminal intent and method as they do today. Over the years, our attitude to collecting art has changed, as has our attitude to fraud. Police investigative methods have evolved, but criminals have been quick to respond, both to trends in the market and to police methods of identifying “a wrong one.”

In 1703, Lord Chief Justice Sir John Holt asked, during the trial of an accused fraudster: “shall we indict one man for making a fool of another?”¹ He considered that we shall not, and did not indict the man for trial at the Crown Court. Unless the “victim” is complicit or conspiratorial, most societies now expect the criminal law and therefore, the police, to protect them from unfair loss or suffering. Some may even expect to be protected when others might consider their actions blurred between victim and conspirator. Take, for example, the subject of the common online “phishing” examples of a Spanish Letter fraud, or Nigerian 419 fraud. These “victims” commonly engage in acts that they believe to be ethical, but illegal, and yet often report the perpetrators for investigation and prosecution.

The 2010 display at the V&A sought to demonstrate how fakers and forgers successfully find a place in the art market for their criminal property. It pointed out the risk of criminals identifying new trends and opportunities, understanding the methods of detection and, thereby, being able to accurately assess the risks of their ventures. This is not to say that “art criminals,” if indeed such a thing exists (for there have been few documented career criminals who focus on art), are any different from criminals engaged in other activities. It all boils down to the core criminal considerations: supply, demand, opportunity and risk.

Truly, the words “fake,” “forgery,” “faker” and “forger” have little or no place in the police investigation of art fraud. Their application within criminal law is unnecessary in all but a very few cases. In practice, crimes are recorded as fraud, and prosecutions are brought under the Fraud Act, Proceeds of Crime Act or Common Law Conspiracy to Defraud. New Scotland

Yard's Art & Antiques Squad is, in many ways, a bridge between policing and the art world. For this reason, they have sometimes found it useful to use terminology that is familiar to victims and experts. Hence the evolution of the following commonly used definitions: fake, forgery, copy and misattribution.

A "fake" is a work of art, antique, antiquity or collectible, that has been tampered with for the purpose of fraud. A fake could be created in a number of ways, but typically will involve a physical change to the object itself, rather than the mere creation of supporting documentation. The intention must be to defraud and, typically, will increase the perceived value of the piece. It is important to understand that the object itself is not criminal. It is the intention and actions of the creator or handler that may be criminal. The same object can pass through different hands, each having separate or no criminal liability.

A "forgery" is an object made in fraudulent imitation of an existing item, or the creation of an artwork that presumes to be something other than what it actually is. A forgery is unlike a fake, because a fake is an object created honestly, but altered for deceptive purposes, whereas a forgery is created from scratch, with the intent to deceive.

A "copy" of a work of art is a direct replica of a pre-existing work, or an artwork created in the style of a particular artist. It is not a criminal offense to make, sell or possess a copy of an artwork. However, a copy could be used to commit a fraud, if it is presented as real.

A "misattribution" is a mistake made when determining the original creator of an artwork. The error may be made for any number of reasons, restoration may have concealed vital clues, or the object could have been created by an artist's school, or by their agent. The essential element is that the mistake was honest.

For the police, one ingredient shines through these definitions. A fake or a forgery requires dishonesty, whilst a copy or misattribution requires honesty. The police investigate those who act dishonestly and commit crimes. The rest they leave for experts or the art trade to sort out.

The police will also consider the date of the criminal offense, before considering an investigation. In the United Kingdom, this is not because of statutory limitations, but rather a simple need to investigate and prosecute a living criminal. The police will not investigate an allegation, however compelling the evidence, if the last known suspect has been dead for a hundred years or more. In these circumstances, despite evidence of criminality, the case will be left for lawyers to resolve in the civil courts.

Criminals are well aware that the prosecution must prove their dishonesty beyond all reasonable doubt. With experience, they will use this to their advantage on every occasion.

I was the Head of the New Scotland Yard Art & Antiques Squad from 2001 to 2010. During this time, we investigated hundreds of alleged art frauds, but

only 10% resulted in an arrest. I offer the following cases, from my memory, to demonstrate some common difficulties encountered when the police start an art fraud investigation. Many cases we were asked to investigate appeared to the complainants to be “cut and dried cases,” but the reality was often very different!

The first investigation in the summer of 2006 concerned a dealer on the South Coast of England, who purchased an unsigned work on paper from an auction house. The work had been sold to him, unsigned, and “in the style of Edward Ardizzone.” The dealer genuinely believed the work to be by the artist, and spent time researching the painting in some detail. Convinced of its authenticity, and sure that it would originally have been signed by the artist, he apparently “restored” the painting by “reapplying” a signature. When presented again in the art market, it didn’t take long for the addition to be noted and reported to the police. The item was very carefully described by the dealer as, “by Edward Ardizzone, signed with the initials ED.” He did not state that the artist had signed his own initials. As no evidence could be found to dispute the statement of the dealer, no deceit or fraud had been practiced and, therefore, the investigation could go no further.

In the second case in 2007, I attended the home of a criminal. He was already known to us, and we had a warrant to search his home for stolen art. We entered the premises quickly, to avoid alerting the occupants, or allowing them to destroy any evidence. The rapid entry was such a success that we caught the suspect, in his garden, sitting at his easel, signing the name of an artist onto the bottom right-hand corner of a Victorian landscape. So confident and casual was the man of his actions that he asked us to wait a moment, so that he could complete his work without being jogged. When questioned, he admitted to making the addition, he admitted to knowing that it was not a work by that artist, but denied any attempt to deceive. If, as he then suggested, he was simply going to hang the work on his wall to impress his friends, he had committed no crime.

Art fraud is difficult to investigate and, in the eyes of many, only affects an elite few. Were this the case, then one would need to consider why police forces around the world dedicate time and resources to such investigations. A relatively modest art fraud investigation, let’s say involving 20 paintings by one forger, sold through a network of three others, will take about 800 hours for detectives to investigate, by my estimate. This broad estimate wouldn’t include the time of experts, prosecutors or in presenting the case at court.

It is an outdated belief that art fraud only affects the “elite,” or those fortunate enough to own valuable artworks. The reality is that the international art market survives on its reputation. It is an important economic generator, supporting employment and subservient industry and business. As with any financial market, fraud reduces public confidence and damages trade. Living artists who are targeted by fraudsters can see their reputation suffer, and the value of their work reduce. Great art is a part of our

cultural heritage, providing key information about our past. When our public museums, libraries, archives and galleries are corrupted by fakes, forgeries or falsified provenance and documents, we are all adversely affected.

The police can afford to ignore academic debate, and remain focused on the facts. There is much debate as to why art fraud reduces the value of an object. Should the creation by one artist rather than another reduce its value? The police investigate art fraud because it's a crime, a crime that has both economic and cultural consequences. It can provide real benefit to criminals, fund criminal networks and provide funds to fuel further crimes.

In policing terms, Cultural Property Crime came of age in the late 1960s. International discussions, leading to the UNESCO 1970 Convention, focused on the global impact of Cultural Property Crime. Leading police forces responded by setting up small dedicated teams of Art and Antiques Officers. London's Metropolitan Police and the Italian Carabinieri were certainly among the first, with the Carabinieri TPC (*Tutela Patrimonio Culturale*) having been established in 1969. The exact date that the Metropolitan Police founded the Art and Antiques Unit appears to be uncertain. As with so many things in the police the team seems to have evolved from a Philatelic Squad, rather than having started with a bang! One thing is for sure however, the Metropolitan Police has never equaled the Carabinieri in size. During one joint investigation I noted that I had at my disposal three officers and a Ford Focus car. Whilst our partners in Italy appeared to have 280 men and the use of a frigate, several helicopters and a mini submarine! London's efforts were almost certainly made in recognition of London's importance as a major international art market. The role of the Art & Antiques Squad has varied over the years, its objectives change and the perception of its role by those inside and outside of the police has also varied. Some consider its role to be the protection of the art market, others to police the art market. I always consider its role to be simple: to deal with art criminals, inside or outside of the market. This would include thieves and forgers, but also those that commission or support offenses, as well as those who benefit, directly or indirectly, from the crimes. However the role has changed over the years. Scotland Yard has investigated fakers and forgers with specialist officers for at least the last 45 years.

Police methods of investigation have developed over time. Forensic Science has evolved beyond all belief in the last 40 years, and has provided investigators with a wealth of new evidential opportunities. The investigation of John Andrews is a good example of police forensic evidence bringing an art fraudster to justice. In January 2008, John Andrews trading as "antiquis-2000" advertised a forged mummy mask for sale on "Ebay." During the investigation that followed; DNA, fingerprint, handwriting analysis, printing and material techniques brought a wealth of evidence against a man who may well have escaped justice had the offense been committed a few years earlier. Many of the forensic tests have been available for years,

but their use was reserved for only the most serious offenses. Now the police can use forensic assistance on even the most trivial of offenses. The tests are far quicker, simpler and cheaper than they used to be. Further information on this case can be found on the Internet.²

Criminals are fast to respond to investigative progress, and quick to exploit new opportunities. In recent years, the police in London have noticed that criminals are finding contemporary art easy to forge, and that they are finding the Internet to be a safe platform to carry out their crimes. Modern works with simple brushwork, deliberately impersonal styles and the use of readily available materials are obviously attractive to fraudsters. Why would they spend weeks researching and preparing materials to produce an older work, when they can pop to the local art shop and produce a modern work that's just as valuable and desirable? The Internet has contributed to art fraud in four obvious ways. It allows criminals to remain anonymous for longer, it restricts the victims' opportunity to properly view or assess the object before purchasing, it can be used to offer up obscure and misleading information and it allows a criminal to disappear as soon as the fraud is complete.

The police have the advantage over the art trade or experts when investigating fakers and forgers. The powers the police have to search suspects, their homes and businesses, obtain records of their financial transactions, and even some of their personal communications, are all excellent ways of gathering evidence. Sometimes, however, the police need experts to assist them. They may need expert assessment or opinion to support initial suspicion or complaint. This expert assistance may provide the police with the "reasonable grounds" that they need to apply for a search warrant, or make an arrest. On other occasions, the police have already exhausted their investigation and need expert opinion or testimony to bring the case to fruition.

Many art fraudsters are well-prepared for the day when the police come knocking; they've made efforts to cover their tracks. Most importantly, they will have a well-rehearsed cover story. This cover story will extend to all of those involved in the conspiracy, and consist of documentation or other proof, whenever possible. Criminals start with a clear advantage: they don't need to prove their story. They don't even need the police to believe their story. They just need to be confident that the police can't *disprove* their story!

Police scientists can examine a suspected forgery, but often their techniques are more attuned to examining objects that do not have such significant value. It is somewhat nerve-racking for a police officer, who merely suspects that a painting may be a forgery, to submit it to the police forensic team. On one occasion, I recall a conversation with a forensic scientist. We had seized a painting in the style of John Anster Fitzgerald, and we strongly suspected it to have been painted by a known forger, within the last few years. We wanted the police scientists to examine the layers of paint, as the suspected forger claimed that the painting had been in his family

for more than 50 years. If we could prove that the layers of paint, especially the first coats of paint, were of more recent application, then we could start to prove the forger's dishonesty. The forensic scientist advised that this examination was absolutely possible. The issue was that his methods were to be far from "non-intrusive," in fact he would need to damage a one-inch square section of the painting. As the painting was potentially worth over 100,000 pounds, I would have needed to be very sure that the painting was a forgery, before I gave the go-ahead. I wasn't, and called upon a specialist from the art market. It's common, therefore, for the police to require the assistance of specialist art conservators, when investigating art fraud.

However, there are many cases that demonstrate that science cannot always provide clear answers as to whether a work is authentic. Scientific opinion is often "subjective," and encourages conflicting scientific opinion in court. On occasion, the police will also call upon art historians. An in-depth understanding of the artist, his style and technique can assist in an investigation. Just as with scientific opinion, every art-historical opinion is bound to invite a conflicting opinion. It always made me very nervous, if I was pursuing a case where the primary evidence was "expert opinion." In court, the case often became about the credibility of the expert, rather than hinging on the facts of the case.

It is not just paintings that are vulnerable to art fraud. Criminals also target sculpture, collectibles, antiques and antiquities. Some commodities, such as silver, are "policed" by professional bodies. They can initiate investigations, and prepare and present expert evidence in court. The police can afford to rely upon the evidence of these accepted experts far more readily than they can for some other commodities. Whilst I was at Scotland Yard, we used evidence from the London Assay on a number of occasions, including during the investigation of Peter Ashley Russell. The evidence from the Assay office was generally accepted by the courts, and rarely challenged by the defendants' lawyers. This was not the case when evidence from artists' foundations, independent art experts, dealers or even museums was presented. This evidence is considered little more than a subjective opinion, and often tainted by personal interest. It is, therefore, ripe for challenge.

Despite the difficulties of working with the trade to gather evidence, the police will always need the art market and independent experts to be successful. For example, during the investigation of Robert Thwaites, it was a dealer who first brought the attention of the police to the suspect. He had become suspicious of the number of paintings by John Anster Fitzgerald that were appearing on the market. The dealer presented a great case to the police for investigation. However, from the beginning, the police could see that the evidence of the dealer was open to challenge. He had, in stock, a number of genuine works by the same artist and, at the same time as he informed the police, he also notified the press. This not only put pressure on the police, but also exposed his evidence to challenge on the grounds that he

stood to financially benefit from his allegation. Further down the line in the same investigation, the police again needed to place their trust in outside art experts, to forensically examine a number of the paintings. This produced solid scientific evidence, but still based partly upon the uncertainty of art-historical opinion. The case was successfully prosecuted, but the best evidence was uncovered by the police, during searches of the suspects' homes, and obtained during interviews and enquiries.

Often, it is the information supplied *with* a fake or forgery, rather than the artwork itself that is the primary tool of the fraudster. It is sometimes also the key that allows the police to unlock the case. Historical documentation, called provenance, is as important for selling a work of art, as ownership documents are when selling a car. Yet strangely, many purchasers of art ignore this.

Provenance can range from a receipt and full history from creation to the present, to simple verbal information given by the seller. Criminals are well aware that, to sell their artwork as genuine, they must also provide some form of history. The criminals I dealt with fell broadly into two categories: those who invented vague and uncorroborated stories that allowed them to escape liability in the event of their apprehension, and those who invested heavily in the provenance, but understood the value of being subtle. An example of the first would be the common story that the object had been handed down to them by their now deceased-grandfather, sometimes supported by an understanding that the grandfather had known the artist, worked with the artist, or had at least lived in the same area. The only way for the police to overcome this built-in defense is to prove that the object was created more recently than the seller claims to have been in possession of it or, of course, to prove that the seller created it! These can often be a lot more difficult to achieve than may be imagined.

A great example of the second method is the case of John Drewe³ working with John Myatt.⁴ John Myatt was arrested in 1995, John Drewe in 1996, the case was taken to trial in 1998 and resolved in 1999, four years after the investigation commenced. Drewe understood not only how to implant false documents into real historical archives, but also the value of leaving clues for the experts. This allowed the "experts" to find the evidence themselves and, therefore, be convinced of its authenticity. Shaun Greenhalgh manufactured so many items that he employed a combination of Drewe's methods of planting historical evidence and leading experts on merry chases, albeit in a less sophisticated way to Drewe and others. As well as criminals using these methods, there are also a growing number of forgers who can't be bothered, and commonly sell online. They provide either no history, or the simple uncorroborated tale that they bought a work recently at a flea market or on the Internet. Whilst they should be unlikely to sell their wares so easily, when they do, it is extremely difficult for the police to disprove their story. When a false provenance is created, its damage is twofold: it helps the

fraudulent artwork weave its way into history, and our archives and written history are distorted.

Years of investigating art fraudsters have taught me some important lessons: to expect the unexpected, believe the unbelievable, trust nobody and test everything. Art fraudsters don't need to be great artists. In my opinion, few are. They do, however, need to be excellent fraudsters. They learn their trade, not as Hollywood might suggest (by sitting behind an easel), but by studying and understanding their victims.

More people than ever appear to be buying and investing in art. Many will have little or no knowledge of the art commodity, or of the way in which the art market operates. Such potential victims will increasingly need to be aware of the risks of investing in art. If they would start to think like cynical old art detectives, trusting nobody and testing everything, then hopefully art fraudsters will move on.

Notes

1. Reg v Jones, 1 Salk. 379. 2 Ld. R. 1013.
2. http://www.antiquitiesonline.co.uk/Fake-Egyptian-antiquities_AWL7V.aspx.
3. http://en.wikipedia.org/wiki/John_Drewe.
4. http://en.wikipedia.org/wiki/John_Myatt.

5

The Grape War of China: Wine Fraud and How Science Is Fighting Back

Toby Bull

Introduction

There has been wine made from grapes – as opposed to grain – in China for thousands of years.¹ Indeed, Wang Renxiang considers it to be at the very heart of China’s culture and identity.² Vine cultivation goes as far back as the Zhou dynasty (ca. 1100–256 BC), where indigenous vines within the royal gardens were said to have existed. The first documented account of Western viticulture coming into contact with the Middle Kingdom is found in a 1st century BC history book, *Shiji*, where an emperor’s envoy sent to the lands west of what is now the Sino-Uzbekistan border area, saw “grapes that were used to make wine . . . the oldest was kept several decades without getting spoilt.”³ The envoy, duly impressed, returned with some cuttings and, not long afterwards, Chinese vineyards from a Eurasian grape varietal were established, eventually producing wine fit for the imperial palate.⁴ And so wine became associated with the rich and high-born: a luxurious and desirous product, and with it, perhaps, the earliest recorded case of a “wine crime” occurring in ancient China.

Li Hua mentions an official bestowing a gift of (grape) wine – the equivalent of 20 liters – in order to achieve a high position and win favor at court.⁵ Hua refers to this as “the first time an office was bought with wine” – a neat symmetry to the modern-day practice referred to in China as “Elegant Bribery:” the art of bribing officials with gifts, normally of art or expensive Grand-Crus. China’s recent anti-graft measures, a decree by the current president, are seeing some changes to this method, although the Chinese still buy wine, lots of it, both for gift-giving and personal consumption, but are now spending less.⁶ Thus, whilst the West can look to the writings of Pliny the Elder from 1st century Rome for early references to the relationship between the wine trade and the shenanigans sometimes associated with it, so too can China look to its past, for the concept is not a new one.

Fast-forward two millennia, and even the non-oenophile drinking public knew that all was not well within the wine world. In the United States, a young 37-year-old Indonesian male, subsequently disclosed to be an illegal immigrant to boot, named Rudy Kurniawan, was making headlines for all the wrong reasons. Once reputed to have owned the world's finest wine cellar, the law, and multiple lawsuits, finally caught up with him. Accused of selling over \$20 million worth of counterfeit wine (and believed to have placed many more millions of dollars-worth of fakes into the market), this self-educated wine connoisseur and dealer was, in 2014, sentenced to 10 years in a US prison, ordered to forfeit millions of dollars and then fined even more in restitution for producing a glittering array of fake Bordeaux and Burgundy wines.⁷ The FBI, upon raiding his home in 2012, found nearly 20,000 fake wine labels, fake stamps, corks and capsules, empty old bottles awaiting refills, as well as counterfeiting formulae (recipes) for reproducing the flavor of some of the world's rarest top wines.⁸

How big a deal was the Kurniawan case? Significant, certainly, especially with the huge sums touted about in the press. But does this reflect the depth of chicanery in the marketplace? Wine fraud is a wide topic, with so many questions undefined. Who is involved: manufacturers, retailers, merchants, organized crime, or lone egotistical opportunists? Are we talking only about the fine wine market, or mass-produced *vin de table*? Who decrees what the definition and/or distinction should be? Should we use the term "wine fraud" in the same breath as "fake wine?" Is this a food and beverage safety issue, or more of an intellectual property rights infringement one? These are all relevant and important points to note, and this chapter will endeavor to tackle certain aspects mentioned above. In the main, more so because it is not within this work's scope to discuss etymological origins, this chapter will act as more of an introductory entry point, a "China wine crime 101," and so the terms "wine fraud," "fake wine" and "counterfeit wine" will be used fairly liberally throughout this work, and on some occasions will be interchangeable, especially when highlighting the criminal element of the trade.

Kurniawan was faking Grand-Crus and playing for high stakes at the big table, with fellow "whales" of the wine-collecting world. From his proceeds, he collected art works by Andy Warhol, Damien Hirst, Gene Davis and Ed Ruscha, among others (interestingly, the Warhol was later sold off at a Christie's auction and brought in over \$460,000, whilst the Ruscha went for \$1.25 million as a part-settlement of a debt that Kurniawan owed). As with the art market, where large figures are achieved in sales, and ever-increasing demand for these alternative assets thrives, as does the "chancer:" the amoral cad who looks to make a buck off the back of a rapidly rising market, whilst exploiting the innate human weaknesses of greed and vanity. Kurniawan was one such, akin to the skilled forger diligently working for years to create his "masterpieces," then placing them in the market. But Rudy was the

antithesis of the said “invisible” forger, for he certainly loved the limelight and notoriety. He was known by his sobriquet, “Mr. 47,” among fellow collectors, and for his love of 1947 Cheval Blanc, which some experts consider to be the greatest Bordeaux ever produced. The wine market, much like with art, operates with a certain degree of opacity and secrecy, and where good provenance is a highly prized asset, adding huge sums to the final sale price or value and with it also, some would say, a potentially perfect breeding ground for criminality.

This chapter looks at the overall fake wine situation in China. The country has something of an image problem in the mercantile world. It is now just as famous for its counterfeit (“Shan Zhai”) products, from electronics and phones to luxury handbags, as it is for the Terracotta Warriors and The Great Wall (which happens to be the name of China’s best known brand of wine). To many, the “Made in China” tag no longer conjures up a vision of a workforce on bicycles and cheap labor, a manufacturing giant whose import and export activity keeps the world’s balance of payments in credit (just) – no, that image is fast disappearing.

Today, China is synonymous with fakes. And China being China, the opportunity for fraudsters to enter the counterfeit wine market would be too big a draw to ignore. Statistics on the illegal trade, like with the reporting on art crime there, are unreliable at best, or completely non-existent at worse. In many cases, one relies on the anecdotes, such as the oft-mentioned but never qualified, “*there is more Lafite ’82 in China than was produced in France.*”⁹ Such anecdotes come from different sources, and range from the brand protection investigator, for example, counterfeit-specialist lawyer Nick Bartman, who has stated that as much as 50% of imported wine in China could be fake; to those of the various Old and New World vintners receiving word back from their agents in the Middle Kingdom that there is a problem, such as when wine arrives purported ex-Chateau in original wooden cases, but these are really second-hand cases sanded down and reprinted with a different vintage year. Other peculiarities include cases that have “de-stripped” labels, which can hide a wine’s true provenance and thus, cause price distortion in the market. Strip labels contain information about the contents of the wine, shipping and importer’s details and are a requirement for importing wine into the US. However, reports from within the trade suggest that some wine shipments offered for resale in Europe have had these labels removed, in an attempt to conceal their well-traveled history. It can also reduce a wine’s value at export by between 10% and 50%.¹⁰ Such tricks can help to let through into the market wines with “mixed” provenance, thus affecting the quality and, therefore, its value.

Global wine consumption is estimated to be around \$198 billion.¹¹ The existence of the “wine hub” that is Hong Kong – sales in 2013 reached \$115 million – situated in China’s backyard, is as problematical for the genuine wine trade as it is for their counterparts in the art market there, for the

local government in Hong Kong is positioning itself as the hub of all hubs. As will be seen in this chapter, similarities do indeed exist between these markets, for when a thriving market so excitedly embraces these auctions, and with record prices being the result, demand soon outstrips supply. This is certainly true for the top-end of the market, but how about lower down the chain? We will attempt to address this issue, highlighting the sheer scale of the problem the trade faced (and still does) in opening up the market to China – a new, untapped and relatively uneducated market, at that. We will then move on to look at how science – in the form of tools to help with verification, authentication, tracking and tracing – is trying to redress the balance.

Wine in China, at a glance

First, some statistics on the genuine China wine trade – ones that can be more easily verified than those for the China art market. Many of these figures are quite staggering (dates are up to 2014, unless otherwise stated).

- In 2011, China's wine-growing area and vineyards were the fourth-largest in the world (Dubois, 2013), and are still increasing, with some of its local wines having few technical faults and ever-improving quality;¹²
- In 2012, China was the fifth-largest export market for Californian wine;¹³
- In 2013, French wine and spirit exports to China were worth €836 million, which accounted for half of all European wine exports;¹⁴
- China is the fifth-largest wine consuming country in the world;¹⁵
- 80% of red wine consumed in China is home-grown;¹⁶
- China is the second largest market globally for the most expensive wines – figures had surged almost 430% during the years 2008–2012;¹⁷
- China is now the world's largest consumer of red wine, ahead of France: China consumed 155 million nine-liter cases, whilst France drank 150 million nine-liter cases;¹⁸
- 90% of wine drunk in China is red wine;¹⁹
- Chinese wine consumption is expected to increase by 40%, to 858 million bottles by 2016, overtaking the US and Russian markets;²⁰
- China has become the leading export market for wines from Bordeaux;²¹
- \$440 million was spent on wine in Hong Kong in 2012, a figure expected to reach over \$535 million by 2017;²²
- Wine counterfeiting was one of the five main trends in the Chinese market in 2013;²³ and
- 44% of Chinese consumers are worried about counterfeiting, and do not know whether the wine they are drinking is authentic or not.²⁴

Since the Hong Kong government reduced the import licensing duty on wines to 0% in 2008 (many reports state that it was abolished, but in reality,

the mechanism is still there, to be increased at a time of the government's choosing), the city has seen imports practically double, reaching €316.3 in 2012, with a lot of it then being re-exported regionally, much of it into China.²⁵ With numbers like these, as well as the startling statistics listed above, it is no wonder then that ne'er-do-wells sniff an opportunity. Whilst record auction prices in Hong Kong make the headlines, it is the effect on the market over the border where it is most keenly felt, especially in those so-called secondary or third-tier Chinese cities, where wine knowledge is more limited and foreign language skills (French/English/Spanish), necessary to read and distinguish the labels and information provided thereon, equally as deficient. Thus, it provided a perfect step in the evolution of counterfeiting, taking advantage of the twin weaknesses: consumers who had little or no experience with wine, but had the money to enter the marketplace. Often, the unsophisticated, but keen-to-learn, buyer will resort to buying expensive French wines, believing them to be of the same stock as the record-breaking Old World wines that they read about over the news wires. It is no wonder then that French wines are particularly popular with the counterfeiters. Perhaps due to this, in April 2014, the Chinese and French governments signed a joint declaration of intent to counter the sales of fake wine and spirits in China, with the French Secretary of State for Foreign Trade sounding full of confidence when stating, "It will guarantee the quality of products for Chinese consumers."²⁶

Counterfeit wine expert, Maureen Downey, is among the many who agree that it is simply impossible to know the size of the fake wine market, partly because it is woven into a legal market. Many do agree on the fact that the quantity of rare wines from the most famous vineyards being auctioned is just too high not to include fakes. Downey points out that she is aware of some of "Mr. 47's" fakes in the cellars in Hong Kong, and is convinced that there is a huge amount of what she refers to as "fraudulent wine" in Asia,²⁷ although she adds that it is equally as important not to overestimate the problem, stating that the problem is still a small proportion of the global wine trade.²⁸ The industry is seen by outsiders as a discrete and relatively secretive world, where many known counterfeits stay hidden and go unreported, as collectors are embarrassed, and also fear the loss of their investment (which likewise parallels with the counterfeit art market).

According to consultancy firms, between 50% and 70% of wine sold in China is fake. More than 90% of the Chateau Lafite bottles found are counterfeit products, with two million bottles supposedly sold in China, yet the famous Chateau only supplies the whole of Asia with 80,000 bottles – already a third of its production.²⁹ Often, counterfeiters use the original label with very slight differences, for example, using Chatelet Cheval Blanc, instead of Chateau Cheval Blanc. There are still the very obvious and glaring spelling mistakes found ("Laffite" or "Lafitte" for Lafite, or "Panfaids," using the same font and color of the Penfolds brand, or "Creat Wall" for Great Wall), but

those were more the first generation problems found in the marketplace. Much the same with regards to the high premiums placed on old empty bottles of Grand Cru wines, where a few years ago it was said that an empty bottle of a vintage Chateau Margaux had a “resale” value of up to \$500–1,000, depending on the vintage.³⁰ Refilling lower-quality wine into genuine bottles (when acquired for illicit purposes) does, however, remain a thorn in the side of the genuine trade. Apocryphal or not, it led to merchants and restaurants resorting to smashing bottles on site, once the contents had been consumed.

Counterfeiters have undoubtedly refined their efforts, especially when trying to fake vintage wines. They will try to get as near to the original as possible, and this requires certain knowledge about the particular wine’s label, capsule, cork, color, and the type of glass used for the bottles, as well as their shape. Alas, the local Chinese wines are neither neglected, nor excluded from the problem, with reports of Great Wall, Ningxia province’s Helan Qing Xue wine, and Inner Mongolia’s Chateau Hansen all being counterfeited.³¹ Another problem is that some genuine local wines are, themselves, of poor quality, but are produced where a lot of the counterfeit wine is made, thus making it hard to distinguish one from the other for the local consumer. Unlike the many fake luxury brands that find their way out of China, the local wine counterfeiters are more than content with duping their fellow countrymen, for the domestic wine market provides more than sufficient business for their nefarious trade.³²

In 2010, counterfeit expert, Nick Bartman, spent several months traveling the breadth of the country on a mission to see for himself just how big a problem the issue of wine fraud was. His report, entitled “Fighting Fakes in China,” makes for an almost surreal and unbelievable read and, were it not for his many photographs backing up his claims, there would, no doubt, be many naysayers, or those who would say that his report was biased or prone to exaggeration. Eminent oenophile, Jancis Robinson, evidently believed him, and published his report on her own website, but for those who have not read it, reproduced here are just some of Nick Bartman’s own findings, taken from his report and in his own words:

Looking back I now know that over 70% of the wine I saw in China was not original, meaning what was written on the labels was not the same as the liquid in the bottles. The problems ranged from incorrect origin claims, copying of others’ barcodes, counterfeiting of brands, and even a chemically assembled wine that had never encountered a grape.

I saw evidence of counterfeit labels and packaging with brands and appellations that were clearly copies...many of these places (wineries and bottling plants) boasted non-existent joint ventures with foreign wine producers, or they self-created letters confirming import rights to China.

Very often there were plaques on office walls claiming fake awards of excellence from foreign panels of judges.

Whilst some counterfeits were reasonable copies, the vast majority were appalling, but sold well since most wine buyers, both trade and retail, had little knowledge of wine-growing countries, appellations, brands or even that mixers were not for wine.

Counterfeiters' imagination and the extremes to which they were prepared to go were extraordinary by anyone's standards.³³

Clearly, a serious cause for concern, and it would get worse. The year 2010 was certainly not a vintage one for the local Chinese wine market: Chinese State media, the CCTV 1 channel, reported that five wineries in the Changli district of Hebei province were suspected of selling fake "wine" and counterfeiting famous local brands. Worse, when tested, some were found to contain only 20% fermented grape juice, whilst others had no grape origins at all – only sugar water mixed with chemicals, like coloring agents and flavoring. The authorities arrested six people, shut down three wineries, froze 16 corporate accounts (worth the equivalent of \$427,000) and seized over 5,000 bottles of fake wine, suspected of being falsely labeled. They also seized 19 templates for forging brand labels, as well as 280 empty bottles awaiting labeling. One of the wineries, Jiahua, reportedly sold over 2.4 million bottles of wine a year. Its wine was found to have nothing but water and chemicals in its make-up (no grape), with the cheapest bottle retailing for less than \$1.50.³⁴ The China Alcoholic Drinks Industry Association reported that wine additives could cause headaches, irregular heartbeat and cancer.

Fake wine in Hong Kong

The problem of fake wines in Hong Kong hardly compares to that in China, but it certainly exists. "Fake wine is prevalent in Hong Kong, but less so than in China, as consumers are more savvy," said Mr. Adam Bilbey, the direct sales manager for Berry Brothers and Rudd Hong Kong.³⁵ As if to reinforce this, in November 2011, the Chilean Consulate in the city called on the Hong Kong Police Force to investigate a mysterious case of abandoned wine found dumped on the streets – about 100 crates (roughly 10,000 bottles). The Consulate became involved, as about 20% of the abandoned wine had labels claiming to be from a Chilean vineyard.³⁶ The rest was purported to be French wine, which generally has a more loyal following among the Chinese. With misspelling on the labels, including the location of the winery, the Consulate stepped in on behalf of the vineyard, with Consul-general Mario Ignacio Artaza stating, "We want the police to find out what happened as we want to protect the consumer in Chile, as well as the companies who are exporting to Hong Kong."³⁷ Clearly, the Consulate and the Winery saw

it as an infringement of their intellectual property rights, and wanted to do all they could to protect the brand before such “wine” (it was actually colored water) from the vineyard was sampled, and then possibly rejected and remembered forever as sub-standard by the local consumer.

Former Hong Kong top politician, and one of the wine world’s most noted collectors and connoisseurs, ex-Chief Secretary Henry Tang, also hit the wine news headlines in 2013. After putting up for consignment to Christie’s 809 lots of Burgundy, with vintages ranging from 1949 to 2010, the auction realized \$6.2 million (an average of \$7,600 per lot), but it was not without the whiff of a scandal, resulting in three lots coming under suspicion. What caused such a suspicion in the first place? Old friend, Rudy Kurniawan. Posted under a website thread on the winebeserkers.com site, a US-based lawyer circulated an allegation that the three aforementioned lots were potentially counterfeit, citing irregular signature labels, bottle numbering and seal wax coloration.³⁸ Other members of the site then chipped in, and asserted that the wines could have come from Rudy’s cellars. Such is the heinous suggestion of any association with Mr. Kurniawan, it was thought best to withdraw one lot “as a precautionary measure,” although the other two went on to sell at the top-end, commanding eye-watering prices.³⁹ Needless to say, Henry Tang, Christie’s and the Chateau all went on record vouching for the wines’ authenticity and integrity. Whilst an interesting aside, it does suggest that even the best-cellarred collections, many with impeccable provenances, held by some of the most knowledgeable collectors, are not free from aspersion. A story such as this continues to spotlight a growing sensitivity around the subject of fake wines in the marketplace, and the need for more due diligence to be done to protect the consumer.

Fighting the Fraud, turning to science

The call of “Caveat Emptor” and increasing the due diligence process brings us on to the last part of this chapter: how science can help. It is the author’s personal opinion that when science is available to help determine the fake from the authentic, then as with determining authorship in the art world, it should be embraced. It is the future.

It stands to reason that the harder the label or bottle design is to fake, the better chance there is that those doing it will opt for another brand to try and copy. If the added cost to production is truly a bar to fighting counterfeits (which is often a counter-argument for taking on board the new technology available), then just how much value is actually placed on brand protection? There appears little point in whining about the situation, when there are remedies that can be taken on board, and not all of them need be at the bottling stage. So, what gizmos or techniques are currently being utilized to try to defeat the crafty counterfeiter?

The areas that need protecting are the same ones that the fakers target: the contents, bottle, label, cork, capsule and packaging. Of course, protecting the wine alone is not enough unless the winery/merchant/storage house can also monitor the supply chain, as quite often it is the human element involved, as well as over-complicated procedures, where breakdowns can occur. Selinko is a Belgian company that uses Near Field Communication (NFC) and Radio Frequency Identification (RFID) chip technology to help prevent one of the industry's most oft-cited problems: refilling of bottles. By way of explanation, NFC enables data to be exchanged between two chips, in this case one inside a phone and the other on the wine bottle, whilst RFID is a generic term used to describe a transmitting technology, of which NFC is a sub-category of RFID.⁴⁰ RFID tags are a further development from the type of tags that are omnipresent in stores to counter shoplifting. Mainly, these type of tags are Radio Frequency (RF) ones, which all send the same simple signal and notify – normally by an alarm – that something is present (the tag), whereas, an RFID tag will send more complex signals that are used to uniquely identify whatever they are attached to; for example, if on a wine label, then all relevant data about the wine, vintage, chateau, etc.⁴¹ When faced with trying to seek out the scale of the counterfeiting problem, statistical analysis and official data proved almost non-existent, as many in the trade had relied mainly on second-hand data and apocryphal stories. This, in turn, led to the company commissioning a new study, one that provided an overview of the various anti-counterfeiting technologies currently available for the trade to use, ranging from the simple “lock and key” approach to highly scientific technology.

The report commissioned by the firm Selinko, entitled, “A new study on the problem of counterfeiting in the area of wines and spirits, and presentation of anti-counterfeiting technologies” written by Eric Przyswa, a consultant and an Associate Researcher at Mines Paristech, lists out the anti-counterfeiting measures as to their use:

- Anti-theft devices: no technological authentication function per se, but simply allows the product and packaging to still be visually read and verified from the information on it;
- Overt technologies: relatively simple security features that are visible to the naked eye, such as holograms;
- Covert technologies: encoded or concealed security features, and cannot be seen by the naked eye. These need a scanning system such as a smartphone app to be able to read the information (provenance, authentication, winery history, marketing details, etc.), often using RFID or NFC type technology;
- Forensic technologies: security features that originated from within the laboratory, such as synthetic forensic DNA;

- Track and Trace technologies: originating from the logistics industry, these security features have bar codes to enable the traceability function; and
- Tamper-proofing technologies: security features that prevent access to the protected items, for example over seals or capsules.⁴²

Some wineries/distributors have already embraced science, in one form or another. For testing the contents, opening a bottle and tasting it would appear to be the obvious way (although quite how many palates can truly authenticate a pre-1960s Grand Cru is an important question – plus, there is the very obvious downside of reducing one’s investment by opening it). The Antique Wine Company of London (AWC) announced that it could test the contents of bottles for certain isotopes, which could then determine whether the grapes in the wine were harvested pre- or post- the atomic bomb age; for example, if after the dates of the atomic tests, it would leave a trace of Caesium 137. AWC also has a test for authenticating the glass of the bottle.⁴³ However, both these methods are invasive and require samples to be taken and tested.

Spanish wine producer, Toro Albala, known for their iconic dessert wines, will integrate the NFC tag system onto their vintage wines, starting from 2015. Likewise, prestigious Bordeaux winery, Chateau Le Pin, which produces some of the most expensive wines in the world, will also integrate the NFC technology to the label area, thus helping to authenticate the vintage. Selinko has also developed a product that is placed on the neck of the bottle, just above the cork. When a bottle is opened, the antenna is broken and the signal goes “dead” (mechanically deactivated). This ostensibly prevents the later refilling of the bottles, however, there is always a chance of a hypodermic needle through cork reverse-extraction method being used to switch the contents of top vintages.

ASC Fine Wines, mainland China’s largest wine distributor, are using QR (Quick Response) Codes on the necks of the bottles they import. A QR Code is a type of 2D bar code which, when used in conjunction with a mobile phone, can provide access to information about a product. According to their website, ASC’s Anti-Counterfeit Label now:

... provides each imported bottle of wine with a unique, traceable QR code that is integrated with ASC’s logistics system and paired with the official ASC mobile application. Consumers can use mobiles to scan any label to instantaneously obtain detailed product information; at the same time, the new label also offers the latest spectrum anti-counterfeit coding and anti-removal protection material.⁴⁴

Australian small premium wine producer, McHenry Hohnen, is trialing an app that is the fruit of collaborative efforts between Western Australia-based

Linkar Group, and the Guangdong Guangxin Information Industry Development Company. It incorporates a new label featuring a scannable code, which allows a tracing system to be activated and, with it, the ability to have the wines tracked.⁴⁵ Brand protection is essential for the smaller exporter, ensuring that the consumer knows exactly what he is buying. It is of note that a Chinese company is involved in this anti-counterfeiting trial, recognizing the huge problems faced in their local domestic market.

Applied DNA Sciences (ADNAS) applies their synthetic botanical-based DNA anti-counterfeiting solution into the ink that is used to print the labels. The authenticity of each one can be easily checked and verified against a database. Paumanok Vineyards, as well as Martha Clara Vineyards, both from Long Island, USA, used this technology to protect their premium wines.⁴⁶

ProofTag's "Bubble Tag" is another scientific tool to help prevent counterfeiting. It describes the technology as, "a 3D chaometric technology based on a random generation of bubbles... whose position, size and shape cannot be mastered."⁴⁷ The actual tool is made up of a translucent polymer into which a set of air bubbles is randomly self-generated. The bubble formation is paired with a serial number and, when both are referenced with each other, it becomes totally unique. Verifying the item is as simple as checking the serial number against ProofTag's database for a visual (unique bubble constellation) authentication match. The tags are then placed within seals, which are then affixed to the bottles. Any attempt to remove or replace them will leave a mark. Christie's partnered with ProofTag in 2014, when the wines of Sir Alex Ferguson were consigned to the auction house. The wines, mostly top Burgundy and Bordeaux from 1986 to 2011 vintages, sold for £2.3 million in Hong Kong, with Mainland collectors making up most of the buyers.⁴⁸

Maureen Downey believes it is important to combine a low-tech solution with a high-tech one,⁴⁹ due to the need for having different levels of security in place, to ward off the unwelcome attentions of counterfeiters who are likewise becoming better and more sophisticated in their methods of fakery. This is indeed the case at Chateaux Margaux – one of the most famous names in the wine world and also, sadly, one of the most faked big brands in China. The security system in place now comprises laser etching on the bottles, Bubble Tags and secure paint. Another vintner who favors multiple security levels is Laurent Ponsot, the fourth generation proprietor of Domaine Ponsot in Morey-St.-Denis, Burgundy. He incidentally played a part in the downfall of Rudy Kurniawan, by getting an auction house to withdraw a number of lots supposedly from his family's vineyard that Kurniawan had consigned. Starting with his 2008 vintages, Ponsot's signature was molded into the bottles. In addition, the capsules had tamper-proof security features added, as well a third level of security which, Ponsot claimed, would be invisible to the naked eye.⁵⁰ This last feature could well be a type of synthetic DNA, such as is manufactured by ADNAS.

One can therefore see the important part science plays in protecting a winery's brand. However, what of the traceability aspect, which some of these new tools also feature? On Christmas Day, 2014, thieves broke into a famed Napa Valley restaurant and stole over \$300,000 worth of world-class wine (including *Domaine de la Romanee-Conti*, whose bottles have a tracking number, and *Screaming Eagle Cabernet Sauvignon*, which uses RFID tags). Not long afterwards, in mid-January 2015, the 76 bottles turned up in a private cellar on the other side of the country, in North Carolina.⁵¹ Whilst law enforcement are not yet revealing whether the recovery was solely down to the tracking functions on the bottles, speculation is that it was, for that is surely one of the main purposes of incorporating them in the first place.

Kurniawan was a criminal, pure and simple, distracted by fame and money. Clever, undoubtedly, but his current predicament hardly lends itself to the empathy of others. The same can be said for the fakers who make counterfeit wine on such a huge industrial scale. This chapter has often linked in small ways the art and wine markets. It will end with yet another.

One of history's great art forgers, Han van Meegeren, duped Reichsmarschall Hermann Goering into buying one of his Vermeer forgeries (he also did a lot more and had his reasons for doing so, but this won't be discussed here). Likewise, wine growers in France under the Nazi yoke, and under instruction to furnish the Berlin leadership with their top growths from their regions, would create fake bottles of wine – conjuring “special” vintages for them by adding carpet dust to inferior wine to give it a mustier and older appearance and, no doubt, taste.⁵² Whilst van Meegeren had to paint a copy of a Vermeer in his cell to prove that he wasn't a Dutch Nazi collaborator,⁵³ the French wine growers simply had special labels that told them, and those also in the know, which were the contaminated/fake bottles.

Whilst not condoning the obvious wrongdoing and criminality involved in forging paintings or passing off fake wine, there is an understanding of why it was done, under those set of circumstances; some empathy even. As stated, not so for Rudy, nor for the charlatans who are threatening the existence of the world's largest domestic wine drinking market – recall the 44% statistic stating Chinese consumers' worries over authenticity – for the consumer, collector and trade with their inferior quality or fake wine, or worse: products that aren't even able to be classified as wine, and which could be harmful to the imbibers' health.

The Chinese government's stepping in, by making it a food safety issue will, in part, help restore some faith to the consumer, although that also has its issues and worries for fine wine exporters – the Chinese hygiene department has the right to remove two bottles per case for tests to see if it is fit for human consumption.⁵⁴ One can just imagine this scenario for a 12-bottle case of *Petrus*, a ridiculous situation, for who would agree to it? Thus, it stifles, or immediately halts, the importation of top quality fine wines entering

the domestic Chinese market, although it isn't as much of a problem for the lesser quality, but still genuine, volume-based wine that continues to be imported. If the source for top-end wines in China becomes harder to come by, this then could provide the counterfeiters with a chance to satiate that demand. As it is, fine wines are simply imported into Hong Kong and their Chinese buyers are then left to sort out their own logistics and deal (or not) with the 48% wine importation tax that China imposes.

Technology is helping with verification and authentication issues, but it is a double-edged sword. Thanks to the record auction prices achieved which, in turn, has a trickle-down effect to the secondary and retail markets, better quality fakes are now being seen, and many more of them too. The link between the increasingly sophisticated authentication methods and the increasingly sophisticated counterfeiting tricks is perhaps best summed up by Mark Solomon, co-founder of truebottle.com who, when asked about the current situation, succinctly answered, "It's kind of an arms race."⁵⁵ Trust in the market will certainly be restored through the various scientific advances in bottle and winery identification and recognition, as highlighted in the preceding pages – until that is, China starts faking those too.⁵⁶

Food (or should that be drink?) for thought.

Notes

1. B. Kjellgren, "Drunken modernity: Wine in China" (2004). Retrieved from <http://www.aof.revues.org/249>.
2. Wang Renxiang, "Yinshi yu Zhongguo wenhua" *Food and Chinese culture* (1993). Beijing, Renmin Chubanshe. Cited in B. Kjellgren (Ibid.).
3. Ibid.
4. Kjellgren (2004).
5. Li Hua (2002), "Zoujin putaojiu" (Approaching grape wine), Beijing, Nangcun duwu chubanshe. Cited in Kjellgren (Ibid.).
6. Q. Luo, "A very bad year for the wine industry" *The Standard*, News Edition, published on (23 May 2014).
7. K. Gittleston, "Wine fraud: How easy is it to fake a 50-year-old bottle?" (2014). Retrieved from: www.m.bbc.com/news/business-28697721.
8. J. Robinson, "A nose for crime: Counterfeit wines" (2014). Retrieved from www.ft.com/cms/s/2/6e8e66d8-8829-11e3-8afa-00144feab7de.html.
9. L. Shaw, "China flooded with counterfeit wine" (2011). Retrieved from www.thedrinksbusiness.com/2011/08/china-flooded-with-counterfeit-fine-wine/.
10. J. Budd, "Label tampering obscures fine wine provenance, merchants warn" (2014). Retrieved from www.decanter.com.
11. Statista, "Value of global wine consumption," Statista (2015). Retrieved from www.statista.com/statistics/232948/value-of-global-wine-consumption.
12. B. Burtshy, "China in the age of reason" *Le Figaro*, published on (24 April 2014). Retrieved from www.avis-vin.lefigaro.fr.
13. R. Shah, "China's growing interest in California wine" BBC News (2013). Retrieved from www.bbc.com/news/business-24333860.

14. Wine-Searcher, "France and China unite to fight fake wine" (2014). Retrieved from <http://www.wine-searcher.com/m/2014/04/france-and-china-unite-to-fight-fake-wine>.
15. J. Bateman, "How education is driving China's unquenchable thirst for wine" *Asian Correspondent* (2014). Retrieved from <http://asiancorrespondent.com/118504/how-education-is-driving-chinas-unquenchable-thirst-for-wine/>.
16. M. Johnason, "Why China surpassed France as world's biggest red wine consumer" (2014). Retrieved from www.ibtimes.com/why-china-surpassed-france-worlds-biggest-red-wine-consumer-1552185.
17. SCMP, "China No. 2 buyer of pricier wines" *South China Morning Post, World Section*, published on (9 April 2014).
18. SCMP (2014).
19. SCMP (2014).
20. Bateman, (2014).
21. SCMP (2014).
22. Vinexpo, "Vinexpo Asia-Pacific 2014, Hong Kong" (2014). Retrieved from www.vinexpo.com/media/cms_page_media/437/IWSR%20-%20Hong%kong%20-%20ANG.pdf.
23. Wine Intelligence, "Is your back label right for China?" *White Paper* (2013). Retrieved from www.wineintelligence.com/wp-content/uploads/2013/08/Wine-Intelligence-Whitepaper-China-Back-Labels-2013.pdf.
24. Wine Intelligence (2013).
25. Vinexpo (2014).
26. Wine-Searcher (2014).
27. J. Robinson, "A nose for crime: counterfeit wines" (2014). Retrieved from www.ft.com/cms/s/2/6e8e66d8-8829-11e3-8afa-00144feab7de.html.
28. Associated Press, "As wine counterfeiting gets more sophisticated, the industry fights back" (2013). Retrieved from <http://www.nydailynews.com/life-style/eats/wine-counterfeiting-sophisticated-industry-fights-back-article-1.1542562>.
29. Daxue Consulting, "The Chinese red wine market both promising and difficult" (2014). Retrieved from www.daxueconsulting.com/chinese-red-wine-market/.
30. Lee (2015).
31. J. Boyce, "Californifakin': How prevalent is fake California wine in China?" (2013). Retrieved from www.grapewallofwine.com.
32. J. Robinson, "Fighting Fakes in China" (2013). Retrieved from www.jancisrobinson.com.
33. Bartman, in Robinson (2013).
34. L. Linlin, "Fake wine stuns Nation" *Global Times* (2010). Retrieved from www.globaltimes.cn/content/604367.shtml.
35. L. Shaw, "China flooded with counterfeit wine" (2011). Retrieved from www.thedrinksbusiness.com/2011/08/china-flooded-with-countefeit-fine-wine.
36. A. Cropp, "Chilean wine mystery develops in HK" (2011). Retrieved from www.ilovechile.cl.
37. Cropp (2011).
38. D. Cornwell, "Rudy Kurniawan and Global Wine Auction Fraud Thread (Merged)" *Wine Berserkers* (2013). Retrieved from <http://www.wineberserkers.com/forum/viewtopic.php?f=1&t=61172&start=4585>.
39. J. Suckling, "Tang refutes fake wine allegations" (2013). Retrieved from www.jamessuckling.com/tang-refutes-fake-wine-allegations.html.

40. Selinko, "Spanish wine producer Toro Albala adopts the Selinko solution to protect its collector wines" (2015). Retrieved from www.selinko.com/press.
41. C. Woodford (2015).
42. E. Przyswa, "A new study on the problem of counterfeiting in the area of wines and spirits, and presentation of anti-counterfeiting technologies" (2014). Retrieved from www.researchgate.net/publication/263016723_Counterfeiting_in_the_wines_and_spirits_market_Key_issues_and_presentation_of_anti-counterfeiting_technologies.
43. N. Charney and S. George, "The Wine Forger's Handbook" *Barolista Books*, Kindle Edition (2013).
44. ASC Fine Wines, "Grape to Glass" (2015). Retrieved from <http://www.asc-wines.com/wine/grape-glass/>.
45. L. Shaw, "App to combat fake wine in China developed" *The Drinks Business website* (2014). Retrieved from <http://www.thedrinksbusiness.com/2014/04/app-to-combat-fake-wine-in-china-developed/>.
46. S. Gannon, "New ways to fight counterfeiters" *Wines and Vines website* (2009). Retrieved from <http://www.winesandvines.com/template.cfm?section=features&content=66988>.
47. ProofTag, "Bubble Tag" (2015). Retrieved from www.prooftag.net/solutions-2/authentication-technologies-bubble-tag-new/.
48. C. Mercer, "Sir Alex Ferguson wine fetches HK\$29m" *Decanter.com website* (2014). Retrieved from <http://www.decanter.com/news/wine-news/586895/sir-alex-ferguson-wine-auction-fetches-hk-29m>.
49. E. Przyswa, "A new study on the problem of counterfeiting in the area of wines and spirits, and presentation of anti-counterfeiting technologies" (2014). Retrieved from www.researchgate.net/publication/263016723_Counterfeiting_in_the_wines_and_spirits_market_Key_issues_and_presentation_of_anti-counterfeiting_technologies.
50. P. Hellman and M. Frank, "The crusade against counterfeits" (2009). Retrieved from www.winespectator.com/magazine/show/id/41140.
51. K. Bender, "\$300,000 in fine wine stolen from famed restaurant recovered" *The Register Guard* (2015). Retrieved from www.registeredguard.com.
52. D. Kladstrup and P. Kladstrup, "Wine and War" *Broadway Books*, Kindle Edition (2002).
53. M. Bailey, "Van Meegeren's secret supplies," sourced from *The Art Newspaper* (2010) and retrieved from <http://www.artlistings.com/art-news/638-van-meegerens-secret-supplies/>.
54. S. Kevany, "Chinese hygiene department, not tax, is main concern for fine wine shippers" (2013). Retrieved from www.decanter.com/news/wine-news/583984/chinese-hygiene-department-not-tax-is-main-concern-for-fine-wine-shippers.
55. Associated Press (2013).
56. Both quantitative and qualitative approaches were undertaken for the research of this book chapter. The former, taken from journals, books, websites, newspaper articles and trade press, whilst the latter took the form of interviews and meetings with people connected to the subject matter under discussion – from those involved with the technology aspect (e.g. Selinko and ADNAS) through to wine merchants, experts and general retailers. My favorite anecdote, however, came from someone involved in the genuine wine trade and who spoke to me on

the condition of anonymity and who ended our conversation with these words, "... the trail back to the supplier convinced me there are vast cellars of fake wine especially in the USA and now in Asia but also how most of those most vocal about fake wines are also those most closely connected to the fraudsters." Cue sinister music.

6

Fingerprinting Objects for the Control of Illegal Trafficking

William Wei

Introduction

The illegal trafficking of objects of cultural heritage continues unabated. Controversies still swirl around many archaeological objects in Western museums. Unrest in the Middle East and Africa, and/or lack of funding in many third world countries leave countless treasures unprotected. The lack of strong international laws and enforcement allows greedy and unscrupulous collectors to continue to obtain objects with relative ease.

Even in countries where law enforcement has greatly improved, such as Italy, or in countries where efforts are being strengthened, such as in The Netherlands, one of the main problems in controlling illegal trafficking is the positive and irrefutable identification of objects. There are a number of important organizations working to fight illegal trafficking including ARCA (Association for Research into Crimes against Art), the Art Loss Register, ICOM (International Congress of Museums) with its Red List, Interpol and its list of "Stolen Works of Art," the Museum Security Network, and SAFE (Saving Antiquities for Everyone). However, these organizations, as well as all law enforcement agencies, and honest buyers and sellers of cultural heritage objects, are still dependent on photographs and written provenances, documents and expert testimonials, and photographs, as proof that an object has been legally acquired. All such documents can, however, be fabricated or forged.

An excellent solution to this problem has been developed in a European project, FINGaRtPRINT ("Fingerprinting Art and Cultural Heritage – In Situ 3D Non-Contact Microscale Documentation and Identification of Paintings and Polychrome Objects") completed in 2008.¹ During this project, a system was developed for uniquely identifying objects using the property of the surface of an object known as roughness.

The roughness of objects and components is an important property in the industrial world. It determines how objects function or appear. For

example, ball bearings or axles in an automobile must have a certain (micro-roughness) to properly take up lubrication and operate smoothly. The surface of a mirror is extremely smooth, but does have a micro-roughness that is even less than that of ball bearings. The surface of powder-coated office furniture is rougher and matter than a glossy paint surface.

This roughness can be measured using so-called profilometers, which have been around since the middle of the last century. Current technology allows the roughness to be measured without contacting the object, on scales from micrometers (one-thousandth of a millimeter) to tens of nanometers (one hundred-thousandth of a millimeter). In terms of works of art, this is a scale much smaller than a paint pigment particle. At such a scale, the roughness of an object is unique. It is thus possible to clearly identify an object by measuring the micro-roughness at some location of the object. This is nothing more than the “fingerprint” of the object, that is, a way in which the object identifies itself. Note that this is NOT some person’s oily fingerprint; it is a property of the object itself.

In this chapter, the concept of the fingerprint and FINGaRtPRINT system are presented. A number of examples will be shown as to how we can identify and differentiate between very similar objects, using these object fingerprints. The enormous possibilities for protecting objects from illegal trafficking using the FINGaRtPRINT system will be discussed. It is suggested that private initiatives will be the most efficient way to introduce the fingerprinting system for fighting illegal trafficking on an international scale, this in the face of weak international laws and cooperation.

Roughness Measurement and the fingerprint

An example of a fingerprint roughness measurement from a painting is shown in Figure 6.1. The fingerprint was taken at the location in the painting indicated by the arrow in Figure 6.1a. A 3.5 mm × 3.5 mm area was measured, which includes a section of the roof of a village church (see magnified image in Figure 6.1b). The actual roughness measurement/fingerprint from this area are most clear in false color, but in this publication, can only be shown as a gray scale image in Figure 6.1c. The gray scales help visualize height, and are based on real roughness measurement data. In this image, the darker areas are lower.

In a false color image, the first thing which one might notice is the somewhat alternating pattern of colors. This is the roughness of the canvas weave. In the gray scale image in Figure 6.1c, this is more difficult to see, but with some imagination, is most evident across the top of the image. Detailed examination reveals more features, for example, those at positions 1, 2 and 3 marked in Figure 6.1b and 6.1c. At position 1 in Figure 6.1b, some white paint is missing in the form of a crescent. The fact that paint is missing means that the surface there would be lower. This can in fact be seen as the

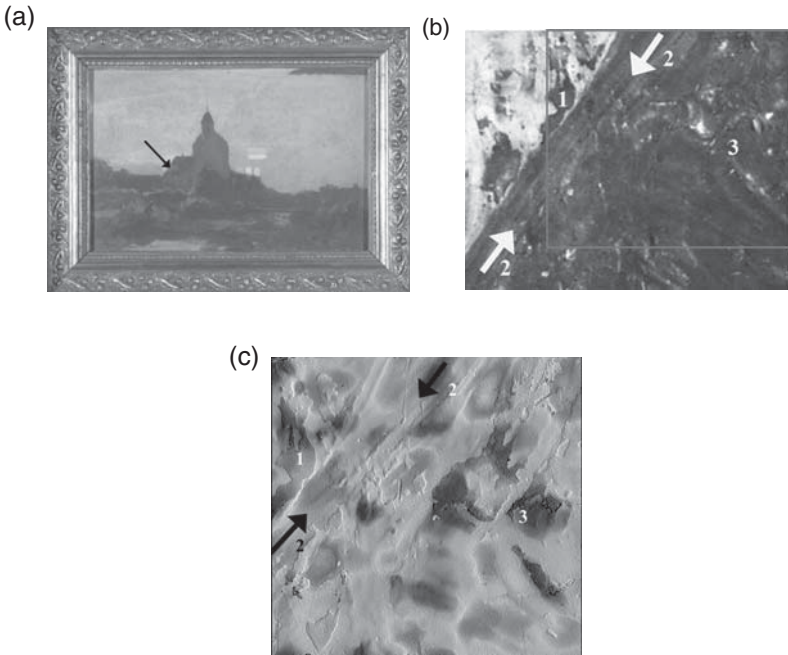


Figure 6.1 Roughness measurement/fingerprint of an oil painting

a) "Dorpskerk bij avond" ("Village church in the evening") by IJ. Wenning. The measurement area is indicated by the arrow.

b) Magnification of the area indicated by the arrow in Figure 6.1a. The square is the measurement area and is approximately 3.5 mm × 3.5 mm in size.

c) Gray scale image showing roughness of area given by the square in Figure 6.1b. The gray scale from high to low is from light to dark.

darker crescent at the corresponding position 1 in Figure 6.1c. The brush strokes used to paint the brown edge of the church roof can be seen between the positions 2 marked by the arrows in Figures 6.1b and 6.1c. Finally, the zigzag crack at position 3 in Figure 6.1b can be seen as a corresponding dark zigzag in Figure 6.1c.

However, the most important feature of this roughness measurement is the very fine mottled structure evident throughout the image in Figure 6.1c. This mottling is a real feature of the surface, not a problem with pixelation of the digital image. The spatial resolution of this image is around 3–4 micrometers (μm). Thus what one sees as mottling is micrometer scale roughness, something which, in the current state of the capabilities of art, cannot be forged. This area roughness measurement is thus unique to this painting, and can be used as a "fingerprint" for its identification.

The roughness is measured using an instrument known as a profilometer. Profilometers were originally developed in the 1940s. Those instruments

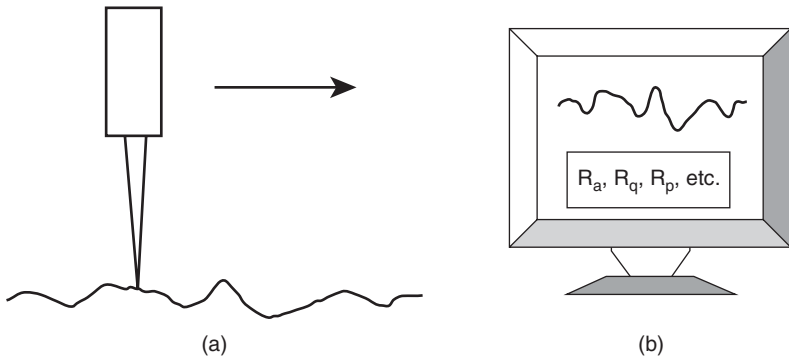


Figure 6.2 Schematic diagram showing the traditional method for measuring a roughness profile using a phonograph style needle. The result is (a) a profile; and, (b) calculations of standard industrial roughness parameters

made use of what, essentially, is a traditional phonograph needle which was moved along a line on the surface of an object (see schematic diagram in Figure 6.2). What one obtained was a profile of the surface, with height data about the peaks and valleys, similar to what one sees on the sports pages that describe the mountains and valleys of a stage of the Tour de France bicycle race. The data can be analyzed, and standard industrial roughness parameters can be calculated, such as average roughness (R_a), root mean square roughness, (R_q) or peak roughness (R_p). However, such needle profilometers are not desirable for use on works of art and cultural heritage, because of the risk of damage to the surface that is being measured.

The fingerprint taken shown in Figure 6.1c makes use of a more recent development in profilometer technology, an instrument known as a confocal white-light profilometer. Such profilometers, now also an industrial standard, are actually laboratory microscopes with special optics to measure roughness. In a standard microscope, the reader probably has the experience that it is not possible to focus the entirety of a very rough surface at one time. For example, it would not be possible to focus (looking down) on the entire surface of the two cones shown schematically in Figure 6.3a. One must turn the focus knob, moving the objective lens up and down, to focus at certain levels, for example at the level of the dotted line on the cone, which would appear as a sharp-focused band in the middle of an otherwise out of focus circular image. Moving the objective lens up and down is, however, nothing else but a height/depth measurement. By adapting the microscope with special confocal optics and computer automation, a confocal white-light profilometer can automatically step through the surface of the object, such as the two cones, Figure 6.3b. At each step it takes an image of the focused area (in the case of the cones, two circles) and at the same time, records the height of that step. By combining the images, the software

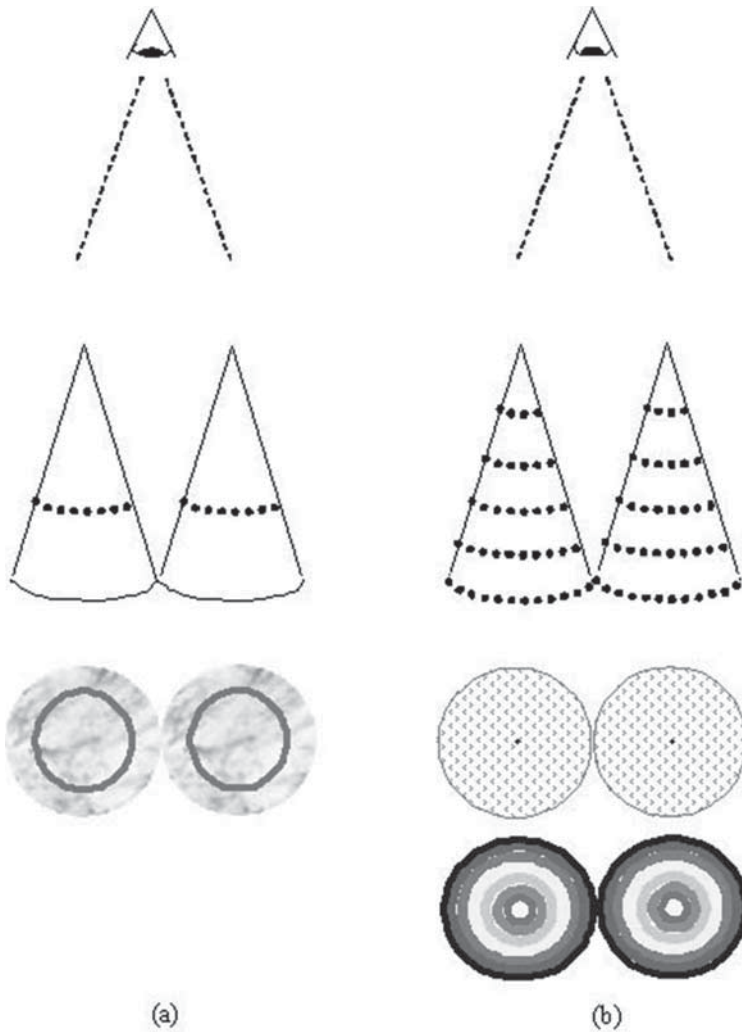


Figure 6.3 Schematic diagram showing principle of confocal white-light profilometry using two cones observed from above

- a) In a standard white-light laboratory microscope, looking from above one can only focus at a certain level of the cones (dark gray circle).
- b) By stepping through each level using confocal techniques, one can obtain a fully focused image of the entire surface of the cones, and height (schematic gray scale, white high, black low) information.

then produces a so-called reflected image, which is what one would normally see in a light microscope. But now the entire image is in focus. More importantly, the data provides height information and visualization, such as the gray scale image shown schematically at the bottom of Figure 6.3b (white is high, black is low). Note that such a false color image is the same as color topographic maps that one sees on typical National Geographic type programs. For more detailed technical information about confocal white-light profilometry, the reader is referred to references 1–3.

There are a number of advantages to using the confocal system, as compared to the traditional needle profilometer. One of the main advantages, for cultural heritage applications, is that the confocal system is non-contact. Furthermore, the confocal system measures an entire area, not just line profiles. For the fingerprint, this is a much more useful way of looking at the roughness of a surface. In addition, taking a fingerprint using the confocal system is much faster. The 3.5 mm × 3.5 mm area shown in Figure 6.1 can be measured at high resolution in a few minutes, whereas a traditional line profilometer would take many times longer, traveling back and forth to cover the same area, and at lower resolution.

The FINGaRtPRINT system and methodology

The FINGaRtPRINT system makes use of a standard μ Surf model white-light confocal profilometer, developed 15 years ago by project partner NanoFocus AG, based in Oberhausen, Germany. The standard table top configuration and the adaptation to the FINGaRtPRINT system are shown in Figures 6.4a and 6.4b respectively. The standard confocal profilometer is a table top instrument (Figure 6.4a), which is designed for high-resolution quality control, as well as for research. The microscope/digital camera is mounted to a perpendicular specimen table. The table can be moved with micrometer precision to accurately position an object for measurement, then relocating the measurement position at some later date. While this is a physically stable system, useful for industrial applications and scientific research, this configuration limits the fingerprinting application to relatively small objects which can fit on the table and have some sort of horizontal surface which can be measured.

For the FINGaRtPRINT system, the microscope and digital imaging component was mounted on a robot arm (Figure 6.4b). This gives the profilometer much more physical flexibility, allowing it to be positioned perpendicular to almost any position on almost any two- or three-dimensional object. The owner of an object can, therefore, select almost any location to take a fingerprint. The system is operated through a user-friendly interface, developed by FINGaRtPRINT partner University of Southampton, UK. Using normal, non-technical English, the interface allows users without a technical background to operate the robot, and take fingerprints without needing to delve

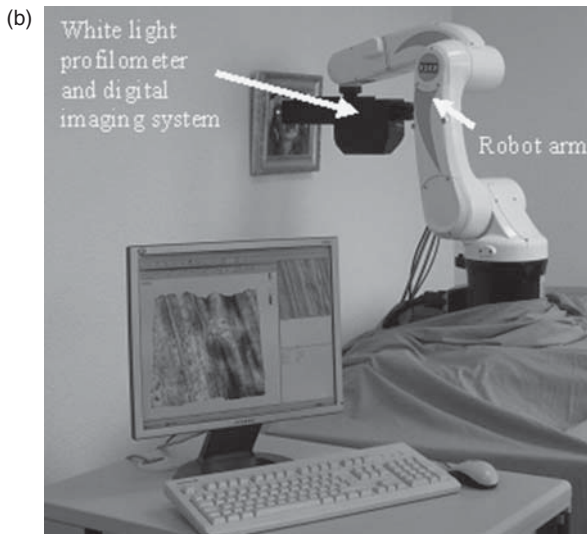
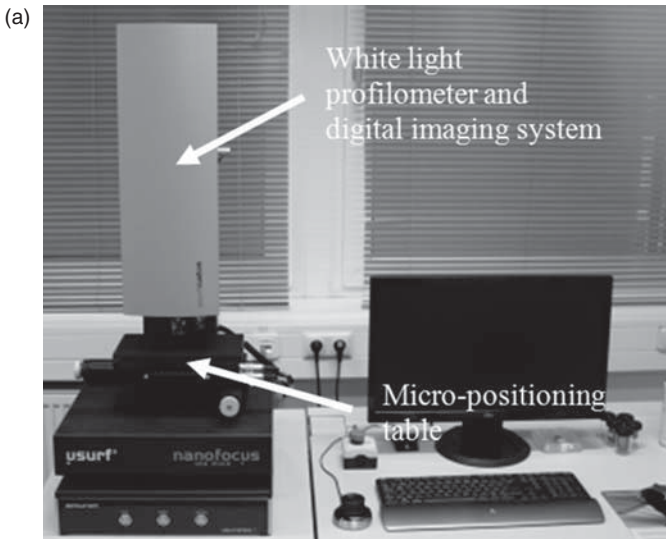


Figure 6.4 μ Surf white-light confocal profilometer developed and manufactured by NanoFocus AG, Oberhausen, Germany

a) Standard table model.

b) Mounted on a robot arm as part of the FINGaRtPRINT system.

into the details of the robot or profilometer software. It should be noted that many of the case studies and measurements conducted during, and after, the FINGaRtPRINT projects, were taken by conservators or art history students. In order to ensure the safety of the object, all robot motions are performed semi-automatically. This means that the operator must push a button to allow the robot to move to a programmed position. If the operator releases the button, the robot stops automatically.

The FINGaRtPRINT system also features a webcam that is used to document the location of the fingerprint. This is necessary for relocating the fingerprint, in the event that an object has to be re-identified, for example, for inspections at customs check points, or to determine if an object is indeed the object which has been returned, after having gone missing. After taking a measurement, the system takes four photographs with the webcam, zooming in closer each time. These photographs are stored. If a fingerprint needs to be found, the computer calls up the photographs, and places “cross-hairs” over the center of the photograph. The operator can then compare the live image with the photographs to help relocate the fingerprint.

In practice, the owner (e.g. an archaeologist, museum, or private collector) of an object can select almost any area on an object with a size of, for example, several millimeters square, and have the roughness measured there. The location and the roughness measurement are proprietary information, known only to the owner, the institute authorized to take the measurement, and law enforcement or customs agencies. The location of this “fingerprint,” and the roughness data, can be stored in a secure database, which can be used to determine if an object has been legally obtained, or is stolen.

The most important application of the fingerprint is its use in a so-called passport for an object. This passport would include all traditional documentation, but also the fingerprint. International laws could be developed to require such a passport when bringing an object into a country, and/or trying to sell or buy such an object. It is not possible to stop thieves from robbing archaeological sites or unprotected museums. However, the requirement of an object passport for trading in such objects would certainly be a tremendous step in strongly reducing illegal trafficking.

Examples of fingerprints

The FINGaRtPRINT system can be used to identify virtually any type of object. The use of the system for identifying paintings was already shown in Figure 6.1. For other paintings, the system easily records craquelure patterns and micro-defects which, at micrometer and sub-micrometer scale, cannot be forged. This is also true for other types of objects, such as the porcelain cup shown in Figure 6.5a. Here, one can see that the glaze of such objects is full of micro-bubbles which are not visible to the human eye (see fingerprint in Figure 6.5b). Such a bubble pattern would also not

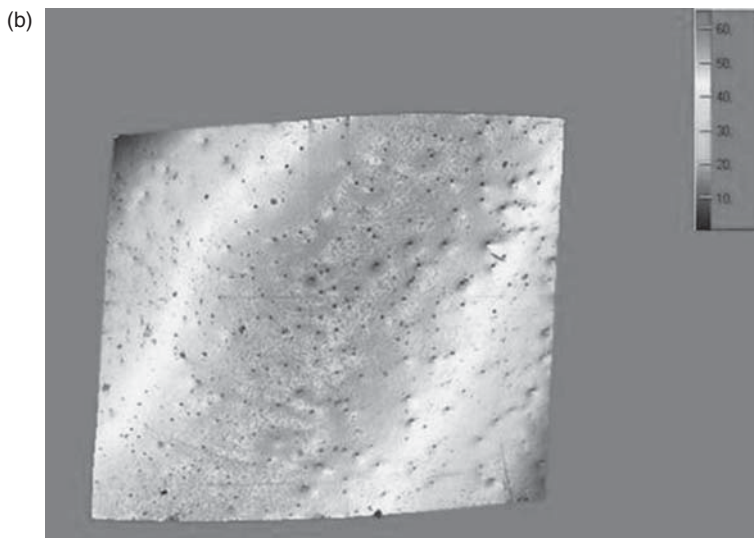


Figure 6.5 Fingerprint of the glaze of a porcelain cup

a) Location of fingerprint is the light spot under the microscope lens.

b) Gray scale fingerprint showing micro-bubbles in the glaze. Note that the gray scale shows the curvature of the measured area on the bottom of the cup, white being the highest curving down to dark gray.

be forgeable, especially considering that the forger would first need to know exactly where the fingerprint was taken, and would have to correctly copy the bubble pattern beyond the fingerprint, continuing into the rest of the object.

Micro-details, such as those seen in Figures 6.1 and 6.5, can be used to clearly differentiate between two similar objects. Two gold bracelets found in the ruins of Pompeii, and their fingerprints, are shown in Figure 6.6. The fingerprints were taken at approximately the same position on both bracelets, the upper half of the upper ring from the clasp. The fingerprints are about 2×2 mm in size. To the naked eye, the two horizontal rings arguably appear to be the same (compare Figures 6.6a and 6.6b). However, examples of features that are unique to each object can be seen in the ellipses (solid lines in Figure 6.6c, dotted lines in Figure 6.6d, including tiny pits and scratches).

A further example of differentiating between two similar objects is related to the problem of the theft, and sale of maps from antique books. Figure 6.7 shows the number 50, printed on two of the same maps, taken from two different copies of a book. One could hardly tell the difference between the two numbers just by looking at the print on the map with the naked eye, or even looking at the number in the confocal light microscope (compare the reflected images in Figures 6.7a and 6.7b). However, in the gray scale images, it can be seen that the number five is slightly raised above the paper surface (Figure 6.7c) of the map number shown in Figure 6.7a (compare arrows in Figures 6.7a and 6.7c). The height of the five is indicated by the lighter shades of gray to white. The five is, however, hardly visible on the other map (Figure 6.7d), probably because the ink for that number happened to absorb into the paper. The zero is, on the other hand, slightly raised in Figures 6.7b and 6.7d (compare again the arrows and lighter gray). The zero is not evident for the left hand map (Figures 6.7ac).

The FINGaRtPRINT system can even differentiate between modern mass-produced objects, as is shown for two mint two Eurocent pieces (see Figure 6.8). Fingerprints were taken of a 2×2 mm area, centered on the relief of Europe on the obverse side of the coins. Structural differences are difficult to see for these mint coins using false color images. Reflected light images (Figures 6.8a and 6.8b) are more useful for this purpose, along with line profiles. Two examples of slight differences between the two reflected images are marked with lime green ellipses. However, the roughness profiles, taken along the lines with numbers 1 through 8, show the differences between the two coins more clearly. The line begins at the rising northwest coast of Spain (1), dropping into the Mediterranean Sea at (7), and ending at the tip of the boot of Italy (8). All eight numbered features can be seen in both profiles. The features are sharper and somewhat lower, less than 220–230 μm for the coin in Figure 6.8a and 6.8c, while the maximum relative heights are close to 240 μm for the coin in Figure 6.8b and 6.8d.

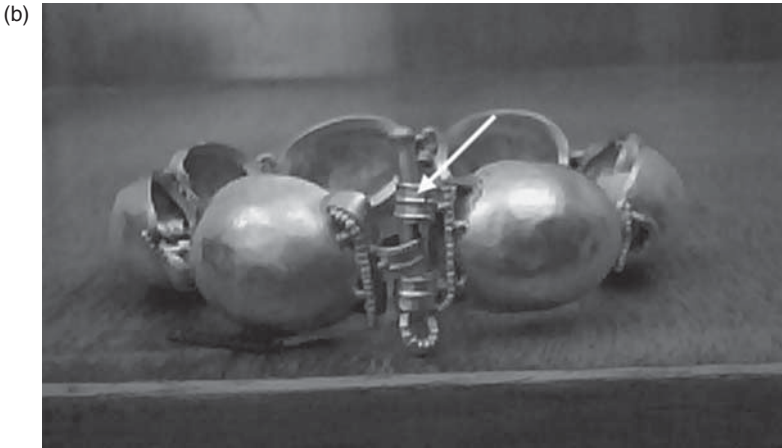
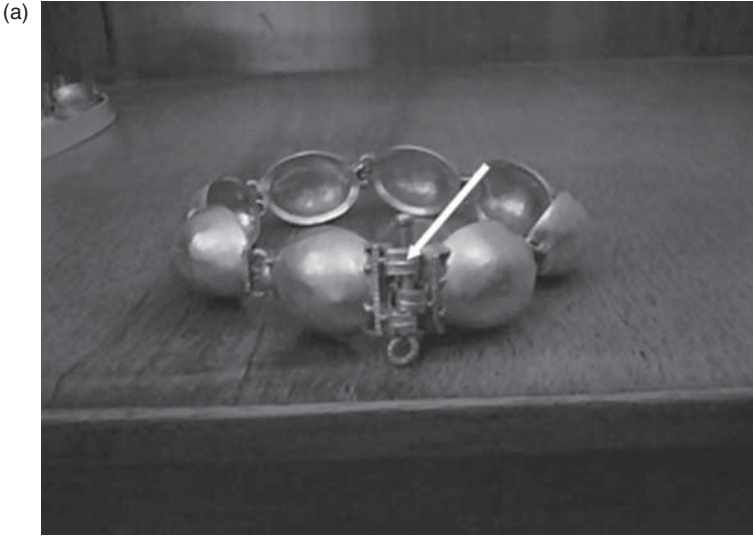


Figure 6.6 Fingerprints taken from two gold bracelets found in the ruins of Pompei
 a) and b) Location of the fingerprint on the two bracelets.
 c) and d) Comparison of gray scale fingerprints from the locations noted in a) and b)
 f) respectively. Images are approximately $2\text{ mm} \times 2\text{ mm}$.

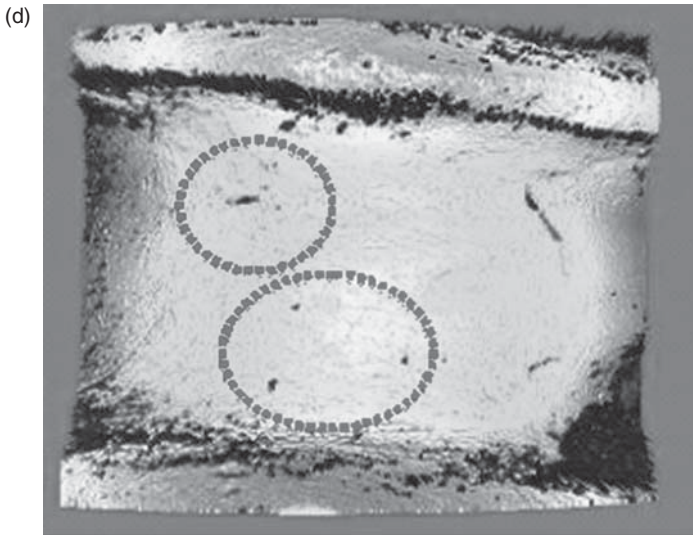
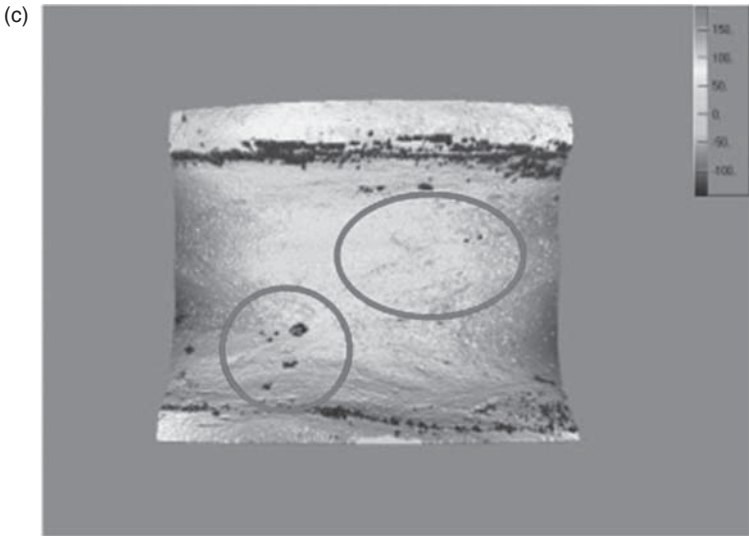


Figure 6.6 (Continued)

Discussion

The research and numerous case studies which were conducted during the FINGaRtPRINT project, several which been discussed in this paper, have shown that the system is an excellent method for unequivocally identifying

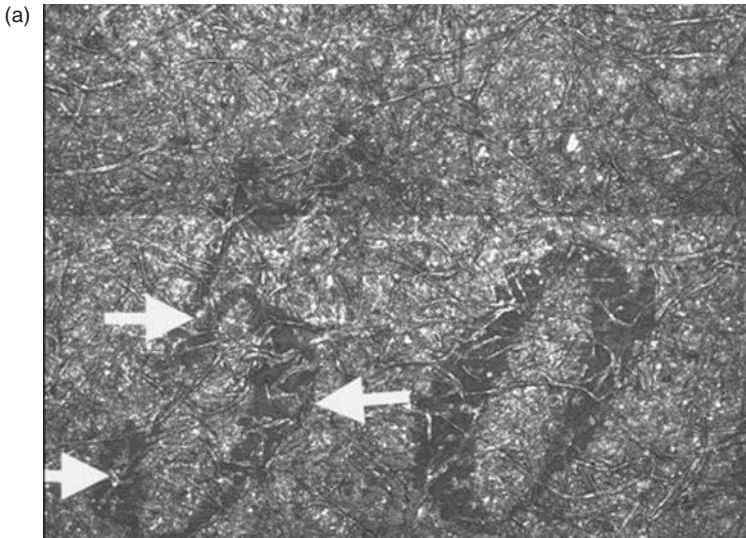


Figure 6.7 Fingerprints taken of the number 50 on two of the same map from two copies of the same book

a) and b) Reflection images of the numbers, approximately $2\text{ mm} \times 2\text{ mm}$ in area.

c) Gray scale fingerprint from a) showing that the 5 is raised above the paper surface, compare arrows in a) and c).

d) False color fingerprint from b) showing that the zero is partially raised above the paper surface, compare arrows in b) and d).

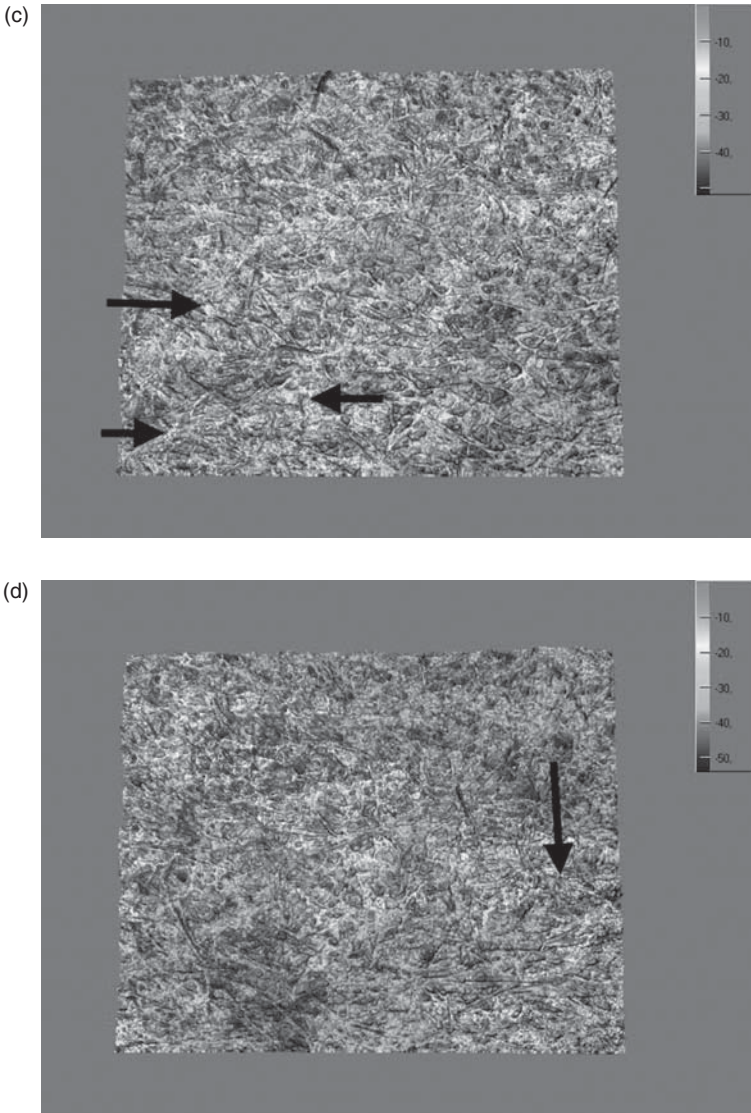


Figure 6.7 (Continued)

objects. Fingerprints have been successfully taken from, among others, archaeological ceramics, metals, paper, paintings, polychrome sculpture and wood. Many fingerprinting measurements were repeated over the course of several years, to show that it is indeed easy to relocate the fingerprints, and

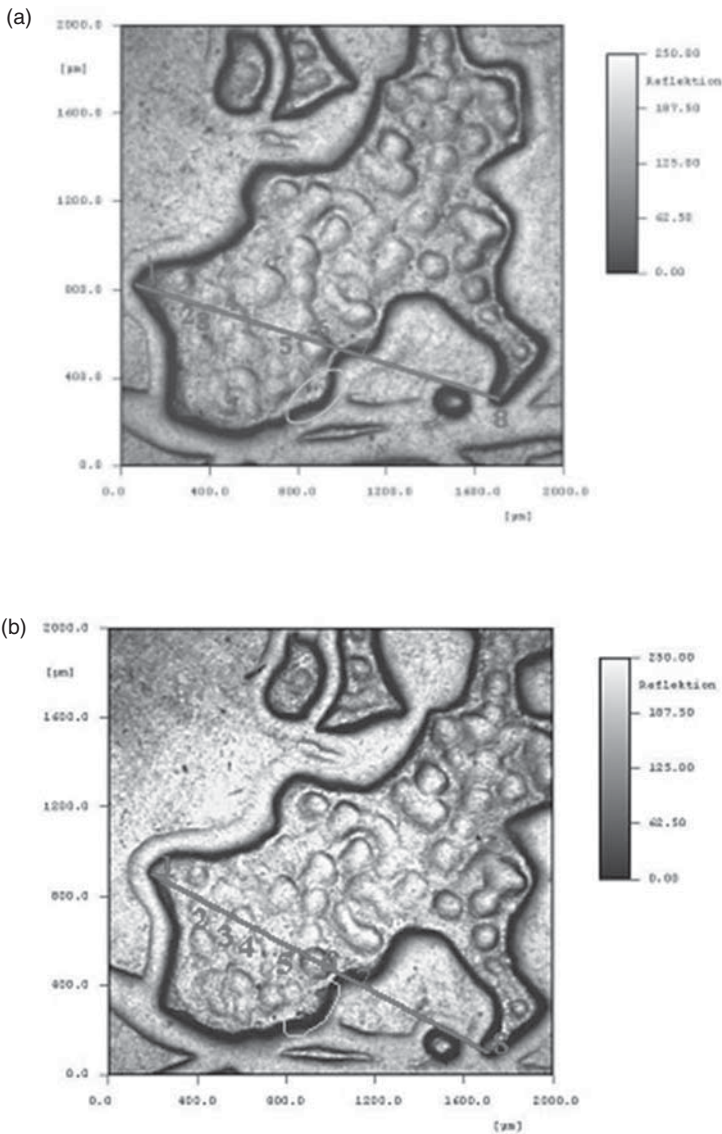


Figure 6.8 Fingerprints taken from two new 2 Eurocent pieces

a) and b) Reflection images of the two pieces, approximately 2 mm × 2 mm in area. The two ellipses show more obvious differences in the surfaces. The lines with numbers show the positions of the roughness profiles given in c) and d) respectively.

c) and d) Comparison of line profiles taken from the lines with numbers shown in a) and b) respectively.

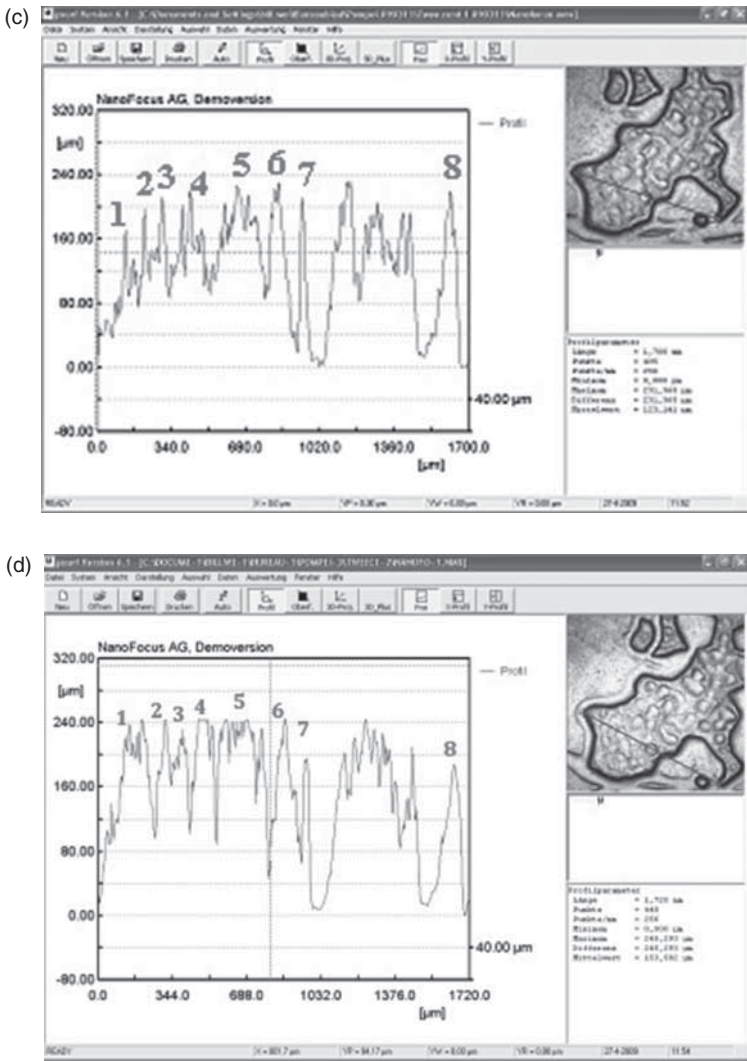


Figure 6.8 (Continued)

that they do not change. This makes them suitable for government officials and law enforcement agencies to use for checking objects which enter a country, or suddenly appear on the market.

Because the FINGaRtPRINT system makes use of commercially available technology, it does not require significant optimization to be applied. There are two aspects of the system which could be improved. The first is the time it takes to take a fingerprint. At the moment, it takes a practiced operator

between 10 and 15 minutes to take a fingerprint. This includes actually taking the fingerprint, and taking the webcam photographs to help relocate the fingerprint. This is certainly fast for taking fingerprints of a few valuable objects for a private collector, but slow for fingerprinting significant numbers of objects from, for example, a museum collection. The main issue is speeding up the movement of the robot arm between the actual measurement, and positioning the webcam for the documentation of the fingerprint location, without endangering the object or the profilometer itself. At the moment, the robot must repeat every action, to ensure that it does not get in its own way. A human would know automatically how to move the profilometer out of the way of itself in almost no time, but this must be taught to a robot computer.

The other optimization issue is the size and transportability of the system. The current prototype is mounted on a granite base in order to reduce vibration to the robot arm. The system has been transported to a number of venues, including Amsterdam, Ljubljana, Naples, and Paris. However, it is heavy, requiring at least two people to move it. This is not necessarily an issue for institutes, which eventually would be authorized to take fingerprints at some central location, where owners could bring objects, or for customs officials working at fixed locations. However, the ultimate goal is to make the system portable, so that it can be used, for example, on location in a museum or at an archaeological site. Partner NanoFocus AG actually has a portable profilometer, which was used early in the project to fingerprint smaller three-dimensional objects. The technology is thus available to reduce the size and weight of the system without sacrificing fingerprint resolution.

The FINGaRtPRINT project also addressed a number of important issues concerning the fingerprinting methodology. The fingerprint is a physical micro-characteristic of the object. It has been shown that the same fingerprint can be found even after several years. At the size scale of the measurement, it cannot be forged. In fact, if necessary, the system can be used with higher magnification objective lenses, to provide even more microscopic detail. The author does not consider this to be necessary in most cases. What must be noted, however, is that the roughness of the surface is subject to damage. For virtually all materials and objects kept under typical museum conditions, the roughness will not change, even over years. However, one must take and, eventually, retake a roughness measurement after any restoration treatments, either to ensure that the fingerprint has not been changed, or to register the new roughness after treatment. At archaeological sites, one must first decide on how much cleaning an object should receive, and then perform that before taking the fingerprint. The fingerprint would have to be taken on an area which has been cleaned, to ensure that the measured surface is not lost in handling, as might happen if one were to fingerprint local soil caked onto an object. In the event of inadvertent damage to a fingerprint, it is noted that, in many criminal investigations

involving real human fingerprints, law enforcement agencies do work with partial fingerprints. International law on illegal trafficking could be written to reflect this. On the other hand, there is the case where a criminal finds out where the fingerprint was taken and then has it removed. This is a danger, but if international law requires the fingerprint (e.g. in a passport) as identification, then the burden of proof is on the criminal to show that the object was legally acquired.

It should be noted that there have been many questions over the past years concerning the use of roughness fingerprints as a manner of authenticating objects. The FINGaRtPRINT system is designed primarily for identification purposes. The fingerprint can be used to tell the user whether an object has been properly registered or is stolen and, if it is supposedly returned, whether or not the returned object really is the object that the owner lost. If someone tried to return a copy, the fingerprinting system could certainly tell the difference. That would be a form of authentication. But in general, users must know from other sources whether or not their object is authentic. The fingerprinting process can only tell them which object is actually theirs.

Such questions of whether or not an object was made by a particular artist have been the subject of disputes for ages. No so-called objective scientific method alone can determine that. Scientific techniques can certainly provide supporting information, but there will always be the need for art-historical study and expertise to determine authenticity, with all of the dangers and mistakes that that sort of expertise faces. The FINGaRtPRINT system could provide supporting evidence, if a study is made of the micro-roughness of a representative number of an artist's works, just as, for example, the results of many chemical studies are used to determine how artist's work can be used to help authenticate paintings. In fact, initial research has been conducted at the University Maastricht in The Netherlands, looking at the possibility of using brushstroke patterns to identify artists' work (see, for example, reference 4).

The main obstacle to the application of the FINGaRtPRINT system is actually one of the main problems facing those fighting illegal trafficking: the lack of international political will to seriously enforce the various UNESCO, and other, treaties in this area. Efforts are thus concentrating on convincing museums, archaeologists, private collectors and existing organizations, which are fighting illegal trafficking, to begin fingerprinting their own collections and findings, at least beginning with those objects which they consider valuable. As the resulting database grows, the concept of an object passport can be developed as a private initiative, with the eventual goal of motivating governments to accept it as the standard for illegal trafficking. This is clearly a long-term goal, but with the help of investors and an increasing number of users, the FINGaRtPRINT methodology can become the basis of international law controlling the trade in objects of art and cultural heritage.

Conclusion

A method has been developed within a European project, called FINGaRtPRINT, to unequivocally identify objects of cultural heritage. The method makes use of the surface micro-roughness of an object as a fingerprint that can be measured using commercially available non-contact confocal white-light profilometers. The profilometer is mounted on a robot arm, which is operated with user-friendly software, allowing the fingerprinting of most two and three-dimensional objects.

The owner (e.g. an archaeologist, museum, or private collector) of an object can select almost any area on an object (an area of, for example, several millimeters square), and have the roughness measured there. The location of this fingerprint, and the roughness data, are stored in a secure database. The fingerprint can be used as a critical part of a so-called object passport which also includes other traditional provenance documentation. The required use of such a passport would be a strong legal weapon to control the international sales of objects of cultural heritage. The FINGaRtPRINT system and the fingerprint database can then be used by law enforcement and customs officials to determine if an object has been legally obtained, or is stolen. Private initiatives are required to establish the FINGaRtPRINT system in order to motivate governments to strengthen their effort in the enforcement of international treaties on illegal trafficking.²

Notes

1. The FINGaRtPRINT project was conducted with the financial support of the European Commission Directorate General "Research" within the EC Sixth Framework Program Policy-oriented Research: Priority 8.1.B.3.6 – "The protection of cultural heritage and associated conservation strategies," Specific Targeted Research and Innovation Project – Contract No. 022453. (*Editor's Note: please note that the author of this article is one of the inventors of the FINGaRtPRINT technology*).
2. The author would like to thank the following members of the FINGaRtPRINT project team for their valuable contributions to the success of the FINGaRtPRINT roughness measurement system: NanoFocus AG (Oberhausen, Germany) – J. Frohn, A. Walther, M. Weber; Ormylia Art Diagnostic Centre (Ormylia, Greece) – S. Sotiropoulou; University of Southampton (United Kingdom) – K. Martinez.

References

- P. Sandoz, et al., "Roughness measurement by con-focal microscopy for brightness characterization and surface waviness visibility evaluation," *Wear*, Vol. 201, pp. 186–192 (1996).
- D.A. Lange, H.M. Jennings, and S.P. Shah. "Analysis of surface roughness using confocal micro-scopy," *Journal of Materials Science*, Vol. 28, pp. 3879–3884 (1993).
- W. Wei, and S. Stangier, "In situ characterisation of the surface of paintings before and after clean-ing using white light confocal profilometry," *Proc. 8th International Conference on Non-Destructive Investigations and Microanalysis for the Diagnostics and*

Conservation of the Cultural and Environmental Heritage, Lecce, Italy, pp. 15–19 May (2005).

- C. Richard Johnson, Jr., Ella Hendriks, Igor Berezhtoy, Eugene Brevdo, Shannon Hughes, Ingrid Daubechies, Jia Li, Eric Postma and James Z. Wang, "Image Processing for Artist Identification – Computerized Analysis of Vincent van Gogh's Painting Brushstrokes," *IEEE Signal Processing Magazine, Special Issue on Visual Cultural Heritage*, Vol. 25, no. 4, pp. 37–48 (2008).

Part II

Terrorists: Policing, Investigation and Terrorism

Introduction to Part II

Noah Charney

Saint Patrick's Day 2015 marks the 25th anniversary of the largest single-event art theft in peacetime history, when 13 works, with an estimated value of \$500 million, were stolen from Boston's Isabella Stewart Gardner Museum by burglars disguised as policemen. This heist is not only at the top of the world's most-wanted stolen artworks list (all the objects are still missing and there's a \$5 million reward), but it is probably the single biggest property theft in history. Yet times of peace and times of war are different creatures. The scale of art theft during conflicts far outstrips the Gardner heist. While many magazines will take this 25th anniversary as an opportunity to chew over the well-known facts of the Gardner case, it also marks an opportunity to consider art theft during times of conflict. In recent weeks, we have confirmed what has long been suspected – that ISIS funds its activities by selling stolen and looted antiquities (when it is not bulldozing ancient monuments or jackhammering sculptures). But when it comes to stealing art during war, there is someone who qualifies under the dubious title of the “greatest” art thief in history – and he stripped European collections with the white-washed rationale that he was conserving the art for those who would appreciate it most.

When Citizen Wicar, one of the key members of the art theft division of Napoleon's army, died in 1843, he bequeathed 1,436 artworks as gift to his birthplace, the city of Lille. Though most were prints and drawings, almost all of these works had been personally stolen by him over the course of his service to the Napoleonic army. And the works he left behind were just a fraction of what he had looted over the course of his career. For this impressive feat, Citizen Wicar, who would later serve as Keeper of Antiquities at the Louvre Museum, may be considered the most *prolific* art thief in history. But it is his boss, Napoleon Bonaparte, who should be crowned with the title of “greatest.”

The story of art theft under Napoleon's supervision is important not only for the enduring legacy of his seizure of tens of thousands of works (many of which were never returned), but it also sparked a precedent that art could,

and perhaps even should, be stolen from those vanquished in war. Hitler modeled his art theft unit, the *Einsatzstab Reichsleiter Rosenberg* (ERR), on Napoleon's. And the horrifying images of Islamic Fundamentalists wantonly destroying priceless ancient statuary, coupled with the knowledge that terrorist groups, from the Taliban to ISIS, fund their activities through the sale of looted and stolen antiquities, provide a sharp reminder that the story of art theft may be thousands of years old, but is very much serious and alive today.

The ancient Roman Republican Army was the first to proactively seek to capture art. At the sack of the Hellenistic city of Syracuse, in Sicily in 212 BC, the Romans seized countless examples of Hellenistic vases and statuary, bringing them back to Rome and launching a positive craze for collecting "Greek" art. Elite Romans, from Cicero to Marcus Agrippa, developed expansive collections, and the marauding Roman armies brought back art as spoils of war: from the treasures of the Temple of Herod in Jerusalem to the columns of the Temple of Olympian Zeus in Athens. There was even an outdoor gallery of stolen statues, near to where the Ghetto in Rome stands today. Since reproducing the expanse and glory of the Roman Empire was Napoleon's goal, it stood to reason that he would mimic their classical penchant for art looting.

Organized looting by Napoleon's army began with the conditions of the armistice signed 17 May 1796 after he had defeated the Duke of Modena, during his campaign in Italy: "The Duke of Modena undertakes to hand over 20 pictures. They will be selected by commissioners sent for that purpose from among the pictures in his gallery and realm." This set a standard for payment and reparations in the form of artworks that would enrage and dismay surrendering peoples for centuries to come. It kicked off a dangerous precedent that would be copied in future wars, not least of which the Second World War, in which an estimated 5 million cultural heritage objects were stolen, destroyed, lost or displaced.

Napoleon gave strict instructions on the proper removal of artworks. Special agents were ordered to use the army to commandeer art, arrange transport to France, and make a precise inventory. This inventory was to be presented to the army commander and the government attaché to the army. Records of each confiscation were to be made in the presence of a French Army-recognized official. Army transport was to be used to bring loot back to France and the Army was to cover the costs. But in practice, these careful instructions served to veil the personal circumvention of them by Napoleon and his officers.

The art theft unit, coyly named Commission of Arts and Sciences, was led by an artist, Citizen Tinet, and consisted of a mathematician, Citizen Monge, a botanist called Citizen Thouin, and another painter, Citizen Wicar – the most notorious of the lot, who proved to be a thief for the ages. But they just acted on orders (when they weren't surreptitiously pocketing

scores of drawings for themselves). The looting scheme was designed by someone else.

Napoleon was not much of an art connoisseur. But luckily for him (and unluckily for those he subdued), Napoleon had a powerful and cunning art advisor: the first director of the Louvre Museum, Dominique-Vivant Denon.

Denon had served as an artist to the court of King Louis XV, gave drawing lessons to the king's mistress, Madame de Pompadour, and acted as ambassador to the court of Catherine the Great in Russia and in Naples. But he is best known as the man who turned the Louvre from a residential palace of the deposed French monarchy and into the world's most famous art gallery. He was the Louvre's first director (a wing is still named after him). We owe much of how we think about museums today to Denon's legacy: he was the first to curate a museum by style (e.g., Baroque Italian paintings all in one room), to attempt to put together an encyclopedic collection, covering the whole history of art, and to hang striking works so that they are framed by doorways and can be seen from a distance, drawing the eye, among other innovations. In a letter to Napoleon in 1803, the year after he became the first director of the Louvre, he described the need for this museum to feature the best works from "the Renaissance of the arts until our own time." In this way, the museum should provide "a history course in the art of painting," presenting its collection with "a character of order, instruction, and classification." He had become Napoleon's personal art advisor after having caught his eye, when he accompanied the general on his 1798 Egyptian campaign, sketching pyramids while the canons were still warm. Denon saw Napoleon's attempt to reconquer the extent of the Roman Empire as a chance to bring together the greatest artworks of the vanquished territories. He drew up an art historian's dream wish-list of works that he would love to have at the Louvre, and the army's art theft unit, featuring the nimble-fingered Citizen Wicar, sought to fill it.

If Denon was the ultimate connoisseur, Napoleon was anything but. As Andrew Roberts explains in his new, best-selling biography, *Napoleon: a Life*, the general's main criteria for whether he liked a work was its size (the bigger the better) and its naturalism (if it looked like real life, then it must be good). But this suited Denon just fine – he was happy for Napoleon to appropriate over-sized academic realist works for his personal enjoyment, as long as the choicest, most important works went to the Louvre. Denon would accompany Napoleon on most of his later campaigns, advising on which artworks to confiscate and send to the Louvre. His nickname was *l'emballeur*, "the packer," for his constant supervision of the packing and shipping to Paris of looted artworks.

Both Denon and Napoleon were great enthusiasts of their looting schemes. For example, on 1 October 1803, when 100 cases packed full of antiquities (including the Medici Venus and the Capitoline Venus) looted from Italy arrived at the Louvre without a single object broken en route,

Denon excitedly made a speech calling Napoleon, "... the hero of our century, during the torment of war, required of our enemies trophies of peace, and he has seen to their conservation." Stealing art from defeated enemies was an act of preservation.

When Napoleon became emperor in 1804, Denon was made Inspector General of French Museums, ostensibly the director of all national collections. Both he and Napoleon understood that there was symbolic power in the capture and display of the cultural treasures of fallen nations, as Napoleon had learned from the history of the Roman Empire. Looted art is like a battle flag, displayed by the victors to demonstrate who they have vanquished: a more elegant and enduring version of exhibiting the severed heads of enemy generals.

The Louvre – originally known as the *Muséum Français*, then the *Musée Central des Arts*, then the *Musée Napoleon* from 1803 to 1814, before becoming the *Musée du Louvre* – became a popular pilgrimage point for the cultured traveler. The accumulation of looted art in Paris was a constant point of discussion in European publications, and elicited a great deal of interest in what might be called "illicit art tourism." In 1802 Henry Milton, an Englishman traveling to Paris specifically to see the loot-stocked Louvre, wrote: "Bands of practiced robbers who could not find an outlet for their talents in their homeland were shipped abroad to commit crimes under another, less discreditable name... Hordes of thieves in the form of experts and connoisseurs accompanied their armies to take possession, either by dictation or naked force, of all that seemed to them worth taking."

Napoleon's art theft unit was established with a spin doctor's public relations savvy. In June 1794, he established a "Committee for the Education of the People," and proposed sending "knowledgeable civilians with our armies, with confidential instructions to seek out and obtain the works of art in the countries invaded by us." On 18 July 1794 an order was issued to the army, stating that, in lands Napoleon hoped to conquer, "there are works of painting and sculpture and other products of genius" and that "the proper place for them, in the interests and for the honor of art, is in the home of free men." Great art, it seemed to him, should only be accessible to those who would appreciate it – as in, the French.

In an order on 22 April 1796, Napoleon expressed dismay at the "dreadful looting committed by pathetic individuals," careful not to mention that he was the biggest looter of them all. But the soldiers paid little heed. Shortly thereafter, Napoleon issued this order: "the Commander-in-Chief is informed that in spite of repeated orders, looting in the army continues, and houses in the countryside are stripped," that any soldier found looting will be shot, and that no objects may be confiscated without written permission of specified authorities. But in the heat of the campaign, this was little-heeded, least of all by Napoleon, who made a habit of showing up at galleries and choosing works that he liked for his own collection.

Napoleon was as enthusiastic as Denon, when it came to looting. As he wound his way through the Italian Peninsula, he extracted thousands of artworks from those who opposed him. Recognizing this inevitability, Turin and Naples determined not to engage in combat, and so they were far less-looted than other cities, which dug in to fight. Pope Pius VI agreed to terms with Napoleon in June 1796, but paid heavily. In addition to the payment of 21 million *livres* in money and goods (approximately \$60 million today), Article 8 of the Treaty of Tolentine stated that the pope was to hand over “a hundred pictures, busts, vases or statues to be selected by the commissioners . . . [and] also five-hundred manuscripts.” Adding insult to injury, the Vatican was required to pay for the transport of all of the art forced from it by the French, for an astonishing sum of 800,000 *livres*, about \$3.6 million today. In total, the looted art of Bologna alone required 86 wagons to transport. Napoleon wrote with overt glee: “We have stripped Italy of everything of artistic worth, with the exception of a few objects in Turin and Naples!”

Walk through the Louvre today, and one can still find works that entered the collection thanks to Napoleon, Denon, Wicar and their like. While Leonardo’s *Mona Lisa* was not looted by Napoleon, Vincenzo Peruggia, the famous thief who stole it in 1911, did so because he thought it had been, and he wished to repatriate it to Italy. It was a reasonable guess. When you look at Jan van Eyck’s *Madonna with Canon van der Paele* (looted in 1794 from what was then called the Austrian Netherlands, modern Belgium), consider the legacy of Napoleonic looting, but also the power of Denon, the true mastermind behind the second largest art theft scheme in history – to which we owe a great deal in terms of how we think about art, the breadth of great collections, and how museums function.

Napoleon and Denon’s legacies have resonated through the 20th century, and inspired Hitler, the only art thief who outdid them in scope. Prior to the First World War, international newspapers warned of the need never to repeat the art looting seen under Napoleon. That sounded well and good, but when the bullets started flying, theory was not put into practice. Art was looted, damaged and destroyed during the First World War, but it was not until the Second that Napoleon was very much outdone.

Hitler established his own art theft unit, the ERR, inspired by Napoleon, which focused on seizing art, books and documents that were of “value” to the Third Reich. While Napoleon and Denon envisioned the Louvre as a sort of encyclopedic super museum, Hitler had a similar vision that was very nearly realized. He planned to rebuild the majority of his boyhood hometown of Linz, Austria and make it into a city-wide museum containing every important artwork in the world. He used the ERR to fill a wish-list of his own, focused on his preference for Teutonic and Scandinavian artists and subject matter. The 7,000 choicest works, stolen from throughout conquered Europe and destined for the Linz museum, were stored in a secret salt mine in the Austrian Alps, that had been converted into a hi-tech art warehouse. They

were nearly all destroyed when a local SS leader determined to blow up the mine and its contents, if he could not defend it against the encroaching Allies. (Part of this story is told in George Clooney's *Monuments Men* film and in my book, *Stealing the Mystic Lamb*).

While Napoleon oversaw the looting of tens of thousands of works, Hitler reached the hundreds of thousands, and far more met unseemly fates, due to his policies and campaigns. If there is a hell for art thieves, then surely Hitler and Napoleon share the throne. Both Napoleon and Hitler rationalized their thefts. Napoleon saw his looting as a way of reimbursing his armies and dragging away artistic treasures so they could be conserved for the sort of people who would appreciate them – the French. Hitler wanted to build a “super museum” to outdo the Louvre, and destroyed tens, if not hundreds, of thousands of artworks and books that went against his aesthetic or Aryan-genetic preferences. But for all his thievery, Napoleon never launched a widespread scheme to obliterate art and monuments that didn't suit his tastes. Hitler is the far greater villain – for it is one thing to steal and transplant a work of art, but another, far more horrible thing, to wipe it off the face of the earth. Though one might hope that the days of book-burning and “degenerate” art bonfires were well and truly behind us, they are, alas, an active and frightening reality. Like the Nazis before them, today Islamic Fundamentalist terrorist groups sell looted antiquities to fund their activities, and destroy art that outrages their values, with the excuse that they are protecting people from the art's corrosive influence.

This section looks at the investigation of stolen art and antiquities, and the very real, immediate and serious fact of terrorist organizations funding their activities by selling looted antiquities (or, in the case of the IRA in the 1970s, stealing fine art from private collections).

One of ARCA's goals as an organization has been to promote and give voice to professionals in the field of art crime prevention, not just the academics who tend to be better about promoting their ideas, and wind up publishing books and articles regularly. One can often learn more from someone in the field than someone who studies those in the field. Ideally the union of experience and theory in one person provides the most powerful, and reliable, combination (think of Matthew Bogdanos, for instance, a decorated lawyer, accomplished author and Marine colonel with years of hands-on experience). Few of the professionals, specifically art police and security directors, have sought publication on their own, and ARCA has been pleased to encourage and assist them in doing so. They have hugely valuable insights that deserve to be published, and thereby made available to professionals and researchers the world over. **Charlie Hill** is one such professional. His chapter is a very personal, insider's look at an ongoing investigation: chasing a pair of Francesco Guardi paintings that were stolen by Martin Cahill's gang, in the infamous theft from Russborough House, in Ireland, in 1986. This heist is oft-cited, as its details are very well-known (unusual in the world

of art crime), and because it clearly demonstrates the intersection of illicit art, drugs and organized crime. In 1986, Martin Cahill and his gang stole 18 artworks from the Beit family collection, at their country house outside of Dublin, a house that, unfortunately, has the dubious distinction of having been burgled of its art on four separate occasions (a record for a private home). Most of the stolen works were recovered, but some remain unaccounted for, and Hill is on the trail. He writes in a conversational manner that is distinct (and quite refreshing, when compared to the academically oriented texts that predominate this book) and accessible – and would make a great Guy Ritchie-style movie.

The world's leading expert on Leonardo da Vinci, and among the few art historians who is a household name, **Martin Kemp's** chapter offers a nice parallel to Charlie Hill's. In both chapters, professionals at the top of their fields provide a sort of play-by-play of an investigation into a stolen artwork, offering us an insider's glimpse that is a rare treat, both for the inherent interest in the subject, and because we learn the stories through the inimitable, and wonderfully opinionated, voices of the authors. Kemp discusses his role in assisting police as they recovered Leonardo's *Madonna of the Yarnwinder*, after it was stolen from Drumlarig Castle, in Scotland. Kemp's relationship to Leonardo's work is highly personal, and so it is fitting that he should pen a diary-like chapter that covers his first hearing of the theft through to the prosecution of the criminals and the painting's recovery.

Art policing in London is more effective than anywhere else in the world. Under the former head of Scotland Yard's Arts and Antiques Unit, Vernon Rapley, art theft in London dropped by more than half, to the point where the Unit was dealing almost exclusively with investigation of forgers, rather than thieves. In this chapter, **John Kerr** looks at art police in London and their role in indirectly benefiting art security in a city that represents the world's largest art market. Kerr draws on extensive empirical research and applies criminological theories to a study of art theft. This may sound unremarkable, but the study of art crime is such a new field, and because of the paucity of good empirical data, it has tended to be more anecdotal and experiential, rather than scientific – more a humanities field than a hard science. As a result, criminologists have shied away from art crime, for lack of the reams of raw data on which they normally work their theoretical magic. Kerr has found a point of departure, a trove of empirical data on art theft in London, and thereby prepares a proper criminological study of art theft and security. Such studies are few and far between, and are precisely what ARCA seeks to encourage. The chapter also nicely nests with those written by Charlie Hill and Vernon Rapley, two former police officers in London who were out in the field producing the case studies that Kerr analyzes.

It is a particular thrill when a thoughtful theoretician and someone with extensive experience in the field combine in one person, and such is the case with Colonel **Matthew Bogdanos**. A US Marine who led the operations

to protect Baghdad Museum and recover its stolen artifacts, he is also a fine writer and an experienced lawyer with the New York District Attorney's office. His chapter outlines a precise, five-point plan that international organizations, including UNESCO and NATO, could implement to curb antiquities looting – it is bold but feasible, well thought-out, and clearly written. Bogdanos also puts to rest any question marks surrounding whether terrorists are funded through the trade in illicit antiquities – they are, without any doubt, and it should reassure anyone suspicious of the statement (due mainly to the classified nature of much of the concrete evidence) to have someone like Bogdanos, with many years' of hands-on experience in places like Iraq and Afghanistan, report both from a first-hand perspective, and from the scholarly, macroscopic angle of someone who frequents international conferences, Interpol meetings, and the intelligence centers of the US Army.

US Army archaeologist, **Laurie Rush**, provides an inspiring overview of the successes, and tribulations, of protecting cultural heritage in conflict zones. She runs through all of the territories that saw fighting in recent years, touching upon Iraq, Afghanistan, Libya, Mali and Japan (which suffered not from war but the devastation of the tsunami), providing both macroscopic and microscopic observations. We learn, for instance, of the elaborate system of multiple keys employed by staff of a museum in Afghanistan, which hid its treasures from the Taliban in secret places throughout Kabul, with each location known only to a few people, and multiple key holders needed to open any one hiding place. Or how librarians in Mali packaged manuscripts in food containers to spirit them out of harm's way, transporting them by canoe and bicycle, when necessary. As an official representative of the US Army, dedicated to teaching soldiers and civilians in conflict zones about heritage and how best to preserve it, Dr Rush is ideally suited to write on this subject, combining the field experience and theory that is so valuable. She concludes with a more theoretical discussion of why people are willing to risk their lives to save objects of cultural heritage – a question at once obvious and rarely asked.

Former Mayor of Rome and Italian Minister of Culture, **Francesco Rutelli**, penned a heartfelt, highly personal essay about his dismay at the destruction wrought by ISIS, a resurrection of 7th century iconoclasm, the destruction of so-called "idols." But he draws a quite brilliant parallel, in that he sees in ISIS' hyperactive use of social media and online video a "new idolatry," seeking praise, fear and followers through spreading their terrorist actions by the Internet. ISIS therefore becomes a sort of virtual idol, and one that Rutelli passionately explains must be smashed.

7

The Theft, Recovery and Forensic Investigation of Leonardo da Vinci's *Madonna of the Yarnwinder*

Martin Kemp

On 27 August 2003, I was sitting under an umbrella on the terrace of the Villa Vignamaggio,¹ above Greve in Chianti, a villa once owned by the Gherardini family, and haunted by the shade of a famous daughter known as Mona Lisa, when Thereza Wells, my former research student and co-author, called to report the theft of the Duke of Bucceluch's treasured Leonardo painting, the *Madonna of the Yarnwinder*, from Drumlanrig Castle in the Scottish borders. The news is as yet hazy. It seems that some men driving a VW Golf GTI had abruptly removed it, shortly before the rooms were to close to the public that day. They had overpowered the female custodian and threatened her with a knife. I received the call when I was in the process of writing a new book on Leonardo, for Oxford University Press, which involves, of course, a discussion of the *Madonna of the Yarnwinder*.² A coincidence of the worst kind.

The *Madonna of the Yarnwinder* is among the most clearly documented of Leonardo's compositions. We know that it was commissioned in Milan by Florimond Robertet, Secretary of State to the invading French King, shortly before Leonardo's departure from the city, in December 1499. The artist was actively working on the picture in Florence in 1501, and it can reasonably be identified with the "small picture by his hand that has recently arrived here [in Blois]," recorded in a letter of 1507 from the Florentine Ambassador to the French court.³ A "Madonna with a Child in her arms" subsequently appears in two inventories of the possessions of Leonardo's long-term assistant, Salaì. The lists were drawn up in 1525, so that Salaì's assets could be divided equitably between his sisters, following his death the previous year.⁴ If this is the *Madonna of the Yarnwinder* – and there are no other obvious candidates – Leonardo must have produced two paintings of this subject, one delivered to Robertet and one remaining with the artist.

Of the very many copies and variants that survive, it has long been recognized that two are of major account. One has long been in the possession of the Dukes of Buccleuch. The other was once in the distinguished 19th-century collection of the Marquises of Lansdowne, and is now in a private collection. Technical examination has demonstrated conclusively that Leonardo was involved in the execution of both paintings, undertaking major revisions as both paintings evolved beside each other in his workshop, even if assistants helped in a subsidiary way in making the finished works. These two paintings are almost certainly those that are documented, but we do not know which was received by Robertet and which remained in Leonardo's own hands.

The theft

The press story inevitably runs in two phases. First comes the narrative of the dramatic snatch. The police issue information. They are seeking a white Volkswagen Golf GTI, five-door saloon car, registration number H596 VRP, which contained four men, one of them wearing a large white hat. The car was last seen locally on the Thornhill to Durisdeer Road at about 11:15 hours. Two of the men are described: "1) in his early 40's, 5 feet 10 inches tall, slim build and clean shaven, he was wearing brown shoes, cream trousers with black belt, a cream T-shirt, brown Nubuck leather jacket, a light colored brown baseball cap and round framed glasses; 2) in his late 40s, 5 feet 10–11 inches tall, slim build and clean shaven. He was wearing black trousers, black shoes, cream long sleeved shirt, sleeveless taupe colored safari type jacket with lots of pockets and a light cream colored wide-brimmed hat." CCTV pictures and e-fit images are issued, with appeals for information. One shows the man in the flat-brimmed white hat and his partner in crime scuttling into the white Golf before speeding to the exit of the estate.

Next, experts are wheeled out to assess the painting and to confirm its authorship. A series of arbitrary pronouncements are made by scholars, most of whom have not seen the painting in the original, and invariably without reference to the technical evidence. They should know better. The pronouncements resemble those made about the Raphael *Madonna of the Pinks* that London's National Gallery has purchased. The quality of the quoted comments on whether it is really by Raphael are for the most part dire. The same applies to the reactions, even by accomplished scholars, about the recently discovered Leonardo portrait of a young lady on vellum.⁵

I decide to do just one interview, with Godfrey Barker of *The Sunday Times*, not because I like the paper (and I have been misquoted and badly treated on three occasions by *The Times*), but because I have dealt with him before, and found him to be a serious and responsible journalist.⁶ I explain that there is no lost "original," that both paintings are of high status. He reads back my quotes for his piece, and I confirm that they are OK. There are things in the

story that I would question, but I did not write it, and I recognize that he is bound to report views with which I might not agree.

In the various press reports, the quoted value of the painting fluctuates wildly according to whether it is considered “autograph” or a studio “copy.” The upper estimates are in the £50 million range. The Duke (John Montagu Scott Douglas) is deeply affected by the loss, and feels that he has let Britain down. The greatest immediate worry is that it has been stolen by lower league thieves trying to move into the big time, who will find that the work is unsaleable and will decide that it is best to destroy it. The myth of the “Mr. Big” who is hoarding a great secret collection by commissioning thefts remains a fantasy.

The police contact me to ask if there are features that will infallibly identify the painting as the real thing, if they recover it or what purports to be it. Not too difficult, I explain. Two officers from the Dumfries and Galloway Constabulary visit me in my house, and I take them through unpublished evidence of the scientific examinations of both versions. They are fascinated, not least because they can recognize similarities with the kind of scientific forensic work they use in their own investigations of crimes. Unhappily, the question about means of identification is framed in anticipation of the Duke’s panel being found eventually, and not because they have recovered it. There is still no sign of the painting, and the trail seems to have gone cold. For the moment, and we hope it is only for a short time, we have to reply on comparing the results of a very thorough analysis of the Lansdowne Madonna, conducted by the Opificio delle Pietre Dure in Florence, with the lower resolution IR reflectogram of the Duke’s stolen painting and an old x-ray plate.

We pray that the Buccleuch Madonna will be restored to its owner. And we wait. The Duke follows up a suggestion that the painting is in Milan. This leads nowhere. A reconstruction is shown in September on the BBC program, *Crimewatch*, in the hope of jogging witnesses’ memories. My best guess is that, after a gap of some years, the new possessors of the painting will, via intermediaries, contact the loss adjustors who have been acting for the insurers, and that they will attempt to strike a lucrative deal for its return. The thieves may, in the meantime, have been using their “asset” as security in major criminal deals, as in the drugs trade. At least this will mean that the painting is being looked after. As damaged goods, it would be worth less to them.

Restored to the Duke

Then, early in October 2007, a detective constable from the Dumfries and Galloway Constabulary calls the Department of the History of Art in Oxford, asking if I will contact him. Even before calling back, I feel a rising sense of optimism. The police indicate that the painting may have been recovered,

and ask for confirmation about tests that would confirm that any recovered painting is indeed the one that was stolen, and not a clever replacement. I explain that the unpublished IR reflectograms would provide about as good forensic evidence as they might wish. No forger would know about the under-drawing in the detail that we did. They ask if I will travel to Edinburgh to look at the picture they have in their hands. I am very sorry to say that I cannot go on the date they suggest, which falls during the frantic first days of term. It also coincides with the run-in to the opening of the exhibition, *Seduced. Art and Sex from Antiquity to Now* that Marina Wallace and myself are curating, with Joanne Bernstein, at the Barbican Art Gallery. Michael Clarke, Director of the National Gallery in Edinburgh, looks at it in my stead. He knows his way around old master paintings and can of course make an informed judgment. I arrange to visit Edinburgh on 24 October, which is my first free day.

In the meantime, on Friday 5 October, the recovery of the Madonna is announced to the press. *The Guardian* announced:

Police in south-west Scotland said last night that they had recovered the painting, in an operation also involving detectives from the Scottish drugs enforcement agency, the Scottish organised crime agency and Strathclyde police. Chief Inspector Mickey Dalgleish, who led the investigation, said the force was “extremely pleased” at its recovery. “For four years police staff have worked tirelessly on the theft and with help from the public we have been able to track down the painting.”

Four men have been arrested, three from Lancashire and one from Glasgow. The Lancashire trio are later named as Robert Graham, John Doyle and Marshall Ronald, a solicitor from Skelmersdale. Another man from Glasgow, Michael Brown, later appears in court. More pictures of cars are issued, including a blue Rover, together with a CCTV image of a male person whom the police want to interview. The man is described as being about 5'10 to 6' tall, slim build with dark hair and a beard.

It is subsequently learned David Boyce, a corporate partner in the respected Anglo-Scots law firm HBJ Gateley Wareing, had been charged, and that the painting had been recovered from the lawyer's West Regent Street offices. Another lawyer who worked for the firm, Calum Jones, has also been implicated and was said by *The Scotsman* to have been acting as a go-between for two parties by scrutinizing a contract that would have allowed an English firm to “secure legal repatriation” of the painting from an unidentified party. The picture is now accorded a value of £37 million, though other papers cite widely divergent values. The trial and its strange result will feature later in our story.

However, joy at the recovery of the Madonna and the arrests is tempered. Johnnie, the Duke of Buccleuch, had died a month earlier on 4 September

2007, aged 83. He knew that there were moves afoot, but did not live to know definitely that his beloved Leonardo would be restored to his family.

More forensics

I fly to Scotland, as agreed, taking off from Birmingham for Edinburgh. I am met by a police car to ferry me to the conservation studios of the National Gallery. There, entering precisely the same room in which we had first inspected the picture 17 years earlier, my heart leaps to see the small panel lying on a covered table with the delighted conservation staff, Jacqueline Ridge and Lesley Stevenson and two members of the team of detectives. Even from a distance, its radiant intensity declared that the police had indeed got their woman (and baby), so to speak.

The panel, apart from possible scuffing in one corner, appeared to have suffered no damage, either from its wrenching from its display case, or during its subsequent life in captivity. The fragile paper labels on the reverse were still intact. It is obviously the real thing, but the police are interested in the hard forensic evidence that I had promised. We take the painting into a smaller room down a corridor, where a new and more potent IR apparatus is now housed, linked directly into a computer that delivers the images to its screen.

As we move the camera over the surface, we not only see features of the under-drawing that were earlier apparent (but unpublished), but also other aspects that the older equipment had not picked up. We complete the examination for the immediate purposes of identification, but do not at this stage record everything we will need to bring the examination up to the level we had conducted on its sister painting. I leave Edinburgh in high spirits.

I write a report for the police, summarizing the results of the analysis. I am also asked to provide a formal statement, covering everything I knew and could remember from before the theft onwards. Two officers from Dumfries visit me in Oxford, and painstakingly record in longhand my answers to a series of questions, in chronological order. My answers are finally read back to me with ponderous care, and I sign the statement as true. The idea that I might be a suspect briefly crosses my mind, but it is apparent that the police are determined that there should be no loose ends and no gaps, if they are to achieve the prosecutions they desire.

In the dock

The last act in the drama to date involves the trial of the five men charged by the police. They were accused of conspiring to extort £4.25 million for the return of the *Madonna of the Yarnwinder*. The trial took place at the High Court in Edinburgh over eight weeks in the spring of 2010. Those who appeared in the dock were a motley crew. The account that emerged in the

trial is riven with inconsistencies, and I doubt whether the full truth is yet known, but the broad outline of events is reasonably clear.

The two Liverpool men in the dock were sharp operators. Robert Graham, a publican, and his friend John Doyle, had set themselves up as private investigators and established an online business, Stolen Stuff Reunited, which aspired to get crooks to return stolen material that proved to have little value (other than to the original owners). They clearly had their underworld contacts, and it seems to have been Doyle who indirectly or directly established a line of communication with the thieves. Graham then involved the Lancashire solicitor Marshall Ronald, who might best be described as a maverick. Realizing that they needed Scottish expertise, Ronald contacted David Boyce of the lawyers HBJ Gateley Wareing in Glasgow, with whom he had earlier done business. Boyce in turn involved Callum Jones in the same firm. The next move was to make contact with the loss adjustor, Mark Dalrymple, who was acting for the Duke's insurers.

Dalrymple, who seems to have been the only one who can be said to have behaved entirely properly, immediately informed the police, on the understanding that strict secrecy must be maintained. The police then set up their own sting, with officers acting as intermediaries and representatives of the Duke. It was agreed by the intermediary that he was to pay £2m into the law firm's client account. He guaranteed that "he and no other person acting on his behalf . . . has given any notification or information relating to the terms of the said agreement (nor will do so until after the completion date) to the law enforcement agencies." In order to massage the transaction, Ronald apparently used £350,000 of a client's money to secure the release of the painting from the criminals. It remains somewhat unclear as to precisely who planned to obtain how much money from the various transactions involved in the painting's return. There was the possibility of a substantial reward and an expectation of some other kinds of payments. The English trio were clearly hoping to profit handsomely at the end of the day. There is, of course, also the excitement of being involved with such a big story, and the glamour of association with Leonardo. Even a sober Glasgow solicitor can be forgiven a frisson of excitement at the thought of a stolen painting by Leonardo being handed over in his office. We might ask, however, whether members of the legal profession should be forgiven for not informing the police. The five charged gave what seem to me to be thin excuses for not doing so.

After complex negotiations, a meeting was set up on the solicitors' offices in West Regent Street in Glasgow, with the promise that the painting itself would be present. The undercover police officers, whose true identity was not known to the other participants, attended the meeting. Jones told them that "the lady" was close by, as Ronald had assured him. Jones introduced the officers to Ronald, Graham and Doyle in the boardroom of the law firm. The painting was then extracted from a black case carried by Doyle. It was

obviously the real thing. Having blocked all routes of escape, the police moved briskly in, surprising the men assembled there with their precious charge. The Dumfries and Galloway Constabulary were rightly proud of their operation. As one of the officers said to me, "I normally deal with muggings and slashings."

In March, I travel from Italy, where I had been staying for two months at the Villa I Tatti, owned by Harvard. I had been asked to testify about the painting itself, and the advice I had given the police. I was rather surprised to be called to testify, since whether the picture was actually a Leonardo or not did not seem to me to affect the case of extortion. The court chamber is unexpectedly cavernous, with serried ranks of what I take to be lawyers – considerable numbers of them – together with other observers, including the press. I can see why the law is so expensive. The accused sit in a glum row. I give an account of the visual evidence we have assembled about the painting's authorship, under examination by the prosecutor. I try to give a lively and accessible account of the painting's qualities and of the scientific examination, explaining how we can be sure that the work that has been recovered is the same as that which had been stolen. I sense that those in the court are pleased to have a diversion into a realm outside the main legal grind.

The painting itself is on show in the National Gallery, at the Mound in Edinburgh, where it remains for the time being. I go to pay my respects. The panel is beautifully framed, mounted and lit. It looks stunning, and more than holds its own with Raphael's *Bridgewater Madonna* in the same room. Raphael's composition, in which the infant Christ surges across his mother's lap, is the younger artist's own homage to Leonardo's seminal invention. At some point the main players in the court drama decamp to the gallery to become directly acquainted with the star actor in their drama.

On 22 April, the news arrives in Italy that the jury had returned its verdicts on the previous day. I was astonished to learn that majority "not proven" verdicts had been given to Ronald, Graham and Doyle, while the Glasgow solicitors, Jones and Boyce were found unanimously not guilty. "Not proven" in Scots law allows a jury to say that the case against the accused has not been demonstrated to their total satisfaction, but stops short of declaring the accused incontrovertibly not guilty. I can only imagine that something had gone badly wrong in the prosecution. Perhaps the extortion charge was not the right one. Doyle argued that if they had been found guilty, no stolen art would ever come back again. It seems to me that the actions of the English trio were such as to encourage thieves to think that stealing paintings could be a profitable enterprise for all involved, including the intermediaries. In any event, the result confirms my view, from involvement in other cases of art in court, that the law at this level involves elaborate and horribly costly rituals acted out by lawyers according to arcane internal rules in which common sense and natural justice are all too readily

obscured. I feel for the police, who are still doing their best. On 6 July 2010, it is reported that the police have interviewed Ronald, the Lake District solicitor, over allegations he embezzled £800,000 from a client to fund the recapture of the painting. It must be galling to the police that Ronald is currently pursuing a claim that he is owed £4.25 million for his part in safely restoring the painting to its rightful owner. Worst of all, at the end of the day, the actual thieves have not been brought to justice.

Notes

1. An earlier version of this chapter appeared in *The Journal of Art Crime* (Spring 2014).
2. Martin Kemp, *Leonardo* (Oxford University Press, 2004).
3. *Leonardo da Vinci. I documenti e le testimonianze contemporanee*, ed. Edoardo Villata, Ente Raccolta Vinciana (Castello Sforzesco: Milan, 1999), p. 208, no. 240.
4. Villata, pp. 278–287, no. 333.
5. Martin Kemp and Pascal Cotte, *La Bella Principessa: the Story of a New Masterpiece by Leonardo da Vinci* (Hodder & Stoughton, 2010).
6. Godfrey Barker, “Rich Pickings” *Sunday Times, Focus* (31 August 2003), p. 19.

8

Trying to Recover Two Francesco Guardi *Capricci* Stolen from Russborough, County Wicklow, in 1986

Charles Hill

Martin Cahill was a notorious Dublin criminal in the 1980s and 1990s who stole anything he could lay his hands on. When Sir Alfred Beit, Bt. announced his and his wife's gift of their art collection to the Irish people and some idiotic price tag was fixed to it by the press, Cahill thought he'd take a slice of the action. One night he threw a stone through a window at Russborough which set off the burglar alarm. Police arrived from Blessington, County Wicklow, took tea and left the Steward of that great house to contact the alarm company to re-set the alarm the next day. Then Cahill and his people broke in and helped themselves to one of the finest private art collections in the world. Books of varying quality have been written about him, and films made too.

About 19 years ago, the Beit Wing of the National Gallery of Ireland was opened. I was invited to join in the celebration along with my wife, our infant son, Andrew O'Connor (then Conservator at the NGI), Liam Hogan of *An Garda Siochana* (who became a senior police officer in the Seychelles and tragically died in 2014), and Martin Bailey of *The Art Newspaper*. There I was introduced to Clementine Beit. Lady Beit told me about the collection of paintings that she and her husband had inherited and collected together: "they were our children."¹ I told her that I would do whatever I could to recover the two Guardi *capricci* that were still missing. She thanked me, and it was left at that. Sometime later, her lawyer rang me, when I was the Detective Chief Inspector at Belgravia Police Station in London, and told me that Lady Beit wanted to leave money to a police charity and asked if I would nominate one. I suggested the Police Convalescent Home in Goring-on-Thames.

I retired from the Metropolitan Police in 1997. In December 2012, a helpful Irishman in the arts world introduced me to a larger-than-life character I will refer to as Cuchulainn II, who is an Irish traveler. Cuchulainn II asked

me to keep his name out of any statement I made to the police (as I told him I would have to make one someday).²

The agreement he and I reached was that we would try to recover the two Francesco Guardi *capriccio* paintings (also known as architectural caprices) stolen from Russborough by Martin Cahill's gang in May 1986. We would then try to recover Oxford's Ashmolean Museum's Cezanne, stolen on Millennium Eve, and a Caravaggio nativity scene stolen from the Oratory of St. Lawrence, in Palermo in 1969. Our idea was to do something positive, as he called it, and worthwhile, as I saw it. (For me, it was largely as a vocation, having spurned a sense of calling to become an Anglican or Episcopalian priest). Cuchulainn II was tired of bare-knuckle boxing as a way of resolving family and wider traveler clan disputes, even as an undefeated champion.

On reflection, both Cuchulainn II and I had mixed motives. We were unlikely to change the habits of our lifetimes and ways of looking at the way our worlds worked, and didn't work. Other than as a child being a camp follower, then a student, soldier, student again and teacher, then cop, and undercover cop, my ability to get along with him was instinctive, and based on experience. He reminded me in looks and temperament of my Squad Leader in Vietnam who lives in upstate Washington retirement, near the British Columbia border. He had been a trawlerman in the Gulf of Alaska before soldiering, and he and I were the only two volunteers for the Draft (US Army conscription) in our rifle platoon of a line company in the 173rd Airborne Brigade. Cuchulainn II was born a bare-knuckle fighter and fought his way to fame and some fortune, all of which he has spent. We were entirely different, but opposite poles of a magnet attract, and he was taken by the art at stake in what we proposed to do. I told him that the art was the thing. We'd avoid the art world. I lied. It's impossible to avoid it.

For Epiphany 2013, Cuchulainn II went to a long stag night weekend in Holyhead, North Wales and then onto a series of weddings in Rathkeale, County Limerick.³ He reported back that one of the Guardi *capriccio* pictures was in Belgium, the other in Florida (In August 1993, a Dublin crook, the late Niall Mulvihill, told me both pictures went to Florida). I said to Cuchulainn II that we'd go after the one in Belgium.

The ground rules for our work, as I explained them to him, were that we would pay for information and expenses leading to the recovery of the paintings. We would not get involved with ransoms, rewards or anything to do with criminal money laundering. Everything we did would have to be legal and reasonable. The Common Law legal precedent for paying for information and expenses leading to the recovery of stolen paintings in the public interest was outlined in a London High Court judgment by Mr. Justice Ferris over a decade ago. That case is detailed in Sandy Nairne's *Art Theft and the Case of the Stolen Turners*.⁴

In February 2013, I went to see the Head of Security at the National Gallery of Ireland, who introduced me to the new Director, Sean Rainbird.

I explained to them what Cuchulainn II and I proposed to do. Because the two stolen Guardi *capricci* were the property of the Alfred Beit Foundation, I was introduced to the Foundation's Chairman by email. What a star he turned out to be.

In April 2013, Cuchulainn II went to Luxembourg, Belgium and Holland, and spoke with people who could assist in recovering the Guardi *capriccio* in the Low Countries. He said he would not tell me their names.

I paid out £10,000 in cash to those people for information leading to the recovery of that Guardi. My bank manager put the purpose for that personal loan to me down as "retrieval of a painting." I first paid out £3,500 to Cuchulainn II to cover his expenses. I believed that he and I were, in effect, acting as agents for the Alfred Beit Foundation, although no formal agreement exists. It is, instead, a gentleman's understanding: Cuchulainn II and I would act with the interests at heart of the Alfred Beit Foundation and the NGI, to both of which the Beits left their art collection for the benefit of the people of Ireland (watch Lord Clark's *Civilisation*).

Cuchulainn II traveled to Holland twice in April 2013 and, after the second trip, told me he had been shown a small painting, still in its frame and behind glass. I then showed him reproductions of both the Beit Guardis. He immediately identified the one with the column and figure on top waving something, as the one he had seen. The other *capriccio* depicts an ancient ruined arch, with a basilica in the Veneto distance.

On Saturday, 27 April 2013, a man named to me as "Another Man" rang, purportedly from the Flatlands, the Low Countries. He said he would bring the Guardi to London on Monday for me. Then he rang me on Tuesday, April 30, at midday, and asked me to collect it in Dunkirk from 5pm onwards on Wednesday, 1 May 2013. He said "they" would want £3,000 to cover expenses for delivering it. Porterage, I supposed. I said that I would discuss that with Cuchulainn II when he returned from a clan funeral in Tullamore, County Offaly.

I went to Dunkirk but, of course, the painting was not there. Then followed eight months' worth of nightmarish messing around about the delivery of the picture, or what they called "The Product," which was on again, and then off again, because the Flatland man had been arrested in Holland, for what I was told was a domestic dispute. I was asked to contribute to his bail bond and I said no. I am not a Dutchman, but I was not going to obstruct the course of Dutch justice. I assumed there was more to his jailing than a domestic matter.

On Friday, 31 May 2013, I was told by Cuchulainn II that the Flatland man was still in a Rotterdam prison, but that they had all of the money for his bail, at last (€30,000), and he would be out Monday (June 3), and we would get the Guardi then. On Tuesday, June 4, my morning call was that we would go get it that night. On Sunday, June 9, it was on for June 10. On Friday, June 14, I was phoned by both Cuchulainn II and another man I didn't

know, and it was the same old bullshit about the Flatlander in a Rotterdam prison. Next week, they both said, and I would have the picture back, once they had sorted out the man's bail at a Dutch court.

Next week turned into next month, with a series of hopeful and hopeless phone calls, from and to Cuchulainn II. On Thursday, July 4, I was contacted by a friend, a Partner at Farrer & Co Solicitors, and told that five grand was coming my way from Farrers and the Historic Houses Association because of a Titian I had recovered for the Trustees of Longleat (and Lord Bath) a decade earlier. (Sarah Lyall of *The New York Times* wrote an amusing article about the recovery of that Titian in August 2002, published in the *NYT Arts Section* on 19 September 2002. Although that article had a few minor inaccuracies, it was certainly fit to print.)

On July 8, I collected the £5,000 in cash and met Cuchulainn II at Euston Station, to discuss his new plan. I gave him half, to reimburse his wife for the £2,500 he had borrowed from her that was intended for their granddaughter's christening party on Sunday, July 21. The other half was for my wife, from whom I had borrowed the money last May to pay for the Flatlander's three grand portrage fee. Cuchulainn II went to Rotterdam with a main man in the Rathkeale clan sorting out the Flatlander's bail. Some in the Sheridan clan hate the Flatlander's guts for whatever it was he did, so Cuchulainn II told me. I still don't know what that was.

There followed six months of increasingly frustrated waiting by me, for some constructive development in the recovery. Weeks went by and I was being shoveled horseshit and promises for the future. However, the Chairman of the Alfred Beit Foundation continued to keep faith, and that made things much easier. I made two trips from London to Dover, for the Calais ferry, only to be called off at the last moment by the Flatlander, who seemed to change his contact mobile phone numbers more often than I had hot breakfasts during that time. The Alfred Beit Foundation did provide me with £1,500 for expenses during August 2013. I gave £1,000 of that to Cuchulainn II, for his and his wife's expenses, for which he signed a receipt, and kept £500 to defray my own expenses.

A possible denouement of this art recovery drama, or saga, for this Beit Guardi *capriccio* came on Friday, October 4, when I received a call from a man who Cuchulainn II told me had an engaging middle name similar to Grapeshot. Perhaps I should call him Ailill, King of Connacht, but no, Grapeshot will do. He told me that I was to have the Guardi to take back to the National Gallery of Ireland, and I was to give him about a week to get that organized. I thanked him. On Sunday evening, 13 October 2013, the Flatlander rang, and I could hear Mr. Grapeshot in the background, obviously standing quite close. I was told that he would ring me on Tuesday morning (October 15) and make arrangements for me to come and collect the picture, to take it back to Dublin. That didn't happen. It seemed that another Rathkealer was involved. Here it might be useful to note that

Rathkeale is a small town in County Limerick that used to have seven policemen. A Commissioner of *An Garda Siochana* (the Irish police) decided that they should police themselves, and withdrew his beleaguered officers. The town now has none. They are a worldwide traveler clan who return home each Twelve Days of Christmas to fight, drink, eat, make love and marry. When I was last there in 2011, a new, green Hummer with French license plates pulled up and parked behind me and I was glowered at by the driver and his mate.

But back to the saga, that man I was to meet was in Bosnia, probably repackaging Balkan Sobranies as Marlboro Lites and supposedly returning to Western civilization on October 30. However, he did not. Meanwhile, Cuchulainn II asked me for a favor. He needed a letter to a Judge saying what a good guy he was.

On Wednesday, 4 December 2013, a character reference letter for Cuchulainn II, written by me, was presented to the Judge at the Circuit Court in Tullamore by our hero's lawyer. He was then given eight months imprisonment, suspended for a year. I have no idea what he was convicted for, but Cuchulainn II thanked me.

Incidentally, in my letter, I referred to the Bishop of Piazza Armerina in Sicily and the work that Cuchulainn II and I were going to do to recover a Caravaggio stolen in Palermo in 1969. This had followed on from some jewels (off of an ancient icon) I had recovered from a theft in Piazza Armerina Cathedral, and returned a decade earlier. I had written in my letter to the Judge in Tullamore that neither his defendant nor I spoke Italian, but that would be the least of our problems in recovering the Caravaggio. (I made a mistake in that letter because, at Easter 2013, the Bishop became Archbishop of Monreale.⁷)

On Christmas Eve 2013, I was called by Cuchulainn II, and told that the man I knew as Cyclops, or Conchobor (who I met with the Flatlander on May 1 in Dunkirk), said that the Beit Guardi would be delivered to me in London on 28 December 2013, so I enjoyed Christmas in hope. Live in hope is my advice to all, and not just at Christmas. Then, nothing happened. On December 30, while emailing an update to the Chairman of the Alfred Beit Foundation, the Flatlander rang with someone purporting to be Mr. Grapeshot. It was all bullshit about bringing "The Product" to me in London on January 14. But Cuchulainn II rang on January 4, to say it was still on for January 14. Gullible fool that I am, I believed him: I continue to live in hope, as in St. Paul's faith, hope and charity, these three; but the greatest of these is charity. My hopes got the better of my judgment.

14 January 2014 came and went. In the late evening of January 15, I was phoned by Cuchulainn II to say that the Flatlander would be ringing me at 10am on January 16, with details about handing the Beit Guardi over to me (still referred to as "The Product") the following Sunday. The Flatlander rang at 1pm and said that Mr Grapeshot was having cancer treatment on Monday,

so he'd stay with him and they'd be over in London with the Guardi next Thursday (the 23rd). That didn't happen.

Then surprisingly, the Flatlander rang me on Friday afternoon, 31 January 2014, to say that he would bring me the Guardi tomorrow at 5pm, but would ring me at 3pm to say where, and I was to have Cuchulainn II with me (about whom he was beyond uncomplimentary, and downright insulting). My hope was that Mr. Grapeshot had insisted on this course of action. I spoke to Cuchulainn II, who said that he would meet me at Euston Station at about 4.30pm on Saturday, after he had taken his wife to a (Saturday?) hospital appointment. I emailed the Chairman of the Alfred Beit Foundation to let him know about these developments.

My plan was to take that Guardi *capriccio* to Dublin as soon as was practical after I recovered it, and deliver it to the NGI on the verbal instructions of the then Chairman of the Alfred Beit Foundation, which owns the picture. I would also contact Detective Superintendent Kyne at the *Gardai* Central Detective Unit to inform him, as well as Andrew O'Connor, Liam Hogan (now RIP) and Martin Bailey, who were present when I made my promise to Lady Beit about 19 years ago.

I am willing to cooperate with Detective Superintendent George Kyne of the Central Detective Unit or any other *Garda* officer. The reason why I have not identified Cuchulainn II by name, or the people from Rathkeale by their proper names, is that I told them I would not. I appreciate that *Gardai* know who they are anyway. The reason for that is what was said to me in the year before he was murdered by Judge Giovanni Falcone, the Sicilian prosecutor, magistrate and secular martyr while entertaining him and his entourage to supper. He was in London for his famous Pizza Connection money laundering investigation. I was head of the National Drugs Intelligence Unit's Financial Section at the time. He replied to my question about how he got *pentiti* (reformed criminals, mostly *mafiosi*) to talk to him by saying, through his interpreter, "When I tell them I'll do something, I do it." I took that as advice on how best to deal with all kinds and conditions of men and women then, now and always.

So far as a legal justification for what I have done is concerned, I have tried to deal with the recovery in a reasonable and legal manner. I believe that our actions have been reasonable and legal throughout the past three years, and in the years before that, since the promise I made to Lady Beit. I also believe that in Common Law, there is public interest in the recovery of those two Guardis. I reckon most judges would think that too.

Before recovering Titian's *Rest on the Flight into Egypt* in August 2002 (that had been stolen in January 1995 from Longleat, Wiltshire), I spoke with the late Professor Sir John Smith QC.⁵ He was then the Emeritus Professor of Law at Nottingham University and original author of *The Law of Theft* (Oxford University Press, 1968, and in nine updated editions). I asked him about the effect of the Proceeds of Crime Act (POCA) 2002, and the recovery of stolen

works of art. He told me that in Common Law, every property owner has a right to recover his own stolen property, and can have an agent do that for him. He added that, in my work, I was most likely to upset law enforcement officers, because they would see me doing their job for them, and they might try to make life difficult for me as a result. He then said that the money laundering provisions of the POCA were untested, and he could see them conflicting with that Common Law right (and common sense – picking up a paperclip from the pavement and subsequently using it is technically money laundering – that 2002 money laundering law has been so badly drafted). I'm prepared to argue that my actions to recover the Guardi have not been criminal, but in the public interest.

The second stolen Beit Guardi *capriccio* is purportedly in Florida. Other than to get general directions about where and to whom it went, I am not prepared to become involved with the Rathkeale people again to recover it. They have wrung my withers over the past three years. I am determined they will not be in a position to do it again. I lie once more to myself. Of course I'll deal with them. Praying to St. Anthony of Padua is unlikely to return these stolen works of art. Leaving it to God is not an option. God leaves these things to us.

I have a Plan B, that I have discussed with the former Chairman of the Alfred Beit Foundation to recover that second Guardi *capriccio*, legally and reasonably. Plan B is to use *Garage Magazine* (published by Roman Abramovich's wife, Dasha Zhukova, in London and Moscow), *The Art Newspaper* (published in London and elsewhere, with Martin Bailey as ace art crime reporter), *ARTnews* (a monthly magazine published in New York formerly by Milton Esterow but now by an oligarch's daughter), and the daily *ARCA* (the Association for Research into Crimes against Art) blog to locate the second stolen Beit Guardi in Florida, and to recover it through publicity generated by the Press and other media. Better yet, I'll finish this chapter for Noah Charney and make this appeal through his new book, *Essays on Art Crime*, published by Palgrave Macmillan.

However, back to the Cuchulainn II and Rathkeale saga: disaster may have struck on Saturday, 1 February 2014 (a year before writing this chapter). The Flatlander rang me that Saturday, at about 1pm, to say that he would meet Cuchulainn II and me at Watford Junction railway station on the Virgin West Coast mainline at 6pm, and he'd have "The Product" with him. Cuchulainn II drove down from his caravan halting site near Manchester, and I took various trains there. The Flatlander walked into the Upper Crust Coffee Shop at Watford Junction Station, with a shaved head, wearing a Liverpool Football Club sweat suit, and built even more like a brick outhouse than the last time I saw him in May 2013. Cuchulainn II arrived and parked in the station car park. Flatlander and I walked over to him, and Flatlander immediately began threatening him about some threats made to him by someone in Limerick and about having his new caravan burned out.

Cuchulainn II got out of his car swearing, and punched the Flatlander twice, hard in the head, making a thudding sound that was as loud as the Virgin mainline express trains hammering through the station at 100 miles an hour. I was surprised by how fast his bare-knuckle fists were. Also, to my surprise, Flatlander stayed on his feet, which gave me the chance to jump between them, with my back to Cuchulainn II, assuming he wasn't going to whack the back of my head. Thankfully, he didn't.

Other people in the car park ran like hell. There was a great deal of shouting by both men, with the Old English vernacular for the Latin word *pudendum* featuring. In some ways, it reminded me of a BBC Radio show comedy exchange between Peter Cook and Dudley Moore years ago, although this time with real hatred and violence expressed.⁶ The Flatlander's face was reddened and swelling, and Cuchulainn II seemed to have lost his mind. After some minutes, things cooled down, and with words of encouragement from me, they both departed to their separate cars and retinues. I went back to the Station for an Upper Crust Coffee Shop coffee, but what I needed was a stiff drink, when the Flatlander rang to say that The Product was on its way to Euston Station, with a girl who would wait for me there. He said she'd be at the barrier and recognize me when I got there on the next local train service.

When I got there, she was nowhere to be seen. Cuchulainn II rang and said he regretted the Eve of Candlemas entertainment. The Flatlander, however, was less emollient. When I told him that no one was waiting for me at Euston, he said that he'd ring back. He didn't and went off the air: stiffed again. Then I put in a call to a mobile number I had for Mr. Grapeshot, and left a message asking him for his help.

Since then, there has been the sound of silence from Cuchulainn II, who did ring on Sunday, February 2, to say that he was on his way to Dublin to sort out things. One thing that must not happen through this internecine aggravation among clan factions is to start a new range war in and around Limerick with beatings, stabbings and shootings. The people and police in Limerick went through all of that in the late 20th century, when the place was similar to the way Dodge City had been over a century earlier.⁷

Wrong again. Cuchulainn II rang at 1.45pm on Tuesday, 4 February 2014. He said he saw Mr. Grapeshot last night. This main man of the Sheridan clan was arranging for me to get The Product within 48 hours. My hopes were high. Did that happen? The hell it did. Cuchulainn II went silent, very silent. He rang me a few months later, at the end of May, and said he'd been in the USA on business, but he was still on the Guardi case. I didn't believe him. Then an interesting twist in this tale happened. I received a call from a lady I'll call Queen Maeve. The Irish for her name is Medb, Queen of Connacht, wife of Ailill, in the first Cuchulainn's era.

Very glamorous in a Dolly Parton kind of way, but with wild black hair cut like a Pawnee Scout in the 7th Cavalry, she has a voice that could give

Tugboat Annie a run for her money. She wanted to make common cause with me about Cuchulainn II because he had been to the USA with almost 50 grand of her money to do a cage fighting deal with some potential Russian business partners and they had taken the money off of him. More bull of Cuailnge? Well, that's more than I lost to him. I told her I was working with him to recover two paintings by Francesco Guardi that I had promised an elderly lady long ago to return them to the Irish national collection. She told me she knew that. She added that she was dealing with a man who had the Ashmolean Museum's Cezanne (stolen on Millennium Eve in Oxford) and Rembrandt's *Storm* (as she called it) and a brass eagle thing from America. Interesting, I thought. I've been bitten. I'm shy. No, I'm not. Tell me more, I said.

I'll now leave this cliff hanger of *The Perils of Pauline* as lived by Queen Maeve. In February 2015, Cuchulainn II is facing four years imprisonment if he pleads guilty at a court in Ireland, but eight if he doesn't. I don't know what for. Recently, one of his brothers received 16 years for murder. His other brother was done for manslaughter. Queen Maeve told me she is standing by his family while he's inside. If I win the lottery, I'll help. One more thing, the FBI is looking for Rembrandt's stolen *Storm on the Sea of Galilee* in South Philadelphia. That was announced by the FBI and US Attorney in Boston at a day after St. Patrick's Day press conference in 2013. The FBI could be looking in the wrong place. While searching for the Beit Foundation's two Guardis, I'll see what Queen Maeve comes up with. Never despair I tell myself. The art world is an awkward place, not only full of hucksters and heroes changing sides, but many players playing a double game.

For me, the words of Samuel Beckett are the right ones: "Ever tried. Ever failed. No matter. Try again. Fail again. Fail better."

Notes

1. Sir Alfred and Lady Beit were art collectors and philanthropists. He was a Baronet and successor to his father and uncle who made a fortune from South African mining. Lady Beit was a cousin of the Mitford sisters of whom Deborah, Dowager Duchess of Devonshire, was the last to leave the stage.
2. Cuchulainn II's name is from that of the flawed hero in a Dark Age cattle rustling epic entitled *The Tain*, best read in a translation by Thomas Kinsella and illustrated by Louis le Brocquy's brush drawings (Oxford: OUP, 1969) and in paperback 2002. As a clue to Cuchulainn II's personality, see the 2011 TV documentary by Ian Palmer, *Knuckle*, or an autobiography entitled *Knuckle* (London: HarperCollins, 2012).
3. Rathkeale, County Limerick is home to the worldwide Irish traveler clan, the Sheridans. Various TV productions about them have included *My Big Fat Gypsy Wedding* and others.
4. Sandy Nairne. *Art Theft and the Case of the Stolen Turners* (London: Reaktion Books, 2011), pp. 80–83.

5. Sicilian Judge Giovanni Falcone, after whom the airport in Palermo is named, was and is a true hero. See Giovanni Falcone with Marcelle Padovani, *Men of Honour: The Truth about The Mafia* (London: Fourth Estate Limited, 1992). Also, see *Smith's Law of Theft (1968)*.
6. Peter Cook and Dudley Moore's radio exchange was in 1974 and can be listened to on Google.
7. Violence in Limerick City in County Limerick in the late 20th century was what violence in Dodge City was to Kansas in the late 19th. Violence in the city of Dundalk (Palermo North), County Louth, ran it a close second during the late 20th century. Art crime was a form of relaxation to some from those parts. Cuchulainn and Cuchulainn II came from that part of the world, Dundalk and the Cooley Peninsula.

9

The Role of the Police in the Co-Production of Art Security in London

John Kerr

Introduction

Art's current popularity in London is unprecedented. With three of the five most visited art spaces in the world, London has eight galleries and museums with more than a million annual visitors.¹ In the UK, there are 28.6 million visits every year to locations run by the National Trust, English Heritage and the Historic House Association. Furthermore, with 18% of the global auction house market in 2012 (Artprice.com), London is a crucial hub along with New York, Paris, Beijing, Shanghai and Hong Kong in the global art market. Following on from the fundamental question of "Who should the police be?"² this chapter examines the role of the public police in the securitization and policing of art in London.

There is a dearth of research into how the security of art in London (or indeed any other global art hub) is produced. The importance of a nation's cultural heritage, the significance of the cultural economy, and art theft's links to other forms of criminality, nationally and internationally, necessitates much more consideration. Criminal enterprise presents a risk to this wealth of heritage and thriving cultural economy. Drawing on empirical research conducted by the author, this chapter focuses on one area: the theft of art. As much as 30% of insurance claims are for thefts, and while at the top-end these incidents are very rare in London and the UK, they happen much more regularly at the lower level, particularly the £10,000–50,000 price range.

This chapter is based on an article first published in *Policing: A Journal of Policy and Practice Policing* doi: 10.1093/police/pas004 First published online: 15 March 2012, and is republished here with permission of Oxford University Press.

It is estimated that, globally, art crime could be worth billions of pounds.³ However, this is very difficult to substantiate. In the UK, the lack of hard evidence suggests that it is difficult to know the actual extent of art theft because, crucially, it is recorded under the large categorization of “property crime.”

Despite the well-known difficulties of accessing the public police, the art world and private policing, my empirical research focused on these worlds. This chapter discusses the data sources and methodology; the changing policing landscape (and corresponding theoretical frameworks); research findings into the role and function of the public police and its relationship with private stakeholders; and examines critical questions and issues in the co-production of art security.

Data sources and methodology

The lack of prior research has forced the few previous researchers into foraging around a range of sources.⁴ Academic researchers, including Mackenzie (2005), Mackenzie and Green (2007) and Polk (1999), have often been drawn to the area of looting and the entry (and further sale) of objects into the art/antiquity market.⁵ There is no research that has focused specifically on the securitization and policing of art theft in London.

My data sources were, first, the policing and securitization agents (public and private) involved with art and, second, the locations in London that display art. Academics often do not have the chance to conduct research in their desired, or most suitable, location. However, London, with its myriad of locations and flows of art within (and in and out of) the city is one of the best sites in the world to address how security of art is co-produced in a city space. In addition to observation, interviews were conducted with people who work for and with locations, ranging from large national galleries, to smaller museums and historic houses (such as Heads of Security, volunteers, and installers). Interviews were also undertaken with the policing and securitization nodes. These included the MPS Art and Antiques Unit, Government agencies, the National Security Adviser, the Policing Adviser to the Heritage Crime Initiative, Interpol, private recovery and investigative companies, private art detectives, loss adjusters, insurance companies, databases, ex-MPS officers. To protect my sources, many names are withheld.

The changing policing landscape

The under-researched configuration of the security network for art theft in London, situated within the broader theoretical framework of policing in the risk society, provides an important test case for theories on modern policing and is a good example of how the public police prioritize certain areas at the expense of others, and deal with the challenges posed by crimes which require specialization and expertise.

Although the limits of the level of control the state can hope to have in crime control and its ability to provide effective security have already been exposed,⁶ the discourse has moved on and now not only can public and private not be defined by “loss” and “crime” labels, but also “public” and “private” are labels which, while still useful for mapping purposes, are less defined within operational relevance because policing (or security governance) is now made up of complex relationships between varied security providers.⁷ The securitization and policing of art theft in London exemplifies this, with its complex matrix of security providers who co-exist together to produce a security and response network. It has many of the characteristics present in theories on policing in late modernity and also has facets and conditions that test these theories.

State-centered policing or post-policing security?

The co-production of art security provides an example of how security nodes form a matrix with an overlapping of “multiple tops” and many “downs.”⁸ Importantly, this matrix is not constant. It adapts as the stratification of the nodes changes. For example, due to its encouragement of cultural spaces, its own large amount of art and the flows of art it helps to create, the state still has a position in the network. Whereas in one area (the public police) the state has taken arguably a smaller role, it still retains (due to, rather than in spite of insurance) a large amount of influence. This chapter focuses on the role and function of the public police within this co-production of security which, due to state-centered policing theories such as anchored pluralism (in which the state is a controlling force within a plural policing terrain)⁹ failing to adequately reflect the post-policing security formation of this particular security arena, is best described by nodal governance in which there is no locus of power.¹⁰

Role and function of the public police

In the UK, the public police’s response to art theft often begins with the local police force where the crime occurred, or, within London, the local borough police or the City of London Police. These officers can turn to the MPS’s Art and Antiques Unit – limited in its operational potential by its small size and jurisdiction over only London – for advice and help in disseminating information on stolen property. Whereas the Unit is involved in operations that require specialist knowledge of art crime, it is the police forces and borough police themselves who are often involved in recoveries and investigations (if they choose to investigate).

The public police rarely target professional receivers because thefts of art, particularly from private houses, are often investigated inadequately by inexperienced officers who have little knowledge of art and a lack of awareness about the Art and Antiques Unit and its database. With the Unit relying

on officers to report thefts to them, there is a strong case for arguing that the public policing node would be more effective and the nodal framework would benefit greatly if, when a property crime occurred, art and antique theft was recorded separately as a matter of procedure, and not just out of choice by an officer. Although art thefts continue to be recorded as property crime and not differentiated from other stolen objects, investigating might not be an attractive option for local police forces as one theft will probably involve more complex, costly, time-consuming investigation than lower value property crimes. It also makes it hard to know the true scale of the problem and difficult to form a concerted public police response (if one were sought after by senior officers). Unless the separation of art crime figures from property statistics (which some within the security network are calling for occurs) or qualitative issues are built into performance frameworks,¹¹ the problem, in effect, will not exist.

The MPS Art and Antiques Unit have been successful in the past. During the 1990s, despite the limited number of detectives (about four), they were annually recovering, value-wise, more stolen property (£14 million) than the rest of the entire Metropolitan Police. Operationally successful, they were involved in high level recoveries such as Munch's *Scream* and Vermeer's *Lady Writing a Letter with her Maid*. The Unit, taking regulatory limitations into consideration, can justifiably claim to still be effective (within their contracted sphere).

Limits of public policing

There are limits to the public police, concerning the spaces in which they actually police; their capability in regards to preventative policing; resources; and regulatory constraints. Within many spaces in modern society, it is private security (whether in-house or contracted) technical staff that "do" the security.¹² While using private security is the case for the many locations that display art, this security is often "public" owing to the large amount of state-run locations that display art. Although there was a small number of private security personnel (less than 5%) working in national museums in 2009, this could increase according to the National Security Adviser. However, whether public or private personnel are used, the public police are not policing inside these spaces. This is not their role. Furthermore, if they were more involved, security personnel might feel they are encroaching on their area and should remain outside to avoid a conflict of interests.¹³ However, while this could be the case for decently paid, full-time security staff at a location such as the Victoria and Albert Museum, this is not the case at other locations that depend on volunteers, many of whom are more than 60 years old.

In the "flows" of art for exhibitions and sales within (and in and out of) the capital, a range of people "do" the security for art and prevent theft or damage. They range from initial risk assessors, installers, and transportation

companies to onsite security personnel. Considering Ericson's concept of "streams of governance,"¹⁴ whereas some art (particularly state owned) actually moves within a "stream" for a length of time, this is not the reality for a lot of art (which will have different people responsible for its security).

Preventative policing

This raises questions over the public police's capacity and role within preventative policing with art. After a theft, while the public police place their emphasis more on the criminal, and the private more on the recovery of the item, both engage in specialized investigative activities. However, the large emphasis on risk management and the prevention of crime by security and policing nodes, particularly insurance companies, shows the preventative measures to be more important than either recovery or criminal. This is highlighted by the crucial role of the National Security Adviser in art security risk assessments for the Government. Public policing has changed dramatically since Shearing and Stenning argued that the focus on opportunities, rather than potential offenders, would need mass surveillance.¹⁵ This has happened and the focus on opportunities is central to both public and private policing. With art, the involvement of insiders makes the public police's role even harder.¹⁶

The public police's focus on prevention involves crime prevention officers and situational crime prevention using initiatives such as Secured by Design and proactive measures by the MPS Unit. Concerning art, the problem for the public police's crime control, as in their investigations, is the lack of art-skilled officers. The MPS Unit is limited in size and while they offer advice to locations, privately owned places with art can expect, at most, a site visit from a local Crime Prevention Officer. This officer will probably have limited knowledge of the art world. Actual risk assessments will be conducted by a surveyor or loss adjuster working for an insurance company. If these risk assessors do not know specific information, they know who does.

With the emphasis on prevention, the policing functions undertaken by the Government through the Department of Culture Media and Sport, Arts Council England (formerly by the Museums, Libraries and Archives Council (MLA)), and in particular, the National Security Adviser, have been successful and are a reason for the low incidence of thefts from state-run museums and art loaned in the public interest [the Government indemnifies its own art and art that is loaned out in the public interest (artscouncil.org)]. As a victim of the "bonfire of the quangos,"¹⁷ the MLA began transferring responsibilities to Arts Council England on 1 October 2011. This could have a detrimental effect, especially concerning functions such as those undertaken by the Acquisitions, Exports and Loans Unit (AELU). However, the role of the National Security Adviser, responsible for so much policing of art in London, still exists.

Resources

With respect to resources, when budget cuts occur, it is the Specialist Crime Directorate units who are most at threat. The MPS Art and Antiques Unit is one of the most vulnerable despite its history of success. The irony is that viewed in line with “acting as market players,”¹⁸ the Unit has offered, and continues to offer, far more than “value for money,” despite the level of specialization required, often lengthy investigations, and regulatory restrictions. Furthermore, the Unit can investigate the many other crimes linked to art.

Regulation

While having to work and “compete” in a growing policing terrain and under ever-increasing financial and managerial accountability pressures,¹⁹ the public police are also faced by risk management (such as surveillance techniques from private security) being used on them, themselves.²⁰ Regulation is more stringent and has curtailed some policing methods, such as using police informants after the 2000 Regulation of Investigatory Powers Act (RIPA). A leading private investigator describes the consequences of the Act, “they (the police) lost round about 80% of all informants when the RIPA act was introduced . . . so they miss out on a huge amount of information as to who is committing crime and where stolen property is going” (Interview, 29 March 2010). This is an area in which the dissimilarities between the private and public policing agencies are highlighted; the public police’s capacity is lessened, whereas the private agencies can, and do, continue to use informants.

However, the private agencies are limited in what they can do with this information; for example, they cannot go and search premises. This reliance on the public police to act is frustrating for those former MPS officers who have moved to the private sector, particularly when they give information to the public police which is then not acted on.

Even though the public police are now more open with the insurance industry, as shown by the “Memorandum of Understanding” with guidelines on exchanging information between the police, insurance companies and loss adjusters (ACPO/ABI, 2005),²¹ increased regulation has made it more difficult for them to work with each other.

Relationship with private stakeholders

An example of the private/public relationship in action is the Art Beat Scheme. Whether described in terms of hybrid policing or nodal governance,²² using the special constables (often employed by private policing companies) introduces the dichotomy where the public police benefit from

using those within the community with specific skills and knowledge, but questions can arise over conflicts of interests.²³

There is considerable skepticism over the scheme from some who work in the field. Whether they work for the private sector or non-profit organizations (such as the V&A and the British Museum) is the use of special constables, policing “on the cheap” (*The Guardian Newspaper* 2007),²⁴ “window dressing” or maybe a public relations exercise for the public/private sector relationship? Could they be used as Police Community Support Officers (PCSOs), not using their specific art and antiques knowledge and skills? The key issue for some is the special constables’ lack of criminality and “evidence gathering” knowledge and the fact that functionally if the police need specific art knowledge they can go directly to an expert.

The Unit’s use of special constables is in line with other areas of policing, such as fraud and IT, and could be viewed as a good use of resources because it utilizes well-trained people with art knowledge, especially as the Head of Security at a leading gallery said, “the average bobby doesn’t know a Canaletto from a can of beans” (Interview, 30 November 2009). While benefiting the public police, the Art Beat Scheme can also help the employers of the special constables, whether they are location nodes or private policing nodes.

The use of special constables is a form of community policing.²⁵ However, in the Art Beat Scheme it is still the public police who are making the decisions, albeit with the assistance of the special constables (and their knowledge).

The public police relationship with private stakeholders can be controversial. An example is their use of the Art Loss Register to identify stolen art objects, and crucially, to allow the Art Loss Register to charge companies and the public instead of them. The public police might be saving costs; however, it has a marked effect on how they and the Art Loss Register are viewed by many other stakeholders within the nodal framework. It creates the kind of monopoly that runs counter to maximizing “the benefits of neo-liberal ‘nodal governance’ arrangements.”²⁶ This friction among the nodes can further increase depending on how the Art Loss Register deals with the information to which it has special access. A leading figure in European art policing sums up this concern: “Sometimes, the flow of information to police was not always as it should have been, and this is to be improved” (Interview, 8 February 2010). It is a strange policing situation if the public police do not know what is in their “own” knowledge bubble and when that stakeholder can profit from this knowledge.

The lack of knowledge sharing within the public police at borough, force, and national level, and also with the private sector, exposes a serious weakness in policing. Stolen art crosses police force boundaries and if forces (or borough police) do not want to get involved because the art was stolen in another force’s or borough’s area, then the policing is severely handicapped.

This is not unique to art (O'Connor 72). The dislocation is highlighted when private sector nodes provide information that should and could be supplied by local or borough forces.

Despite this, there is knowledge transference within the security terrain. This mainly happens through the MPS (Metropolitan Police Service) Art and Antiques Unit and involves relationships with loss adjusters, cooperation with museums, and with private policing agencies. The forming of the London Museum and Archive Security Group in 2006, with the support of the V&A, is a good example of the nodes (including 240 museums) working together. The creation of the National Museum and Archive Security Group by the V&A in 2011, which already had 350 members by 2012, shows the drive is there for more cooperation within the UK. The interconnection of knowledge bubbles sharing information such as specific times and days when criminals are targeting locations, their methods, and the type of pieces (e.g. Old Masters, porcelain, bronzes) can make a significant difference.

The MPS Unit have been further hindered in the past by attitudes within the public police. In spite of the evidence that art theft is often committed by profit driven criminals with links to other crimes, their attitude is exemplified by a proposed national stolen art database in 2003 being hampered by the lack of interest shown by local police forces and the failure of the MPS to publish their Art and Antiques Unit's level of recovery success in the past.²⁷ However, the recent move by the Association of Chief Police Officers (ACPO) to also include museums and galleries in its heritage crime remit shows that a change in attitudes may be occurring.

Conclusion

Certain parts of the art security terrain are functioning well. The low incidence of reported thefts from national museums highlights an area that is being policed effectively. The National Security Adviser successfully leads the co-production of security in these locations. However, other locations are much more vulnerable and whereas they have fewer resources for security, a more effective co-production through the nodal governance framework can make a significant difference. Although other art policing nodes might work well with the MPS Art and Antiques Unit, these nodes struggle to have a similar relationship with other public police who, whether because of a lack of specialized knowledge, deficiency of resources, lack of desire within the force, or indifference at management level, are keener to focus on other areas of policing.

The insurance industry has similar problems after thefts have happened. They involve the public police straight away by either contacting the officer leading the investigation or through their loss adjuster. Although some successful joint operations do occur, this cooperation is not the norm and the public police often frustrate them. Similar to other nodes, they hand the

police information that is then not acted upon, or they face delays in receiving police authorization to pay a reward. Some within the industry believe it is in the public police's interests to use the insurance companies more.

A major reason, or justification, for the lack of prioritization within the public police is the assumption that art is insured. Whereas insurance companies are centrally involved in the regulation of the art world, they are not the police. The formal responsibility²⁸ of the public police is important here because with art theft while they might be simply one node in the security framework, their unique powers give them a particular role, whether they are best suited to it or not, or indeed whether they want it or not; first, if a reward is offered, and, second, because of their powers to arrest and to conduct a criminal investigation.

Among those involved with producing art security (from insurers to private art investigators), it is a common belief that the existence of insurance should not make art theft less of a priority for the public police. Also, it is often a false assumption that art collections are insured. Although a dealer might view a painting as an economic investment whose value they need to insure as matter of course, the uniqueness of much art means some people choose not to insure as financial compensation can never replace the art work.

Preventative measures are now more important for both the public sector and private stakeholder nodes than either the recovery of the piece or the criminal. The crucial question is not who is best suited to doing this preventative policing, but how different nodes (with their range of motivations and interests) can produce the most effective preventative policing matrix and, crucially in neo-liberal terms, one in which they all benefit. The insurance companies are central to the security terrain. Fluidity in the art world creates profit and, in line with Ewald's view that "insurance allows enterprise," insurance is the driving force behind institutions taking "risks" such as putting on blockbuster exhibitions with loans of art works moving around the world, even after previous thefts during loans. Similarly, the state follows an insurance model for both creating flows of art (and the consequent "risk"), and also for securing its art and that deemed to be shown in the public interest.²⁹

Art is one of the few remaining unregulated fields, and is a world that has problems dealing with thieves within it. We are now all our own risk assessors³⁰ and in line with Johnston and Shearing's belief that "negative logic"³¹ need not be the case; if the public is unhappy with the public police's response, they will turn to the private sector. At present, private companies offer many services and arguably provide a more effective service to the public. However, history warns us about the unintended consequences and risks of a private sector takeover.³²

The general consensus throughout art security is that the public police cannot leave the field altogether, despite the huge amount of preventative

policing being undertaken by nodes (public and private) other than the public police, as well as the private stakeholders' significant involvement in recoveries. While a lot of art in London and the UK is therefore protected and well secured, private owners should not miss out on state policing and have to rely on either self-policing, lending their art to the state, or on the insurance industry. If the public police are seen to not be involved, there is the danger that the criminals will view it as a less risky criminal enterprise. Private stakeholders' lack of criminal investigative powers means that while the thief (or those connected) might lose the artwork they have stolen, the risk of criminal justice sanction lessens dramatically. It can be argued that the often low-level punishment already makes involvement in art theft a more attractive proposition than other more dangerous thefts.³³

Although people within the security terrain for art agree that other crimes should be higher priorities, many would like the public police more involved, especially due to the links with other crimes and its funding of other criminal activities. The Johnson crime family are an example. Their activities included drugs, armed robberies, thefts, and violent crimes but their Achilles' heel was art theft, and the public police could have realized this long before they did. A crucial point is that it does not need to be an uppermost priority in line with Level 3 policing, but nor should it be marginalized because it inhabits the Level 2 policing gap.³⁴

If the coordination were better, the public police could be more effective without a huge increase in cost. The policy within public police senior management of not taking the lead role in certain crimes is not new (Johnston and Shearing 120). A co-production best described by nodal governance offers the public police the opportunity to be involved in tackling art theft by using other nodes to do much of the policing and securitization, but they should still be involved due to their unique powers. Non-involvement could actually hinder the framework. Attempts such as The Council for the Prevention of Art Theft (COPAT), set up in the private sector to organize the security and policing nodes,³⁵ have been hindered by the very node, the public police, which would benefit from a more organized security terrain. ACPO's involvement in the Heritage Crime Initiative might signal an acceptance that cultural crime is important and that this type of co-production of security can work. As well as the recent inclusion of galleries and museums in the heritage remit, another positive sign for art theft is the creation in 2013 by ACPO of a working group made up of policing agencies and the cultural sector to address heritage crime.

Another way to help the security terrain work more effectively would be to set up a national or international, free-to-use (or at minimal cost) database. In this proposal, which predominantly comes from some insurers, loss adjusters and leading art investigators, dealers, auction houses and insurance companies, or the public as a service charge could pay charges. However, to then charge again for the recovery as the Art Loss Register does,

is not a fair system. For example, if a victim recovers their own property, why should they pay the Art Loss Register?

Since August 2009, the Interpol database has granted access to the public. Interpol's involvement is certainly positive as policing agencies must be aware of the fluidity of transnational crimes and organized criminal networks broadening their activities into areas such as art theft.³⁶ As criminal processes such as laundering through currency exchanges have become more difficult,³⁷ "the last, great unpoliced financial market" (Interview, March 2010), i.e., the art world remains attractive.

"New Policing" theses help to describe modern policing matrices.³⁸ Considering how the public police presently carry out their policing work with art, other state-centered policing models such as Loader and Walker's³⁹ concept of anchored pluralism are unfeasible in the co-production of security for art in London. With an adaptable co-production, best explained by nodal governance,⁴⁰ the public police can remain an important part of the policing matrix when they are suited to being so, but also allows them to play a lesser role in some areas. For example, other nodes in the policing matrix are better suited to do some of the "policing" as they (such as insurance), can either impose security measures on the art, or they have the capacity to gain better access to information (such as art detectives in the private sector). The key for both security providers and those responsible for situating art security is that the public police must remain in the co-production even if other nodes, public or private, are producing or directing certain aspects of the securitization and policing. The public police could view the co-production as advantageous to their role within the terrain, and not as an excuse to leave it.

Notes

1. The Art Newspaper. April 2013; Number 245, 15, 29.
2. C. Shearing and M. Marks, "Being a new police in the liquid 21st century" *Policing* (5 March 2011): 210–218.
3. M. James, "Trends and Issues in Crime and Criminal Justice." *Art Crime*. 170. (Canberra: Australian Institute of Criminology, 2000); T. McShane and D. Matera, *Stolen Masterpiece Tracker* (New Jersey: Barricade Books, 2006); G. Mueller, "Transnational Crime: Definitions and Concepts," in *Combating Transnational Crime: Concepts, Activities, and Responses*, ed. P. Williams and D. Vlassis (Portland, Oregon: Frank Cass Publishers, 2001).
4. J. Conklin, *Art Crime* (Westport, CT: Praeger Publishers, 1994); S. Mackenzie, "Criminal and victim profiles in art theft: Motive, opportunity and repeat victimisation." *Art Antiquity and Law* 4(2005): 353–370.
5. S. Mackenzie, "Criminal and victim profiles in art theft: Motive, opportunity and repeat victimisation" *Art Antiquity and Law* 4(2005): 353–370; S. Mackenzie and P. Green, "Criminalising the Market in Illicit Antiquities: An evaluation of the Dealing in Cultural Objects (Offences)." 2007. Available at SSRN <http://ssrn.com/abstract=1004267>; K. Polk "Who Wins and Who Loses When Art Is

- Stolen or Forged?" Paper presented at the Art Crime Protecting Art, Protecting Artists and Protecting Consumers Conference convened by Australian Institute of Criminology, Sydney, 2, 3 December 1999.
6. D. Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001); L. Johnston *The Rebirth of Private Policing* (London: Routledge, 1992); L. Johnston, *Shearing C. Governing Security: Explorations in Policing and Justice*. (London: Routledge, 2003).
 7. E. McLaughlin, *The New Policing* (London: Sage, 2007), p. 94.
 8. J. Wood and C. Shearing, *Imagining Security* (Devon: Willan Publishing, 2007), p. 149.
 9. I Loader and N. Walker, *Civilising Security* (Cambridge: Cambridge University Press, 2007).
 10. L. Johnston and C. Shearing (2003).
 11. D. O'Connor, Closing the Gap, "A Review of the 'Fitness For Purpose' of the Current Structure of Policing in England and Wales" (London: HM Inspectorate of Constabulary, 2005).
 12. C. Shearing, M. Farnell and P. Stenning, *Contract Security in Ontario*. (Toronto: University of Toronto, 1980); E. Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory*. (London: Verso Press, 1989); M. Davis, *City of Quartz: Excavating the Future in Los Angeles* (London: Verso, 1990); Johnston and Shearing 2003; A. Wakefield, *Selling Security: The Private Policing of Public Space*. (Cullompton, Devon: Willan Publishing, 2003); R. Ericson, *Crime in an Insecure World* (Cambridge: Polity Press, 2007).
 13. M. Button, *Security Officers and Policing: Powers, Culture and Control in the Governance of Private Space* (Aldershot: Ashgate, 2007); B. Hoogenboom, Grey Policing "A Theoretical Framework" *Policing and Society: An International Journal of Research and Policy* 2.1 (1991): 1477–2728.
 14. R. Ericson, *Crime in an Insecure World* (Cambridge: Polity Press, 2007), p. 184.
 15. C. Shearing and P. Stenning, "From the Panopticon to Disney World: The Development of Discipline," in *Criminological Perspectives Essential Readings*. 2nd edn. Ed. E. McLaughlin, J. Muncie and G. Hughes (London: Sage, 1985).
 16. Mackenzie (2005); A. Tjinhuis, *Transnational Crime and the Interface between Legal and Illegal Actors*. (Holland: NSCR Wolf Legal Publishers, 2006).
 17. House of Commons. Public Administration Select Committee. <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-select-committee/news/new-report-quangos/> 2011. (Accessed 4 May 2011).
 18. Loader and Walker 2007, p. 23.
 19. R. Reiner, *The Politics of the Police, 3e* (Oxford: Oxford University Press, 2000), p. 209.
 20. Ericson (2007); R. Ericson and K. Haggerty, *Policing the Risk Society* (Toronto: University of Toronto Press, 1997).
 21. ACPO/ABI. "Memorandum of Understanding." http://www.abi.org.uk/Information/Verification_and_Exchange_of_Information_Forms.aspx 2005. (accessed 10 November 2010).
 22. L. Johnston, *The Rebirth of Private Policing* (London: Routledge, 1992); L. Johnston and C. Shearing, *Governing Security: Explorations in Policing and Justice* (London: Routledge, 2003).
 23. M. Button, *Private Policing* (Cullompton, Devon: Willan, 2002).

24. The Guardian Newspaper. "Purveyors of Dodgy Constables Set for Brush with Art Squad." <http://www.guardian.co.uk/artanddesign/artblog/2007/jan/11/purveyorsofdodgyconstables2009>.
25. T. Jones and T. Newburn, *Private Security and Public Policing* (Oxford: Clarendon Press, 1998); L. Johnston and C. Shearing, *Governing Security: Explorations in Policing and Justice*. (London: Routledge, 2003).
26. E. McLaughlin, *The New Policing* (London: Sage, 2007), p. 94.
27. Estelle Morris and Caroline Flint (2004). Letter to Sir Gerald Kaufman. Website: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/99091/foi-2005-cultural-3.pdf.
28. R. Reiner, p. 7.
29. F. Ewald, "Insurance and Risk," in *The Foucault effect: Studies in Governmentality*, ed. G. Burchell, C. Gordon and P. Miller (Chicago: University of Chicago Press, 1991), p. 208.
30. N. Rose, "Government and control" *British Journal of Criminology* 40.2 (2000): 321–329.
31. Ericson and Haggerty p. 86.
32. L. Zedner, "Liquid security: Managing the market for crime control" *Criminology and Criminal Justice* 6.2(2006): 267–288.
33. G. Passas, "Globalization and Transnational Crime: Effects of Criminogenic Assymetries," in *Combating Transnational Crime: Concepts, Activities, and Responses*, ed. P. Williams and S. Vlassis (Portland, Oregon: Frank Cass Publishers, 2001).
34. D. O'Connor, *Closing the Gap. "A Review of the 'Fitness For Purpose' of the Current Structure of Policing in England and Wales"* (London: HM Inspectorate of Constabulary, 2005).
35. House of Commons, "Select Committee on Culture, Media and Sport." <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmcmuds/59/3111105.htm> 2003. (Accessed 04 October 2009).
36. B.A. Bowman, "Transnational crimes against culture. Looting at archaeological sites and 'Grey' market in antiquities" *Journal of Contemporary Criminal Justice* 24.3(2008): 225–242.
37. J. Sheptycki, "Policing the virtual launderette: Money laundering and Global governance," in: *Issues in Transnational Policing*, ed. J. Sheptycki (London: Routledge, 2000).
38. E. McLaughlin, *The New Policing* (London: Sage, 2007).
39. Loader and Walker, p.194.
40. L. Johnston and C. Shearing, 2003.

10

Thieves of Baghdad: And the Terrorists They Finance

Colonel Matthew Bogdanos

Introduction

As the head of the investigation into one of the greatest art crimes in recent memory – the looting of the Iraq Museum in 2003 – I have spent more than a decade attempting to recover and return to the Iraqi people their priceless heritage.¹

I have also spent a significant amount of time in three parallel pursuits: (1) attempting to correct the almost universal misconceptions about what happened at the museum, in those fateful days in April 2003; (2) highlighting the need for the concerted and cooperative efforts of the international community to preserve, protect and recover the shared cultural heritage of all humanity; and (3) trying to increase awareness of the continuing cultural catastrophe that is represented by the illegal trade in stolen antiquities, which is indeed funding terrorism. Toward these ends, and in more than 150 cities in 19 countries, in venues ranging from universities, museums and governmental organizations to law enforcement agencies, from Interpol (the International Criminal Police Organization) to both houses of the British Parliament, I have urged a more active role for governments, international organizations, cultural institutions and the art community.

I have done so, knowing that most governments have few resources to spare for tracking down stolen artifacts; that many international organizations prefer to hit the conference center rather than the streets; and that many academics are content to issue a call for papers, rather than a call to action. As for the archaeological community, I have learned that some

Parts of this chapter are adapted from *Thieves of Baghdad: One Marine's Passion to Recover the World's Greatest Stolen Treasures* (Bloomsbury, 2005). Reprinted with permission of Bloomsbury USA.

members wash their hands of unpleasant realities and argue that, while technically illegal, the market in purloined antiquities is benign – victimless – as long as it brings the art to those who can properly protect and appreciate it (namely, themselves).

All the while, the situation in the Middle East deteriorated dramatically after 2003, causing the United States to withdraw its forces from Iraq – an action most knowledgeable (read “non-political”) observers predicted would lead to a power struggle, such as the one that has played out in vivid color as ISIS (the Islamic State in Iraq and Syria) commits one atrocity after another. Given the bloodshed, it is a pretty tough sell to ask people to care about a bunch of old rocks with funny writing. Finding the political will to divert resources to saving cultural artifacts, no matter how precious, seems like cutting funding for police and fire in order to expand the public library. There might be a case for it one day, but not now. After all, looting has always been a cottage industry in the Middle East, the region that gave birth not just to agriculture, cities, the wheel, and pottery, but to war and conquest, as well.

The argument for protecting artifacts takes on added strength when we recognize that Iraq and Syria have been so bloody, not just because of the failure to provide sufficient security to overcome the long-festering tribal and religious animosities, but also, I submit, because of the continuing failure to appreciate the importance Iraqis and the rest of the Middle East place on the preservation of their history. This failure to protect a rich heritage going back to the dawn of civilization has convinced many that we in the West do not care about any culture other than our own. Even today, more than a decade after the initial looting, and despite having recovered almost two-thirds of the antiquities stolen from the museum,² we are hard-pressed to keep pace with the artifacts that are being looted from archaeological sites every day.

Global criminal enterprise

As the investigation continues, much has happened to reinforce the core lesson we learned in the back alleys of Baghdad: that the genteel patina covering the world of antiquities rests atop a solid base of criminal and, now, terrorist activity. Witness the events that have taken place since 2003.

In New York, the Metropolitan Museum (the “Met”) accepted what amounted to a plea bargain with Italian authorities, agreeing to return 21 antiquities the Italian government said were stolen, including one of the Met’s most prized items: the Euphronios krater, a 6th century BC Greek vase.³ In Ohio, the Cleveland Museum of Art agreed to return 13 antiquities that had been looted from Italy.⁴ In California, the director of the J. Paul Getty Museum agreed to return antiquities the Greek government says were stolen, even as the Getty’s longtime curator for ancient art resigned, to stand trial in Rome against famed prosecutor Paolo Giorgio Ferri, on charges of conspiracy to receive a different set of stolen artifacts – the details of

which are brilliantly documented by Peter Watson and Cecilia Todeschini.⁵ Although that trial ended when an Italian court ruled that the statute of limitations had expired, the evidence revealed the Getty's – at best – willful ignorance.⁶

I am delighted that nations are moving to reclaim their patrimony. I am also delighted to see media attention beginning to illuminate certain well-appointed shadows, where money changes hands and legitimate, but inconvenient, questions of the provenance of the object are too frequently considered outré. Many shadows remain.

In March 2006, for example, private collector Shelby White donated \$200 million to New York University to establish an ancient studies institute, prompting one of the university's professors to resign in protest over what he considered the questionable acquisition practices of the donor.⁷ Ms. White and her late husband Leon Levy have generated considerable debate since at least 1990, when the Met (of which Ms. White was and still is a trustee) presented a major exhibition of 200 of their artifacts from Greece, Rome, and the Near East.⁸ The Met did so, despite the fact that a study, later published in the *American Journal of Archaeology*, determined that more than 90% of those artifacts had no known provenance.⁹ As with the Euphronios krater, Italian authorities have consistently maintained that they can prove many of the antiquities in the Levy-White collection were illegally excavated (read as: stolen) and smuggled out of their country.¹⁰

Not only did the Met proudly display that collection, dubious origin notwithstanding, but it also (perhaps without coincidence) celebrated the opening of its new Leon Levy and Shelby White Court for Hellenistic and Roman antiquities on 15 April 2007.¹¹ Other institutions continue to hold out one hand, while covering their eyes with the other. In 2000, Cornell University accepted a gift, from well-known collector Jonathan Rosen, of 1,679 cuneiform tablets from Ur.¹² They said, "Thank you very much," despite reports of widespread looting at Ur after the 1991 Persian Gulf War, and despite the fact that the provenance of 10% of the tablets consisted of the phrase "uncertain sites."¹³ Harvard University has done equally well in neglecting to ask awkward questions: witness its Shelby White-Leon Levy Program for Archaeological Publications.

But this is nothing new. In 1994, a decade before its current imbroglio, the Getty displayed a major exhibition of classical antiquities owned by Lawrence and Barbara Fleischman.¹⁴ Like the Met, the Getty proudly held this exhibit despite the fact that 92% of the objects in the Fleischman collection had no provenance whatsoever, and the remaining 8% had questionable provenance at best (*ibid.*). To put it in starker terms, of 295 cataloged entries, not a single object had a declared archaeological find-spot, and only three (1%) were even described as coming from a specific location.

Sometimes, however, the questionable practices extend beyond merely willful ignorance. Consider the following. Prior to the exhibition in 1994,

the Fleischman collection had never been published. Thus, the first catalog for, and hence first publication of, the Fleischman exhibit was the Getty's – of which Ms. Fleischman was a trustee. Fewer than two years later, the Getty purchased part of that collection for \$20 million (*ibid.*). But the Getty had a stated policy of not purchasing objects unless they have been previously displayed in published collections. How, then, could they have justified the acquisition? Easy: the Getty was quick to point out that the collection had been published just two years earlier, by themselves. Further sweetening the deal, while the collection had been purchased originally at a much lower price, it was valued at \$80 million at the time of the sale to the museum (*ibid.*). US tax laws use the Fair Market Value (FMV) at the time of the sale, rather than the original purchase price, in determining the value of a bequest. As a result, the difference between the 1996 valuation of \$80 million, and the \$20 million sale price to the Getty would be deemed a gift of \$60 million, affording a \$60 million tax deduction for the Fleischmans. Under these terms, the gift to the Getty, therefore, was actually financed by US taxpayers – a shell game of Homeric proportions.

In cases that I have investigated and prosecuted more recently, the pattern continues. As the result of an undercover sting operation at the fabled Waldorf-Astoria Hotel in midtown Manhattan on 3 January 2012, world-renowned surgeon Arnold-Peter Weiss, a former member of the board of the American Numismatic Society, was arrested in possession of what he believed to be millions of dollars' worth of stolen Greek and Italian coins, dating back to the 6th century BC. Although most of the coins were authentic, after we examined the hoard using a scanning electron microscope, we determined that the three most valuable ones were extraordinary forgeries – highlighting one of the most common risks when buying unprovenanced antiquities. Weiss was convicted of possession of stolen property¹⁵ and, in August 2014, we returned to Greece those coins in Weiss's possession that were real.¹⁶

Similarly illuminating is the case of Shubash Kapoor, whose upper east side Manhattan gallery had, for decades, supplied museums and high-end collectors around the world with exquisite 10th and 11th century AD sculptures from temples in India, Pakistan, and Afghanistan, through a sophisticated network that included Singapore, Hong Kong, Geneva, London, and New York. Since his arrest in Germany in 2011, we have recovered almost \$150 million dollars in ancient statues that Indian authorities claim were looted from their temples.¹⁷ Kapoor is currently in India, awaiting trial there before being extradited to face the charges here in New York. But in the meantime, many museums have decisions to make about how to handle their acquisitions from Kapoor, ranging from Boston's Museum of Fine Arts, the Art Institute of Chicago, and the Met to the Toledo Museum of Art, Toronto's Royal Ontario Museum, and Singapore's Asian Civilisations Museum.¹⁸

This decision-making process seems more tortuous for some than for others. For example, in September 2014, Australia's Prime Minister Tony Abbott returned to India two looted statues Kapoor had sold to Australia's National Gallery of Art.¹⁹ On the other hand, as recently as 2008, the Met's policy was to require documentation covering only the last ten years of an object's history prior to acquisition, even though most institutions view 1970 – the year of the landmark United Nations Educational, Scientific and Cultural Organization Convention to regulate the transfer of antiquities²⁰ – as the cut-off date for requiring proof that an antiquity was not illegally looted.²¹ This imposition of a firm date is crucial in stopping the trade in illegal antiquities, because as each year passes after 1970, it becomes less likely that a previously unpublished antiquity can appear on the market and be legal, i.e., that it came from a properly sanctioned excavation or collection assembled before the imposition of any requirement of documentation. To put it another way, as each year passes after 1970, it becomes increasingly certain that previously unpublished items are stolen, and the Met's ten-year rule looks increasingly flawed.

As if to flaunt this policy of “see no evil,” Philippe de Montebello, the museum's long-standing, but now retired, director told *The New York Times* in 2006 that the context in which an artifact is found is virtually meaningless; in his opinion, accounting for less than 2% of what we can learn from antiquity.²² His position was as unreasonable as the view of some archaeologists at the other extreme: that context is everything. Doubtless recognizing the fallacy of the 10-year rule, the Met recently modified its acquisition policy. Now, the Met “normally” shall not acquire archaeological material unless it was outside its country of probable modern discovery before, or legally exported after, 1970.²³ But, the Met will still make exceptions for “some works [that] lack a complete documented ownership history.”²⁴

In some respects, then, we have advanced very little since the imperial 19th century, when Lord Elgin could haul away the Parthenon Sculptures (now in the British Museum and commonly referred to as the “Elgin Marbles”), and Henry Layard could haul away the Nineveh reliefs (now in the Met).

But far from this world of museum receptions and limos waiting at the curb, however, there has been an even more troubling development. In June 2005, US Marines in northwest Iraq arrested five insurgents holed up in underground bunkers filled with automatic weapons, ammunition stockpiles, black uniforms, ski masks and night-vision goggles. Along with these tools of their trade, were 30 vases, cylinder seals, and statuettes that had been stolen from the Iraq Museum. Since then, the scenario has been repeated many times. It did not take a counterterrorism expert to detect the sinister adjustment that had taken place. In 2003, when pursuing leads to recover antiquities, we usually came across weapons and links to violent groups. But after 2005, the tail began wagging the dog: as security forces pursued

leads for weapons and terrorists, they discovered antiquities. More recently, according to multiple intelligence sources, ISIS has begun to profit.²⁵ Citing the Quran's provision that one-fifth of war booty shall be paid to Allah, ISIS requires locals to fork over one-fifth of the proceeds of archaeological looting in Iraq and Syria.

In a modern-day version of the old "molasses to rum to slaves" triangle trade of pious New England ship captains and owners, who sang hymns and offered prayers while getting rich off human misery, the cozy cabal of academics, dealers, and collectors who turn a blind eye to the illicit side of the trade is supporting the terrorists who are murdering innocent civilians in the Middle East.

This exploitation of archaeological looting is hardly surprising. As the National Commission on Terrorist Attacks Upon the United States (The 9/11 Commission) noted, international law enforcement has aggressively attacked traditional means of terrorist financing by freezing assets and neutralizing charities that had previously served as fronts for jihadists.²⁶ But terrorists are nothing if not adaptive. In late 2005, the German newspaper *Der Spiegel* reported that 9/11 conspirator Mohammed Atta had approached a professor at the University of Goettingen, trying to sell Afghan antiquities to raise money to buy an airplane (*Der Spiegel*, 2005). While nothing came of that inquiry, times have changed. Like the Taliban in Afghanistan, who learned to finance their activities through opium, terrorists in Iraq and Syria have discovered a new source of income: antiquities.

We do not have hard numbers – the traffic in art for arms is too recent and shadowy a phenomenon – and some of the investigations remain classified, because of the connection to terrorists.²⁷ But this illicit trade soon became a growing source of revenue for violent organizations in Iraq, ranking just below kidnappings for ransom and "protection" money from local residents and merchants.²⁸ Among the most prized items are cylinder seals, intricately carved pieces of stone about the size of a piece of chalk that can sell for \$250,000, enabling anyone to smuggle millions of dollars in his pocket. Given this almost limitless supply of antiquities, the terrorist appears to have found an income stream sufficiently secure to make any chief financial officer sleep well at night.²⁹ As a result, the desert night is filled with the roar of bulldozers ripping into the ancient mounds of clay that were once thriving cities.

Protect the archaeological sites

Based on my experience in both counterterrorism and law enforcement, and as a result of the years I have spent throughout the world in tracking down stolen antiquities, I submit that the first order of business in addressing this catastrophe must be to protect the source: as the cradle of civilization, Iraq alone has more than 12,000 poorly guarded archaeological sites.³⁰

Some of these, such as Babylon and Nimrud, require several hundred guards and support staff, for protection around the clock. The maths is daunting: country-wide, more than 50,000 personnel are required, along with the necessary vehicles, radios, weapons and logistical needs. Syria requires similar numbers. But there is an immediate solution.

In other contexts, the United Nations (UN) and the North Atlantic Treaty Organization (NATO) have acted to address catastrophic situations. In Bosnia, Cyprus, and Afghanistan, for example, countries have provided contingents for specific missions under UN or NATO auspices – but not in Iraq or Syria. The reasons are much-argued, and I do not address them here. Recalling Voltaire's observation that everyone is guilty of the good he didn't do,³¹ (*Age of Louis XIV* 1752) I focus instead on what we can do now.

So, who might act? In the past, most archaeological digs in the Middle East have had foreign sponsorship: the Germans at Babylon and Uruk, the British at Ur and Nimrud, the French at Kish and Lagash, the Italians at Hatra and Nimrud, the Americans at Nippur and Ur.³² Leveraging this history, I have proposed that these and other countries provide forces to protect archaeological sites until a professional host-nation security force, dedicated to the sites, can be recruited, equipped and trained. Under this proposal, with the permission of the host government, and under the authority of the UN or NATO, each country would "adopt" a site. After sending an assessment team to the assigned sites, to determine the precise numbers and type of personnel and equipment required, each donor nation would then execute bilateral status of forces agreements, outlining the rules of engagement, funding, billeting, etc.

Then, each country would deploy its security forces (military, police, private contractors, or a combination of all three) to the agreed-upon archaeological sites, around the perimeter and around the clock. Upon arrival, each country's contingent would also be assigned a group of recruits to train at their chosen site. Once those security forces were fully trained (that ordinarily takes months), the donor nation would recall (or reassign) its forces on a site-by-site basis. In half a year, every archaeological site of consequence could be protected from the looters, Mesopotamia's cultural patrimony would be safe, and the terrorists would have to find another income source.

Unfortunately, neither NATO nor the UN has ever shown an inclination to protect the sites. NATO opened a training center in Iraq in 2004, but trained only 5,000 military and 10,000 police personnel, none of whom were assigned to archaeological sites, before shutting down in 2011.³³ The UN has never trained guards for sites. Even the UN's cultural arm, UNESCO, has failed to act, shielded by the claim that it has no such mandate from its member nations, many of which argue that the level of violence does not permit deployment of their forces. The circular nature of this rationalization is underscored by the fact that it is the failure to protect these sites that is

partly funding those who are creating the unsafe environment. "If you were to take account of everything that could go wrong," Herodotus advised long ago, "you would never act"³⁴ (Herodotus 440 BC). Of course, there is risk. I know this first-hand. But the risks of the failure to act are far worse: more money for the terrorists and the loss of these extraordinary testaments to our common beginnings. It is time for the UN to convince its members to support such a plan, with UNESCO stepping into the vacuum of international leadership, seizing the bully pulpit, and becoming relevant again.

Equally risky are the politics: most elected officials view involvement in Iraq or Syria as political suicide. But an internationally coordinated contribution of personnel would not be a statement about war. It would be a humanitarian effort to protect a cultural heritage rich with a common ancestry that transcends the current violence. Real leaders should have no difficulty convincing their electorate of the distinction between politics and culture. It is, of course, the very definition of leadership: to educate, inform, and motivate into action those who might otherwise be inclined to do nothing.

The next steps: A five-point action plan

The incomparable works of art unearthed in the land between the Tigris and Euphrates rivers predate the split between Sunni and Shiite. They predate the three competing traditions that have brought so much bloodshed to the Middle East: Islam, Christianity, and Judaism. Attending to this cultural heritage from the very dawn of civilization reminds us of our common humanity, our common aspiration to make sense of life on this planet. I have seen these pieces of alabaster and limestone with funny writing on them work their magic through a language that is immediate and universal, visceral and transcendent. While protecting the archaeological sites is a vital beginning, much more needs to be done. To stop the rampant looting and the black market that funnels money into terrorist hands, we must adopt a comprehensive global strategy using all of the elements of international power. Toward this end, I propose a five-step plan of action to combat the global traffic in antiquities.

1. Mount a public relations campaign for mainstream society

The cornerstone of any comprehensive approach must take into account that real, measurable, and lasting progress in stopping the illegal trade depends on increasing public awareness of the importance of cultural property, and of the magnitude of the current crisis. First, then, we must communicate a message that resonates with mainstream society, not just with academics. We must create a climate of universal condemnation, rather than sophisticated indulgence, for trafficking in undocumented antiquities.

But this call to arms needs to avoid the sky-is-falling quotes so beloved by the media, while steering clear of the debilitating rhetoric of politics. It also has to keep the discussion of the illegal trade separate from broader issues such as the repatriation of objects acquired prior to 1970, and whether there should be any trade in antiquities at all. The Parthenon Sculptures are in the British Museum, but their return is a diplomatic or public relations issue, not a matter for the criminal courts. Similarly, there is a legal trade in antiquities that is regulated and above board. It is simply unproven (and unfair) to argue that the legal trade somehow encourages an illegal trade. Most dealers and museums scrupulously avoid trading in antiquities with a murky origin. Repatriation for pre-1970 transfers, and the question of whether all trade in antiquities should be banned, are legitimate issues, but they are not my issues. Every time the discussion about stopping the illegal trade in antiquities veers off into these realms we lose focus, we lose the attention of mainstream society, and it makes my job of recovering stolen antiquities that much harder.

2. Provide funding to establish or upgrade antiquities task forces

Although several countries – including the US, Britain, Italy, and Japan – have provided millions of dollars to upgrade the Iraq Museum, improve its conservation capacity, and enhance the training of the Iraq State Board of Antiquities and Heritage’s archaeological staff, not a single government, international organization, or private foundation anywhere in the world has provided additional funding for investigative purposes. Read that sentence again: not one. Reluctant to be seen cooperating with police and military forces, many cultural leaders and organizations seem oblivious to the fact that a stolen artifact cannot be restored until it has been recovered. To put it more clearly: money for conservation is pointless without first providing money to track down the missing objects to be conserved.

This ivory-tower distortion of priorities affects investigative efforts worldwide. In 2014, Interpol convened the 11th meeting of its Expert Group on Stolen Cultural Property (formed as a result of the looting of the Iraq Museum in 2003). Its final report in 2014 was two pages long.³⁵ The US Federal Bureau of Investigation’s (FBI) Rapid Deployment National Art Crime Team has 14 people total, for the entire country, and the head of that team, Special Agent Robert Whitman, who retired in 2008, has not been replaced.³⁶ Regardless of the dedication and talent of these personnel, no law enforcement agency can operate effectively at such pitiful levels.

Thus, as a second component, all countries – but especially the countries of origin, transit, and destination – must establish robust, specialized art and antiquities task forces, with particular attention paid to the borders and ports of entry. Where such forces already exist, we must increase their size and scope, with cultural foundations providing art squads with vehicles, computers, communications equipment and training.

3. Create a coordinated international law enforcement response

Among the many dirty secrets of the looted antiquities market is that “open” borders are as profitable as they are porous. Many countries, especially those with free trade zones, generate sizeable customs and excise fees from shipping and, despite their public protestations to the contrary, are not eager to impose any increase in inspection rates that might reduce such revenue. Even if willing, the sheer tonnage passing through international ports makes 100% inspection rates impossible. Nor does the improved technology installed, as a result of the September 11 attacks, solve the problem: devices that detect weapons and explosives do not detect alabaster, lapis lazuli and carnelian. Further exacerbating the problem, most high-end smugglers are simply too sophisticated, and the questionable acquisition practices of some dealers, collectors and museums, too entrenched to be defeated by improved border inspections and heightened public consciousness alone.

The *sine qua non* for effective interdiction, then, is an organized, systematized, and seamlessly collaborative law enforcement effort by the entire international community. We need coordinated simultaneous investigations of smugglers, sellers and buyers in different countries. And, just as important, prosecution and incarceration need to be credible threats. Thus, as a third component, the United Nations, through UNESCO, should establish a standing commission to continue the Iraq Museum investigation, expanding it to include other pillaged countries, as they arise. Interpol must also become more active, enabling each of its 190 member nations to forward to them immediately, along a secure network (that already exists), a digital photograph and the particulars (who, what, when, and where) of all antiquities encountered by law enforcement or military forces anywhere in the world – including those items that were seized, and those that were inspected but not seized, because there was insufficient evidence of criminality at the time of inspection to hold the item.

The global criminal enterprise that is antiquities smuggling must be defeated globally, through international cooperation (promoted by UNESCO) and real-time dissemination of information (enabled by Interpol). The consequent ability to conduct monitored deliveries of illegal shipments to their destinations (a tactic long used against drug smugglers) would enable legal authorities to incriminate, and thereafter prosecute, each culpable party along the trail. It would also serve as a deterrent to collectors or curators, who could never be sure that the next shipment was not being monitored by law enforcement officials.

4. Establish a code of conduct for trading in antiquities

Museums, archaeologists and dealers should establish a stricter and more uniform code of conduct. Similar to ethics rules for lawyers and doctors, this code of conduct would clarify the documentation and diligence required for

an artifact to change hands legally. Although many argue that the interests of dealers, collectors, museums and archaeologists differ from each other so dramatically that any single code of conduct acceptable to all is impossible, I point out that the differences within the art world are no greater than those existing between prosecutors and criminal defense attorneys. Yet, the American Bar Association has adopted, and actively enforces, a single Code of Ethics applicable to every attorney admitted to the bar.³⁷ Until the art community follows suit, I continue to urge academics, curators and dealers to abandon their self-serving complacency about, if not complicity in, irregularities of documentation.

5. Increase cooperation between the Art community and law enforcement

Finally, the art community must break down barriers, and assist investigators by serving as law enforcement's eyes and ears. We need scholars and knowledgeable dealers as on-call experts, to identify and authenticate intercepted shipments, and to provide crucial in-court expert testimony. They should also request appropriate law enforcement personnel (depending on country and focus) to provide detailed, factual briefings at every conference purporting to address art or antiquities smuggling. The call for up-to-date investigative facts should become as standard as the call for papers.

But the education and information exchange should run in both directions. In 2004, polymath C. Brian Rose, former President of the Archaeological Institute of America, developed and began conducting cultural-awareness training in half a dozen pilot locations around the US, for military personnel scheduled to deploy to Iraq or Afghanistan. Laurie Rush, a gifted archaeologist with the US Department of Defense's Legacy Heritage Management program (who has also written an essay for this volume), has also made significant strides in training military personnel, including creating the media-darling archaeological playing cards,³⁸ establishing websites for Iraq and Afghanistan and disseminating pocket cards on the "Dos" and "Don'ts" for Military Operations concerning archaeological sites. A similar program has been offered on a limited basis to the FBI and the Department of Homeland Security within the US, and to similar law enforcement agencies worldwide. It must be expanded and institutionalized

Conclusion

Diverting resources to save cultural artifacts during a time of war or civil unrest may seem trivial, considering the human cost of armed struggles. But some of our best soldiers have seen the wisdom. "Inevitably, in the path of our advance will be found historical monuments and cultural centers which symbolize to the world all that we are fighting to preserve," said General Dwight D. Eisenhower, just before D-Day during the deadliest war of the last

hundred years. "It is the responsibility of every commander to protect and respect these symbols whenever possible."³⁹

Antiquities trafficking will never merit the same attention or resources as terrorism, drugs, human trafficking or violent street crime. But it deserves to be on the same list. And now that it is funding terrorism, it should be high on the list. From government corridors, precinct headquarters and media newsrooms to faculty lounges, museum boardrooms and Madison Avenue galleries, this cultural catastrophe must be confronted and debated. We must expose those who engage in the illegal trade for what they are: criminals.

On my first tour in Iraq, our mission was to track down illegal arms and terrorist networks. My decision to expand our mission to include investigating the looting of the Iraq Museum and tracking down the stolen artifacts was characterized by some as a distraction. I regret that I did not pursue that distraction even more.

Notes

1. Matthew Bogdanos *Thieves of Baghdad: One Marine's Passion to recover the World's Greatest Stolen Treasures* (New York: Bloomsbury, 2005a).; Matthew Bogdanos, "The Casualties of war: The truth about the Iraq Museum" *American Journal of Archaeology* 109 (3): 477–526, 2005b; Dan Cruickshank and David Vincent, *People, Places, and Treasures under Fire in Afghanistan, Iraq and Israel* (London: BBC Books, 2003).
2. In a very real sense, of course, any insistence on using raw numbers to assess either the scope of the tragedy or the success of the recovery misses the point. It makes it sound as if we are counting ears of corn. In this taxonomy, each bead, pin, pottery shard, piece of shell, and the Sacred Vase of Warka count as one item. But surely the loss of legendary artifacts is an order of magnitude greater than the loss of a pottery shard. Nonetheless, recognizing that – used properly – numbers do have some value in quantifying the loss (and recovery), I offer what we know more than ten years later. Inventories of the museum's holdings were far from perfect or complete, but according to the former director of the museum, the most recent and complete inventory put the loss at slightly more than 14,000 items. Based on my unpublished running tally from law enforcement contacts throughout the world, more than 9,000 items have been recovered, including more than 4,000 inside Iraq and more than 5,000 internationally: Jordan (2,450 items, see Mcelroy 2008); United States (1046 items); Italy (833 items, see Reuters 2008 and Bogdanos 2005b); Syria (701 items, see Associated Press 2008); Dubai (100 items, see McClenaghan 2008); Lebanon (57 items, see Agence France-Press 2008); Kuwait (38 items); and Saudi Arabia (18 items).
3. Randy Kennedy and Hugh Eakin (3 February 2006a). *The Met, Ending 30-Year Stance Is Set to Yield Prized Vase to Italy* (*The New York Times*).
4. Ariel David (19 November 2008). *Cleveland Museum of Art to Return Art to Italy* (Associated Press).
5. Christopher Reynolds (31 October 2005). *The Puzzle of Marion True* (*Los Angeles Times*); Peter Watson and Cecilia Todeschini (2006). *The Medici Conspiracy: The Illicit Journey of Looted Antiquities, from Italy's Tomb Raiders to the World's Greatest Museums* (New York: BBS Public Affairs).

6. Elisabetta Povoledo (13 October 2010). *Rome Trial of Ex-Getty Curator Ends* (The New York Times).
7. Elisabetta Povoledo (29 November 2006). *Top Collector Is Asked to Relinquish Artifacts* (The New York Times).
8. Povoledo (2006).
9. Kate Taylor (1 May 2007). *Shelby White in Center Court at the Met* (New York Sun); Christopher Chippendale and David W.J. Gill (2000). "Material Consequences of Contemporary Classical Collecting." *American Journal of Archaeology* 104 (3): 463–511.
10. Povoledo E (2006).
11. Kate Taylor (1 May 2007). *Shelby White in Center Court at the Met* (New York Sun).
12. Martin Gottlieb and Barry Meier (2 August 2003). *Ancient Art at the Met Raises Old Ethical Questions* (The New York Times).
13. Gottlieb and Meier (2003).
14. Jason Felch and Ralph Frammolino, (2 August 2007). *The Return of Antiquities a Blow to Getty: Forty Disputed Artworks that are Hallmarks of the Museum's Collection Will be Returned to Italy in End to a Long Legal Fight* (Los Angeles Times).
15. Laura Italiano (3 July 2012). *World-Renowned Surgeon Pleads Guilty To Attempting To Sell Fake Coins* (New York Post); Janon Fisher (4 July 2012). 'What's Up Doc?' (New York Daily News).
16. James C. Mckinley Jr. (4 August 2014). *Ancient Coins Returned to Greece, Ending U.S. Ordeal* (The New York Times).
17. Tom Mashberg (11 October 2013). *New Arrest in Inquiry on Art Looting* (The New York Times).
18. Julia Halperin (6 August 2012). *Major Museums Reel as the Extent of Shubash Kapoor's Alleged Smuggling Ring Is Uncovered* (Blouin ArtInfo).
19. Geoff Hiscock(8 September 2014). *Australia Returns lost Ancient art to India* (CNN World).
20. UNESCO. (1970). Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 823 U.N.T.S. 231.
21. Robin Pogrebin (1 April 2006). *US\$200 Million Gift Prompts a Debate Over Antiquities* (The New York Times).
22. Randy Kennedy and Hugh Eakin (28 February 2006b). *Met Chief, Unbowed, Defends Museum's Role* (The New York Times).
23. Met (2014). *Collections Management Policy*. Retrieved from: <http://www.metmuseum.org/about-the-museum/collections-management-policy#acquisitions>.
24. Met (2014).
25. For a published, albeit anecdotal, account of this development, see Simon Cox 'The Men Who Smuggle Loot that Funds IS' in *BBC News Magazine* (16 February 2015). The details in this story are consistent with what intelligence sources have been reporting.
26. Matthew Bogdanos (op-ed.) (10 December 2005c). *The Terrorist in the Art Gallery* (The New York Times).
27. In late 2005, my team prepared a report setting forth in detail that insurgent and terrorist groups had begun using antiquities to fund their activities. The report is still classified, and I do not have the authority to declassify it, but we were authorized to share portions of it with various law enforcement organizations around the world.

28. In the summer of 2004, as a result of a dramatic spike in the number of kidnappings in Iraq, my team was tasked with assisting in the establishment of the U.S. Department of State's Hostage Working Group to monitor foreign hostages in Iraq. This working group began to compile data on kidnappings and extortion of Iraqis as well – and the numbers were shocking in both human cost and dollar amount. Again, although I am not authorized to declassify any of the daily briefings, I am able to say that throughout our time in Iraq these activities were the main source of income for terrorist and insurgent groups.
29. At the risk of stating the obvious in a land that has seen continuous human occupation for almost 10,000 years, virtually every area in Iraq covers a potential historical treasure. This includes not only the more than-12,000 registered archaeological sites, but those that are discovered on a regular basis during construction. For example, the Bassetki Statue, cast in pure copper (one of the earliest known examples of the lost-wax technique of casting) and dating to the Akkadian period, ca. 2250 BC, was discovered by a road construction crew in the 1960s near the town of Bassetki in northern Iraq.
30. Matthew Bogdanos (op-ed.) (10 December 2005c). *The Terrorist in the Art Gallery* (The New York Times).
31. *The Age of Louis XIV*, Chapter V: 'France up to the Death of Cardinal Mazarin in 1661' (1752).
32. Matthew Bogdanos (op-ed.) (6 March 2007). *Fighting for Iraq's Culture* (The New York Times).
33. NATO. (2014) *NATO's Assistance to Iraq*. North Atlantic Treaty Organization. Retrieved from: http://www.nato.int/cps/en/natohq/topics_51978.htm.
34. *The Histories*, Book 7, Chapter 50. Translation by author.
35. Interpol. (2014). Conferences and Meetings. Retrieved from: <http://www.interpol.int/Crime-areas/Works-of-art/Conferences-and-meetings>.
36. FBI. (2014). FBI – Art Crime Team. Retrieved from: http://www.fbi.gov/about-us/investigate/vc_majorthefts/arttheft/art-crime-team.
37. ABA. (1983). 'Model Rules of Professional Conduct,' (American Bar Association. Chicago, IL: National Center for Professional Responsibility).
38. Melik Kaylan (7 October 2007). "U.S. to Troops: Play cards protect a culture" *Wall Street Journal*.
39. Memorandum, Dwight D. Eisenhower, General, U.S. Army to G.O.C. in Chief, 21 Army Group; Commanding General, 1st U.S. Army Group; Allied Naval Commander, Expeditionary Force; and Air C-in-C, Allied Expeditionary Force, Subject: Preservation of Historical Monuments, May 26, 1944, File: 751, Numeric File August 1943–July 1945, Records of the Secretariat, Records of the G-5 Division, General Staff, Supreme Headquarters Allied Expeditionary Forces (SHAEF), Allied Operational and Occupation Headquarters, World War II, RG 331.

11

Looting of Antiquities: Tearing the Fabric of Civil Society

Laurie W. Rush

Introduction

Heritage is an essential fiber in the woven fabric of a healthy society, and the foundation of its identity. When disaster and conflict disrupts, threatens, or destroys the social order, heritage preservation plays a critical role in reconstruction and healing. As we consider a series of recent tragic conflicts across the world, when stability begins to return, we discover that even in the most dangerous locations, people have put their lives on the line to preserve the heritage of their communities. It is also true that in cases of ethnic and religious conflict, the aggressors target cultural, sacred, and heritage properties in an attempt to demoralize or even erase a community or culture. To further complicate the situation, the international press has a tendency to focus on damage and destruction to heritage, rarely featuring cases where cultural property is successfully protected or where recovery efforts are made. Unfortunately, elements of the global art market also take advantage of crisis situations to position themselves to steal, loot, smuggle, purchase, sell, and collect objects of antiquity and works of art that belong to others. Heritage professionals and community members of nations in crisis situations put their lives on the line to save heritage under even the most horrific circumstances. The illicit behaviors of looting and antiquities trafficking compromise the ability of a community to recover and are an extreme betrayal to the community to which the heritage belongs.

This chapter was written in the author's personal capacity and not as an official of the US Government. The contents of this chapter are the author's personal statements and do not necessarily reflect the opinions or position of US Army, the US Department of Defense, or the US Government. The author would like to thank ARCA for her tenure as writer in residence, and Jared Muehlbauer who assisted in editing of this document.

Iraq: More to the story

In the appalling aftermath of the looting of the Iraq National Museum, global news carried images of empty glass exhibit cases standing in the galleries. In the outrage that surrounded news of the looting, very few viewers asked how glass exhibit cases could be standing intact if, in fact, all of the contents of all of the galleries had been stolen. Why wouldn't the looters have smashed them to gain the contents? The truth of the matter was that the staff of the museum, in defiance of Saddam Hussein, had removed many valuable objects from the galleries and secured them in the basement of the museum,¹ even placing a concrete floor over the newly secured storage area.

When the question of securing the national collections in Baghdad prior to the US invasion was discussed, Saddam viewed any recognition of the possibility of US forces entering Baghdad to be a form of treason. As a result, the museum staff members risked imprisonment, and even the death penalty, for securing the collections in their care. For museum professionals and citizens living in free and more secure societies, it requires a leap of faith to appreciate the courage shown by the custodians of the treasures of Iraq. There is no question that the losses at the museum were tragic, and looting of the Iraq National Museum represents a consequence that the US will have to live with as part of its history. Just as important, however, is the fact that failure to recognize the commitment and courage of the Iraqis in caring for their heritage compounds the tragedy of the situation in a significant way.

In the more than ten years since the looting, staff members of the Iraq National Museum have come to work every day. They have worked to rebuild their galleries and storage areas, have cooperated in successful efforts to recover stolen objects, have mounted exhibitions, and host groups of visitors and Iraqi students. When a team from the US State Department, the US Army, and the Archaeological Institute of America visited the museum in 2009, they were privileged to meet this group of dedicated colleagues who were clearly committed to making their institution the best possible home for the treasures of Iraq. The team saw immaculate galleries, engaging exhibitions, and outstanding efforts to care for the collections.² Any claim that an object of antiquity stolen from Iraq is better off in an American collection³ is a direct insult to the Iraqi colleagues who have dedicated their lives to protecting and caring for their heritage.

As the global community considers the looting of the museum ten years later, it is important to balance the rhetoric, in order to gain a more nuanced understanding of what has actually taken place. Yes, thousands of objects were lost but, just as importantly, thousands of objects were saved, and the international community has contributed millions of dollars for heritage recovery in Iraq in more than just support for the National Museum. In 2008 alone, the US announced a gift of \$14 million to the Iraqi people, for the purposes of heritage preservation. The Iraq State Board of Antiquities,

in cooperation with the Governor of Erbil, used a major portion of these funds to establish the Iraqi Institute for the Conservation of Antiquities and Heritage (ICAH) in Erbil, housed in a building belonging to the city government. The institute features an international faculty, who travel to Erbil to work with Iraqi experts and to coach Iraqi heritage professionals. These professionals come from all regions of Iraq and from multiple ethnic and religious backgrounds, to live and work together, as they learn information and techniques that will assist them when they return to their home cultural institutions.⁴ The success of the institute illustrates the fact that heritage preservation is a topic that even people traditionally in conflict agree on. Funding for an institution of this nature, though, never seems to be secure, and loss of an institution like ICAH in Erbil would put the Middle East at risk of losing yet another unifying influence in a troubled region.

Treasures of Afghanistan

Thanks to the “Afghanistan, Treasures of the National Museum” exhibition, that has been touring the world since 2008, thousands of international citizens have had the opportunity to appreciate artifacts saved, again under extremely challenging circumstances. Prior to the Russian invasion of Afghanistan, the National Museum in Darulaman was home to extraordinary collections that represented the remarkable story of a place that had served as the crossroads of civilization for millennia. When the Russians withdrew from Afghanistan in 1988, the museum, located six miles south of Kabul, found itself on the front lines of factional fighting. With each temporary victory, the museum became vulnerable to renewed waves of looting. The institution was further devastated by rocket attacks and gunfire that damaged the roof, walls, and windows opening the collection storage areas to the elements.

As the Taliban gained control of Afghanistan, the collection came under further risk from additional looting and iconoclasm. In the midst of the most horrendous circumstances imaginable for a museum and its curators, the museum staff hid the most important objects from the collections throughout Kabul.⁵ They used a key holder system, where only a small and select group of individuals knew where the treasure was stored, and held the keys. The key holders, or *tahilwidar*, could only open the treasure cases in the presence of other key holders.⁶ Were a key holder to be killed or incapacitated, the keys would pass to his son. This system protected over 20,000 objects, many of which were gold, for over five years of Taliban oppression.

When it became clear that the Taliban were going to destroy objects remaining in the museum, once again, the museum staff did their best to save what they could from the collection. *The New York Times*⁷ has recently confirmed the first-hand accounts of staff members, who described their role

in placing the least valuable objects in prominent locations to be smashed, after hiding and securing statues and objects determined to be of greater value.⁸ Essentially, the museum staff were able to engineer a tragic situation, and for the citizens of the world who care about heritage, there is tremendous satisfaction in knowing that the Taliban were not nearly as in control as they thought they were.

Dr. Massoudi, Director of the museum, has devoted his life to the institution. His loyalty to the collection, and willingness to continue to rebuild in the face of tremendous loss to looting and destruction, also demonstrates remarkable courage. As we move into the future, the University of Chicago Oriental Institute, with funding from the US State Department, is working in partnership with the National Museum staff members, to establish a modern inventory and curation program.⁹

Conflict in Libya

In 2011, representatives of the Associated National Committees of the Blue Shield (ANCBS) and the International Military Cultural Resources Working Group (IMCuRWG) completed two cultural heritage inspection missions to Libya.¹⁰ At Sabratha, Leptis Magna, Tripoli, Cyrene, over and over again across the country, they encountered evidence of local people protecting archaeological sites and objects in local museums. The inspection team found magazines and museum storage areas with the doors welded closed and the objects safe inside. At the National Museum in Tripoli, critical objects were secured behind a fake wall. The only damage was to exhibits featuring automobiles belonging to Ghaddafi, and removal of pictures of him from the walls. At Leptis Magna, Ghaddafi forces had attempted to occupy the site, but had been repulsed without damage to the archaeological deposits.

At Cyrene, the site guards moved away from their families to live on the site, to offer protection throughout the conflict. At one point, the site controller encountered eight well-armed men looting on the site, who were in the process of removing a statue torso. He courageously confronted the men, who choked him until he lost consciousness, and who also stole his mobile phone and keys. As soon as he was able, he attempted to call his stolen phone to negotiate for return of the objects. Even though this effort was unsuccessful, due in part to his heroic efforts, the looters were caught and jailed.¹¹

Currently, Oberlin College is working at the grass roots level with the staff members of the Libyan State Board of Antiquities, to establish a nationwide heritage site inventory and stewardship program. Their program is productive and meaningful because it reflects genuine and long-standing friendships between the Libyans and the project principals, because the project is designed to respond to heritage needs as articulated by the Libyans,

and because the project participants are all realistic about what can be accomplished given the current challenges of the new Libya.¹²

Of course there were also cases of damage, theft, and loss during the course of conflict in Libya and, unfortunately, damage continues in the post-conflict environment, due to unregulated development. However, the protection efforts offered by responsible citizens of Libya, who live in the midst of extraordinary cultural property, should not be diminished. Libya, as well as Iraq, offers instructive caveats to those of us who live in secure areas, but who want to intervene to protect property in other people's countries, especially during conflict. It is critical to remember that protection, ultimately, is up to the local community, and local community members necessarily make the decisions about what elements of culture matter. One must question the morality of encouraging, or arming, individuals to protect specific examples of cultural property in conflict zones, especially if that cultural property is valued more highly by outsiders than by the community members themselves.

Saving manuscripts in Mali

When the Islamists began to invade Mali, the world was sickened by media coverage of the deliberate destruction of the Sufi tombs. Custodians of libraries and manuscripts recognized that the Islamists responsible for the destruction and desecration were also capable of destroying hundreds of years of Malian history, poetry and literature. They also recognized that the responsibility for saving these collections was going to be completely up to them. One by one, thousands of manuscripts were moved from their homes in storage and on display, placed in traditional food containers and spirited out of Timbuktu. They traveled in cars, trucks, canoes, and on the backs of people and bicycles. The courageous curators and librarians had to bribe Islamists at checkpoints, risking their lives while, essentially, ransoming the manuscripts and buying their way out of Timbuktu.¹³

After the French intervened, and the area was re-secured, news began to emerge that many of the manuscripts had been saved. Again, it is difficult for a Western audience to imagine, but individuals who took these containers into their homes were putting their families at terrible risk against an enemy capable of unconscionable atrocities.

Tsunami recovery at the Rikuzentakata City Museum, Japan

As we know, not all disasters are caused by humans. The personification of extraordinary emotional courage in the face of the loss of cultural property is Mr. Fumito Honda, former Director of the Rikuzentakata City Museum.¹⁴ The tsunami swept through the museum, killing the entire staff of six, and leaving the collection in shambles. Mr. Honda came back from retirement

facing the personal loss of his former colleagues, while engaging to prevent the potential loss of his entire life's work and the city's history. The trauma is such that he described his situation through a translator by saying, "I'm working here like this, but I have to keep reminding myself that it is not a dream or a hallucination. This is all real." When I contacted Mr. Honda to invite him to Rome, Italy to talk about his efforts at a conference they were organizing, he sent his appreciation and regrets, along with the message that his work to save the collection was too important to leave for even a few days, not even for a trip to Rome.¹⁵ Since the tsunami, Mr. Honda, eventually with the assistance of a new curator, city staff, volunteers, and self-defense personnel, has been working to recover and stabilize the collection that originally numbered 150,000 objects. The collection was the oldest in the region and represented botanical, faunal, cultural and historical objects, and works of art.

Why do people risk their lives for Heritage?

When working with the military, training deploying personnel and raising awareness on the issue of cultural property protection, one of the first roadblocks encountered is "It's just stuff. Human life and safety always takes priority over preservation and rescue of objects." Yet, again and again we meet individuals whom we view as heroes who put their lives on the line to save museum collections, historic buildings, sacred structures, and even archaeological sites. Why?

One example comes from the Monuments Men of World War II. In his memoir, *Florentine Art Under Fire*, Lt. Frederick Hartt recounts a situation where the Germans systematically destroyed every structure in the tiny Italian village of Pieve Santo Stefano. Miraculously, the Andrea Della Robbia altarpiece survived in the destroyed church.¹⁶ Lt. Hartt wanted to move the altarpiece to a place of safety, but the citizens of the town protested, "E tutto quello che ci rimane," "It is all we have left." Recovery and reconstruction of the community began by rebuilding the church around the altarpiece.

BG Furstenhofer, founder of the Austrian Society for the Protection of Cultural Heritage, has also offered an illuminating example that provides insight into possible answers to this question.¹⁷ As a young officer, BG Furstenhofer was part of an Austrian team responding to the 1980 Calabritto earthquake in central Italy. As crews worked to clear rubble throughout the region, the Austrians focused on a collapsed church. They recovered all of the sacred objects required for celebration of the Eucharist. As the traumatized citizens gathered for the first time after the disaster, one of them thanked the Austrians. The Italians explained that this celebration was the first symbol of hope that they might recover not just as individuals, but also as a community. Furstenhofer was so moved by the experience that he made cultural property protection a priority throughout his military career, and it is due in

part to his efforts that the Austrian military currently has a military occupation specialty (MOS) designation for cultural property officers, and why their military is also a global leader for cultural property protection education and training.

When UNESCO asked the Austrians to host a cultural property protection training program for representatives of countries that were once part of the former Yugoslavia, they created the first event after the Balkan conflict where every country agreed to send a representative, with the full knowledge they would be meeting in the same room at the same time. By the end of the three-day seminar, Croatsians were making arrangements to work together with Bosnians to train members of their respective militaries in cultural property protection. The subject of heritage protection demonstrates extraordinary opportunities for helping people of different backgrounds and beliefs to find common ground, while offering projects that can be used as platforms for conflict resolution.

When people think about disaster and loss, once their loved ones, friends, and neighbors are accounted for, the next priorities are homes, community, sacred places, and property deemed to be of value. In the United States, in the formal process for planning for wild-land firefighting, cultural property is first on the list after life, safety, and homes. People who are in the midst of recovering from disaster need sacred spaces and objects even more than people whose lives are centered in quiet, stable communities. Victims of disaster need to know that the objects required for worship will be available to them, that the ancestors are still safely at rest, and that iconic objects that tie them to their history, their homes, their lands, their families, and their communities will not disappear. Hope is found in heritage.

Over the years, the story of damage at Babylon by US military units who had been assigned there to protect the site has also taken on multiple dimensions that have never been thoroughly covered by the international press. The fact that Saddam Hussein had seriously damaged the site with flawed restoration and construction of modern features, prior to coalition occupation, is rarely mentioned, when damage at Babylon is discussed in the international media. However, news of the damage at Babylon prompted a series of initiatives by US military archaeologists, in partnership with academic subject matter experts, to establish a training and awareness program for cultural property protection within the US Department of Defense.¹⁸ The Polish military was also present at Babylon, and both countries have since worked with the Iraqis to mitigate damage done, to stabilize the site, and to enhance tourist amenities, making visits to the site more informative and enjoyable for everyone. The Future of Babylon Project, being implemented by the World Monuments Fund, also enjoyed generous support from the United States Ambassador's Fund for Cultural Preservation. The project is working in partnership with the Iraq State Board of Antiquities to map the site in detail using the latest technological assets; to provide travel and

training opportunities for staff to learn about site management; and to assist in preparing the application for UNESCO World Heritage Site designation.¹⁹

What is the appropriate response?

Meaningful protection of antiquities in crisis situations requires commitment from all parties: members of indigenous populations and local communities, members of international response teams and/or the military, subject matter experts with experience in the regions or objects at risk, and members of the wider global community. All of the examples discussed in this essay illustrate the critical role of the local populations when it comes to saving heritage. Ultimately, the responsibility for heritage preservation rests with its host community and culture. The examples illustrate that, even in the face of seemingly insurmountable challenges, local community members put themselves at risk, make sacrifices and undertake extraordinary efforts to safeguard their heritage.

The question is then to identify the nature of the role that must be played by those of us with the privilege and luxury of living in stable prosperous societies whose heritage isn't currently critically at risk. One appropriate response, of course, is to ensure that the representatives of our stable society that we send into crisis zones are adequately trained to recognize and respect art and antiquity at risk. The efforts and products of the Combatant Command Cultural Heritage Action Group (www.cchag.org) are guided and designed with this goal in mind. Clearly, for military operations, prevention of looting contributes to overall stability, and becomes a priority when the deployed force is working to restore social order. However, for efforts in planning and preparation for military operations, the emphasis begins with insuring that the force does no harm through ignorance.

Ancillary goals include educating the force, to insure that deployed personnel do not contribute to the market in looted antiquities by purchasing objects and attempting to bring them across international borders, back into the US. In addition, the State Department, in partnership with the University of Pennsylvania Museum Heritage Center, developed a training program for customs and border protection officers, in order to assist them in rapid identification of illicit objects coming into the United States. These courses are currently being offered by the Smithsonian. The State Department Cultural Heritage Center has also participated in developing the International Council of Museums Red Lists, that offer a user-friendly reference for anyone who may be in a position to encounter stolen objects on the international market.

It is also critical to have participation from subject matter expert partners advocating for heritage preservation. From time to time, museum professionals in the US publicly advocate for ownership of looted antiquities from conflict zones, as a form of global heritage preservation.²⁰ Some use multiple

and fascinating falsehoods in their attempts to rationalize their untenable positions. In actuality, thoughtful and responsible behavior from museum colleagues who are in the privileged positions of working in secure institutions in secure societies, offers a first step in suppression of looting behavior at the global level. It is important to remember that museum professionals are not only responsible for advice related to purchase of looted objects for institutional collections but also are often called upon to advise private collectors who are interested in purchasing extraordinary objects. These opportunities could be used to assist in educating the community of wealthy collectors.

Most experienced professionals know the symptoms, when an object is of questionable origin. One of our colleagues, now an eminent professor who studies ancient Etruria, remembers a job at a prominent collecting institution, very early in her career. When she was sent, by herself, to meet questionable individuals in a questionable part of a major city, to examine a spectacular sarcophagus hidden in a garage, she realized that she did not wish to be a part of this type of activity. She resigned, an act that risked her career while demonstrating great integrity in a young professional. It is this type of exemplary behavior that makes a difference and inspires others.

Fortunately, there are other individuals and families who also make good decisions when it comes to repatriation and the property of others. In the autumn of 2012, a family with two boxes of "Indian things," purchased at an antiques auction in the 1970s, approached the author with questions about identification. They had sold a third box to a mutual friend during a summer barn sale. It was immediately clear that the objects were most likely Mesoamerican. The collection included ceremonial ceramic vessel fragments, jade gorgets, a ceramic mold for decorating textiles and numerous pottery shards. When provided with images, Professor John Henderson of Cornell University narrowed down the object origins to Costa Rica, with dates ranging from 3000 to 1000 BC. When the archaeologists explained to the families that the boxes probably contained Costa Rican antiquities, some of which could be valuable, they also mentioned the option of contacting the Costa Rican Embassy in Washington DC, and offering to return the objects to the Costa Rican people. Both families made this choice. The National Museum of Costa Rica confirmed the identifications. After the families, along with volunteers, under the guidance of a qualified conservator, spent several months gently cleaning and building customized ethofoam mounts for the objects, Her Excellency, Muni Figueres Boggs, Ambassador from Costa Rica to the US and her staff, organized a repatriation ceremony, in May of 2013. Four generations of family members attended the ceremony, along with delegations from other Central American embassies, representatives of the US Committee of the Blue Shield, the Lawyers' Committee for Heritage Preservation, the University of Pennsylvania Museum Cultural Heritage Center, and the Smithsonian. The experience was moving

and rewarding for all who had the privilege to attend. It offered an opportunity for “ordinary” Americans to reach out to the people of Costa Rica with a gracious gesture. If “ordinary” citizens can reach a decision of integrity regarding repatriation of objects that they intuitively know don’t belong to them, why is it so difficult for some representatives of institutions of higher learning who work in the public trust to reach the same conclusion in comparable situations?

It is reasonable to wonder if collectors would make the same purchase decisions, if they had the opportunity to meet the victims face to face. Would an institutional collector of stolen cuneiform tablets from Mesopotamia have the courage to face members of the staff of the National Museum of Iraq, and attempt to convince them that the tablets belong somewhere other than Baghdad? What would a collector say to students of Southern Illinois University, whose field school excavations were destroyed by looters, in a case where collectible antiquities were not even present?²¹

Prevention of looting boils down to shutting down the illegal market. Without collectors, there would be no incentive to steal objects out of the ground. The issue is, in essence, a matter of right and wrong. Attempts to rationalize purchase and ownership of objects that belong to others do not change the simple right and wrong dimensions of the equation. Rationalization fades further when one takes the time to personally consider the individuals and communities who are betrayed by looting, theft and illicit collecting. It is time to put faces and names to the individuals and communities at risk like the courageous citizens, colleagues, and friends of Mali, Japan, Libya, Iraq, Afghanistan, and now Syria.

Notes

1. C. Wegener, *Presentation to the Annual Meeting of the US Committee of the Blue Shield* (Washington, DC, 2013). www.cchag.org date accessed 25 January 2014.
2. L. Rush, B. Rose, and D. Siebrandt, *Visit to the National Museum of Iraq* (Baghdad, Iraq, 2009).
3. L. Johnson-Kelly, *Presentation to the Annual Meeting of the New York State Archaeological Association* (Watertown, NY, 2013).
4. B. Lione, *The Iraqi Institute for Conservation of Antiquities and Heritage at Erbil; an Update, Presentation to the Combatant Command Cultural Heritage Action Group Annual Meeting, Co-Sponsored by the Smithsonian Institution* (Washington, DC, 2013).
5. F. Hiebert and P. Cambon, *Afghanistan, Hidden Treasures from the National Museum, Kabul* (Washington, DC: The National Geographic Society, 2008).
6. R. Atwood, “Afghanistan’s Hidden Treasures; How a trove of priceless antiquities survived.” *National Geographic* (2008). Retrieved from <http://ngm.nationalgeographic.com/2008/06/afghan-treasures/atwood-text>, p.1.
7. R. Nordland, “Saving Relics; Afghans Defy the Taliban.” *The International New York Times* (2014). Retrieved from http://www.nytimes.com/2014/01/13/world/asia/saving-relics-afghans-defy-the-taliban.html?_r=0.

8. A. Feroози, Personal communication, Conversation with L. Rush, Kabul 2010.
9. L. Alessandro, *Oriental Institute Conservation Project, the National Museum of Afghanistan*, (Presentation to the University of Arizona Afghanistan Project Symposium, Tucson, AZ, 2013).
10. ANCBS (2011). Missions to Libya, Reports, Mission One, http://blueshield.at/libya_2011/09-2011/mission_report_libya_09-2011.pdf and Mission Two, http://www.blueshield.at/libya_2011/11-2011/mission_report_libya_11-2011.pdf.
11. ANCBS (2011), p. 7.
12. S. Kane, *Lessons Learned from Libya* (Presentation at the Archaeological Institute of America Annual Meeting, Chicago, IL, 2014).
13. J. Hammer, "The race to save Mali's priceless artifacts," *Smithsonian Magazine* (2014). Retrieved from <http://www.smithsonianmag.com/history/Race-Save-Mali-Artifacts-180947965/>.
14. E. Corkill, "Tsunami-Struck Museum starts recovering collection; over 150,000 items scattered and damaged," *The Japan Times* (2011). Retrieved from <http://www.japantimes.co.jp/news/2011/06/08/news/tsunami-struck-museum-starts-recovering-collection/#.UsTDxKVfWl>.
15. E. Corkill, Personal communication with L. Rush, translated response from Mr. Honda (2011).
16. F. Hartt, *Florentine Art Under Fire*. Princeton (New Jersey: Princeton University Press, 1949), p.5.
17. N. Furstenhofer, *The First Austrian Experience, Earthquake Calabritto 1980* (Presentation to Archaeology in Conflict, World Archaeology Inter-Congress, Vienna, Austria, 2010).
18. See www.cchag.org.
19. www.wmf.org, accessed 25 January 2014.
20. L. Johnson-Kelly, *Presentation to the Annual Meeting of the New York State Archaeological Association* (Watertown, NY, 2013).
21. G. Pawlaczyk, "So much work and it was gone," *Vandals Hit SIUE Archaeology Dig*. *News Democrat* (2011). Retrieved from <http://www.bnd.com/2011/06/14/1748370/so-much-work-and-it-was-gone-vandals.html>.

12

The Return of Iconoclasm: Barbarian Ideology and Destruction by ISIS as a Challenge for Modern Culture, Not Only for Islam

Francesco Rutelli

In cities, archaeological sites and religious and historic monuments devastated or destroyed by ISIS, the West is an oblivious witness, abandoning its core values. The entire international community is suffering from the disavowal of the courageous achievements of modern culture. When my colleagues and I launched a campaign to save cultural heritage under attack in Syria,¹ along with Paolo Matthiae, we did not want to defend a dictator – Assad – over the cutthroats of Daesh, or al Qaeda. We knew that these tragedies concern and sweep away universal freedoms. It appears that many were shocked with the deliberate spread of films with which ISIS, under its black banner, claimed responsibility for the destruction of the Mosul Museum. Horror, shame and barbarism. But now is not only a time for commentary. Can anything be done?

I wanted to cry two years ago when I saw the Google Earth satellite images of the incredible Roman *Cardo Maximus* of Apamea in Syria,² with its Corinthian colonnade over a kilometer long. Surrounding it was a Swiss-cheese landscape full of holes caused by excavators searching for mosaics, marble and pieces of sculpture, to be placed on the black market. It's not just war, and it's not only illegal trafficking. The establishment of the "Caliphate," which then quickly spread to Iraq, and the occupation of a territory bigger than that of Hungary, was accompanied by savage, deliberate destruction (of Christian sites, mosques and monuments) and the deletion of pluralism in religion, culture and education.

The resurgence of iconoclasm

Iconoclasm is not a trademark of ISIS. Fanatics date all the way back to the 7th century, to the Age of Purity with the Prophet and his companions,

to the alleged duty to demolish any anthropomorphic statues, or those representing gods or animals, making it an unexpected invention in contemporary times. If we were in the 7th century today, in my city, in Rome, we would have to seek shelter in the architectural remnants of ancient glory, after the triple sacking that took place less than 2,000 years ago, first by the Goths under Alaric (410 AD) and then followed by the Visigoths, Ostrogoths, and the Burgundians (472 AD, with the end of the Empire). Moreover, in between, there was the catastrophic destruction by the Vandals under Genseric (two entire weeks in June, 455 AD). If we were in Baghdad, we would have six centuries of very refined civilizations, before the wondrous capital of the Abbasid Empire would be destroyed (1258 AD) by Hulagu's Mongol army. It is said that the waters of the Tigris ran black with the ink of the vast quantities of the libraries' manuscripts in Baghdad (as well as blood red, just like the Arbia in Montaperti, just two years after, as narrated by Dante Alighieri).

Barbaric, yes. But iconoclasm was always, primarily, an instrument of power. It was this way for the Byzantines. During the Reformation. For Cromwell and the Puritans during the English Civil War, in the mid-17th century. For the *auto da fé* Catholics, who destroyed religious symbols and records of the Maya. It happened during the French Revolution, until a forward-looking trend was born out of that revolution, one crucial to the birth of modern culture in the West. It was put in place to counteract the destructive acts against works commissioned under the power of the deposed French monarchy and aristocracy. These works were deemed, instead of expressions of absolutism and monarchy, as the expression of the intellectual life of France. With the extraordinary testimony of the seven Letters to Miranda (1796) by Antoine-Chrysostome Quatremère de Quincy, directed at avoiding deportations of masterpieces from Rome and Italy for the collections of the Louvre, he wrote "the harm which would be caused to arts and sciences by the removal of art from Italy" in the name of "civilization, improvement of instruments of happiness and pleasure, the advancement and progress of education and reason and therefore, the improvement of the human species."³

It was only after the disasters of the Second World War, with the Nazi seizure of precious European art (and private collections of Jewish families), the carpet bombing of Dresden, and the demolition of Montecassino, that international law gradually banned using cultural heritage, through plunder or destruction, for the purposes of warfare, via the Hague Convention of 1954.⁴ Furthermore, the regulation of its protection was established, by virtue of all artwork belonging to all humankind, by banning illegal trafficking and encouraging respect for cultural diversity, a concept continued by the various UN conventions, under the auspices of UNESCO.⁵ We believed the demolition (2001) of the giant Buddhas of Bamiyan, in Afghanistan,

by the Taliban to be an isolated, monstrous exception (I cannot forget the diplomas I had the opportunity to deliver, as the Minister of Culture of Italy at the time, to a brave squad of Afghan archaeologists, trained in Italy, in the years following).

These tendencies to respect cultural heritage (actually, heritage in terms of a shared, common legacy, even with its radical differences) were inherited from a painful legacy of accountability. It was, finally, a victory of the culture of the West. It was a victory that seemed irrevocable, shared by the international community, made more visible within the peaceful race to establish its protection and to spread this defense of heritage throughout the world, in areas like UNESCO World Heritage Sites: new brands of development, welfare and tourism. The consequence, in turn, was an expectation of peace and dialog, and not of confrontation or clash between civilizations, with a kind of inevitable multiculturalism and respect for diversity. Until...

Until the rude awakening at the hand of the ISIS cutthroats. The cutthroats who reinvented, within the framework of a profound conflict within Islam, systematic iconoclasm – a rebellion against the creations and cultures of all previous historical eras, as well as against manifestations of “other” cultures and distinct religious denominations. “The inexpiable hatred,” according to Matthiae, “for enemy cultures.”⁶ The invocations after the acts in the Mosul Museum, by the very designers of the destruction, between December and January stated, “These statues were not here at the time of the Prophet nor his companions. They have been excavated by Satanists.” They continued, “The Prophet Mohammed took down idols with his bare hands when he went into Mecca. We were ordered by our Prophet to take down idols and destroy them,” followed by “Let’s go destroy the British Museum!”⁷

In the beginning, there was also the political willingness to destroy national identity as a result of the drawing of boundaries by the 1916 Sykes-Picot agreement, 100 years ago, through which Western powers planned to subdivide the Ottoman Empire. There was the establishment of educational programs based on a non-existent “Islamic Purity,” from grade schools to university levels, the elimination of books on literature, science, art and philosophy found in public libraries and bookstores (only volumes on Islamic theology were spared). The loss of the last signs of cultural and religious pluralism in Mosul is incalculable, especially after the blowing-up of the “Tomb of Jonah,” and the mausoleums of Prophets Jirjis and Seth, the bulldozing of the winged bull at Nimrud, and the destruction of parts of the ancient walls and monuments of Nineveh. Ancient Nineveh was, in fact, the Assyrian capital, the city of Eastern Christianity and the capital of several Muslim states. According to Italian archaeologists, like Daniele Morandi Bonacossi,⁸ and anthropologists, like former director of the Institut Français pour le Proche-Orient, Hosham Dawod, “this is radical nihilism, a crime against civilization,

culture and history.”⁹ “It is a deliberate strategy to make a clean sweep of the past by establishing chaos,” according to the Director-General of UNESCO, Irina Bokova.¹⁰

However, here it is necessary to subject the irresistible concept of nihilism to some concrete evaluation.

Idolatry

In the book of Exodus, it is written: “You shall not make for yourself an idol, or any likeness of what is in heaven above or on the earth beneath or in the water under the earth. You shall not worship them or serve them”¹¹ (Book of Exodus 20, 1–3). But has anyone been visiting the Mosul Museum to offer religious services to the ancient Assyrian gods, therefore raising the necessity to break them with a jackhammer? Unfortunately Muslim leaders did not condemn the attacks on the Mosul Museum. But Abbas Shouman, undersecretary of Al-Azhar University of Cairo, said: “They are nothing more than stone. No one believes that they are gods” (*The Economist* 7 March 2015).

Purity and courage

“When God commands us to remove them and destroy them,” declares the spokesperson for the demolition of the Mosul Museum, “it becomes simple for us and we don’t care if their value is worth millions of dollars.”¹² This is not exactly true. According to UNESCO, “archaeological traffic from Iraq could reach 7 billion Euros.”¹³ In Syria and Iraq, certain “concessions” of plots of archaeological areas are excavated in order to finance the power of ISIS and its local gangs. Witnesses have reported looting of sites in Nimrud, with small items being taken away by truck before the demolition of larger statues, which could not be sold due to their size. *The Times* of London witnessed the sale of about 100 items trafficked by the “caliphate” in London,¹⁴ the speculative parasitism of Daesh, with regard to the cultural heritage of the past, is being moved through Turkey, Jordan and Lebanon.

Samir Abdulac, Secretary-General of the French National Committee of the International Committee on Monuments and Sites (ICOMOS), came to Venice last November for a speech honoring the courage of the Director of Antiquities in Damascus, Maamoun Abdulkarim. An international jury that I created with the Associazione Priorità Cultura awarded the Cultural Heritage Rescue Prize to him, for defending the cultural heritage of his country, despite the murder of some of his colleagues. Abdulac reminded us of episodes of heroism taking place in Iraq as well, “Some Sabrina somewhere has sacrificed his life after defending the cultural heritage threatened by ISIS on her Facebook page. She was arrested and beheaded.”¹⁵

Media idolatry

How else can we define the triumphant use of cinematic techniques to show the crimes of ISIS in the world? Those slaughtered and those burned alive. But even now, the irreparable destruction of art is being broadcast. According to a study by Brookings and Google,¹⁶ ISIS controls at least 46,000 Twitter accounts. The management and use of images, the glorification of blood-thirsty leaders through mass media coverage, is part of a *new* idolatry, which is considered the most pervasive tool used to involve and recruit others, in Muslim communities even in the West.

Iconoclasm by ISIS is a crime against humanity. The pride of the declared willingness to “go back to the seventh century” (because all other cultures and religions are worthless), and the demented and cruel will to suppress or sell off universal riches left from our common historical legacy, once it becomes practice or systematic, cannot remain unanswered by those who have institutional authority. Therefore, what is really needed is an honest crusade for truth in the global public opinion, and concrete actions of force against these fanatics, justified by the principles and standards of international law. But this is not happening.

We have verified that it’s not happening over the last two years, as we have tried to involve the European Commission – and its High Representative, Catherine Ashton – in the campaign to safeguard cultural heritage in Syria, which was accompanied by a series of concrete proposals: (1) surveying and monitoring cultural heritage at risk; (2) paying guards and custodians, who risk their lives in different areas of the conflict; (3) encouraging and training new generations of scholars and archaeologists (abroad); (4) beginning preparations for rehabilitation projects in a post-conflict scenario, which necessarily will happen; and (5) having efficient enforcement to fight illegal trafficking of archaeological goods.

The response was politically non-existent. This reminds me of the formidable words of an Englishman, a member of the war cabinet of Churchill, Sir Harold Nicolson, who wrote, during the Second World War, “I should assuredly be prepared to be shot against a wall, if I were certain that by such a sacrifice I could preserve the Giotto frescoes; nor should I hesitate for an instant (were such a decision ever open to me) to save St. Mark’s, even if I were aware that by so doing I should bring death to my sons...”¹⁷

It is certainly not with such an extreme intellectual spirit of sacrifice but, when faced with the universal and unique value of the cultures of Mesopotamia and Syria (from which we are all descended), the Italian government has demonstrated a rather rare sensitivity to this situation compared, to the inadequate European response. Minister of Culture Dario Franceschini supported and inaugurated the exhibition last year entitled, “Syria: Splendor and Tragedy,” in Rome in Palazzo Venezia, and he took part in our Rescue Prize awards ceremony in Venice, alongside Undersecretary

Sandro Gozi, for the courageous defenders of this butchered cultural heritage. It should be stressed that the Cultural Heritage Rescue Prize¹⁸ seeks to fill a void in the attention of the international public, thanks to the presence in the jury of internationally renowned, respected and high-profile members.¹⁹

The Italian Minister of Foreign Affairs, Paolo Gentiloni, expressed concrete interest in an initiative that we are about to launch, for the restoration of monuments affected in conflicts: the Mediterranean Heritage Action. Moreover, our Italy, where there is not enough investment in culture and where illegal activities still continue to happen at the hands of grave robbers and criminal networks, is the only country in the world to have established a military police devoted to protecting cultural heritage: the Carabinieri Division for the Protection of Cultural Heritage. Furthermore, Italy has, among other things, contributed decisively to the reopening of the Museum of Baghdad, and established a milestone in cultural diplomacy with the recovery of stolen masterpieces abroad, and building the consequent international collaborations.

We cannot ignore the fact that we find ourselves facing a genuine abandonment by the West, a refusal to lead the battle for liberty, which should profoundly compel our societies to have a fruitful dialog with the larger part of Islam, that rejects the folly of ISIS, and which is also affected by it.

As a prominent European Foreign Minister pointed out to me, today we are experiencing the perfectly predicted events in Charles Kupchan's 2012 book, *No One's World*.²⁰ What was once called "democratic interventionism" has now given way to total tactical cynicism. What was once called R2P, "Responsibility to Protect," now reflects the burns and the subsequent absence of necessary assumptions of responsibility. It is no coincidence that this expression was used, for the first time, in a resolution of the UN Security Council to support military intervention against Gaddafi in 2011,²¹ remaining devoid of the subsequent necessary actions for stabilization. And it is no coincidence, either, that the first resolution to oppose the destruction of cultural heritage in Iraq and Syria and its illegal trafficking, Resolution 2199,²² was not presented by a Western country, but by Russia.

ISIS? The unravelling of Islam, with all its internal divisions. Idealism, pretenses, illusions, and competition to rule the world – these are not concepts for the 21st century.

No. Silently witnessing iconoclasm as a power play in the homeland of cutthroats is not a concept for 21st century men, women and institutions.

Notes

1. http://www.prioritacultura.it/?id=19&I=Campagna_per_la_salvaguardia_del_patrimonio_culturale_in_Siria La Stampa, 12 February 2014 Il Corriere della Sera, 27 March 2014.

2. <http://traffickingculture.org/data/looting-at-apamea-recorded-via-google-earth/>.
3. Antoine-Chrysostome Quatremère de Quincy, *Lettres à Miranda*, 1796.
4. Convention for the protection of Cultural Property in the Event of Armed Conflict: The Hague, 14 March 1954 Tullio Scovazzi, "La notion du patrimoine culturel de l'humanité dans les instruments internationaux," Leiden, 2006.
5. UNESCO Convention on the Illicit Import, Export and Transfer of Cultural Property; Paris, 14 November 1970; UNESCO Convention on the Protection of the World Cultural and Natural Heritage; Paris, 16 November 1972; UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, contemplating the expressions of collective cultural identity; Paris, 17 October 2003; UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions; Paris, 20 October, 2005.
6. Catalog of the Exhibition "Syria. Splendor and Tragedy" 20 June–31 August 2014, Saloni Monumentali, Palazzo Venezia, Rome.
7. BBC News Middle East, 6 March 2015.
8. *La Repubblica*, 7 March 2015.
9. *Le Monde*, 1–2 March 2015.
10. *Le Monde*, 4 March 2015.
11. Book of Exodus, 20, 1–3.
12. *FQ Magazine*, 26 February 2015.
13. *Le Monde*, 1–2 March 2015.
14. BBC Middle East, 25 February 2015.
15. *Le Monde*, 1–2 March 2015.
16. <http://counterjihadreport.com/2015/03/09/brookings-study-of-isis-twitter-accounts-reveals-us-among-top-locations/>.
17. Sir Harold Nicolson, *Bombing Works of Art*; *Spectator*, 25 February 1944.
18. *NY Times*, 25 October 2014.
19. Mounir Bouchenaki (former director of ICCROM, now Special Advisor to the UNESCO Secretary-General), Bonnie Burnham (President of the World Monuments Fund), Noah Charney (Director of ARCA, Association for Research into Crime against Art), Stefano De Caro (Director-General of ICCROM), Jack Lang (former Minister of French Culture, now President of the Institut du Monde Arabe in Paris), Giovanni Nistri (former Commander of Carabinieri for the Protection of Artistic Heritage, now Director of the Great Pompei Project), Catherine Anne Robert-Hauglustaine (Director-General of ICOM), Ismail Serageldin (Director of the New Library of Alexandria) and Peter Watson (writer, author of papers regarding cultural heritage trafficking).
20. "Between 1500 and 1800, the West sprinted ahead of other centers of power in Asia and the Middle East. Europe and the United States have dominated the world since. But this era is coming to a close, as power shifts from the West to the rising rest." Charles Kupchan *No One's World* (Oxford University Press, 2012).
21. UN Security Council, Resolution 1973, 17 March 2011.
22. *Ibid.* 2199, 12 February 2015.

Part III

Tomb Raiders: Archaeology and Antiquities Looting

Introduction to Part III

Noah Charney

It was the summer of 2012, and Prince Ravivaddhana Monipong Sisowath, known to his friends as Ravi, was staring at the cover of the Sotheby's catalog. "My first reaction was, 'once again, Sotheby's,'" he recalls, followed by "this will be a hard recovery to make, because it is basically a problem of money and politics." The footless statue was the star of the sale, estimated at around \$2 million, yet it was obviously stolen, looted from a temple in his native Cambodia, the country from which his family, the royal family, had been exiled since 1970, and in which he had first set foot in 2000, aged 29. "I wondered, how can you give a price to something so precious that to me it cannot have a price? I was totally shocked." He picked up the phone and made some calls. Within minutes he knew exactly which temple the life-size statue had been looted from. He knew, because its feet were still there.

The statue in question is called the Duryodhana, and depicts the protagonist of a Sanskrit Hindu epic (thought to have been penned in the 9th century BC), the "Mahabharata." Duryodhana was the eldest of 100 sons of a blind king, but was muscled out of place as rightful heir when his cousins, the Pandava brothers, led by Bhima, claimed the throne instead. The life-sized statue was sculpted around the 10th century, during the height of the Khmer empire. It had been consigned to Sotheby's in 2011 by a Belgian collector, but experts suspect that it had been looted sometime in the 1970s.

This was but the most recent and highest-profile example of a trend that has lasted decades, with its origins in the systematic looting of Cambodian religious sites by the Khmer Rouge, the Communist regime that seized power on 18 March 1970 and prompted the exile of the royal family, a year before Ravi was born. Throughout the Cambodian Civil War (1970–1998) trafficking in looted antiquities, largely taken from temple complexes, was commonplace. There is no estimate as to the number of works stolen, damaged, or destroyed, but visitors today, without venturing off the beaten path, can see hundreds of empty plinths and niches that once housed artworks. Dr. Simon MacKenzie, a criminologist who studies looting in Cambodia as part of the Trafficking Culture research group, based at the Scottish Centre

for Crime and Justice Research at University of Glasgow, explains: “Many temple sites we visited were empty shells – still magnificent, of course, but hollowed out by the theft of the statuary. There is a great sadness which comes with visiting these sites, which while still great have been so severely diminished. Everywhere you turn there are plinths with just the feet of a former statue remaining, or statues without heads.” It was back in the 1970s that the Duryodhana was stolen, cut off at the feet to facilitate transport, and smuggled into Thailand and then abroad, for sale in Europe. Most of the looting during the time of the Khmer Rouge was organized by that regime, and therefore funded their activities, which ranged from terrorism to genocide. Unfortunately, remnants of the trafficking networks of the Khmer Rouge era remain in place to this day.

The Cambodian government formally requested the removal of the statue from the sale on the morning it was to be auctioned. Sotheby’s removed the statue from the sale, but refused to hand it over to the Cambodian government, considering it to be the property of the woman who consigned it. Like all auction houses, Sotheby’s is a middleman. It sells for a commission, but does not buy works directly, so it is not unreasonable that it should refuse to hand over an object on consignment. However insult was added to injury when a Sotheby’s representative suggested that the Cambodian government *buy* the looted statue from the seller.

Dr MacKenzie’s Trafficking Culture team consists of five researchers and five doctoral students. Funded by the European Research Council, they collect evidence of global looting of cultural objects by conducting regional case studies of trafficking routes. He and one of his colleagues, Tess Davis, traveled to Cambodia to visit looted sites and do what they could to track down those responsible. What they found was frightening in scale, organization, and physical menace.

For MacKenzie and Davis’ essay in this chapter, first published in *The British Journal of Criminology*, they traveled, in the summer of 2013, some 2,500 kilometers throughout Cambodia and Thailand, to track the route of looted statues from major temple sites, like Koh Ker, and find out who was behind what was once a highly organized, large-scale looting scheme – and which remains remarkably intact to this day. “We have established a picture of a funneling network that moves statues from various temples in Cambodia and passed them into a small networks of channels that moved them by oxcart, truck and even elephant out of the country and into Thailand,” wrote MacKenzie in a recent article in *The British Journal of Criminology*. Cambodian sites in the northwest of the country, including Koh Ker and Angkor, saw looted objects funneled through Sisophon, a town 20 kilometers from the Cambodian/Thai border. MacKenzie and Davis tracked the trafficking route, through scores of interviews with locals and regularly aware that they were in danger by asking such question, from Sisophon to Poipet, which straddles the border, and on to Aranyaprathet and Sa Kaeo, in

Thailand. From there works were taken to Bangkok and then sold abroad. MacKenzie was able to identify specific criminal networks, routes taken by looters, and even individuals responsible for the looting. "Organized criminals with no military affiliations were active in the looting of Cambodia," he writes. The illicit trade in antiquities went hand in hand with the drug and arms trades, and murders were committed to solidify claims on looting sites and smuggled routes. It has been alleged that the looting of the Koh Ker site may have been done under through the personal intervention of Ta Mok, one of the most notorious of the Khmer Rouge masterminds of genocide, who was nicknamed The Butcher. But while there was a historical component to this research, the worrisome fact is that it is still going on. While interviewing locals during his research trip, a looter in Thailand offered Dr. MacKenzie any Cambodian antiquity he might like from a temple, if he would bring a photograph of it.

In 2013, a lawsuit was filed by the US District Attorney's Office, for the return to Cambodia of the Duryodhana. "The US wanted to show their good will [toward Cambodia]," Ravi notes, "and so it all went the way it should." The signor was forced to return the statue with no compensation, but she was not penalized, as there was no evidence brought forth that she knew that the statue was looted when she acquired it. Sotheby's was likewise not penalized, aside from yet another round of negative publicity due to suspect behavior on the part of the individuals in the auction house (for an extensive look at the various problematic issues in Sotheby's history, one may look at Peter Watson's *Sotheby's: the Inside Story*). They did offer to pay for the shipping of the statue back to Cambodia – no small feat, as it weighs in at half a ton.

Duryodhana was not the only looted statue to make its way back to Cambodia recently. Also in 2013, the Metropolitan Museum of Art voluntarily returned a pair of comparable statues, perhaps taken from the same temple complex, referred to as the Kneeling Attendants, but who actually represent two of the Pandava brothers, the rival claimants to the throne in the epic "Mahabharata." In May 2014, yet another statue from the Koh Ker complex, the Bhima, was returned from the Norton Simon Museum in California, where it had been a star of the collection since it was bought from a New York dealer in 1976. It had been looted from the same temple, Prasat Chen, in the Koh Ker complex, as had the Duryodhana. Bhima, like the Kneeling Attendants, were all representations of Pandava brothers. Bhima's feet, still on site at Prasat Chen, were identified in 2006 by a French archaeologist, Eric Bourdonneau, who produced a digital image that matched the feet in Cambodia to the rest of the statue in the United States. By April 2012, a month after the Duryodhana was featured on the Sotheby's catalog, archaeologists in Cambodia further excavated Prasat Chen and found nine pedestals, all of which had once contained statues from this same group – four of which would shortly be restored.

The returned statues were displayed together in May 2014 in a special gallery Cambodia unveiled in an elaborate ceremony that featured classical dancers. It was particularly fitting that the Bhima, the Kneeling Attendants and the Duryodhana should have been looted and returned together. In the epic “Mahabharata,” Duryodhana does battle with Bhima and his five Pandava brothers, challengers as heir to the throne. Their millennia-old battle was mirrored in a traditional Cambodian dance to honor a guest or a spirit when they return to their homeland. As the dancers swirled and glided barefoot before the embattled stone warriors, whose feet, sawn-off at the ankles, will never again touch the ground, but who now float above the earth of the nation from which they were ripped decades ago.¹

This section will look at cases like this, following the trail of antiquities looted from source countries, particularly Italy.

Stefano Alessandrini examines the story of antiquities looters and collectors as a human one, and it is often easy to forget that each tomb raider, and each wealthy collector, has a full and rich biography. In order to illuminate the history of 18th and 19th century collecting of looted Greek vases, this chapter examines the lives of several famous collectors, foremost among them Sir William Hamilton, British ambassador to Naples, and Napoleon’s brother, Lucien Bonaparte. We also learn the looting history of famous sites like Vulci and Cerveteri, which have been looted for millennia, but which began to be stripped in earnest in the early 19th century, making it that much more surprising that tomb raiders still manage to dig up works by the likes of Euphronios at these sites centuries on.

Using a collection of possibly looted ancient Iraqi incantation bowls as a lens, **Neil Brodie** challenges the argument made by some scholars that expanding knowledge justifies looting, or at least putting to use looted artifacts. In fact, studying likely looted artifacts allows owners to rationalize their purchase and gives the objects a sheen or respectability. He likewise argues against the move by some collectors to suppress, or attempt to suppress, the publication of provenance, and links this to potentially problematic interrelationships between collectors and scholars, some of whom appear to collude.

Simon MacKenzie and **Tess Davis**, both criminologists based at University of Glasgow, embarked on a trek through Cambodia to follow the trail of looted ancient Buddhist temple statues, along the lines of those which were nearly sold at auction on recent years, only to be withdrawn once a clear connection was made between the statue in the catalog, which was missing its feet, and the sawed-off feet, which had been found on a plinth in a Cambodian temple. Rather than sit in an office and analyze data, or bemoan lack of enterprise, these admirable adventurer criminologists set off to see what they could learn in situ. The result is a dynamic read, and combines personal travelogue with acute criminological analysis. They met

executioners, gangsters and terrorists, and learned of the steady flow of antiquities for sale abroad during and after the Khmer Rouge.

The powerful chapter written by **Christos Tsirogiannis** is as much a remarkable piece of investigative journalism, as it is an academic essay. Tsirogiannis delves deep into a number of specific lots at Christie's auctions that lacked provenance or seemed related to the notorious dealers in looted antiquities, Gianfranco Becchina, Giacomo Medici and Robin Symes. Combining scholarly research, keen observation and investigative techniques borrowed from newspaper reporters (repeatedly emailing for information and recording responses, even when they are conspicuously unhelpful), we are offered a damning look at a number of objects of specific origin that were nevertheless sold through Christie's, an auction house that has gotten off lightly when compared to its rival, Sotheby's, which has been the subject of more than one entire book on its illicit dealings, but is nevertheless far from clean of hand.

It is particularly striking how, regardless of the case study chosen, the same names crop up in the collecting history of questionable objects. One cannot throw a stone far without striking the names of Giacomo Medici and Gianfranco Becchina, arguably the two leading dealers in looted antiquities from Italy and truly ubiquitous when discussing problematic antiquities. The saga of illicit antiquities that passed through the hands of Giacomo Medici, and which appear in his now-infamous dossier of Polaroids (he took photos of objects he had acquired, freshly unearthed from tombs by clandestine tomb raiders), continues in this chapter co-authored by **David Gill** and **Christos Tsirogiannis**. The Medici Polaroids are in many ways an investigator's dream: it is an easy matter, most of the time, to match the Polaroid of a freshly dug antiquity, covered in grime and broken, with its clean, doctored, restored equivalent, featured (inappropriately) in a major auction house catalog. The authors continue their close-up detective work in this chapter tracing Medici Polaroids to various auction houses.

We are fortunate to include a chapter by **George Abungu**, who has worked for many years with ICOM, UNESCO and a variety of other international organizations beyond his native Kenya, representing a relatively rare voice and focus area – the looting of antiquities throughout Africa. So much scholarship in this field has focused on Europe and, more recently, the Middle East, that the enormous wealth of the African continent, Egypt aside, has gone largely overlooked. Abungu's chapter tries to address issues in a number of countries, beyond what has made the news of late (Mali, Libya, Egypt), raising awareness of just how much Eurocentric news and scholarship tends to bypass a continent's worth of treasures.

Lawrence Rothfield's chapter points out the valid point that art crime tends to lump together fine art theft from extant collections with looting of antiquities from archaeological sites, when the two have little in common. It is far easier to profit directly from the sale of looted antiquities,

which for all intents and purposes have never before existed for modern man, and therefore will never appear on a stolen art database, because no one has seen them since they were first buried. They can, therefore, be sold on an open market, with doctored excavation and exportation documents, or with no documents at all, whereas stolen art from known collections is far more difficult for criminals to turn into cash. Rothfield explores the idea that archaeological looting is more a policy problem than most discussants have considered to date, and suggests a new form of tax to pay for the local protection of archaeological sites as an innovative way to approach what is a problem of enormous scale, and that much more serious when we understand that terrorist organizations like ISIS supplement their activities through funds generated through the sale of looted antiquities.

13

Looting and Passion of Greek Vases from Etruria and Magna Graecia: The Birth of the Great Collections

Stefano Alessandrini

The great museums of the world proudly display beautiful painted vases in their showcases. Their painted figures speak about heroes, adventures, lovers. They tell the old, great stories that have always fascinated us, and it is extraordinary to think that these beautiful objects were created thousands years ago, for the wealthy people of the Mediterranean, in particular for the Etruscans. But where did these masterpieces come from? Why are they so extraordinarily well-preserved? Who discovered them?

Unfortunately (and almost always) collections of these objects are created by committing real crimes against archaeology. More precisely, the history of our vases starts with accidental discoveries, made centuries ago by some peasants who found unexplained, strange holes in the ground while they were ploughing. Those openings were not a geological phenomenon, but openings to the tombs. Burial sites that belonged to people who lived long before the immense power of Rome would bring civilization to the Western world. This chapter examines the history of 17th and 18th century “gentlemen” tomb raiders and collectors of Greek vases in Italy.

Sir William Hamilton

One of the earliest grave robbers had an illustrious name: William Hamilton, British ambassador to the Kingdom of Naples from 1764 to 1800. Hamilton made a career following (and participating in) clandestine excavations. As a result, he picked up collections of great value from several archaeological sites in Campania. Hamilton was deeply interested in the digging. His fascination extended beyond his own personal interests, to that of his family, friends and acquaintances. In 1772, he sold his first collection to the British Museum. For the first time, painted vases began to be studied outside Italy.

William Hamilton had a network of informers who kept him apprised of new discoveries. In 1766, the burial site of Trebula, not far from Caserta,

was found, and Hamilton was notified while he was in attendance at the court of Ferdinando IV, in the beautiful palace of Caserta. He stole away in secret to take an active part in removing the artifacts from the tombs. But this time, the clandestine excavations were discovered and halted, and the Marquis Bernardo Tanucci arrested the Neapolitan informant in Sir William's pay. Not to be thwarted, the ambassador, protected by his diplomatic status and the English Crown, protested to Ferdinando IV, and the informant was released.²

Thus Hamilton took possession of a fantastic collection of 5th century vases and bronze artifacts. The trove included an Attic red-figure bell-krater vase, depicting a symposium of young people lying on couches, playing at Kottabos, which is now in the British Museum.³

Hence, for nearly 33 years, Sessa Palace was the cultural center of Naples, the residence of Sir William Hamilton, where the ambassador kept his collection of Greek vases. "Sir William Hamilton has much enjoyed this city for a long time and now he reaps the rewards," wrote Goethe, who knew him in 1787. "His apartment is magnificent and the view that can be enjoyed from the corner room is perhaps unique . . . You cannot possibly find another view like this in Europe."⁴ The wonderful view was from Sorrento to Capri to Posillipo. But what of Hamilton?

He arrived in Naples in 1764. He was a tall man, elegant and smart in appearance. He cultivated a certain disingenuousness of manner, which was hugely successful in that corrupt court, through which he moved with ease. At that time, Naples was almost at the pinnacle of its political power, but Hamilton, secure in the knowledge that he was supported by the English throne, was certainly not humble in his dealings with the King and the Court. He was a lover of classical antiquities, and he helped to change the nature of art patronage in Naples and throughout Europe. Shortly after his arrival, he bought hundreds of vases from the excavations at Herculaneum, and from private collections. Many came from Capua and Nola (some from St. Agatha of the Goths, in the area of Benevento). Hamilton also bore witness to many discoveries in Campania, which he reported to the Society of Antiquarians, and he was present at the discovery of a tomb near Nola, painted with scenes depicting Samnite warriors (now in the Archaeological Museum of Naples).

The year after the discovery of this tomb, he published a volume entitled *Collection of Etruscan, Greek and Roman from the Cabinet of the Honorable William Hamilton*. Hamilton became famous throughout the Kingdom of Naples as a great patron, and this reputation grew and spread to Paris and London. As a consequence, many artists, including Philip Hackert and Thomas Jones, arrived in Naples with letters of recommendation to the ambassador. Hamilton was fascinated by Vesuvius, and he went on an expedition with friends to visit the crater. Afterwards, he described the charm of

the eruptions. In 1766, he published his book, *Campi Phlaegrei*, a treatment of key places for the Grand Tour, as described by classical authors.

In 1792, Hamilton's wife died and he became strongly attracted to Emma Lyon, the beautiful young mistress of his nephew. It wasn't long before the two married. Goethe was struck by the contrast between William's judicious maturity and Emma's vivacity. She enjoyed dressing in the Grecian style and, for important guests she would often perform the tarantella, a very sensual dance in the eyes of foreigners. In September 1793, Captain Horatio Nelson, who carried documents for Hamilton, arrived in Naples on the ship, *Agamemnon*. Sir William introduced him to Lady Hamilton, telling her that he would astonish the world. By 1796, Hamilton had assembled his second collection of vases, "finer than the first," in his own opinion.⁵ Emma performed a dance round them, using many of the vases as props.

On 12 September 1798, Nelson's flagship, the *Vanguard*, arrived in Naples after the triumph against the ships of Napoleon at Aboukir Bay. Ambassador Hamilton received Nelson as a hero, and Lady Emma threw her arms around the victor. In 1798, with Naples under threat from the advancing Armies of Napoleon, Sir William and Lady Hamilton fled the city. Each individual vase in the collection was wrapped in putty and carefully packed into large wooden crates. Eight of these crates, containing something in the region of 1,200 vases, were loaded aboard the warship *Colossus* for transportation to England; the rest traveled in convoy in a smaller transport vessel. On December 10, the *Colossus* was wrecked at Sicily taking half of the collection to the bottom of the sea. The remainder of the collection arrived intact with the other ship, and was sold in four auctions at Christie's (in 1801 Thomas Hope purchased the collection of mostly South Italian vases).⁶ In 1799, it was judged prudent to remove the Royal from Naples, to escape the dangers of the French Revolution. Nelson escorted them to Palermo, and Sir William and Emma (now mistress of Horatio) accompanied them. Although Ferdinand IV later returned to Naples, it was the beginning of the end of the Bourbon's reign.

In the meantime, Sir William and Lady Hamilton had returned to London, to take up their residence in Grosvenor Square. Horatio Nelson also returned to London, to increasing matrimonial difficulties. Eventually, he found himself unable to live with his wife, and he separated from her and went to live with his friends, the Hamiltons. In 1801, Emma gave birth to a daughter, Horatia, whom the Admiral recognized as his daughter.

Hamilton, now an old man, died in 1803. Two years later, Nelson was victorious at the Battle of Trafalgar, but did not survive that glorious day. The British, thanks to Hamilton and his "excavations," were now able to admire the vases from Magna Grecia, which were on display for the first time in a public museum. Two, in particular, became famous: the "Hamilton Vase" (a large Apulian volute-krater) and the wonderful "Meidias hydria."⁷

Lucien Bonaparte

In a strange twist of fate, another character, brother of the greatest enemy of the British Empire so worthily represented by Hamilton, would play a pivotal role in the looting and collecting of our vases. Luciano, Napoleon's younger brother, was intensely patriotic. While in Corsica he joined the independence movement with Pasquale Paoli. Then, under the influence of Robespierre, he joined the Jacobins, (for which he was arrested). Most of all though, he was Napoleon's faithful ally in the conquest of power.

During the coup of 18 Brumaire in 1799 (the second month of the French Republican calendar), the Council of Five Hundred was poised to declare Napoleon an outlaw. Before the words could be spoken, Luciano grabbed a sword, pointed it at his brother's throat, and declared that he would kill Napoleon if he had violated the freedom of France. Luciano avoided living in the shadow of the future Emperor, but he did not refuse the associated honors and favors.

He disapproved of his brother's style of government and, against his brother's wishes, married the widow, Alexandrina de Bleschamps. For Luciano, by assuming the role of dictator, Napoleon had betrayed his Republican ideals. So in 1804, even though he loved Napoleon (and he supported him through even the direst moments), he established himself in Rome. In 1808, he bought land in Canino, in Tuscia (an ancient Etruscan area of Lazio). A year later, he went to live in the nearby castle of Musignano, which was presented to him by Pius VII. Then Napoleon annexed the Papal States to the French Empire, and Luciano fled. In 1810, he was captured by the British in Sardinia, while aboard a ship trying to reach America. He was taken to London, where he remained a prisoner until 1814 when, with Napoleon transferred to Elba, he was released and returned to Rome (where Pius VII appointed him Prince of Canino).⁸

His ill-fortune, however, continued to dog him. Just a few years later, he found himself on the brink of bankruptcy. His creditors were at the door, he had a large family, an ambitious wife and a score of servants, guards and ladies-in-waiting. And he had a famous name and a title to honor: Prince Lucien Bonaparte.

He was forced to sell Palazzo Nuñez in Rome, where he had led a lavish life. He also sold the splendid Villa Rufinella at Frascati. And still it was not enough. Luciano was forced to ask for help from family members, to prevent the name of Bonaparte being dragged through the courts by his creditors. The family rallied, and help came from his uncle, Cardinal Fesch (an extraordinary art collector) and his older brother, Joseph, former king of Naples and Spain, who now lived in America. But the debts were enormous: even this assistance could not stem the tide of financial problems. Just when it seemed all was lost, an extraordinary event occurred in his life: the discovery of the necropolis of Vulci.

Vulci

The Prince of Canino saw his opportunity. He launched a new business venture and started the systematic exploitation of the archaeological riches of his land. He “dignified” this as the creation and development of the international market of antiquities. The risk was high, but it was an economic and personal triumph.

Lucien Bonaparte was not only a country squire who organized hunts and digs (or a disgraced politician exiled to insignificant Canino, the lost part of Etruria). He was a man with a strong and complex personality. He managed to combine the roles of revolutionary, friend of the pope, Republican, aristocrat, intellectual and merchant at one and the same time.

It must, of course, be remembered that in the mid-18th century, scholars and antiquarians had already begun to collect beautiful objects of art found in Etruria. Moreover, desecration of tombs has occurred throughout the ages, since the time of the Etruscans and the Romans themselves. At the time of Julius Caesar, painted Attic vases were much sought after and the Emperor Theodoric ordered the breaking open of the tombs of Italy to recover gold and metals (Cassiodorus).⁹

In the early decades of the 19th century, the tempo started to change, and the catalyst was Lucien Bonaparte and his discoveries. “Tomb fever” exploded, especially among wealthy aristocrats and great landowners, who began systematic programs of sustained digging in the ancient necropoli. These were the first real grave robbers and they owned much of Etruria.

George Dennis, in *City and Necropolis of Etruria*, writes that, in the spring of 1828 the ceiling of a chamber tomb near Vulci Castle collapsed under the weight of the oxen ploughing a field, revealing not only the chamber beneath, but its treasure trove of vases and other artifacts. Thus began a “treasure hunt” that continues today. Dennis, an archaeologist, traveler, writer and diplomat, penned articles for the British public, and the first edition of his work was published in London in 1848. His narratives, describing the course of events, made compelling reading, and it is likely that his account of the episode with the oxen was learned from the Bonapartes.¹⁰

Toward the end of 1828, Luciano Bonaparte started a “production line” of digging and, in just a few weeks, his operations had uncovered over 2,000 artifacts. Luciano understood the cultural value of his finds, but also (and unfortunately) he grasped the commercial potential of the new “market,” upon which museums and collectors (both public and private) would insatiably feed. Indeed, almost all of the artifacts discovered by Luciano ended up abroad, even though papal law forbade excavation and trade in such objects. He was an avid seeker of the painted vases, and could not bear to lose even the smallest fragment. Instead, they were carefully recovered and then painstakingly reassembled.

Some extraordinary pieces were recovered and handed over to restorers (who also made copies). But less valuable vessels, such as *buccheri* and simple crockery, were destroyed, so as not to “saturate” the market and bring down prices. Vulci, “fortunately,” had never been intensively quarried over the centuries and it proved to be a “goldmine” of vases. The prince continued excavations until his death at Viterbo, in 1840.

During his career, Luciano made some sensational blunders. He mistook the necropolis of Vulci for that of Vetulonia, one of the 12 major Etruscan cities quoted in Roman and Etruscan sources, and which historians and archaeologists in Maremma had been seeking since the Renaissance. In his defense, the words *Velcha* (Vulci) and *Vatlu* (Vetulonia) are similar. He also believed that all figured vases, included Attic and Corinthian, were Etruscan. For him, a kylix depicting Dionysus on a boat surrounded by vines (now in the Antikensammlungen in München) represented Noah, “inventor” of wine.

In Viterbo, in 1829, he published his *Muséum étrusque de Lucien Bonaparte, Prince of Canino* and in 1830 the *Catalogo di scelte antichità etrusche degli scavi del Principe di Canino* (Catalogue of Choice Etruscan Antiquities Found in the Excavations of the Prince of Canino). In these volumes, each object is carefully reported, by describing the form, the subject of decoration, size, date and place of discovery. Luciano was undoubtedly the greatest collector of his time. True, he sold much of what he found, but he reserved the most beautiful pieces for his own collection. This, unfortunately, was destined to be dispersed by his heirs.

On Luciano’s death, the digging did not stop, but increased. The “Princess” Alexandrine de Bleschamps, widow of Luciano, ran “the industry of the excavations” with almost military precision, and for the highest possible profit. When Dennis visited Vulci in 1842, Luciano had been dead for a couple of years, but the “production line” was very active, under the direction of the energetic widow. This pillager’s methods were appalling. Dennis saw gangs of diggers working under the supervision of a man armed with a rifle. In each case, the tomb was opened and every painted fragment was removed. Plain, unpainted vases and bowls were destroyed, and then the tomb was re-closed and buried. After this, the gang moved on to the next tomb, and the whole dreadful process was repeated. Dennis, awestruck by such flagrant vandalism, asked the gang leader, who was overseeing the work, if he could take one of the vases that was to be destroyed, as a memento. The man however replied that it was necessary to carry out the orders of the princess. So Dennis left Vulci without a souvenir. The castle of Musignano (residence of Bonaparte) and its gardens were full of exhibits. Dennis saw the vases ready to be exported, and a restorer who reassembled the fragments.

For the tomb-raiding princess, agriculture was still important. Her excavations were carried out when farm work was slack (from autumn to spring), and the graves were always to be re-buried under the earth, so that the land could continue to be used for agricultural purposes.

The widow Bonaparte squeezed Vulci like a lemon. She loved to wear precious jewels stolen from Etruscan tombs, and it is unknown how many thousands of graves she looted, nor is it known how many objects were destroyed on her orders. Certainly today, archaeological museums all around the world proudly display beautiful vases from Vulci. But the Bonapartes were not the only tomb raiders operating on that territory. Almost all the “gentlemen” devoted time to excavations, the most famous of which were the Campanari brothers and Torlonia, who purchased Bonaparte’s property and discovered the fabled Tomb Francois, in 1857. He removed the frescoes and had them moved to the Villa Albani in Rome.¹¹

Cerveteri

After speaking of Campania and Vulci, let us shift our focus to the plundering of the most famous (and extended) necropolis of the Etruscan world: the tombs of the great city of Cerveteri. The first “explorations” of the tombs of the ancient Caere began in the 19th century, and were obviously made by treasure hunters who were also genuine lovers of the ancient artifacts hidden there. In 1836, there came an exceptional find. General Vincenzo Galassi and the Parish Priest of Cerveteri, Alessandro Regolini, discovered burial goods of incredible quality, in a tomb dating from the 7th century BC, at the Sorbo necropolis. These artifacts are now in the Gregorian Etruscan Museum.

In years following this find, more and more excavations were made in areas of the necropolis and the ancient city. The most enthusiastic searchers were the Castellani and Boccanera, but it was the Marquis Campana who became known as the most famous Cerveteri digger.

Giovanni Pietro Campana was born in Rome in 1808. His grandfather had carried out excavations and was a collector of antiquities, and his father, Prospero, had amassed a large collection of coins. Campana joined the Monte di Pietà (the institutional pawnbroker) in 1831, and was appointed general manager in 1833. Thanks to him, the Monte di Pietà expanded and it granted many loans to the Papal Treasury. Campana had unlimited powers, because there was no regulation of the Monte, although in 1847, Pope Pius IX ordered an investigation into its activities. The only outcome, however, was a written report recommending a more organized administration.

Campana wrote that his life was “not always happy stories” and to take his mind off this, he would go down among the ruins and the earth in search of “the buried trophies” of the past glories of Italy.¹² In 1831, he discovered the columbarium of Pomponius Hylas, near the Via Latina in Rome. He was also appointed to direct excavations in Ostia until 1835 by Cardinal Bartolomeo Pacca.

The Bulletin of the Institute of Archaeological Correspondence, in 1836, announced the new Campana collection of antiquities (the largest collection was visited by Pope Pius IX in 1846). Campana was part of the Commission

for Antiquities and Fine Arts, and was treasurer of the Pontifical Academy of Archaeology. He had also sold many Roman coins in London. In 1843, he discovered a painted tomb of exceptional quality in the necropolis of Veii. Shortly after, he began to dig in Cerveteri.

Campana organized digs in the necropolis of Banditaccia, from 1845 to 1846. George Dennis described some of the freshly discovered tombs, and Heinrich Braun wrote about the “Campana sarcophagus.”¹³ The vases ended up in Campana’s collection. Campana declared that he wanted to create a “museum model,” and as he was a powerful man, no one checked on the correctness of his excavations in Cerveteri.

In 1849, after the fall of the Roman Republic, Campana was appointed by the French to “protect” the monuments of Rome. The Monte di Pietà, under Campana’s direction, began to make loans, in exchange for works of art and old master paintings. Campana married an English woman, Emily Rowles, bought a mansion and lent money to Napoleon III. In 1851, he discovered the fabulous Tomb of the Reliefs in Cerveteri. He was at the height of his success.

But then disaster struck, and his fortune was destroyed. At the end of 1854, his debts amounted to about 500,000 scudi (practically a year’s salary for 100 cardinals) but his collection was worth twice as much. Consequently Campana tried to sell some of it abroad, but his efforts met with no success: It is likely that objects which were simply indiscriminately grabbed were not particularly desirable to some important clients, who would have been looking for more “prestigious” works, such as large marble statues.

On 28 November 1857, Campana was arrested for embezzlement and abuse of office, and on 5 July 1858, he was sentenced to 20 years in prison, and obliged to repay his debts.¹⁴ His arrest was dramatic. The archaeological world spoke of a “great wound” inflicted “on the nation, art, and science.”¹⁵ He was president of the Pontifical Academy at the end of 1856, and its collections included “primitive” Italian, Renaissance and Baroque paintings and ceramics. In 1856, he published a catalog of the best statues and materials (*Marbres antiques du Musée Campana à Rome*). These were already too numerous to be housed in his villa, and in the Lateran Palace on Via del Babuino. As a result, he bought storage space in Via Margutta and in Via dei Giubbonari. To his accusers, he had sacrificed his fortune for his “passion for antiques and the arts.”¹⁶

The enormous loans he had taken out were to increase his collections, and his museum was the product of treasures clandestinely stolen from the Monte di Pietà over many years. Archaeologists and art historians complained bitterly about Campana’s “monopoly” at Cerveteri, and claimed that many of his finds had never been made available for public viewing (*Bulletin of the Institute*, 1852 and 1856). In order to avoid a scandal, Campana proposed a “Museum of Italy.”¹⁷ (*Bullettino dell’Istituto di Corrispondenza Archeologica* from 1839 to 1862) He was also strongly criticized for his “bad

habit” of entrusting the restoration of fragments to restorers who devised “messes without merit,” arbitrary reconstructions and actual forgeries.¹⁸

Notwithstanding, many demanded his release from prison, especially Napoleon III. Pius IX was initially unyielding, but in June 1859, the remainder of the sentence was commuted to exile. On 23 April 1859, Campana was forced to cede 900,000 scudi, to pay his debt to the Monte, thus losing all of his “antiques or art” and almost all of his properties.

On 23 May 1860, a committee of scholars set a value on the collection: 836,754 scudi, excluding coins. The committee suggested that the state should acquire the collections of pottery, jewelry and coins, and the collections of terracotta reliefs, paintings and statues. Nothing, however, was done. The announcement of the sale of the collection unleashed a “diplomatic war” among potential buyers. The papal government granted the privilege of first choice to the Russian agent. There were strong protests in the French press against the break-up of the collection.

The following year, nearly 600 pieces from the collection were purchased by the Tsar for 125,000 scudi. Thanks to the success of the “affaire Campana,” the agent of the Tsar, Stepan Gedeonov, was appointed first director of the Hermitage. He had managed to bring to Russia 500 artifacts (including one Euphronios Psykter), 193 bronzes and 78 sculptures.

For 812,000 scudi, Napoleon III made sure that many of the remaining artifacts ended up in the Louvre. Paris exhibited painted terracotta plaques of great rarity, and a wonderful sarcophagus depicting two spouses. There were also two great calyx-kraters made by Euphronios and many other beautiful vases.¹⁹ Other objects ended up in London, Brussels, Florence and in the Capitoline Museums in Rome. The largest private archaeological collection of the 19th century was thus dismembered.

Upon his release from prison, Campana went to Naples. In 1864, he went to Geneva and in 1866, to Paris. In 1867, he filed a lawsuit in the Court of Rome to try to recover the difference between the sale of his collections and his debt (and unsold items) from the Monte di Pietà, but he was unsuccessful. Around 20 September 1870, he returned to Rome, and filed a new lawsuit to recover money and property. In 1875, he went to Florence, where his wife died. He died in Rome, on 10 October 1880, on the eve of the first hearing of the new trial.

Thus have the largest museums in the world created their collections of ancient Italian vases. They were produced by the great Greek artists, and sold by merchant navigators to the rich ancient “Italian Greeks” and to the Etruscans, the greatest collectors of those masterpieces. They rested in rock-cut tombs, buried in a sleep that seemed eternal. Then came the blows of the spade and pickaxe, and the light of the sun and a new glory. Those masterpieces created for a few, after their plunder, are now admired by millions of people all over the world (and still sought after today, “at any cost,” by unworthy men without scruples).

Notes

1. The preceding text was originally prepared by the author as a feature for *The Guardian* newspaper. As of the date of the submission of this manuscript, that feature was accepted by *The Guardian* but has not yet run.
2. Claudio Calastri, Il territorio di Trebula Balliensis. *Carta Archeologica e ricerche in Campania* (2006), L'Erma di Bretschneider.
3. P.H. d'Hancarville, *Antiquités Etrusques, Grecques Et Romains, Tireses Du Cabinet De M. Hamilton* (Naples), 1766–1767.
4. Johann Wolfgang von Goethe, *Italian Journey* (1787).
5. J.H.W. Tischbein, *Collection of Engravings from Greek Vases . . . in the possession of Sir W. Hamilton* (Naples), 1791.
6. Roland Morris, *H.M.S. Colossus: The Story of the Salvage of the Hamilton treasures* (Penzance: Periscope Publishing 2006).
7. Nancy H. Ramage, *Sir William Hamilton as collector, exporter and dealer*. *American Journal of Archaeology* (94: 3 1990).
8. Antonello Pietromarchi, *Lucien Bonaparte, le frère insoumis*. (Perrin 2004).
9. Cassiodorus, *Variae epistolae*, 4, 34, 3, 5th century AD.
10. For the most part, the stories and anecdotes of the sacking the Vulci Necropolis by Luciano Bonaparte and his wife Alexandrine de Bleschamps come from George Dennis and his splendid account of his travels: Dennis, George. (1848). *The cities and cemeteries of Etruria*, Chapters XXI – XXII.
11. Anzio Risi, *Canino – Storia, Arte e cultura* (2004).
12. Giampietro Campana, *Antiche opere in plastica discoperte, raccolte, e dichiarate*. Roma. 1842.
13. *Bulletino dell'Istituto di Corrispondenza Archeologica*, 1850.
14. Istituto Archeologico Germanico, Rome: p. 3406, Mag: *Causa Campana . . .* (1858), I–III.
15. Istituto Archeologico Germanico, p. 3406, Mag: *Causa Campana . . .* (1858), I–III.
16. *Il Museo Campana e le sue vicende*, in *Studi Romani*, III (1955).
17. *Dissertazioni della Pontificia Accademia Romana di archeologia*, (from 1840 to 1864). *Bullettino dell'Istituto di Corrispondenza Archeologica* (from 1839 to 1862).
18. A. Michaelis, *Un secolo di scoperte archeologiche* (Bari 1912).
19. Eveline Schlumberger, *L'inespuisable collection Campana*, in *Connaissance des Arts* (1964).

14

Aramaic Incantation Bowls in War and in Peace

Neil Brodie

The archaeological sites and museums of Iraq have been subject to intermittent and sometimes serious looting since the end of the 1991 Gulf War. Stolen and illegally exported artifacts have been traded and collected on the international market without any indication of provenance (ownership history) that might help to reveal their illicit pedigrees. The act of looting destroys material evidence of the past and the trade is in the hands of criminals. Nevertheless, many of these artifacts that are now in private hands are being published and studied by university-based scholars. This chapter offers a brief overview of the legal and ethical issues that the collection and study of unprovenanced, but likely looted and criminally traded, objects entails, by reference to the example of Aramaic-inscribed incantation bowls.

Legal contexts

Aramaic incantation bowls date to between the 5th and 8th centuries AD. Typically, they are hemispherical, sometimes flat-bottomed ceramic bowls with Aramaic inscriptions written in ink on their inner surfaces, frequently spiraling outward from the center. Each inscription records a magical incantation protecting against malevolent spirits. As a corpus, the inscriptions comprise a body of writing illuminating the popular religious or magical beliefs of the Jewish inhabitants of Sassanid Mesopotamia. Until 1990, fewer than 1,000 Aramaic bowls had been discovered. Only a few derived from a documented archaeological context, all of which were in Iraq.¹ During the 1990s and into the 2000s, hundreds of previously unknown bowls began to appear on the antiquities market, and in private collections. Foremost among the private collections assembled during this period were those of Martin Schøyen² and Shlomo Moussaieff.³ At least 2,000 Aramaic

An earlier version of this chapter appeared in *The Journal of Art Crime* (Spring 2014).

incantation bowls are now known to exist. It is widely believed that the many hundreds of previously unknown incantation bowls acquired since 1991 must have derived from illegal digging in Iraq after the 1991 Gulf War.

In September 2004, a Norwegian Broadcasting Corporation (NRK) television documentary questioned the provenance of bowls in Schøyen's collection, alleging from the testimony of an unnamed Iraqi archaeologist that the bowls had been recovered in 1992, by clandestine digging in the area of Najaf, and transported by road to Amman, and passing through London before being acquired by Schøyen.⁴ If this account is correct, the trade of the bowls would have been illegal under Iraqi law and in direct contravention of the 1990 United Nations Security Council Resolution (UNSCR) 661, which imposed a trade embargo on all goods in and out of Iraq. The embargo applied to antiquities, as much as to any other class of material though, throughout the 1990s and early 2000s, artifacts (including incantation bowls) were flowing out of Iraq onto the international market.⁵ Schøyen denied the NRK account of illegal trade, however, expressing his belief that his 654 bowls had been out of Iraq since at least the 1960s when they had been in Jordan.⁶

In 1996, several years before the NRK program screened, Schøyen's bowls had been deposited at the Department of Hebrew and Jewish Studies at University College London (UCL), for the purpose of study and research by Shaul Shaked of the Hebrew University. Research on the bowls proceeded, without public incident or interference, until the 2005 NRK allegations of looting and illegal trade from Iraq. UCL announced, on 10 October 2004, that it had alerted the Metropolitan Police to the incantation bowls in its possession, as required under Article 8(2) of the UK's Statutory Instrument 2003 No. 1519, the Iraq (United Nations Sanctions) Order (SI 1519), but that the police had advised UCL that there was "no reason to take the matter further," and that there was "no objection to the return of the material to Mr. Schøyen." UCL also announced the appointment of an independent committee of inquiry to review the provenance and rightful ownership of the bowls, together with the university's future policies as regards the acquisition and study of unprovenanced cultural objects, more generally. UCL's stated intention was that "subject to obligations of confidence," the conclusions of the review would be published.⁷

UCL's 2004 statement went on to say that "UCL's possession has now entered the post-2002 era, when new principles and policies have emerged and attitudes have changed." The significance awarded to the 2002 date was probably because it marked the accession that year of the UK Government to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The 2002 adoption of the 1970 UNESCO Convention had no retrospective force in British law, and so its requirements, as regards the return of stolen cultural objects, would not have applied to the incantation bowls, because

they had been in storage at UCL since 1996. But by 2004 in Britain, both the Museums Association and the British Museum had formulated acquisitions and loans policies, based on principles enshrined in the UNESCO Convention that prohibited the acquisition of any object that could not be shown to have been exported from its country of origin before 1970, or exported legally after that date. Thus, if UCL wanted to adhere to what had, by 2004, become best practice in British museums and other collecting institutions (which would include UCL), it would have to consider the implications of holding material that did not meet the 1970 requirement – and that might mean returning the incantation bowls to Iraq. UCL had maneuvered itself into the uncomfortable position of arbitrator, as regards ownership of the bowls.

In May 2005, UCL announced that its planned independent committee of inquiry had been established in March of that year (with the cooperation and consent of Schøyen) to investigate the provenance of the incantation bowls and the ethical, legal and professional implications arising from UCL's possession of them, and to then make recommendations regarding ethical policies for the future acquisition and study of cultural objects by UCL and UCL staff.⁸ In July 2006, the UCL committee submitted the first part of its report (into the provenance of the bowls and implications for UCL), and a copy was made available to Schøyen though, at that time, the findings were not made public. While the committee had found nothing to suggest that Schøyen had any knowledge of the bowls' origins, or had acted dishonestly in acquiring the bowls, it concluded that "on the balance of probabilities," the bowls had been removed illegally from Iraq sometime after August 1990.⁹ In March 2007, Schøyen initiated legal proceedings against UCL for the return of the bowls.¹⁰ In June 2007, a joint UCL/Schøyen Collection press release stated that, after "investigation by an eminent panel of experts, and further enquiries of its own, UCL is pleased to announce that no adverse claims to the Schøyen Collection's right and title have been made or intimated."¹¹ The press release went on to state: "UCL has now returned the Bowls to the Schøyen Collection, and has agreed to pay a sum in respect of its possession of them."¹² The agreement for payment, and the return of the bowls, appears to have been brokered as part of an out-of-court settlement with Schøyen, in return for which he ended the legal proceedings initiated in March 2007. The agreement also provided for non-publication of the committee of enquiry's report,¹³ which contains evidence and expert opinions concerning the provenance of the bowls, and which would comprise an important resource for research into the trade of the bowls, and of antiquities more generally, out of Iraq.

For example, in a press release dated 14 October 2007,¹⁴ Schøyen stated that "the bowls were exported from Jordan, and not from Iraq, and already in 1988," and furthermore that the bowls "were also part of an old established collection that was not put together in recent years, as has been

implied, but was built up over many years by two generations of collectors in Jordan well before 1965 (in the 1930s), and was granted a valid export license by the Jordanian authorities in 1988. The Schøyen Collection rejects any imputation of wrongdoing as wrong-headed and unwarranted." Among other things, the suppressed report contains a forensic account of the export license which questions its validity.¹⁵ The implication would be that Schøyen had been duped.

Archaeological contexts

The report on the University of Pennsylvania's 1888–1890 expedition to Nippur remains the best-documented archaeological context for the bowls.¹⁶ Incantation bowls were found in the structural remains of houses that were uncovered immediately below the surface. A house might contain one or more incantation bowls, alongside domestic artifacts, such as grinding stones and pottery. The bowls were found placed upside down under thresholds, or under the floor in room corners. The fact that bowls are found in the upper strata of sites such as Nippur encourages the belief that they are "surface finds." Mark Geller, for example, who was at UCL's Department of Hebrew and Jewish Studies when the bowls were first accepted on loan wrote, in 2005, that "many of the sites in Iraq have Jewish Aramaic incantation bowls as surface finds," and that "within the past decade, hundreds of Aramaic incantation bowls have appeared on the antiquities market, collected from archaeological sites; there is no evidence that these objects have been stolen from a museum."¹⁷ Schøyen, too, claimed that his bowls were "mostly surface chance finds, and not the result of active excavation."¹⁸

The idea that the bowls are surface finds probably reflects the fact that many of them have been found on, or close to, the surface, in the final occupation layers of archaeological sites. That is not to say that they are altogether without context, however, even when the archaeological context is close to the surface, as was shown back in the 19th century at Nippur. But while the label "surface find" can be applied, innocuously enough, to describe the stratigraphic positioning of an object, it often carries implicit connotations of "out of context," which can be wrong. The texts carried by the bowls allow for historical and theological discussion of Jewish religious or magical beliefs, and their relations with the Babylonian Talmud and other contemporaneous belief systems. But the absence of archaeological context frustrates any scholarly aspirations to learn more. A comprehensive account of the material relations of the texts remains out of reach, along with any broader historical and sociological reconstructions. Questions, such as those posed by Shaked in 2011,¹⁹ relating to the social status of the bowls' owners, cannot be answered from the texts alone, nor can those asked about when or why the production and deposition of bowls ended.²⁰ The very fact that the bowls are ubiquitous "surface finds" on long-occupied sites such as Nippur suggests that their end was associated with a broader process of

settlement abandonment, but that cannot be judged from the content of the texts alone. Thus, the bowls are important historical documents, but their absent contexts constrain the types of question that can be asked of them, and limits the reach of historical scholarship

But perhaps not all bowls are, in fact, “surface finds.” There always remains the possibility of a unique and important, though previously unknown, context for the bowls, and one that remains hidden from scholarship, because of the clandestine nature of the bowls’ recovery. It is potentially fallacious to believe that, simply because all bowls so far known with a documented context were found close to or on the surface in domestic architecture, then all bowls must be found in similar circumstances. In a recent article reviewing the publication of some bowls from the Moussaieff Collection, Aramaic specialist Christa Müller-Kessler argues, with regard to the Moussaieff and Schøyen bowls, that the incidence of textual parallels “... proves in detail that a major find of incantation bowls from an ancient site in Iraq or Iran was split up between these two dominant collectors.”²¹ Both collections also contain bowls written for the same client,²² which similarly suggests they were found in close proximity. Müller-Kessler further argues that, because of the accomplishment of their scripts, the bowls may have been found at Sura or Pumbeditha – both home to Talmudic academies. Seeming confirmation of Müller-Kessler’s hypothesis comes in an interview conducted with Moussaieff, where his incantation bowls are described as being from “Pumbeditha in Babylonia.”²³ Pumbeditha is present-day Falluja, and a couple of hundred kilometers north of the Najaf find-spot alleged by NRK. The location of Sura is not known, but is thought to be much closer to Najaf.

If the Schøyen and Moussaieff bowls were, in fact, found together, as Müller-Kessler suggests, at Sura or Pumbeditha, it implies three things. First, the location of a major Talmudic academy site is now known to someone, and should be open to archaeological investigation. Even though the looting of the bowls will have damaged its remains, it should still provide important evidence of associations to improve the interpretation of their texts. Second, the Schøyen and Moussaieff bowls do not together, necessarily, represent the totality of the find assemblage. There is no reason why other bowls from the same find should not have been sold off and disappeared from view. Thus the textual corpus assembled from the presently known bowls cannot be studied as a relational whole. Finally, if the bowls are mistakenly assumed to have been found as single items in domestic contexts (“surface finds”) when, in reality, they were found together at a major center of religious scholarship, it constructs a false and potentially misleading context of interpretation for the texts, and historical conclusions drawn from their study might be wrong.

Ethical contexts

Scholars who routinely engage with unprovenanced, and likely looted, archaeological objects, such as the incantation bowls, defend their position

with arguments about intellectual responsibilities and freedoms. Shaked, for example, who is studying Schøyen's bowls, has said that "it is my responsibility as a scholar to work on an ancient artifact that has information to tell us."²⁴ This type of argument invokes academic freedom, the idea that scholars must be left free from outside interference to pursue objective knowledge, the implication being that objective knowledge is a public good. But apart from philosophical uncertainties about the nature of objective knowledge, it is an argument that is open to challenge on pragmatic grounds. Academic freedom is a classic example of the Isaiah Berlin's "negative freedom,"²⁵ where ideally a scholar's intellectual curiosity is protected from outside interference. Different negative freedoms can come into conflict with one another, however, so that one person's freedom can infringe upon the freedom of another. Thus, the exercise of even negative freedom can become an exercise of power. Such is the case here. Schøyen's suppression of the UCL report facilitated the study of his bowls by his chosen scholars, while at the same time obstructing scholarship critical of the circumstances and conditions of their trade. If Schøyen had not been wealthy enough to challenge a major public institution in court, and to stop UCL from returning the bowls to the ownership of Iraq, the outcome for scholarship and for "academic freedom" would have been somewhat different.

The access of scholars to unprovenanced incantation bowls in private collections appears to be conditional upon their disinterested acceptance of whatever account of provenance, or lack of provenance, the collector sees fit to offer. Cuneiform scholar Andrew George, for example, has expressed his opinion that the:

... importance of primary sources for the reconstruction of man's past makes it imperative that all cuneiform texts be published without prejudice, no matter what their origin, history, and present location, and whether or not their owner makes public what he knows of their recent history...²⁶

Inasmuch as the refusal by collectors to countenance the publication of provenance constrains the freedom of academics who have chosen to study the recent history of the material in question, the necessary acquiescence of scholars as part of their own "free" study impacts negatively upon the differently focused agenda of their colleagues. There is also a question of research ethics. If the bowls have been criminally traded, the harmful consequences of their trade should be taken account of by any scholar desirous of studying them.²⁷ Scholarly experts should hold themselves answerable to more exacting ethical standards than should be expected of an "innocent" purchaser. A more ethical and intellectually profitable strategy for scholars studying the bowls would be to insist upon full disclosure of provenance, as part of a broad scholarly agenda. It may, after all, transpire that the origins of the

bowls in question are indeed innocuous. But if Moussaieff really does know that his bowls were found at Pumeditha, then that is an important fact for all scholars. Freedom implies choice, as does ethical research and, until scholars are fully informed about the sources of unprovenanced artifacts, and able to make knowledgeable choices about their engagement, they will not be free to conduct ethical research.

Another criticism of academic freedom that might be made in this context concerns the choice of subject or material to be studied. Angela Brew has written that “research sometimes avoids attempting to solve society’s closest and most pressing problems, instead choosing to escape from the world to pursue knowledge of that which is distant and socially unproblematic.”²⁸ It is hard not to view the study of ancient artifacts in this light, particularly in cases like the Iraqi incantation bowls, especially when the distancing from social problems is secured by a stubborn refusal to consider the provenance of the research material. Brew goes on to argue that research choice can be governed as much by personal, historical, social and political factors, and by disciplinary and individual inertia, as it can by dispassionate intellectual curiosity. Outside attempts to break this inertia can be met with hostility and prejudice.²⁹ She questions this state of affairs, because it “can lead to a neglect of moral responsibility because it allows researchers to detach themselves from the moral consequences of their actions.”³⁰ Again, these generalized observations seem pertinent to the issues at hand here. Are scholars studying incantation bowls justified in ignoring the possible consequences of their work, especially when it is thought that those consequences could be socially harmful?

Then there is the issue of the collector, or at least of the collector’s relationship with the scholar, and of the collector’s possible influence upon scholarship. The personality of the collector does not usually figure in published studies of privately held collections, perhaps out of respect for the privacy of the collector or, more likely, because the personality of the collector is thought not to intrude upon scholarly practice and, therefore, be irrelevant to the job at hand. But again, in her review article, Müller-Kessler has critical things to say about the relationship. She suggests that some of the textual interpretations offered are “speculative,” and enlarges that “one gets the feeling that many of these comments are based on rushed ideas, and are included to satisfy the desire of the private collector to believe that he holds unique Jewish textual sources in his collection. This might be nice for the latter, but it does not help achieve scholarly progress in general . . .”³¹ The scholar is, after all, beholden to the collector for access to material and, thus, indirectly for professional advancement, and there does not seem to be any reason why the collector should not regard the relationship as one of patronage or of reciprocity. Consciously or unconsciously, the scholar might lean toward accommodating the collector’s desires, beliefs or prejudices, again at the cost, as Müller-Kessler says, of reliable historical knowledge.

There seems to be a sense of urgency about the study of the incantation bowls. There is no reason why, in the long-term, scholarship should have suffered if the Schøyen bowls had been returned to the ownership of Iraq. Other texts smuggled out of Iraq are being studied in the USA by agreement with Iraq, as part of an arrangement for their repatriation.³² Perhaps the bowls would not have been studied and published in the immediate future, but they would have been kept. Is the discipline of Aramaic studies of such public importance that time cannot be taken out to establish rightful ownership, and perhaps to deter future episodes of illegal trade, thereby promoting more reliable historical scholarship? Perhaps the impatience of claims for scholarly access is rooted in the personal agenda of the scholars themselves? Studying artifacts in their countries of origin would usually require applications for permits and funding for travel and support. These “obstacles” to research are removed, once artifacts are out of their country of origin, and in private hands. Permits are not required, and the collector may even provide financial or logistical support. In terms of personal achievement and career advancement, studying unprovenanced material, such as the Schøyen bowls can be a rewarding exercise, in a way that waiting for it to be restored to its country of origin would not.

Conclusion

Ancient artifacts looted from conflict zones such as Iraq continue to circulate on the international market, to be collected and studied. The example of the Aramaic incantation bowls shows that the scholarly study of such material in universities is problematic for a number of reasons. By extension, it also shows that the academic establishment, in the form of universities and funding agencies that support scholarly research, is either unaware or dismissive of the problematical contexts in which such study proceeds. Questions about the public interest of such research are not posed and remain unanswered.

Notes

1. Neil Brodie, “The market background to the April 2003 plunder of the Iraq National Museum,” in *The Destruction of Cultural Heritage in Iraq*, ed Peter G. Stone and Joanne Farchakh Bajjaly, 41–54. (London: Boydell Press, 2008), pp. 46, 50–51 table 2.
2. Shaul Shaked, J.N. Ford, and Siam Bhayro., *Aramaic Bowl Spells: Jewish Babylonian Aramaic Bowls Volume One*. (Leiden: Brill 2013).
3. Dan Levene, *A Corpus of Magic Bowls: Incantation Texts in Jewish Aramaic from Late Antiquity* (London: Kegan Paul, 2003).
4. NRK.. *Skriftsamleren*. TV program, 7, 14 September. (Oslo: Norwegian Broadcasting Corporation, 2005); Staffan Lundén, (2005). TV Review: NRK (Norway) Skriftsamleren [The Manuscript Collector]. *Cultural Without Context*, 16, 3–11.
5. Neil Brodie, “Iraq 1990–2004 and the London Antiquities Market,” in *Archaeology, Cultural Heritage and the Antiquities Trade*, ed Neil Brodie, Morag M. Kersel,

- Christina Luke and Kathryn Walker Tubb, 206–226 (Gainesville: University Press of Florida, 2006).
6. Lundén (2005), p. 6.
 7. UCL. Incantation bowls: statement by UCL (University College London). Press release, 10 October 2004.
 8. UCL. UCL establishes committee of enquiry into provenance of incantation bowls. Press release, 16 May 2005. Retrieved from <http://www.ucl.ac.uk/news/news-articles/news-releases-archive/bowls>.
 9. Michael Balter, "University suppresses report on provenance of Iraqi antiquities" *Science* 318, 554–555, 2007, at p. 554.
 10. Schøyen (2007a). Schøyen Collection Sues University College London for Recovery of Incantation Bowls. Press Release, 9 March 2007. Retrieved from http://www.schoyencollection.com/news_articles/UCL-090307.html.
 11. Schøyen. (2007b). The Schøyen Collection of Aramaic Incantation Bowls. Press Release, 26 June 2007. Retrieved from http://www.schoyencollection.com/news_articles/bowlsreturned-260607.html.
 12. Schøyen (2007b).
 13. Michael Balter (2007).
 14. Schøyen (2007c). Correction of Media Innuendo Concerning Alleged 'looted' Provenance of Incantation Bowls. Press Release, 14 October 2007. Retrieved from http://www.schoyencollection.com/news_articles/bowlscorrect-141007.html.
 15. Neil Brodie and Morag M. Kersel, "Wikileaks, text and archaeology: The case of the Schøyen incantation bowls," *Archaeologies of Text*, ed Morag M. Kersel and Matthew Rutz (Oxford: Oxbow, 2014), 194–213.
 16. John Peters, *Nippur, or, Explorations and adventures on the Euphrates: The narrative of the University of Pennsylvania Expedition to Babylonia in the years 1888–1890* (New York: G.P. Putnam and Sons, 1897), pp. 182–194.
 17. Geller, Mark. (2005). "Spies, Thieves and Cultural Heritage." Retrieved from <https://groups.yahoo.com/neo/groups/Unidroit-L/conversations/topics/499>. No longer available, text with author.
 18. Schøyen (2007c).
 19. Shaul Shaked, "Transmission and transformation of spells: the case of the Jewish Babylonian Aramaic bowls," *Continuity and Innovation in the Magical Tradition*, ed Gideon Bohak, Yuval Harari and Shaul Shaked, 187–218 (Leiden: Brill 2011), at pp. 201–202.
 20. Shaked et al., 2013, p. 1 note 2.
 21. Christa Müller-Kessler, "Of Jesus, Darius, Marduk . . . : Aramaic magic bowls in the Moussaieff collection" *Journal of the American Oriental Society*, 125, 219–240, 2005 at p. 221.
 22. Shaked, 2011, pp. 191–192, note 13.
 23. Sara Jo Ben Zvi, Solomon's treasures. *Segula*, 2 (2010). Retrieved from <http://www.segulamag.com/articles/view-article.asp?article=2>. No longer available, text with author.
 24. Michael Balter, (2007), p. 555.
 25. Isaiah Berlin, Two concepts of liberty. *Four Essays on Liberty* (Oxford: Oxford University Press 1969).
 26. Andrew George, *Babylonian Literary Texts in the Schøyen Collection* (Cornell University Studies in Assyriology and Sumerology. Volume 3). (Bethesda: CDL Press 2009), p. xvi.

27. Neil Brodie, "Congenial bedfellows? The academy and the antiquities trade" *Journal of Contemporary Criminal Justice*, 27, 411–440, 2011.
28. Angela Brew, *The Nature of Research Inquiry in Academic Contexts* (London: Routledge 2001), p. 78.
29. Angela Brew, (2001), pp. 78–94.
30. Angela Brew, (2001), p. 103.
31. Müller-Kessler, (2005), p. 224.
32. Ashley Parker, Detoured by 9/11 attack, 4000-year-old tablets make it back to Iraq. *The New York Times*, 15 September 2010.

15

Temple Looting in Cambodia: Anatomy of a Statue Trafficking Network

Simon Mackenzie and Tess Davis

Introduction: From source to market, but how?

Compared to other types of commodity traffic, in drugs, wildlife or even human beings, relatively little reliable empirical data have previously been gathered and published about the process of “trafficking” in antiquities. Scholars of the international criminal market in cultural objects have access to a number of analyses of what we might characterize as the two ends of the global supply chain, in the form of studies of “source” and “market,” but comparatively little about how looted cultural objects actually move from the ground to the international market buyer.¹ With limited exceptions, the available data have clustered around looters who take objects from important archaeological sites;² and dealers, museums and collectors around the world who provide the destinations for these stolen artifacts as part of their general acquisitive practices.³

In empirical terms, the few exceptions to these studies of the two ends of the chain essentially have been limited to a modest body of important investigative journalism, which understandably tends not to adopt a conventional academic-theoretical approach.⁴ There is nothing in this field of study, however, which approximates the sort of global trafficking research that is emerging in anthropology, history or international relations,⁵ or in criminology for other international trafficking problems,⁶ and so we are left with something of a black hole in our understanding of illicit antiquities trafficking networks. This paper aims to begin to fill that hole.

This chapter was originally published as “Temple Looting in Cambodia: Anatomy of a Statue Trafficking Network”, *The British Journal of Criminology*, 54 (5): 722–740. Reprinted with permission of (Oxford University Press, 2014).

Speculation on the likely structure of antiquities trafficking networks has evolved over the last three decades in the literature. An early writer in this field set out what he perceived to be a role-based structure to the movement of looted cultural objects from source to market. These stages included: (1) looters (“local diggers”); (2) “black market middlemen”; and (3) “local or foreign dealers.”⁷ More recently, Campbell has undertaken an analysis of secondary data and proposed a four-stage network structure: (1) Looter; (2) Early-stage intermediary; (3) Late-stage intermediary, and (4) Collector.⁸ Polk has simultaneously produced a similar network outline: (1) “Extractors”; (2) “Middle-men”; (3) “Dealers”; and (4) “Buyers.”⁹ Polk also notes that his and other models refer to activity mainly taking place in the 1980s and 1990s and that conditions of globalization such as the growth in Internet sales, as well as more attention now paid to looting during conflict, would require adjustments to the model to ensure a contemporary fit. Other writers have produced models with a regional focus, in which the main roles above are again identified with some local inflections.¹⁰

We can see clear continuity and convergence in these various expressions of the constituent network roles. Interestingly, both of the Campbell and Polk analyses pick up on the importance of a type of middleman or dealer role that involves a particular individual having the capacity to “face both ways” up and down the network, as it were, with a criminal face when looking down and a legitimate face when looking up. This is the particular type of international fencing that is necessary to allow the early-stage criminality of trafficking and looting to link up with the later-stage trading, which takes place in the “grey market”¹¹ of apparently legitimate and often highly public deals involving auction houses, dealers, museums and collectors. The fence who “faces both ways” is therefore the personification of a sanitizing portal for loot, taking it by reaching down the trafficking chain with a dirty hand and passing it onwards up the supply chain with an apparently clean one. As such, he is of fundamental importance in regulatory analysis of this illicit market. He is Janus – one face looking into the illicit past of an artifact and one looking into its public future where that dark past is concealed – the point of transition, or gateway between local looting and the international art market. Several examples of alleged, and in some cases convicted, occupants of the Janus role can be found in the case study literature on this market. We identify a similar Janus in the Cambodian traffic in the outline that follows.

In respect of the fit of the data and analysis presented here with contemporary theory on forms of groups and networks in other types of organized crime, there is both continuity and conflict. A paper recently published in *The British Journal of Criminology* by Lo sets out a progression of organizational analysis of Asian organized crime groups, with an emphasis on Chinese Triads.¹² Lo describes the “structure-control” perspective, which emphasizes “structural and subcultural control” through which

“triad societies were able to compel their members to run illicit activities.”¹³ This perspective has been developed through critique and ongoing empirical research, culminating in Zhang and Chin’s “structural deficiency perspective,” which essentially locates in this same property of structure-control the failure of traditional triad societies to exploit transnational illicit market opportunities in trades such as human trafficking and heroin supply.¹⁴ These international globalized illicit markets are, for these authors, the domain of small, flexible, entrepreneurial groups of traders who are unbound to, or stepping outside of, conventional organized criminal structural bases, to “somehow find one another for a few sporadic transnational operations” and,¹⁵ therefore present a considerably more elusive target for law enforcement than larger and more stable organized crime groups. These are “enterprising agents [with] no identifiable organizations, no rigid structure, no clearly defined deviant norms and values.”¹⁶ Lo puts a social capital frame of analysis around these two perspectives on transnational organized crime, identifying high degrees of internal “bonding capital” in traditional organized crime structures like triads, together with horizontal “bridging” and vertical “linking” capital providing opportunities for illicit enterprise via complicity respectively with other legitimate or illegitimate groups, or corrupt state interests.¹⁷

The research literature on trafficking in a variety of illicit markets has often supported the flexible, informal, small-scale trafficking model, somewhat in the face of an entrenched policy discourse that constructs the threat of transnational organized crime in considerably more fixed, structural, grand and opaque terms.¹⁸ This seems to have been the case in relation to much wildlife trafficking, for example where Naylor has identified in relation to the illicit ivory trade that “while much anti-animal trade rhetoric emphasizes the alleged participation of ‘organized crime’ in the clandestine traffic, the reality is that, not just with ivory, but with all wildlife trade, the illegal market is run (and always has been run) by the same actors who operate the legal one, and with the same infrastructure.”¹⁹ The high level international policy discourse of illicit antiquities regulation has been criticized in similar terms for reliance on and promulgation of a language of organized criminal underworld, when equally if not more important must be questions of corruption, complicity and facilitation of illicit trade by apparently legitimate actors, since the insertion of looted artifacts into open public trading venues is clearly a core problem.²⁰

Looking across the literature on social networks and organized crime, we can note that Morselli’s studies of criminal networks have premised the “flexible order” in which both hierarchically and loosely structured settings of criminal enterprise subsist, in which “criminal entrepreneurs” exploit “brokerage configurations” that are essentially opportunity structures that arise out of criminal contacts and associations between potential co-offenders.²¹ And these social network theories of organized crime have been stressed by

Asian area studies in the discipline, especially with regard to Chinese criminal syndicates where the emphasis has come to be on “the superiority of familial and personal networks and fortuitous social contacts, with limited hierarchical structures.”²²

The question, therefore, arises: to what extent are these theoretical developments in analysis of organized crime structural models applicable to the transnational illicit antiquities trade? We engage with that issue here, suggesting that commonplace claims about the eclipse of hierarchical organized crime enterprises by looser and shifting networks may not be universally accurate. Historical issues of military presence and control in Cambodia present a different context to that underscoring most research on trafficking and smuggling by Asian organized crime groups. Broadly stated, our conclusion will be that while the present case study is undoubtedly of a *network*, in which nodes, contacts, and certain types of social capital are useful explanatory concepts, there is also an observable stability, and identifiable forms of hierarchy, both along the chain of the whole network and within each of its nodes. We conceptualize the network as a repetitive process, having developed by way of linking nodal actors in long-term trading relations, and harnessing the benefits at different stages in the chain of both localized territorial “structure-controlled” organized crime and (as the trades move increasingly toward the transnational) more flexible entrepreneurial trafficker-dealers who are less tied into frameworks involving territory or group.

Methodology

In the summer of 2013, the authors traveled to Phnom Penh and from there toured the country by road, covering approximately 2,500 km before crossing into Thailand and finally departing from Bangkok. We were accompanied by a local contact who had been doing regional scoping research in the preceding year and was therefore able to introduce us to some potentially useful interviewees. We uncovered more interviewees ourselves during the course of fieldwork. We rotated three interpreters (one also an expert on the illicit antiquities trade) throughout our travels, so that we usually had two on site at any interview. This made conversation less stilted, since the first could ask our questions of the interviewee, while the second translated their responses. This approximated a free-flowing “normal” conversation as much as possible in an environment where locals spoke Khmer or Thai and usually no English.

We explored the network from the bottom-up, beginning at six major archaeological sites. These were Angkor (including the Roulous grouping and Banteay Srei), Banteay Chhmar (including Banteay Torp), Koh Ker, Phnom Banan, Preah Khan of Kompong Svay (the Bakan) and Sambor Prei Kuk. These represent a wide spectrum of Cambodia’s ancient history,



Figure 15.1 Map of sites visited and key locations

geography and current development. These sites are indicated on the map in Figure 15.1.

The oldest site (the city of Sambor Prei Kuk) dates back to the 6th century, while the latest (the monument of Banteay Torp) was modified as late as the 16th century. They thus include examples of two major religious traditions – Hinduism and Buddhism – and a number of distinct artistic styles. Most were built during the height of the Khmer Empire, the Angkorian Period, from the 9th to 15th century. Several were the work of a single ambitious king, Jayavarman VII, who ruled from circa 1181 to 1218. In size, they range from a single temple (Phnom Banan) to ancient capitals with dozens of temples (Angkor, Koh Ker and Sambor Prei Kuk). In location, they span from the center of the country, to the far north, to the far west. Some fell to the Khmer Rouge as early as 1970; some remained under their control until their 1998 surrender. Now, the most tourist-friendly (Angkor) is mere kilometers away from an international airport and welcomes millions of sightseers each year. The least accessible on our itinerary (Preah Khan of Kompong Svay) is so isolated that we had to approach four drivers before finding one willing to attempt the road, and not surprisingly, it receives only the most adventurous visitors. All are very much “living” sites. This is most obviously the case at

Angkor, where within the park's boundaries over 120,000 people inhabit 112 villages, some of which are said to be as ancient as the monuments themselves.²³ Even at the remote Preah Khan, there is a small community. Furthermore, each temple we surveyed is still used as a place of worship, and most have an active pagoda on the grounds or nearby.

We started our search for data at these temples, led by our local contact or by local guides. Aside from the latter's usual brochure-style recitations delivered on tours of the sites, they were also able to answer our more directed questions about the recent history of the area. These "children of the temples," as they are called in Khmer, were mostly around 30 years old and, therefore, often had stories of growing up in the nearby village and witnessing looting first-hand. These 30-year-olds in Cambodia have known war for half their lifetime. While born after the Killing Fields (1975–1979), they grew up in the Vietnamese Occupation (1979–1989), when much of the country was still under Khmer Rouge control, or that of other paramilitary groups, or of course the Vietnamese themselves.

Another useful strategy we found for accessing local knowledge on looting, recommended by our local contact, was to go to a temple complex and seek out the "oldest person in the village" or "the person who knows stories about the village." In some cases, this was the village or commune chief, or Buddhist monks or nuns. Even in a country where only 3.9% of the population is over 65, elders were quite easily found, and were generally happy to sit down and talk to us about their community's relationship with the temple dating back to the colonial period. Some were able to point us to people who had witnessed looting, or even been involved in it, and thus might be better sources of information. Consultation with these individuals, especially those who had taken statues and other parts from temples, led to information about who had organized the looting ventures and/or where the objects had gone.²⁴ This enabled us to move up the chain of supply.

All of the information we present here is historical, in the sense that the narratives we have gathered refer to the period from the mid-1960s to mid-2000s, with the majority of activity occurring during the 1970–1998 Civil War. Few of the erstwhile looters we spoke to admitted involvement in contemporary trafficking. Some attributed this to their realization that disturbing sacred sites brings only bad luck, and feared their role in the illicit antiquities trade had cursed them, or worse, their families. Others mentioned increased temple security, especially at the heavily guarded Angkor. Another explanation is that "most of the good pieces have already gone" – which rings true to our site visits, where we accumulated many pictures of headless statues, pedestals from which statues have been broken off at the ankles, and holes in walls where reliefs used to be.

As we shall see, however, remnants of the trafficking networks remain in place. We were told by a receiver at the Thai border that if we wanted any piece that was currently in situ, we should go and take a picture of it and

he would arrange for it to be looted and delivered to us within a month. A number of archaeologists, conservators and curators have told the authors such “theft on demand” was a common practice in the 1990s. So while the networked looting and trafficking activity we analyze here does seem to have abated somewhat in recent years, there is an open question around how much is still going on.

The network structure

In crude overview, we have established a picture of a funneling network, which took statues from the various temples of Cambodia and passed them into a small number of channels that moved them by oxcart, truck and even elephant out of the country and into Thailand.

One of these channels operated from Cambodia’s northwest (including the sites of Angkor, Banteay Chhmar, Koh Ker, Phnom Banan, et cetera) through Sisophon, a town around 20 km from Thailand. From Sisophon, statues went through Poipet on the Cambodian side of the border to Aranyaprathet and Sa Kaeo on the Thai side. From there, it is a straight drive up a main road to Bangkok – a journey that now can be made by car in three hours. In this paper, we will outline the roles played by key traffickers identified in the course of our research. These criminals worked at the main points along this channel: at Koh Ker, in Sisophon, and in Aranyaprathet. The routes involved in this channel are indicated in Figure 15.2.

Another channel used the due north border with Thailand, taking objects through the deep forests of the Kulen region and former Khmer



Figure 15.2 Trafficking routes in the “Channel 1” network

Rouge stronghold of Anlong Veng on the Cambodian side, across the Dangrek Mountains which traverse that northern border, to Khun Han and Kantharalak on the Thai side. Again, from here, the statues move to Bangkok.

Each of these two channels has been confirmed by a number of different sources, so we can be reasonably secure in our view of the reliability of this information. However, we present these channels as illustrative rather than definitive. This is because we focused on Battambang, Banteay Meanchey, Kampong Thom, Oddar Meanchey, Preah Vihear and Siem Reap provinces, in other words, the central, northern and western areas of the country. Also the ethnographic methods of our research make it an opportunistic rather than a comprehensive survey. This raises the question whether, for example, there might be different channels for objects originating in southern Cambodia: perhaps by sea through the port of Sihanoukville or overland to Vietnam. The greatest concentration of Angkorian temples is obviously centered on Angkor itself, but southern Cambodia is also archaeologically rich, especially with pre-Angkorian sites and the occasional Angkorian outpost such as Phnom Chisor. It is thus not surprising that Lafont and Nagashima both cite an antiquities smuggling route from this part of the country,²⁵ through the port of Sihanoukville, to Singapore. Nagashima further reports that some pieces are then “re-exported” from there to Thailand before entering the Western art market.²⁶

In this paper, we will outline the processes of trafficking involved in the first channel mentioned above. A companion piece to this paper will perform the same type of analysis for the other channel.²⁷ The northwest channel we address here is in broad terms an “organized crime channel:” the major players in the early stage traffic along this channel are identifiable as local gangsters. The northern channel, by contrast, was used by Khmer Rouge to move statues out of Cambodia, and is therefore more amenable to analysis under the question that is often asked as to whether antiquities traffic funds armed conflict, rather than whether it is linked with organized crime, although of course the two questions are not mutually exclusive.

To foreshadow the main discussion in this paper, the channel we identify here has four major network nodes (all names are pseudonyms):

1. *Thom*, a regional “broker,” who organized the looting of statues and delivered them to Sisophon.
2. Two organized criminals in Sisophon, *Sambath* and *Phala*, who acted as the north-western hub for Cambodian statue traffic, buying from the regional brokers and delivering the loot to the border with Thailand.
3. *Rachana*, a receiver on the Thai side of the border who would take delivery of the statues and move them to Bangkok.
4. *Kanok*, an internationally connected dealer of statues in Bangkok, who was the “Janus” interface between the licit and illicit trades.

Temples: The start of the chain

The 12th-century citadel of Banteay Chhmar is infamous in the academic literature for “the most daring and devastating theft that ever took place in Cambodia” (Lafont 2004: 54). In late 1998, rogue Cambodian military surrounded the temple at dawn and blockaded it from the local community, with no explanation. The Cambodian generals responsible no doubt used the country’s ongoing tumult to their advantage, as the Khmer Rouge was disintegrating near simultaneously, just 130 kilometers away from Banteay Chhmar in Anlong Veng. For the next two weeks, heavy machinery was used to break-up the complex and when the clamor finally stopped, soldiers loaded an estimated 30 tons of stone – including an entire 30 meters of the southern wall, prized for its skilled bas-reliefs of Lokeshvara and Apsaras – onto six trucks and drive off for the Thai border just 15 kilometers away. It is believed the convoy crossed at Ban San Ro Changan, where it was met by Thai dealers, who transported the antiquities on to Bangkok.²⁸

Thai authorities stopped one of the trucks in Sa Kaeo province and seized over 100 antiquities, including an 11.5 meter span of wall. The two drivers were arrested – and eventually tried and convicted – despite denying knowledge of their illegal cargo. They likewise could not (or feared to) identify who had hired them or to whom they were delivering their shipment. There were no further prosecutions, even though an investigation later identified the Cambodian generals responsible and further implicated the military in other thefts.²⁹ After over a year of political wrangling between Cambodia and Thailand, the seized pieces were finally returned to Phnom Penh. But the rest of the haul from Banteay Chhmar which escaped in the other five trucks has, aside from a few opportunistic recoveries, disappeared into the art market.

While scholars and journalists have described the 1998 heist as unprecedented, we learned instead that it is fairly representative of the history of looting at Banteay Chhmar and just the tip of the iceberg in terms of looting across the country. Village elders at Banteay Chhmar told us that in their youth there were many statues in and around the temple (a fact confirmed by colonial accounts and photographs). Then in the early 1970s – during an attack foreshadowing that in 1998 – soldiers from the US-backed Lon Nol army closed off the complex, raided it during the night and carried off their spoils by helicopter. The next years are a question mark, as the villagers were displaced during the 1975–1979 Killing Fields, and many also spent the subsequent years of occupation and famine in Thai refugee camps. Those present in the 1980s and onwards, however, report a revolving door of armies – from the Khmer Rouge, to paramilitary groups, to government forces – that ended only with the Civil War in 1998.

During this time, local villagers were “invited” (in the sense of “instructed”) to loot the temple at night by these various armed factions,

who effectively functioned as gang-masters for this looting enterprise. Local men were offered 300 Thai Baht (today approximately US\$7, though in the 1990s, it would have been closer to \$12) per night to work on the effort, and faced violent intimidation and possibly death if they refused. One source in the village said it was not a difficult choice, if it can be called that, and that he and many of his friends had become looters.

The looters at Banteay Chhmar report having witnessed Thai dealers (up to four at a time) negotiate the purchase of pieces with the military chiefs who were organizing the looting gangs. Again, Banteay Chhmar is very close to both Cambodia's northwest border with Thailand (15 kilometers) and the large town of Sisophon (60 kilometers), an integral stop on the path taken by objects running along the first looting channel we identified. The looted statuary of Banteay Chhmar thus crossed into Thailand both ways – in some cases directly and in some cases through Sisophon.

Nowadays there is little left to steal. During our visit, we did not see a single intact statue. Archaeologists do hope some have survived inside the complex, protected under the tons of collapsed architecture, but it is possible looters have reached these as well. The large perimeter wall is really all that visibly remains, and it is still impressive in its structure and artistic adornment. One can see how it would make an attractive target for organized looters with the capacity to lift and carry away heavy chunks of it, as happened in 1998.

Just as the 1998 incident is representative of looting at Banteay Chhmar, so too is the looting at Banteay Chhmar representative of that throughout the country. We learned the basic elements were repeated, in varying forms, at all the temples we visited. Locals report that each of these sites had been well protected in the colonial era and early years of independence (1800s–1960s). In most cases, organized looting and trafficking is only remembered as beginning around 1970, with the start of the Civil War. There is no little irony in the observation that 1970 was also the date of the culmination of successful negotiations around the landmark United Nations Educational, Scientific and Cultural Organization Convention, which in that year drew countries together in recognition of the need to protect the cultural heritage of humanity against plunder and illicit trade.³⁰ In Cambodia, the plunder would remain closely tied to the conflict through to the 1998 surrender of the Khmer Rouge, with heavy involvement from the various armed forces in the country (including the Cambodian military, paramilitary groups and the Khmer Rouge). These groups would use local labor (willing and unwilling, paid and unpaid) when needed. From the temples, the pieces would be carried by oxcart, truck/military truck and occasionally even helicopter or elephant to the border. From there, they would go to Bangkok, often with the help of Thai military. Importantly, however, although we note that the traffic was “closely tied to the conflict,” this does not mean that looting and trafficking was the exclusive preserve of military groups. As we shall

turn to discuss now, organized criminals with no military affiliations were active in the looting of Cambodia, as were others with fleeting or otherwise non-committal ties to a particular armed faction.

The role of regional brokers

By accessing villagers near the temple sites – as we did at Banteay Chhmar and others – we moved up the trafficking chain. In particular, our local contact led us to a “broker” (his term for himself), whose organized crime activities included controlling the regional looting network. We received a wealth of richly detailed information from this broker, Thom, which first led us to realize the importance of Sisophon as the Cambodian hub for cross-border traffic to Thailand down the north-west channel. Thom, and subsequently others, described this town as the main portal between the regional Cambodian brokers like himself and the Thai border trade.

Thom ran the temple looting network in a region containing Mount Kulen and Koh Ker, as well as countless other archaeological sites. The territorial limits of his “jurisdiction” were quite precisely defined; so much so that he was able to identify a street corner in a particular town where “his” territory ended. He controlled the looting in this area in partnership with another man – each region, he said, had two brokers who controlled it together. His relationship with his partner was based on what he described as a very high level of trust.

Thom had grown up in this region, but was forced into the military at age 11, during the early years of the Civil War. His ability to ride a horse earned him the coveted post of Khmer Rouge messenger, tasked with delivering missives between their regional camps. In his teenage years, he graduated within the Khmer Rouge from messenger to soldier. At the height of the purges, Thom defected from the Khmer Rouge, fleeing to the jungles of Kulen. For three years, he remained there in hiding, often taking shelter in temples (knowledge that would serve him well in later years). After the Vietnamese overthrew the Khmer Rouge in 1979, weary of war and regretful of his part in it, Thom resolved to do something with his life that did not involve so much death, thus began his career in statue trafficking.

In the 1980s, he began this enterprise as a solo effort, knowing little about what he was doing but learning what he needed to from his uncle, who was already an active statue trafficker. He described to us his very first venture, in which he took a large and valuable statue from a nearby temple but sold it for only 50 Cambodian Riel. This is less than a penny in today’s currency, but even in the 1980s, it would have been mere dollars at most.

Desperately in need of money, facing poverty and starvation, Thom’s family helped him to improve his skills as a looter. As well as his uncle having first-hand knowledge of statue theft, his father-in-law was a former cultural official and had given him an illustrated Khmer art history book, from which

he learned a great deal, despite being illiterate. Over the course of his trafficking career, he would develop an expert eye for statuary. We showed him catalogs of Khmer ancient art and he was able to quickly and accurately identify objects from only the pictures by their date and style ("12th century," or "Angkor Wat Style" and so on). He recognized several of the objects, now in established collections outside Cambodia, as some of those he had been involved in trafficking.

As the 1980s passed he developed his trading business. He joined forces with his partner and they began to become more organized by recruiting people to work for them. Over time, the two men established a gang, which Thom says at its height had "a thousand" people in it. This is probably an exaggeration, and is in part explained by the somewhat loose-knit practical arrangement of his network of workers described below.

In Thom's looting operation, there is a clear hierarchy, with Thom and his partner at the top, and a relatively small group of colleagues around them who we might think of as forming the second tier. But below this, there is a much more fluid and opportunistic network-type structure. Thom would drive around the region in the morning, picking up willing participants for that day's looting. In some cases, he would order local villagers to take part where they would otherwise have been unwilling, and they would obey through fear of his reputation for violence. He would generally pay the willing participants, but not the unwilling ones.

The enterprise was, therefore, characterized in the field by flexible groups of casual looters, looking somewhat like a contemporary "zero-hours" contract arrangement where an employee is always available to work but only gets paid for the hours they actually put in. On many days, the looting groups would be large in number; Thom describes one particularly heavy statue which took 40 men to carry. Having to pay all of these workers led to an escalation in the amount of looting and traffic, both through high capacity to undertake thefts and movement and also through business prerogatives – Thom ruefully described how his sense of fairness in wanting to pay all of his workers meant that he "had to steal more" in order to make sufficient profits. When asked about an average example of the split of proceeds, he recalls one statue sale where he took 1,500 baht for himself and paid each of his six gang members involved in that theft 600 baht. In his general recollection, he reported that quality pieces would fetch 5,000, 20,000 or even 40,000 baht (about £750 in today's prices).

Thom found it difficult to say how many statues he had trafficked in his career, which was active from the 1980s until recently. While leafing through the Khmer antiquities catalogs we had brought to show him, he would occasionally point to modestly sized pieces in bronze and say that he had found "thousands" like them. When pressed to put a number on the volume of his activity, he stressed that like any business, some years were better than others. For example, 1994–1996 was a bad period, due to heavy fighting in

the region. But he remembered mid-1997 to mid-1998 as a “good year” for looters, as the ongoing collapse of the Khmer Rouge opened up the country for the safer internal movement of people and goods. In that 12-month period, he estimated his group had trafficked 92 statues. Some of the objects his network handled were pieces that are now celebrated as among the most important Khmer statues in world collections. For example, he has identified several major statues that he took from the Prasat Krachap temple at Koh Ker.

On to sisophon

Thom and numerous others identified a main channel as the preferred route for trafficking Khmer art out of the country. It funneled antiquities from Cambodia’s archaeologically rich northwest to Sisophon. From here, smugglers would travel along Highway 5 to the border, crossing at Poipet/Aranyaprathet.

Two brothers who were dealers in Sisophon were the Cambodia-side destination for objects passing through this channel. They were individually attached to different military factions, but they worked together on the trafficking business. We learned that such cooperation between enemy factions was typical, and while Cambodia’s various armed forces refused to govern together, some of their soldiers had no problem doing business together. Both Sambath and Phala are remembered by locals as running a wide range of illicit enterprises as well as statue traffic, including drug smuggling and prostitution. One of the brothers, Phala, is now deceased, while the other brother is still alive and runs a business in Sisophon. He is widely feared for his violent reputation, having reportedly killed many people in disputes over the brothers’ illicit businesses.

In the days when Sambath and Phala were in business together, Sambath was “the money man” and Phala was “the delivery man” in the statue traffic. Sambath would collect payments from the receivers above them in the network chain, and Phala would deliver the statues from Sisophon to the Thai border, often using military trucks that he had access to through his affiliation with a paramilitary faction.

Thom, the regional broker introduced above, was one of those who supplied Sambath and Phala. Further, Thom and others told us that the 1998 Banteay Chhmar looting detailed above had been organized by Phala. Although Sambath and Phala were Cambodian, they both spoke Thai, so this may explain the reports from the looters we met at Banteay Chhmar that the statues taken from the temple had gone to “Thai dealers.” The Cambodian/Thai border has in any event long been porous, and frequently disputed, with some provinces having gone back and forth between the two countries multiple times over the last centuries. As a result, there are many native Khmer speakers on the Thai side of the border, and vice versa.

The aggregate of all the various reports we received from interviewees on Sambath and Phala therefore seems to place them as a major node in the Cambodian trafficking network, with a number of regional lines of supply connecting to the Thai border through them.

Thom also told us that Sambath had organized the killing of his uncle. Thom's uncle had attempted to cut Sambath and Phala out by taking one of Thom's looted statues direct to the Thai border, and trying to sell it to the dealer Kanok we mention below. Kanok declined, apparently concerned with repercussions that might arise if Sambath and Phala found out. They did, and the uncle was shot shortly afterwards at Sambath's business premises. Thom himself had once taken a statue up the northern route in an attempt to cut Sambath and Phala in Sisophon out of the deal. When he tried to sell the statue to the dealer Kanok in Kantharalak, Kanok insisted on including in the price the normal commission which Sambath and Phala would charge had the statue passed along their supply channel and which he duly remitted to them. This left Thom with the impression that attempting to circumvent the operations of the north-western border channel was fruitless and also that Kanok himself seemed to be concerned not to cross the dealers in Sisophon.

The normal procedure for arranging traffic up the network from ground to the border was that Thom would send Sambath and Phala photos of the objects his gang had looted or sometimes pre-looting photos of objects in situ. An offer would come down the line from Sisophon with a price. This price was open to marginal negotiation but was generally not very flexible. Although the art crime literature regularly discusses the possibility of "theft to order," Thom said that this never happened in the course of his involvement in the traffic in as specific a way as the literature has sometimes imagined. In other words, photos would be sent up the chain saying "we have stolen this, would you like to buy it?" but photos of statues in situ never came down the chain saying "please steal this." The closest arrangement to this latter possibility was that occasionally requests would come down to supply a particular type of statue, but these were general types rather than specifically identified artifacts.³¹

The Thai-side border trade

At the Thai border, the objects were received by people reported to us to be variously "Thai dealers" or "the Thai army." We attempted to get more specificity on this link in the chain by traveling to Aranyaprathet on the Thai side of the border and the smaller town of Sa Kaeo which is arranged along both sides of the highway that leads from "Aran," as the locals call it, to Bangkok. In Aran, we met the owner of an antiquities shop and hotel, Rachana, who suggested that he was Thailand's premier faker of ancient statues. He had also been the main receiving point for objects coming across the

border from Sambath and Phala, working with a general in the Thai military, and in his own words having “seen every statue that came from Cambodia in the last 30 years.” Rachana mixed his trafficking business with a faking business, which in some cases supplied the same customers. From Aran, he was able to sell the looted and fake objects relatively freely to buyers in Bangkok who could transport them out of the country without obstruction. There has been, and remains, no appetite at Thai customs for restricting the export of any country’s cultural heritage other than their own Buddhist pieces, and the export of fakes is not prohibited by law.

Fakes are a difficult concept in Cambodian statues. From high-end shopping complexes for antiquities like River City in Bangkok, down to street stalls in the city’s Chatuchak market, fakes are in abundance. They are marketed under a number of different names, however, and rarely called fakes explicitly. Instead, we find apparently oxymoronic labels like “genuine reproductions” or “modern ancient art.” Rachana, the receiver in Aran, had a team of 20 Cambodian fakers working for him, reproducing old statues using a variety of techniques to artificially give them the impression of age. After manufacture, statues were buried in the ground for between six months and five years to give them a musty patina, so that when sprayed with water they would give off a smell suggesting they were older. Rachana suggested he supplied “40–50 per cent” of the tourist outlets at River City. When describing his creations, he did not use the Thai word for “fake” but called them “copies” which, in the context he used it, suggested an artistic process involving respect for the older original pieces and a legitimate attempt to recreate their genius.

A few miles up the highway from Aran toward Bangkok is Sa Kaeo, a town that everyone will have to pass through who is taking the border-crossing land route from Poipet in Cambodia to Bangkok. Lining the highway and with nothing to recommend it other than its location along a main thoroughfare near the border, this has always been a town of traders – before statues, it was other types of goods. People in Sa Kaeo remember trucks, many of them military vehicles, filled with looted statues rolling through the town on their way to Bangkok from the 1970s until around ten years ago. Locals report that “everyone” in the town was involved in the statue trade and that the richest people in the town earned their money originally through buying and selling looted statues. A major regional dealer is still based in the town, running a hotel with “secret” rooms where major pieces of looted statuary are available for viewing by interested buyers. As with so many “secrets” in this trade, and indeed in this region, these are things that are widely known and easily confirmed. As well as the organized border trade involving Sambath, Phala and Rachana, there was a more disorganized trade where poor Cambodians would arrive at the border needing food and medicine with statues to sell by way of payment.

Bangkok

A dealer, Kanok, had been a major buyer of looted statuary in Bangkok for decades, via both the channel we have outlined here and the second northern channel we address elsewhere. Thom, the regional broker, thought Kanok to be the main buyer of all the looted statues traveling down the north-western channel. Thom remembered Kanok to have tight links with the Thai military, so all the Cambodian side of the network had to do was to get the objects to the border and they would be delivered from there to Kanok by the military-dealing network on the Thai side. There were a small number of other such high-end high-volume Thai dealers too, and some of these were suppliers of Kanok, as well as dealers for other clients. Thom noted with some resignation that there was a considerable widening of profit margin on transactions further up the chain, so that one of Kanok's main Thai dealers/associates was now very rich and had relocated to the United States, whereas Thom was still exactly where he had been all his life, albeit in slightly more comfortable accommodation than some of his neighbors.

Rachana, the dealer in Aran, cited Kanok as a major customer of both fakes and the genuine looted pieces. Kanok commissioned Rachana to make fakes for him and as Kanok was renowned for having one of the best eyes in the business, Rachana took great delight in telling us about the time Kanok visited his outlet and after some appraisal declared a piece to be genuine when it was in fact a fake that Rachana had produced at Kanok's behest, but which Kanok had forgotten about. After speaking to people who had observed, supplied or worked for Kanok, a recurring suggestion seems to be that Kanok was commissioning these fakes to sell, or donate to museums. As one source put it, he "loved the objects too much" and so could not bear to part with the original pieces he had acquired – thus the suspicion this source held that he had them copied and donated or sold the copies instead.

On the road from Phnom Pehn to Kampong Thom, we met another master faker who had produced works for Kanok. He had produced over 100 fake statues for Kanok alone, and had at one point been flown to Bangkok by Kanok so that he could do his work there to remove the problems of transporting the fakes out of Cambodia.

Conclusion

How does the network identified here fit with the models of organized crime groups/networks identified in the general literature on "the organization of serious crimes for gain,"³² and further and more narrowly, how does it fit with the commodity-specific models proposed in the transnational crime literature concerned with trafficking cultural objects, reviewed at the outset of this paper, which consider the trade as a role-differentiated network taking the form: (1) looter; (2) early-stage dealer; (3) late-stage dealer; and (4) buyer?

The structure of the network identified here seems in some respects to support Lo's arguments for a progression from theories of "structure-control" versus "social network" toward a "social capital" approach,³³ which he suggests can incorporate previous observations on group and network, while also adding a layer of explanation around political dynamics as they support and affect the development of social networks and organized crime. Importantly, the social capital approach allows us to acknowledge a picture in which both groups and networks exist, with regionally bounded and in Lo's terms "bonded" (structure-controlled) groups interfacing with a network of transnational actors who become more flexible in their trading partners – and therefore look more like a social network and less structure-controlled – the further up the chain toward the market we progress, using bridging (horizontal) social capital to pass looted and fake statues through the variety of market channels in Bangkok. The involvement of corrupt military officials and the complicity of other powerful actors may appear to be a form of linking (vertical) social capital. But there are also many elements of the analysis which seem to continue to demand a more traditional structure-control approach to explanation. We conclude by looking a little more closely at this issue through the framework of the role-differentiated models proposed for antiquities trafficking chains.

At Stage 1, we have Thom and his gang. Thom is an "organized" looter, but some of his employees may be better classed as volunteers looking for a modest daily rate of pay – not quite the subsistence diggers of the illicit antiquities literature,³⁴ but not serious profiteers either. Thom is also a broker, or as some other models have it an "early-stage middleman." Sambath and Phala are also "early-stage middlemen," however, so clearly some distinction is required between levels of early-stage middlemen. Likewise, the Thai border traders are also (later-stage still) early-stage middlemen. Only when we get to Kanok in Bangkok do we arrive at a late-stage middleman – but Kanok is also a collector, so he confuses somewhat the last two steps in the four-stage model. It becomes clear therefore that the models previously proposed are identifying roles which: (1) can be filled on several levels by multiple individuals or groups, leading in some stages to more trades in a network chain than are suggested by the models in their basic form, and (2) the opposite is also true, in that one individual or group can occupy multiple roles. Indeed, the proponents of these models have recognized this dimension to them.

Of the first – "looter" – stage in his model, Campbell says "sources show there is no representative type of participant . . . revealing that any individual presented with a profitable opportunity might be inclined to participate."³⁵ Our data add some context to that rather asocial opportunity-theory-based rational choice position on the matter.³⁶ As might be expected, looting choices are made in a culturally situated social space where personal decisions are cast in light of personal and group-based historical influences

including in particular in our case study traumatic participation in war and mass killing for Thom, and threats made for non-participation against some members of his workforce. It is not just “any individual” who appears in this role – in our case, Thom’s personal journey was important as was the social learning aspect of picking up the routines of the trade from his uncle, who was already involved. In some senses then, a deeper understanding of participants’ life histories allows us to see the “pathway” rather than mere “opportunity” elements of the process of “becoming” a statue trafficker.

On the second and third stages of his model – early- and late-stage intermediaries – Campbell says “observable trends show that even this stage is variable, with early-stage intermediaries regularly using different late-stage intermediaries. Interactions generally consist of single exchanges of capital and goods with no promise of long-term agreements.... In contrast to hierarchical structures, participants in the trade have no fear of sanctions if further interactions do not occur....”³⁷ Yet our research has uncovered a trafficking channel that was essentially fixed for several decades, in terms of its roles, the occupants of those roles and their trading relationships. Where occasionally an individual may have tried to step outside of the norms of this trafficking chain, they experienced sanctions from the established hierarchy, which either quickly brought them back into line or resulted in their being used as examples to others not to try similar innovations. The involvement of organized criminals in this supply chain has precisely had the effect of encouraging the “promise of long-term agreements” on pain of violent repercussions in the case of breach, since such stable sources of income generation are the life blood of illicit business.

For various reasons, therefore, it can be suggested that based on this case study evidence, antiquities trafficking “networks” might be thought of as more stable, hierarchical and repetitively functioning supply chains than the highly fluid picture that has been developed both in the general organized crime literature and in recent papers in the illicit antiquities sub-field. Clearly, much more primary empiricism needs to be done to adequately verify this pattern as being generally representative rather than just a regional historical observation. It seems, however, that to say that “the illicit antiquities trade can be usefully explained through the network paradigm; hierarchical organization does not appear to exist currently within the trade” is to overlook the stability of organized criminal routines in the early stages of the network,³⁸ which certainly entail hierarchies of an important kind. It also seems to misdiagnose the Janus role as an opportunistic networked transition point for illicit objects, seeing it as the exploitation of a passing profitable opportunity rather than a pinnacle of the organized crime hierarchy, driving an illicit market in important practical ways that have previously been thought to be better identified at the very end point of the supply chain via widely supported statements that embody the sentiment that “collectors are the real looters.”³⁹ In the trafficking network under

study in this paper, it might equally be thought to be Janus who is the real looter.⁴⁰

Notes

1. For a literature review of evidence-based studies in the field see N. Brodie, J. Dietzler and S Mackenzie, 'Trafficking in Cultural Objects: an Empirical Overview', in S. Manacorda, ed. *Prevenzione e Contrasto dei Reati Contro il Patrimonio Culturale: La Dimensione Nazionale ed Internazionale* (Naples: Vita e Pensiero, 2013).
2. D.P. Staley, "St Lawrence Island's Subsistence Diggers: a New Perspective on Human Effects on Archaeological Sites" *Journal of Field Archaeology*, 20: 347–355, 1993; S. Paredes Maury, (1996), "Surviving in the Rainforest: The Realities of Looting in the Rural Villages of El Peten, Guatemala" Report submitted to the Foundation for the Advancement of Mesoamerican Studies, Inc available at their website at <http://www.famsi.org/reports/95096/95096ParedesMaury01.pdf> (version current at 7 September 2013); D.T. Van Velzen, "The World of Tuscan Tomb Robbers: Living with the Local Community and the Ancestors" *International Journal of Cultural Property*, 5: 111–126, 1996; D. Matsuda, "The Ethics of Archaeology, Subsistence Digging, and Artifact Looting in Latin America: Point, Muted Counterpoint" *International Journal of Cultural Property*, 7: 87–97, 1998; J. Farchakh Bajjaly, "Who Are the Looters at Archaeological Sites in Iraq?" in *Antiquities Under Siege: Cultural Heritage Protection After the Iraq War* ed. L. Rothfield (Lanham: AltaMira, 2008a); J. Farchakh Bajjaly, "Will Mesopotamia Survive the War? The Continuous Destruction of Iraq's Archaeological Sites," in *The Destruction of Cultural Heritage in Iraq*, eds. P.G. Stone and J. Farchakh Bajjaly (Woodbridge: Boydell Press, 2008b).
3. D.J.W. Gill, and C. Chippindale, "Material and intellectual consequences of esteem for cycladic figures" *American Journal of Archaeology*, 97/3, 1993: 602–673; C. Chippindale, and D.J.W. Gill, "Material consequences of contemporary classical collecting" *American Journal of Archaeology*, 104: 463–511, 2000; V. Nørskov, *Greek Vases in New Contexts: the Collecting and Trading of Greek Vases – an Aspect of the Modern Reception of Antiquity* (Aarhus: Aarhus University Press, 2002); S. Mackenzie, *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (Leicester: Institute of Art and Law, 2005); N. Brodie, and B. Bowman Proulx, "Museum Malpractice as Corporate Crime? The Case of the J. Paul Getty Museum" *Journal of Crime and Justice* 2013.
4. P. Watson, *Sotheby's: The Inside Story* (London: Bloomsbury, 1997); R. Atwood, *Stealing History: Tomb Raiders, Smugglers, and the Looting of the Ancient World* (New York: St Martin's Press, 2004); P. Watson, and C. Todeschini, *The Medici Conspiracy: The Illicit Journey of Looted Antiquities – From Italy's Tomb Raiders to the World's Greatest Museums* (New York: Public Affairs, 2006); J. Felch, and R. Frammolino, *Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum* (Boston/New York: Houghton Mifflin Harcourt, 2011).
5. For example: W. Van Schendel, and I. Abraham, eds., *Illicit Flows and Criminal Things: States, Borders and the Other Side of Globalization* (Bloomington, IN: Indiana University Press, 2005); C. Nordstrom, *Global Outlaws: Crime, Money and Power in the Contemporary World* (Berkeley: University of California Press, 2007); B. Bruns, and J. Miggelbrink, eds., *Subverting Borders: Doing Research on Smuggling and Small-Scale Trade* (Heidelberg: Springer Verlag, 2012).

6. For example: R.J. Kelly, J.L. Maghan, and J.D. Serio, *Illicit Trafficking: a Reference Handbook* (Santa Barbara, CA: ABC-CLIO, 2005); R. Hornsby, and D. Hobbs, "A Zone of Ambiguity: the Political Economy of Cigarette Bootlegging," *British Journal of Criminology*, 47/4: 551–571 2007; M. Lee, *Trafficking and Global Crime Control* (London: Sage, 2011).
7. P.M. Bator, "An Essay on the International Trade in Art" *Stanford Law Review*, 34: 275, 1982.
8. P.B. Campbell, "The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage" *International Journal of Cultural Property*, 20: 113–153, 2013.
9. K. Polk, "The Global Trade in Illicit Antiquities: Some New Directions?" in *Heritage and Crime: Prospects, Progress and Prevention*, ed. L. Grove and S. Thomas, (Basingstoke: Palgrave Macmillan, 2014).
10. M.M. Kersel, "Transcending Borders: Objects on the Move" *Archaeologies: Journal of the World Archaeological Congress*, 3–2: 81–98, 2007.
11. S. Mackenzie, "The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organized Crime in the International Antiquities Market," in *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, ed. S. Manacorda and D. Chappell (New York: Springer, 2011); B.A. Bowman, "Transnational Crimes Against Culture: Looting at Archaeological Sites and the 'Grey' Market in Antiquities" *Journal of Contemporary Criminal Justice* 24/3: 225–242, 2008.
12. T.W. LO, "Beyond Social Capital: Triad Organized Crime in Hong Kong and China" *British Journal of Criminology* 50: 851–872, 2010.
13. Lo (2010), p. 852.
14. S.X. Zhang, and K.-L. CHIN, "The Declining Significance of Triad Societies in Transnational Illegal Activities" *British Journal of Criminology* 43: 469–488, 2003.
15. Zhang and Chin (2003), p. 486.
16. *Ibid.*, p. 485.
17. Lo (2010).
18. D. Hobbs, "Going Down the Glocal: the Local Context of Organized Crime" *The Howard Journal of Criminal Justice* 37/4: 407–422, 1998; D. Hobbs, "The Firm: Organizational Logic and Criminal Culture on a Shifting Terrain" *British Journal of Criminology*, 41/549–560, 2001; M. Woodiwiss, and D. Hobbs, "Organized Evil and the Atlantic Alliance: Moral Panics and the Rhetoric of Organized Crime Policing in America and Britain" *British Journal of Criminology* 49: 106–128, 2009.
19. R.T. Naylor, "The Underworld of Ivory" *Crime, Law and Social Change* 42: 261–295, 2004.
20. Mackenzie (2011).
21. C. Morselli, *Contacts, Opportunities and Criminal Enterprise* (Toronto: University of Toronto Press, 2005); C. Morselli, *Inside Criminal Networks* (New York: Springer, 2009); C. Morselli, ed., *Crime and Networks* (New York: Routledge, 2013).
22. Lo (2010), p. 868; see also P. Williams, and R. Godson, "Anticipating Organized and Transnational Crime" *Crime, Law and Social Change*, 37: 311–355, 2002; M. Xia, "Organizational Formations of Organized Crime in China: Perspectives from the State, Markets and Networks" *Journal of Contemporary China* 17/54: 1–23, 2008; S. Zhang, and K.-L. Chin, "Enter the Dragon: Inside Chinese Human Smuggling Organizations" *Criminology*, 40: 737–768, 2002.
23. B. Hauser-Schäublin, ed., *World Heritage Angkor and Beyond: Circumstances and Implications of UNESCO Listings in Cambodia* (Göttingen: Universitätsverlag Göttingen, 2001), p. 127.

24. While some knew more than others, every time we asked a local where looted Khmer antiquities go, the answer was always “Thailand.” However, some expressed surprise upon learning that from there, Khmer antiquities have ended up in the United States, Europe, and Japan.
25. M. Lafont, *Pillaging Cambodia: The Illicit Traffic in Khmer Art* (London: McFarland, 2004), p. 40; M. Nagashima, *The Lost Heritage: the Reality of Artifact Smuggling in Southeast Asia* (Bangkok: Post Books, 2002), p.107.
26. See also R. Thosarat, “Report from Southeast Asia” *Culture Without Context: The Newsletter of the Illicit Antiquities Research Centre, University of Cambridge*, 8/Spring: 18–21, 2001.
27. T. Davis, and S. Mackenzie, “Crime and Conflict: Temple Looting in Cambodia,” in *Cultural Property Crime*, eds. J. Kila and M. Balcells (Leiden: Brill, 2014).
28. Lafont (2004), pp. 52–56.
29. Phnom Penh Post (1999), “The Raiders of Banteay Chmar” website at <http://www.phnompenhpost.com/national/raiders-banteay-chmar> (version current at 11 April 2014).
30. UNESCO (1970), Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.
31. Note this is in contrast this to what the Thai dealer Rachana said when he offered us theft to order in 2013.
32. M. Levi, “Thinking about organized crime: Structure and threat” *The RUSI Journal*, 159/1: 6–14, 2014.
33. Lo (2010).
34. Matsuda (1998).
35. Campbell (2013), p. 125.
36. M. Felson, and R.V. Clarke, “Opportunity makes the Thief: Practical theory for crime prevention” *Policing and Reducing Crime Unit, Police Research Series Paper 98* (London: Home Office, 1998).
37. Campbell (2013), p. 125.
38. *Ibid.*, p.138.
39. R.J. Elia, “Ricardo Elia Responds” *Archaeology*, 46/3: 17, 1993; C. Renfrew, “Collectors are the Real Looters” *Archaeology*, 46/3: 16–17, 1993.
40. This work was supported by the European Research Council under the European Union’s Seventh Framework Programme (FP7/2007–2013)/ERC Grant agreement n° 283873 GTICO. We thank our colleague and research assistant Naren Than for helpful comments on an earlier draft of this article. This work originally appeared in *The British Journal of Criminology*, published 9 January 2014 by Oxford University Press journals, and is reprinted here with permission.

16

Something Is Confidential in the State of Christie's

Christos Tsirogiannis

Introduction: Repatriations from the archives and Christie's statements

In 1995, the Italian and Swiss authorities confiscated the Giacomo Medici archive in the Free Port of Geneva.¹ Later, in 2002, the same authorities confiscated the Gianfranco Becchina archive in Basel.² In 2006, during a raid at a villa complex maintained by the Papadimitriou family (descendants of the antiquities dealer the late Christos Michaelides), the Greek authorities confiscated the archive of the top antiquities dealers of modern times, Robin Symes and Christos Michaelides.^{3,4} These three archives – and, especially, the combined information they include (almost exclusively after 1972) – provide an unprecedented insight into the international antiquities market. Research in the archives uncovers the ways in which thousands of looted antiquities from all over the world were smuggled by middlemen, and “laundered” by auction houses and dealers, before being acquired by museums and private collectors, in contradiction of the guidelines of the 1970 UNESCO Convention⁵ and the 1970 ICOM statement on Ethics of Acquisitions.

Since 2005, the Italian authorities, based on evidence from these three archives, have repatriated about 200 antiquities so far, from: the University of Virginia,⁶ Boston Museum of Fine Arts,⁷ Jean Paul Getty Museum (on

I am grateful to: Professor David W.J. Gill (University Campus Suffolk), Dr Christopher Chippindale (University of Cambridge), Dr Helen Van Noorden (University of Cambridge), Emeritus Professor Patrick Boyde (University of Cambridge), the staff of the Department of Antiquities at the Fitzwilliam Museum (University of Cambridge), Dr Paolo Giorgio Ferri (Italian Ministry of Culture), Nikolas Zirganos (Ελευθεροτυπία, Η Εφημερίδα των Συντακτών) and Fabio Isman (Il Messaggero, The Art Newspaper). I am also grateful to Max Bernheimer (Christie's), Andrew Gully (Sotheby's) and Senta Zeller (Jean-David Cahn AG) for their answers to my emails. This article is an updated version of the original article published in *The Journal of Art Crime* (9), Spring 2013, pp. 3–19.

three different occasions),⁸ Metropolitan Museum of Art (on two different occasions),⁹ Princeton University Museum of Art (on two different occasions),¹⁰ Cleveland Museum of Art,¹¹ the Shelby White/Leon Levy private collection,¹² Royal-Athena Galleries (dealer Jerome Eisenberg),¹³ the Minneapolis Institute of Art¹⁴ and the Dietrich Von Bothmer private collection of vase fragments in the Metropolitan Museum of Art.¹⁵ Recently, Toledo Museum of Art agreed to return an Etruscan Hydria to Italy,¹⁶ while Dallas Museum of Art announced the return of five antiquities to Italy and one antiquity to Turkey.¹⁷ From the numerous antiquities depicted in the three confiscated archives, the Greek authorities have managed to repatriate only two so far, both from the Getty Museum in 2007.^{18,19}

Following their repatriation, these antiquities were published and exhibited with acknowledgment of their looted past,²⁰ revealing the true nature of most antiquities in the confiscated archives. So incriminating is the evidence in the three archives presented by the authorities during the negotiations for each object that in no case has any museum, private collection or dealer tried to defend their acquisitions in court. The reason is that the photographic evidence presents, in most cases, the *oldest* part of the object's modern collecting history, its first appearance after being looted, smashed and covered with soil, or recently restored, without any previously documented legal collecting history. An attempt to defend their illicit acquisitions during a court case would have brought (apart from the inevitable surrender of the object(s)) a long-lasting negative publicity for the museums, private collectors and dealers involved, additional embarrassment, an extra financial loss and the possibility that their and others' involvement in more cases of looted antiquities would be revealed. The subsequent returns, in 2012 and 2013, from the Getty Museum to Italy and from the Metropolitan Museum of Art to Italy in 2012, prove that point.

Although each repatriation case attracted massive media attention,²¹ and non-specialists around the world began to be informed about the true nature of the modern international antiquities market, the market itself reacted badly. Having missed the 1970 UNESCO opportunity to reform, the market is now losing a second chance to change its attitude, since it is continuing to offer antiquities depicted in the three confiscated archives.²² Christie's auction house, through Max Bernheimer, its current International Antiquities Department Head in New York, declared:²³ "Media attention has been focused on the contested pieces but there are plenty of things that are free of repatriation issues and those are the things that people are hot after." However, Christie's auctioned on 14 April 2011, in London, a Roman marble head of Domitilla Minor, Vespasian's daughter,²⁴ which was offered as "A Roman marble portrait head of a woman ... Possibly Livia or Agrippina ...," with the following collecting history: "Private collection, Switzerland, circa 1975. Acquired by the present owner in Switzerland in 1988."

The marble head was sold,²⁵ but soon after was proved to have been stolen from a statue at the Sabratha Museum, west of Tripoli, Libya.²⁶ The Roman head has been recovered in Italy by the Carabinieri and was returned to the Libyan authorities on, 21 January 2012 by the then Italian Prime Minister Mario Monti, during his official visit to Libya.²⁷

After his 2006 statement, Bernheimer made another statement:²⁸

Buying through an auction house, where due diligence is incredibly thorough and everything is openly published in the catalogue, limits the possibilities over ownership and repatriation issues later on.

In April 2012, U.S. Immigration and Customs Enforcement released the following statement:²⁹

The first investigation tied to Becchina is the case involving the two, 2,000-year-old ceramic vessels. In 2009, investigators learned about the sale of an Attic red-figured pelike, circa 480–460 B.C. for \$80,500, and a red-figured situla, circa 365–350 B.C. for \$40,000, at Christie's New York auction house. The investigation determined that these two objects were looted from archeological [sic] sites in Italy and smuggled into Switzerland. The ownership of the objects was transferred before they arrived in a Beverly Hills, Calif., gallery and subsequent consignment to Christie's in New York. HSI [Homeland Security Investigations] special agents in New York seized the objects, and upon authentication, both were forfeited for return.

The second investigation tied to Becchina involved a Roman marble statue, a janiform herm that was believed to have been smuggled out of Italy into the United States via Switzerland. HSI special agents in New York initiated an investigation into the sculpture which had been auctioned and sold at Christie's for \$26,250. It was later seized at Christie's pursuant to a seizure warrant obtained by the U.S. Attorney's Office for the Southern District of New York and in May 2011, forfeited to HSI for return to Italy.

A spokesperson for Christie's made the following statement:³⁰

The transparency of the public auction system combined with the efforts from the U.S. ICE [Immigration and Customs Enforcement] and foreign governments, in this matter, led to the identification of two stolen artifacts.

It is of major importance that Christie's acknowledged that these objects, identified from seized photographic archives, were "stolen."³¹ However, these are only a few of the total number of cases which demonstrate that

the world-leading auction houses (Christie's, Sotheby's, and Bonhams) continue to offer antiquities which are depicted in the three confiscated archives and raise repatriation issues.³²

After reviewing the fate of Becchina objects at Christie's,³³ we may now explore the current situation in the international antiquities market, using as a case study research on the collecting history of antiquities depicted in the confiscated Medici and Symes-Michaelides archives and offered by Christie's during, 2012, in three auctions, in London and New York. Giacomo Medici has been found guilty by Italy's highest court for conspiracy, illegal export and receiving stolen goods³⁴ and was sentenced to eight years³⁵ and a 10,000,000 Euro fine.³⁶ Robin Symes was convicted to two years' imprisonment for contempt of court,³⁷ after Christos Michaelides died in a "sudden and peculiar"³⁸ accident³⁹ at an Independence Day celebration meal on 4 July 1999. The collecting history ("provenance") of the seven identified antiquities was not fully presented in the Christie's auction catalogs, since the involvement of these dealers and other significant issues and details were omitted.

My sources are as follows. Part of the Medici archive was made public by the website of the Carabinieri for a time.⁴⁰ Part of the Symes-Michaelides archive was published by.⁴¹ Since, 2006 several publications included images from the confiscated archives.⁴² The Medici, Becchina and Symes-Michaelides archives were presented publicly by the Italian judicial and police authorities during the trials of Giacomo Medici, Gianfranco Becchina, Marion True, Robert Hecht and dozens of Italian looters in Rome from 2000 to 2011.⁴³

Four of the identifications took place before the auctions. For these, I notified Dr Paolo Giorgio Ferri, the public prosecutor, who contributed vastly to the Italian repatriations of looted antiquities identified in the three confiscated archives, from the Getty Museum, Boston Museum of Fine Arts, Metropolitan Museum of Art, Shelby White Collection, Royal-Athena Galleries (dealer Jerome Eisenberg). Dr Ferri, who is now working on illicit antiquities cases for the Italian Ministry of Cultural Heritage and Activities, was very interested in the identifications, and responded that the Ministry would make all the necessary steps. The remaining three antiquities were identified after the auctions, while researching for the production of this article.

Christie's Auction of 8 June 2012 in New York

On 8 June 2012, Christie's offered 261 lots for sale at their New York branch.⁴⁴ According to the Christie's catalog, 165 lots and a part of two other lots (nos. 180 and 185) had no pre-1970 collecting history; for 16 lots and parts of two other lots (nos. 180 and 185) it was unclear if they had any collecting history before 1970; and only 78 appeared to have a

pre-1970 collecting history. Christie's estimations totaled (by my calculations) \$8,052,500–\$12,350,500 from the sale of all the lots, and although 79 lots remained unsold, the remaining 182 lots were sold for a total of \$8,968,375.

Among the unsold antiquities appear four objects (three lots) that were identified in the Medici archive:

A Greek Bronze Boar

A bronze figure of a boar first surfaced in 1987 as one of the, 202 antiquities that the Thetis Foundation lent for an exhibition at the Museum of Art and History of Geneva.⁴⁵ The boar stands on a curved bronze base, below which emerges a bronze hook. The antiquity was depicted on a four-legged base of white plastic.⁴⁶ The accompanying text makes no reference to the individual from whom the Thetis Foundation acquired the figure, nor to any other previous collecting history related to the object.⁴⁷ The boar is first presented as "Art Corinthien" but later on the same page is described as "corinthien ou sicyonien."⁴⁸ A separate note, "Epire?" apparently expresses a different and very broad "find-spot" (?) for the boar.⁴⁹ In the "Index" its region is presented as "Corinthie."⁵⁰

Four years after Zimmermann's publication, the Thetis Foundation consigned 144 antiquities at Sotheby's London branch.⁵¹ These antiquities were presented in 124 lots (lots 1–124) at the auction of 23 May 1991, which bore the code name "Thetis."⁵² All the consigned Thetis Foundation antiquities had previously appeared in Zimmermann's 1987 publication, but for 121 of them, Sotheby's mentioned no collecting history other than their appearance in this publication. In this big group of antiquities was the same bronze figure of a boar,⁵³ which was presented as:

A Greek bronze figure of a sow, (female boar), perhaps Corinthian, ... , standing on a thin rectangular base, a large hook for attachment below it
... .

This time, the boar is presented standing on a modern wooden base, evidently made exclusively for this figurine, since the base's upper surface follows the curve of the boar's bronze base, incorporating – and thus covering – the bronze hook.⁵⁴ The print of a small label that has been removed is visible near the right corner of one of the wooden base's long sides. This may be an indication that the figure was traded again before its appearance in the 1991 Sotheby's auction, or maybe even before 1987, although the wooden base seems to appear between 1987 and 1991. Its condition seems surprisingly neglected; dust can be observed along the surface of a step which forms the lower part of the wooden base.

The antiquity was estimated at £6,000–8,000 and sold for £14,300. I would have asked Mr Keresey, the Worldwide Sotheby's Director of Egyptian,

Classical and Western Asiatic Antiquities, about the buyer of the boar in the 1991 auction, but Mr Andrew Gully, Worldwide Sotheby's Director of Communications, had replied on 8 January 2013, to my inquiry about another antiquity (see below, case "e"), with the following direction:

As I said in our initial exchange, Sotheby's does not disclose the names of consigners or buyers. In the future, please use that answer as your guide.

The same figure is depicted in one of Medici's regular (non-Polaroid) images, among 11 other figures and vases against a red background, equally divided in two shelves of what appears to be a case for exhibiting antiquities. The image was produced by Giacomo Medici in his warehouse in the Free Port of Geneva,⁵⁵ the same one that was raided in 1995 by the Swiss and Italian authorities, who discovered thousands of antiquities and the famous Medici archive with its thousands of images.⁵⁶ The image depicting the boar was delivered, among several other images, to the Greek journalist Nikolas Zirganos by Medici himself, during an interview that took place in late January 2006 in Rome; these images were subsequently published by the Greek magazine *Epsilon* on February 19, 2006.⁵⁷ The boar appears at the right corner of the top shelf. Although the print of the previously existing label is still visible on one of the wooden base's long sides, a white thread tied tightly around the boar's right front foot ends in a small paper label is not readable. A ruler is depicted in front of the objects on the lower shelf. In the caption of the image Zirganos wrote (my translation from the original Greek text):

One of the images that Medici used to send to potential buyers. The ruler helped them to estimate the scale of the antiquities.

The image proves that the boar was once owned by Medici in Geneva before 1995, since it was not found during the 1995 raid by the Swiss and Italian authorities. It is not known whether the Medici image pre-dates the 1987 Zimmermann publication or was produced after the Sotheby's 1991 auction, since there is no date on the image. However, the appearance of another figure on the same shelf, also published in Zimmermann and auctioned by Sotheby's in 1991 suggests that the Medici image was produced after the Sotheby's 1991 auction and that Medici was the buyer of both figures.

After its last appearance in the Sotheby's 1991 auction, the boar reappeared, this time in Christie's auction of 8 June 2012 in New York,⁵⁸ with the following collecting history:

Provenance:

The Thetis Foundation;

Sotheby's, London, 23 May 1991, lot 54.

Private Collection, Switzerland, 2004.

Published:

J.-L. Zimmermann, *Collection de la Fondation Thetis*, Geneva, 1987, pp. 37–38, no. 72.

In the Christie's catalog the figure appears in exactly the same condition as it is depicted in the Medici image. The close-up of the Christie's image verifies the observations made about the images of the boar in Sotheby's 1991 auction and in Medici: the modern (wooden) base follows the curved bronze base of the figure and the print of a label at the upper right corner of one long side of the modern base can be distinguished more clearly. In addition, dust is again observable along the surface of the step which forms the lower part of the modern base. That is, for over, 21 years, an antiquity considered a work of art is presented by the world's two leading auction houses without anyone caring to dust its base.

The boar was identified on 5 June 2012, three days before the Christie's auction, in the Medici image published in the *Epsilon* magazine. Immediately Dr Ferri was informed (my email on 5 June 2012). The figure was estimated at \$60,000–80,000, but remained unsold. I enquired by email to Christie's (26 December 2012) regarding the Thetis Foundation contact details, the name of the consigner of the boar in the 8 June 2012 auction (since it appeared under the title "Various Properties"), the possibility that its consigner was the anonymous owner of the "Private collection, Switzerland, 2004" and if the boar was returned to him/her since it apparently remained unsold. Mr Bernheimer replied (email 2 January 2013):

Regarding lot 65 from the December 2012 sale, as the Thetis Foundation was not the seller, I do not have contact information. You might find details on the foundation in Zimmerman's 1987 publication, *Collection de la Fondation Thétis*. In terms of the name of the consignor, again, that information is confidential; it is my understanding that our consignor acquired the piece from the Private Collection, Switzerland, in, 2004, and that the Private Collector acquired it from Sotheby's London in 1991. The bronze has been returned to the seller.

Questions regarding this case arise first from the variations between different publications regarding the find-spot and production origin of the boar. The apparent find-spot "Epire?" and the apparently secure production origin "Art corinthien," "corinthien ou sicyonien" and "Corinthien" (in Index) in Zimmermann 1987, became "perhaps Corinthian" in the Sotheby's 1991 auction, without any note either about the previously mentioned find-spot or any other. In Christie's 2012 auction no information was given either about production origin or about find-spot. On what grounds did

Sotheby's conceal Zimmermann's hypothesis on the find-spot of the bronze boar ("Epire?")? Did typological or other scientific research lead Christie's to the conclusion that the previous sellers of the bronze boar had inaccurate information on the find-spot and the production origin of the object? From where did Thetis Foundation acquire the information included in its 1987 exhibition catalog?

Some of the other 11 objects depicted with the boar in the Medici image have their own images in the confiscated Medici archive, depicted on a towel and on the same shelf in the Geneva warehouse. Since the photographic evidence suggests that Medici acquired the bronze boar at the Sotheby's 1991 auction and Bernheimer informed me that the "consignor [in Christie's 2012] acquired the piece from the Private Collection, Switzerland, in, 2004, and that the Private Collector acquired it from Sotheby's London in 1991," it appears that "confidentiality" is protecting Giacomo Medici and whoever acquired the bronze boar from him. If Giacomo Medici is the so-called "Private Collection, Switzerland, 2004," where did he store and trade this antiquity, almost a decade after the 1995 raid and with a legal case ongoing against him in the Italian courts? Conversely, if the boar has a legal collecting history, why did Thetis Foundation not reveal the previous owner of the bronze boar as part of its collecting history? Why did Christie's not reveal that the object passed through Medici's hands, thus demonstrating that Medici was dealing in licit antiquities, as well as (proven) illicit ones? If the bronze boar is not a looted and smuggled antiquity, why did Giacomo Medici not demand that his name be mentioned in the collecting history supplied by Christie's, thus advertising a legitimate part of his previous activities?

On 17 December 1998, the Thetis Foundation consigned 16 Egyptian antiquities,⁵⁹ 22 Classical antiquities⁶⁰ and five Western Asiatic antiquities,⁶¹ again in a Sotheby's auction,⁶² this time in New York. From the total 42 consigned antiquities, only 16 appeared in Zimmermann's 1987 publication.⁶³ No collecting history of any kind was given by Sotheby's in their catalog for any of the remaining, 26 "Thetis" antiquities, which do not appear in the 1987 Zimmermann publication either.

This case verifies that auction houses *do not* publish everything openly and, in fact, hide parts of the object's collecting history,⁶⁴ but a further point may be made. Following Bernheimer's reply "as the Thetis Foundation was not the seller, I do not have contact information," I contacted Ms Delaloye, Christie's Specialist (Antiquities Department) by email (5 January 2013) requesting the contact details of the Thetis Foundation (see case, 2.i below), since in this extremely recent auction (25 October 2012) Thetis Foundation *was* the seller and thus Christie's (the London branch) had the relevant contact details. My email in January followed up a previous email (30 December 2012) to Ms Georgiana Aitken, the Head of Department (regarding case, 2.i below) and to Ms Delaloye, since I received an

automatic out-of-office from both. Despite the prompt answers I received by Mr Bernheimer (Christie's, New York), Ms Delaloye (Christie's, London) never replied to any of my emails. Evidently, then, auction houses block access to the most crucial information for academic research, by not replying at all.

The lack of reply about the contact details of the Thetis Foundation also leaves unanswered the key question about whether the boar figurine is a licit antiquity or not. Christie's New York branch politely denied that they had contact details since Thetis Foundation was not the seller, but the same request, in reference to an auction in which Thetis Foundation *was* the seller, was ignored by Christie's London branch, without any excuse. Once again, "confidentiality" prevailed over truth.

A Greek terracotta votive ship

During the preparation of this article, a terracotta vessel in the shape of a sea-monster, with eight rowers and two coxswains, was identified in a regular image in the confiscated Medici archive (Cd, 2, racc. 11, pag. 15, foto 3).

The vessel is depicted on a modern base made of metal wire, and a tape measure appears extended in front of it to indicate the vessel's length. The fact that the object was photographed at a slight angle from above allows certain observations to be made: the ten ancient figures are depicted sitting on four modern wooden rowing benches, and at least three figures of the rowers appear broken and glued at the level of the thighs (one of them at the arms, as well).

The same terracotta vessel surfaced for the first time in Rodeo Drive, Beverly Hills, at the Summa Galleries, owned by dealer Bruce McNall, where it is termed a "boat." The vessel with its ten figures is depicted in the first antiquities catalog of the Summa Galleries, in December 1976, in exactly the same condition as it is depicted in the Medici image, but without the modern base. The antiquity was offered for sale as "a votive offering."⁶⁵ The only information given by the gallery on the collecting history of the antiquity was "Sicily." According to the price list supplied by the Summa Galleries, the price for the vessel was \$4,500.

The terracotta vessel appears to be sold by Summa Galleries to the private collector Gordon McLendon. The link between McLendon and the Summa Galleries has been discussed by Gill and Chippindale:⁶⁶

Gordon McLendon donated two Apulian pots to the Getty in 1977 (Appendix A, nos., 20, 21). McLendon, who was involved in radio stations, collected antiquities in part derived from Summa Galleries and Numismatic Fine Arts. It is alleged that Frel encouraged donations from McLendon at an "exaggerated appraisal." In 1977 McLendon also donated an Attic volute-krater attributed to the Kleophrades painter that remains in the Getty.

In the period 1976–1983, the Getty Museum received more than 900 antiquities as a donation from Gordon McLendon, who was “part of a decade-long looting and tax fraud scheme being run out of the Getty’s antiquities department.”⁶⁷ Some of these antiquities were proven to have been looted and were repatriated to Italy, e.g., the two Apulian red-figured volute kraters nos. 77.AE.13-14, donated in 1977.⁶⁸ One of these kraters, at least (no. 77.AE.13) is depicted smashed in pieces in a Polaroid image from the Medici archive (CD, 2, racc. 23, pag. 8, foto 10).

The terracotta vessel under discussion reappeared on June 14, 1996 at the same Christie’s antiquities auction held in New York,⁶⁹ where Konrad O. Bernheimer (relative of Max Bernheimer, of Christie’s) sold ten ancient textiles.⁷⁰ The Summa Galleries’ “boat” was presented in Christie’s as “A Greek terracotta votive ship.” The vessel and its figures were depicted in the same condition in which they are depicted in the Medici image and the Summa Galleries 1976 catalog, without any base. This antiquity was offered by Christie’s as the “Property from the McLendon collection,” with the following collecting history:

Provenance:

The Summa Galleries, Beverly Hills, Catalog 1, 1976, no. 65.

Although Summa Galleries offered the object with “Sicily” as its place of origin, 20 years later Christie’s reduced this to “perhaps from Sicily.” The object was estimated at \$4,000–6,000 and was sold for \$12,650. Finally, the same terracotta vessel was offered for sale in the Christie’s antiquities auction of 8 June 2012 in New York,⁷¹ again as “A Greek terracotta votive ship” which was offered as “The Property of a California private collector.” This time, only the vessel was offered for sale, without the eight rowers and the two coxswains. The four modern, wooden rowing benches which suggested the existence of the rowers, at least, were also removed. Furthermore, Christie’s did not refer at all to the rowers and coxswains presented in its own auction of 14 June 1996, even though this auction appears as part of the vessel’s “Provenance” in the catalog of 8 June 2012:

Provenance:

With Summa Galleries, Beverly Hills, 1976 (*Catalog 1*, no. 65).

The McLendon Collection; Christie’s, New York, 14 June 1996, lot 69.

with Ariadne Galleries, New York, late 1990’s.

In this, the latest Christie’s catalog, the vessel’s place of origin was altered again: from “Sicily” (in the Summa Galleries in 1976) and “perhaps from Sicily” (in Christie’s 14 June 1996 auction), to “South Italy or Sicily.” This time the vessel is depicted on, two small plastic bases. It was estimated at

\$15,000–20,000 and finally sold for \$22,500. To my inquiry regarding the buyer of this object in the 1996 auction, as well as the names of the buyer and the seller in the, 2012 auction (email 11 January 2013), Bernheimer replied on the same day: “unless a client chooses to be identified, the names of buyers and sellers are confidential.”

The collecting history given implies that Ariadne Galleries was the buyer of the vessel in 1996, but Bernheimer verified only that the private Californian collector who consigned the object in, 2012 “indeed acquired the piece from Ariadne.”

On 12 January 2013 I emailed “Ariadne Galleries” in New York, requesting:

... the details (description, provenance, image) of the boat, as it appeared in a catalogue of your gallery in the late 1990’s, as well as the name of the buyer.

Ariadne Galleries never replied to my email.

Circumstantial evidence about the two galleries in this object’s collecting history should make us wary. Ariadne Galleries was involved in the case of the Icklingham bronzes acquired by Shelby White.⁷² The owner of Summa Galleries, Bruce McNall, writes in his autobiography that he cooperated with Hecht,⁷³ confirming a vivid image of their partnership given by Thomas Hoving, the former director of the Metropolitan Museum of Art.⁷⁴ The director of Summa Galleries in 1976 was Dr Margaret Ellen Mayo; she prepared and wrote their first catalog, which includes the object under discussion,⁷⁵ and she also wrote the introduction to the Hunt antiquities collection volume,⁷⁶ which includes the looted Euphronios kylix. Dr Mayo was then the Curator of Ancient Art at the Virginia Museum of Fine Arts from 1978 to 2004. During Mayo’s curatorship Virginia Museum of Fine Arts appears to have acquired at least one antiquity depicted in the confiscated archives.⁷⁷

It is not clear exactly when or where this antiquity, which appears to have Giacomo Medici as the oldest part of its modern collecting history, lost its integral part over the years of its circulation in the market, and the whereabouts of the eight rowers and the two coxswains remains unknown. The leading auction house in the world (Christie’s) makes no reference at all in its, 2012 catalog to the previous appearance or to the current existence of the ten ancient figures, although it was Christie’s who last auctioned them along with the vessel in 1996, an auction mentioned in their, 2012 catalog. In the latest catalog, even the modern rowing benches do not appear and only the ancient holes for the original ones are left to suggest their previous existence to the careful observer. Was the disappearance of the ten ancient figures accidental or deliberate? In each case why did Christie’s (and perhaps

Ariadne Galleries) not mention the cause of their absence, let alone their existence?

The case of the Greek terracotta vessel is one more reminder of unaffordable intellectual loss. On what grounds is the vessel characterized as “votive,” first by Summa Galleries, then by Christie’s (twice, in 1996 and in 2012)? Did Ariadne Galleries in the late 1990’s follow the same pattern? Did Summa Galleries know if it was originally found in a tomb or a sanctuary? We can only imagine what valuable knowledge we may have gained from any interaction with other votive offerings in an undisturbed, archaeologically excavated and responsibly recorded context. In the same way, why were Summa Galleries seemingly confident that Sicily was the vessel’s place of origin? Was it the result of typological research that led Christie’s (and perhaps Ariadne Galleries) to be less certain about this point? The find-spot of an archaeologically excavated and responsibly recorded antiquity is never questioned. Is the vessel such an object?

These questions lead to others, of the same kind that occur whenever a “toxic” antiquity (one without collecting history before 1970 and, therefore, dangerous even to consider for acquisition) surfaces in the market. Why does the vessel appear in the confiscated Medici archive? Is Medici part of the boat’s collecting history? Is Medici *the oldest part* of the vessel’s collecting history? Who sold it to Summa Galleries? Why did Summa Galleries and especially Christie’s not refer to this individual since, as they claim, “due diligence is incredibly thorough and everything is openly published in the catalogue?” Has Christie’s checked all the lots with the databases of the Italian, Greek or any other authorities, before the auction? Did the Italian authorities identify the object and claim it from Christie’s, as they did with Becchina objects which surfaced, again in Christie’s, again in New York? Whom does the famous “confidentiality” protect, in the end, such that archaeological and other knowledge remains hidden?

A pair of Canosan pottery volute Kraters

Two Canosan volute kraters appear separately in two Polaroid images from the confiscated Medici archive (nos. Medici CD, 3, racc. 74 oggetti passati, pag. 10, fotos 3–4). They are depicted with a black cloth background in order that their decoration should be more visible. In the Polaroids, the two kraters are depicted unclean and missing parts of their bases, while one of them is also missing a piece of its rim (the one depicted in Polaroid no. 4). The number printed at the back of each Polaroid image is identical, a proof that the two kraters were photographed with the same film. It is also an indication that the objects arrived together and passed as a *pair* through the hands of Giacomo Medici.

This observation is verified by the fact that the same two kraters appeared as a pair at Sotheby’s *Antiquities and Islamic Works of Art* auction of May 30, 1986 in New York.⁷⁸ This time the kraters appeared cleaned, with their bases

and the missing piece of the rim (Medici Polaroid no. 4) conserved. The kraters were presented as “Apulian” and Sotheby’s gave no previous collecting history or the name of their consigner.⁷⁹ The kraters appeared in a section of the Sotheby’s catalog under the title “Other Properties.” They were depicted in a single image, framing a bigger Canosan polychrome volute krater (lot 23) and two Canosan polychrome funerary vases (lots 26–27). All these vases, including the pair of kraters, were presented as “Apulian.” The two kraters were estimated at \$6,000–9,000 and were sold – according to an email from Andrew Gully (Worldwide Director of Communications at Sotheby’s) on 2 January 2013 – for \$14,300 (including buyer’s premium). Regarding my inquiry (email 26 December 2012) about the names of the consigner and the buyer of the kraters, Mr Gully replied: “Sotheby’s does not disclose the names of consigners or buyers.”

The same pair of Canosan volute kraters (this time labeled as “Canosan”) appeared in the Christie’s auction of 8 June 2012 in New York,⁸⁰ in the same condition as that in which they were presented 26 years earlier by Sotheby’s. In their catalog Christie’s gave the following collecting history:

Provenance:

Private Collection, New York.

Anonymous Sale; Sotheby’s, New York, 30 May 1986, lot, 24.

Regarding my inquiry (email 29 December 2012) about the consigner of the kraters, if s/he was the same as the “Private collection, New York” mentioned in the “Provenance” section and if the objects were returned to the seller since they remained unsold, Mr Bernheimer replied (email 2 January 2013):

Regarding lot 99 from the June 2012 sale, unless a seller decides to be identified in the catalogue, the name of the seller remains confidential. The information that the pair came from a “private collection, New York” was passed on from Sotheby’s, who originally sold them in New York in May, 1986. They have been returned to the seller.

The kraters were estimated at \$40,000–60,000, remained unsold and – according to Bernheimer’s email – were returned to the seller, without its being clear if the, 2012 seller was the same “private collection, New York” which acquired them from Sotheby’s in 1986.

The identification of the two Canosan kraters took place on 17 May 2012 and Dr Ferri was immediately notified (email 17 May 2012). The case was reported on 31 May 2012 in Italy and Greece, by *Il Messaggero*⁸¹ and *To Βήμα*,⁸² respectively. Professor David Gill highlighted Isman’s article on 31 May 2012,⁸³ but in New York, where the auction took place, the press did not refer to the identification of the kraters.

Peter Watson revealed a major scandal at Sotheby's London branch,⁸⁴ that forced Sotheby's to announce that it would "no longer have its general sales of Greek and Roman antiquities or Indian and Himalayan works of art in London."⁸⁵ Part of the scandal concerned antiquities passing through Medici's hands and consigned in Sotheby's London branch. The identification of the two Canosan kraters depicted in Medici's Polaroids and first offered in 1986 by Sotheby's New York branch, perhaps suggests that something similar could have been revealed for Sotheby's New York branch. Indeed, Sotheby's denial to disclose the name of the kraters' consigner in the 1986 sale supports this suggestion. Is "confidentiality" on behalf of the auction houses protecting Medici here too, or Robert Hecht, as the photographic evidence suggests (see n.9 above)?

I should add another point on the case of the two Canosan kraters (presented as "Apulian" by Sotheby's in 1986): Professor Ricardo Elia, researching the appearance of Apulian vases in Sotheby's during the period 1960–1998, concluded that "Sotheby's has had long-term, direct links to large-scale, commercial sources of undocumented Apulian and South Italian vases."⁸⁶

Last but not least: the two kraters were finally repatriated to Italy in September 2012 without my being notified. Even their repatriation uncovered several problems which I discuss in the overall conclusions to this piece.

Christie's Auction of 25 October 2012 in London

On 25 October 2012 Christie's offered, 289 lots at their London branch.⁸⁷ Their estimations totaled (by my calculations) £3,899,300–5,774,300 and, although 61 lots remained unsold, a total £8,080,562 was fetched for the remaining 228 lots.⁸⁸

According to Christie's, 144 lots had a pre-1970 collecting history, 45 lots had an uncertain collecting history with regard to the 1970 UNESCO Convention date, and 100 lots had a post-1970 collecting history, against the UNESCO Convention guidelines.

Antiquities from the collection of Thetis Foundation (lots 143–191) were all offered as "acquired prior to 1970." It is striking that objects of such high quality remained either unpublished, or were published well after 1970, with few exceptions: lot 150 was published in 1966 and 1971, and lots 178 (one of five), 181 (two of six) and 183 appear to be published as early as 1911.⁸⁹ In at least one case (lot 171, "An Attic 'head' oinochoe"), part of the previous history of the vase was omitted, since it had been previously offered for sale in the Sotheby's auction of 17 December 1998 as lot 138, again by Thetis Foundation.

The vase apparently remained unsold; Sotheby's could "not find any record of what became of it after it did not sell at that sale" (email by Mr Gully of Sotheby's on 23 January 2013), but the vase must have been

returned to Thetis Foundation, since Thetis Foundation consigned it in Christie's in October 2012.

One striking detail about this auction is that Christie's noted that lot 162 ("A Greek bronze horse") was published in 1987 by Zimmermann ("*Collection de la Fondation Thétis*, Geneva, 1987, p. 134, no. 39"), but the bronze horse presented in Christie's October 2012 auction was a totally different object to the one published by Zimmermann. Thus, Christie's gave a fake collecting history to an antiquity which apparently has no prior publication – at least not in Zimmermann 1987.

The Abeler collection, consisting mainly of rings included only one (lot 192) from the 42 objects published before 1970. Among the unsold antiquities appears one object which I have identified in the Medici archive:

Etruscan terracotta votive boy

In the Medici archive, a regular image (no. Medici CD, 2, racc. 4, pag. 12, foto, 20) presents an Etruscan terracotta figure of a boy with its hand resting on an unidentified small object. The figure is shown seated, integral with a base, against a red background (identical to the background of the bronze boar and the 11 more figures and vases in their Medici image, see case 1.i above). The terracotta figure is depicted with its head broken off the body, but balanced on the broken neck, propped on what appears to be a small round yellow plastic lid or a roll of sellotape wedged between the head and the neck. Several black spots appear on the shoulders, the left side of the face and parts of the torso and the base. The right thumb and the top of the object that the boy touches with his left hand are missing. A label, stuck on the upper left corner of the image, bears the number 20.

The same Etruscan terracotta boy appeared on 5 November 2011 in the antiquities auction of Jean-David Cahn AG gallery in Basel,⁹⁰ as "A seated boy with a dove" and was dated "3rd cent. B.C." This time the head appeared restored and the black marks on the surface of the shoulders, the face, the torso and the base had been partially cleaned, leaving light brown marks. The boy's right thumb and the head of the dove appeared in place (restored or conserved). The description of the object in the catalog concludes:

... A crack at the neck. Slightly worn. Minute lacunae. Probably from a funerary monument.

Provenance: Coll. G. Granelli de Croon, Switzerland, acquired on the Swiss art market ca. 1990. The last piece to enter the coll. after a long pause in collecting.

The figure of the boy was given an "approximative starting bid" [sic] of 12,000 Swiss francs and sold for 16,800 Swiss francs, according to the online "Result list" the Cahn gallery provided after the auction.

After consulting the relevant entry in the Cahn gallery catalog, I emailed Jean-David Cahn AG gallery three times between 26 December 2012 and 7 January 2013, asking the estimated price of the object, whether the consigner was a member of the Granelli de Croon family, and the name of the buyer. On 28 January 2013, I received an email from Ms Senta Zeller (secretary of “Jean-David Cahn AG”), attaching the two pages of the Cahn gallery catalog that I had already noted in all my emails. I replied again that I already had the relevant catalog, and that I would wait for the answers to my questions, but to date I have received none.

About a year later the same figure appeared – in the same condition in which it appeared in Jean-David Cahn’s gallery – in Christie’s auction of 25 October 2012 in London as an “Etruscan terracotta votive boy” of the 4th–3rd century BC.⁹¹ In the description of the figure, Christie’s provided no information regarding any level of restoration or conservation. The collecting history given by Christie’s was only: “G. Granelli de Croon collection, Switzerland, circa 1990.” Dr Ferri was informed of this identification before the Christie’s auction (my email on 22 October 2012). The figure was estimated at £20,000–30,000, but apparently remained unsold.

On 30 December 2012, I contacted Ms. Aitken and Ms. Delaloye of Christie’s in London (see *supra*, case study 1.i), asking a) if the consigner of lot 99 (“Etruscan terracotta votive boy”) was a member of the “G. Granelli de Croon collection, Switzerland,” and if not, the name of the consigner; b) the email address (or any other contact details available) of the person in charge of the G. Granelli de Croon collection; c) any previous collecting history of lot 99 (prior to its appearance in Cahn AG gallery in, 2011, which Christie’s had not mentioned); and d) if the object was returned to the G. Granelli de Croon collection, since it apparently remained unsold. I never received any answer from any of them.

Jean-David Cahn’s gallery has an unfortunate record in recent years. In 2008, the Greek state, after my identification of a looted and illegally exported Attic marble funerary lekythos, repatriated the object from Jean-David Cahn AG,⁹² an operation in which I cooperated with the investigative reporter Nikolas Zirganos and the former head of the Greek police Art Squad, the late Georgios Gligoris.⁹³ In another case, the Greek state repatriated from Jean-David Cahn in 2007 a marble statue of Lykeios Apollo that had been stolen from the archaeological site of Gortyna in Crete in 1991.⁹⁴ Jean-David Cahn regularly advertises his business in the British Museum magazine.

Once again, the staff of Christie’s London branch did not reply to the enquiries, a tactic followed by Jean-David Cahn AG gallery as well. Once again, with the striking evidence of the photographic archive from Medici, an attempt to reconstruct the true collecting history of an object was blocked by the very people who advertise their openness in such matters.

Christie's Auction of 5 December 2012 in New York

On 5 December 2012, Christie's offered at their New York branch, 224 lots.⁹⁵ Their estimations totaled (by my calculations) £8,386,500–13,039,000 and, although 57 lots remained unsold, a total \$8,214,937 (including buyer's premium) was fetched for the remaining 167 lots.

According to Christie's, 50 lots and six parts of lots (each of these lots consisting of more than one object) had a pre-1970 collecting history, 46 lots and eight parts of lots had an uncertain collecting history with regard to the 1970 UNESCO Convention date, and 120 lots and three parts of lots had a post-1970 collecting history, against the UNESCO Convention guidelines.

Antiquities from the collection of Paul and Helen Zuckerman (lots 183–216) included only one lot (196) and parts of three other lots (186b-l, 195a-b and 197a) with a post-1970 collecting history, but only one lot (187) and parts of four other lots (183a, 185a-b, 189a and 191a) are given with a pre-1970 (or 1970) collecting history. From the total 34 lots of the Zuckerman collection presented by Christie's, 25 lots and seven parts of other lots have an uncertain collecting history ("Provenance: Acquired by Paul and Helen Zuckerman, Detroit, 1960s-1970s") in relation to the date of the UNESCO Convention guidelines.

In the same catalog, 27 antiquities in 19 lots (153–171) were presented as "Property from a distinguished private collection." This anonymous collection contains also a group of old masters paintings, which Christie's auctioned on 30 January 2013.⁹⁶ Their catalog states: "The artists of the Renaissance looked to the world of Antiquity for inspiration and this catalogue reflects that important connection." The advertisement of the private collection continues:⁹⁷

The superb group of works reflects the passion and intelligence of true connoisseurs, ranging from ancient Egyptian canopic jars, painted Attic amphorae to a masterpiece by a less-well known sixteenth-century master such as Pulzone, and iconic works such as the bust of Marcus Aurelius and the Madonna and Child by Fra Bartolomeo.

The "passion and intelligence of true connoisseurs" did not, however, protect them from acquiring antiquities without provenance: almost all the lots (153–170, except lot 171, a bust of the Emperor Marcus Aurelius) appeared in the Christie's catalog with no collecting history before 1970, i.e., against the guidelines of the 1970 UNESCO Convention. After the auction, Christie's celebrated the sale:

G. Max Bernheimer, International Department Head, and Molly Morse Limmer, Head of Antiquities, New York, said: "Property from a Distinguished Private Collection, which included the glorious portrait bust of

the Emperor Marcus Aurelius, led the day, attracting multiple bidders throughout the globe. The collection sold for a phenomenal \$3.1 million, which was 195% of the pre-sale low estimate, with Marcus achieving a stellar \$2 million."

I have now identified two of the antiquities in this "distinguished private collection" in the confiscated Robin Symes-Christos Michaelides archive.

An attic red-figured Kylix, "Manner of the Euaion Painter"

An Attic red-figured kylix is depicted in the confiscated Symes-Michaelides archive, in four professional images (nos. 0303–0306). A few round holes, visible on the seated figure on the tondo and at least on two of the nine standing figures around the exterior, suggest that the kylix had been broken in some areas and repaired in antiquity with bronze staples, indicated by the green color of the corrosion around at least one hole.⁹⁸ In these images it can be observed too that the kylix was put together from several fragments and that not all the fragments of the vase were available before its reconstruction. Where fragments were missing, the vase has been restored with pieces of clay which were left unpainted. This, and the fact that the fragments were glued together, indicates that a full-scale reconstruction and a partial restoration of the kylix took place in modern times.

The first public appearance of the kylix in the antiquities market was in Sotheby's antiquities auction of 13–14 December 1982 in London.⁹⁹ The vase must have been estimated for more than £15,000–20,000, since this was the highest estimation given in the catalog for another object (lot 172), whereas the kylix (and nine other lots among the total 453 lots) was given, instead of a price, the reference "Refer Dept.," equivalent to the recent "Price on Request." The absence of a hammer price in the final price list, released by Sotheby's after the auction, indicates that the kylix remained unsold on this occasion.

In this sale the kylix was presented restored: the round holes left both on the interior and the exterior of the kylix from the ancient repair were no longer visible, having been filled with clay and repainted. In addition, the new clay pieces filling the empty spaces left by the original, missing fragments were also painted over. Sotheby's did not mention anything regarding any stage of the restoration of the kylix, did not provide any collecting history, and did not even name its consigner in the auction (Robin Symes and Christos Michaelides? Another dealer involved in antiquities trafficking?) – the kylix was presented in a group of objects under the title "Various Properties."

The same kylix appeared again in Sotheby's London branch some years later, on 10–11 July 1989.¹⁰⁰ In the Sotheby's 1989 catalog, the interior of the vase was represented only by a close-up of the tondo decoration, which made it even more difficult to see that the vase had been reconstructed from

various fragments and that this reconstruction took place in modern times. The kylix was presented by Sotheby's in the restored condition of 1982. Once again, Sotheby's did not reveal the name of the consigner of the vase in the 1989 auction, let alone the 1982 one; again, the kylix appeared in the "Various Properties" section. Once again, Sotheby's provided no collecting history for the kylix, not even its previous appearance in their 1982 auction.¹⁰¹ This time, the kylix was estimated for £25,000–35,000 and sold for £24,200.

The same Attic red-figured kylix, in the "Manner of the Euaion Painter," was offered for sale by Christie's on 5 December 2012 in New York, with the following collecting history:¹⁰²

PROVENANCE: Anonymous sale; Sotheby's, London, 10–11 July 1989, lot 202

This time, the antiquity was estimated at \$80,000–120,000, and it sold for \$86,500. Contradicting the aforementioned statement of Bernheimer that "due diligence is incredibly thorough and everything is openly published in the catalogue," Christie's failed to mention in their catalog the appearance of the kylix in Sotheby's 1982 auction. I note too that in the catalog for 5 December 2012, Christie's stated that five objects passed through the hands of Robin Symes (lots 28, 46 (two objects), 82 and 90), but did not record that the kylix, too (lot 159), passed through the hands of Symes-Michaelides.

On 7 January 2013 I contacted Mr Keresey of Sotheby's New York, asking the name of the consigner of the kylix in the 1982 auction, the previous collecting history of the antiquity and the name of the restorer of the kylix before the Sotheby's 1982 auction. Mr Gully replied (email 8 January 2013):

Once again, I am replying on behalf of Mr. Keresey. As I said in our initial exchange, Sotheby's does not disclose the names of consigners or buyers. In the future, please use that answer as your guide. I have no further information in response to your additional requests.

Once again, the two leading auction houses hid the oldest appearance of the kylix when they later offered it for sale. Once again they did not disclose the name of the first consigner of the kylix in any collecting history of the object given later on, obstructing research into whether an antiquity is legal or not.

A Roman marble portrait head of Antisthenes

A Roman marble head of Antisthenes first surfaced in Sotheby's "Important Antiquities" auction of 9 December 1981 in New York.¹⁰³ The nose of the head appears worn – but not broken – and the antiquity had been drilled below the neck to receive a metal pole connecting the head to a modern black square base. The head was offered in the auction, under the title "Other

Properties,” without any information regarding its consigner or collecting history, and was termed “Marble head of a Greek philosopher ... , possibly Antisthenes,” The object was estimated at \$5,000–8,000.

To my enquiry (email 29 December 2012) to Mr Keresey asking the name of the consigner, the price realized and the name of the buyer (if the object was sold), Mr Gully replied (email 2 January 2013):

Sotheby’s does not disclose the names of consigners or buyers. However, we do publicly state the prices paid for items at auction. Lot, 239 sold for \$4,840 (including buyer’s premium)

The same marble head appears in the Symes-Michaelides confiscated archive, in three professional images (nos. 0012–0014). In these, the head stands on the same modern, black square base, but the entire nose is missing, and a circular hole is visible between where the nostrils should be. These three professional images were produced by Dieter Widmer, a Basel-based professional photographer, and bear on the reverse the initials “RS,” presumably for Robin Symes, followed by three different three-digit sequential numbers.

Widmer had produced professional images also for Gianfranco Becchina¹⁰⁴ and Herbert Cahn,¹⁰⁵ father of Jean-David Cahn (see case, 2.i above). Copies of professional images produced by Widmer for Robin Symes are depicted in some of the Polaroid images found in the Medici archive, e.g., the “White Sakkos Painter” Apulian loutrophoros no.1988.431, repatriated to Italy from the Museum of Fine Arts, Boston, an antiquity which passed also through Jerome Eisenberg’s Royal-Athena Galleries.¹⁰⁶

The same marble head of Antisthenes appeared finally in Christie’s auction of 5 December 2012 in New York¹⁰⁷ and in the catalog’s introduction to the “distinguished private collection.”¹⁰⁸ In the auction catalog, the nose appears fully restored, but Christie’s failed to mention this restoration in the description of the antiquity. They also failed to mention its auction in Sotheby’s 1981, since the only collecting history given in the, 2012 catalog was:

PROVENANCE:

Art Market, Zurich, 1988.

with Royal-Athena Galleries, New York, 1988.

Just as with the kylix (lot 159), Christie’s did not record that the marble head (lot 168), too, passed through the hands of Robin Symes, although they indicated Symes’ involvement in lots 28, 46(2), 82 and 90. The head was estimated at \$100,000–150,000, but apparently remained unsold. Why did Christie’s not indicate the gallery or the dealer who handled the Antisthenes marble head in Zurich? Nefer gallery in Zurich (owned by Frieda

Tchacos-Nussberger)¹⁰⁹ seems not to have been involved here, since the head is not included in their 1988 catalog.

I could not trace the 1988 Royal-Athena Galleries catalog in any libraries in Cambridge or London. However, Jerome Eisenberg (owner of Royal-Athena Galleries) has a bad record. Eight objects were returned to Italy by Eisenberg.¹¹⁰ Two of them were exhibited in Athens among recently looted, smuggled and, subsequently, repatriated antiquities to Italy and Greece.¹¹¹ Two of the eight were auctioned by Christie's in 2004.¹¹² In late 2010, with the help of Professor David Gill, I identified 16 antiquities, which were on sale in Royal-Athena Galleries, in a much worse condition in the Medici, Becchina and Symes-Michaelides confiscated archives.¹¹³

On more than one occasion, Eisenberg acquired antiquities stolen from Greek and Italian museums, and he put on sale at least one of them.¹¹⁴ For the purposes of this article, the notable case concerns the biggest ever museum theft in Greece: 285 antiquities stolen from the Corinth museum in April 1990.¹¹⁵ Between December 1997 and March 1998 Eisenberg acquired three of these through Christie's, although in 1990 he had drawn attention in his magazine, *Minerva*, to other pieces in the Corinth theft.¹¹⁶

So we come back to Christie's. Even after all but three of the stolen antiquities were recovered by the Greek authorities with the assistance of the FBI, Christie's attempted to sell one of the remaining three – a marble head of Serapis¹¹⁷ – at their New York auction on 9 December 1999. The specialist in charge of the auction was again Max Bernheimer.¹¹⁸ Instead of a named consigner, the marble head was offered under the title "Various properties." This implies that the title "Various Properties" is being used not only to hide the identities of their consigners, as suggested by the cases of the bronze boar at Christie's on 8 June 2012 (case 1.i above) and of the kylix at Sotheby's in 1982 and 1989 (case 3.i above), but also to cover antiquities thieves.

Conclusion

Several years after the discovery of the Medici, Becchina and Symes-Michaelides warehouses and archives, archaeological material that passed through their hands continues to be offered annually by the top auction houses. However, the market in most cases omits the names of Medici, Becchina and Symes-Michaelides from the collecting history of the antiquities on offer. More museums are currently in the news for having been involved in acquiring looted material which had first passed through the top auction houses (e.g., in late 2012, Dallas Museum of Art announced that it will return antiquities which had been auctioned at Christie's and Sotheby's in the 1990s). Conversely, in the partially presented collecting history of the objects presented in Christie's, I have found that most of the dealers, galleries, collectors and auction houses that appear as ex-owners have been involved in other cases of confiscated, looted, smuggled and stolen antiquities.

Evidence presented here suggests that auction houses are using the term “confidentiality” to cover up the involvement of convicted dealers. At the same time, seriously incomplete collecting histories make the antiquities on sale more attractive to potential buyers who are unaware of the facts. By acting in this way, auction houses are putting their clients and their clients’ investments in danger in the event that repatriation claims arise. On an academic level, the auction houses are blocking research into the truth. We must not forget that it is Christie’s, through Max Bernheimer, who publicly declared:¹¹⁹

Buying through an auction house, where due diligence is incredibly thorough and everything is openly published in the catalogue, limits the possibilities over ownership and repatriation issues later on.

Several basic questions remain unanswered. Where were these seven antiquities found? How did they cross borders? How is it that, even after recent revelations of the ways in which auction houses “launder” antiquities,¹²⁰ objects are still presented and sold without a pre-1970 collecting history? If these antiquities are licit, why were all the members of the market unwilling to release further information or evidence which could date the appearance of these objects before 1970?

Subsequently, wider questions arise. What kind of knowledge – archaeological, historical or other – is irretrievably lost through the modern collecting history of these seven antiquities? How much do we really know about the people who created and used these objects? How much do we learn about our past from objects which are offered for sale in an incomplete condition because the market decided this, without explanation (e.g., the case of the terracotta boat), or because the market decided to add archaeologically unjustified characterizations (e.g., “votive” in the case of the terracotta boat)? How is our knowledge about antiquity limited every time the market decides to offer limited information for antiquities on sale, just because the market accessed them first? Who gives the market this right and who allows the market still to operate in such a way, after all the scandals uncovered in recent years? Who controls the market of antiquities?

Inevitably, the implications of these questions lead to others. Which organizations and authorities should be held responsible for not actively checking the material in auction houses and galleries? Did national authorities identify these seven antiquities in their own archives? If they did, have they claimed them all back? If they did not, what are their reasons? Why is it that it is mainly museums that are returning post-1970 looted and smuggled cultural property and very rarely auction houses, although the evidence in all cases comes from the same archival sources?

One further, somewhat troubling issue arises from the news I received in May 2013 from an article by Fabio Isman that the pair of Canosan kraters I identified in Christie’s June 2012 auction in New York (case 1.iii above)

had been repatriated to Italy.¹²¹ This had taken place on 14 September 2012, as I then discovered from correspondence with Isman (email 22 May 2013) and the kraters were put on exhibition at the Castel Sant'Angelo museum in Rome, where I saw them in June 2013 (exhibited until November 2013). Heading their entries in the exhibition catalog,¹²² we find: "*Recupero effettuato dal Comando Carabinieri Tutela Patrimonio Culturale, 2012.*" No mention is made of any part of the modern collecting history of the kraters; the text for both objects is an account of the vases' shape and decoration. This is in stark contrast to the wealth of information given in the catalog for the exhibition "*Nostoi. Repatriated Masterpieces*"¹²³ jointly organized by the Greek and Italian states in Rome and Athens. This catalog five years ago indicated the place from where each antiquity was looted and the gallery or museum from which it was repatriated. A detailed account of all who were involved in the trafficking of these antiquities was also given in the introduction of the catalog by Fabio Isman.¹²⁴ It is therefore curious that the Italian authorities did not reveal the name(s) of the consigner(s) from whom they repatriated the kraters. Are they protecting someone in this case, and if so, why? We cannot maintain the ethical, archaeological and historical right to condemn the market for hiding parts of the true collecting history of recently looted antiquities if state authorities are concealing information even after successful repatriations.

The seven antiquities identified in three Christie's auctions during 2012 and in Medici and Symes-Michaelides confiscated archives form a clear indication that the market will continue to sell "toxic" material. The phenomenon seems to have become worse, as auction houses seem to ignore the very photographic evidence that was successfully used to repatriate antiquities from museums.¹²⁵ The approach that international organizations chose to follow in 1970 has failed in practice. From 1995 to 2008, Italian authorities were proving that an active engagement with the problem can yield real results. Under the current circumstances, however, it seems inevitable that the activities of major auction houses in 2013 will produce cases for another report on the appearance of Medici, Becchina and Symes-Michaelides material in the market.

This will not be kept confidential.

Notes

1. Peter Watson and Cecilia Todeschini, *The Medici Conspiracy* (revised edition) (New York: Public Affairs 2007), p. 20.
2. Peter Watson and Cecilia Todeschini (2007), p. 292.
3. I had the honor to serve as an archaeologist at the Greek police Art Squad from August 2004 till December 2008 and to participate in the raiding team in Schinousa Island, where the Symes-Michaelides archive was found.
4. Nikolas Zirganos (May 21, 2006b). Σκάνδαλο Γκετί, No. 3: Ο Θησαυρός του Σάιμς. Epsilon, p. 44; Zirganos in Watson and Todeschini, 2007, pp. 316–317.

5. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970.
6. Jane Ford (3 January 2008). University of Virginia returns rare archaic sculptures to Italy. *UVA Today*. Retrieved from <http://news.virginia.edu/tags/acroliths>; Fabio Isman (2008). Artworks in exile, in Godart, De Caro and Gavrili (eds.): pp. 20–31, at p. 25; Fabio Isman, *I predatori dell'arte perduta. Il saccheggio dell'archeologia in Italia* (Milano: Skira 2009), pp. 87–88.
7. David W.J. Gill. and Christopher Chippindale (2006). "From Boston to Rome: Reflections on returning antiquities" *International Journal of Cultural Property* 13:3, pp. 11–331; Vernon Silver (2010). *The Lost Chalice* (New York: Harper), pp. 263–264.
8. For the first see David W.J. Gill. and Christopher Chippindale (2007). "From Malibu to Rome: Further developments on the return of antiquities" *International Journal of Cultural Property* (14): pp. 205–240; David W. J. Gill (2010). The returns to Italy from North America: An overview. *Journal of Art Crime* (3): pp. 105–109, at pp. 105–106; Silver (2010), p. 268. For the second and third see David W. J. Gill (2012b, November 19). Getty returns fragments to Italy. *Looting Matters*. Retrieved from <http://lootingmatters.blogspot.co.uk/2012/11/getty-returns-fragments-to-italy.html>; and, David Ng and Jason Felch (10 January 2013). Getty Museum to return Hades terracotta head to Sicily. *Los Angeles Times*. Retrieved from <http://www.latimes.com/entertainment/arts/culture/la-et-cm-getty-museum-hades-sculpture-sicily-20130110,0,2715069.story>, respectively.
9. For the first see Silver (2010) pp. 252–253; Gill (2010) p. 106; for the second see David. W. J. Gill (2012a). Context matters: Princeton and recently surfaced antiquities. *Journal of Art Crime* (7): pp. 59–66., at p. 64.
10. For the first see Gill and Chippindale (2007) pp. 224–225; David W. J. Gill (2009a). *Homecomings: Learning from the Return of Antiquities to Italy. Art and Crime: Exploring the Dark Side of the Art World*, edited by Noah Charney: 13–25. Santa Barbara: Praeger; Gill, 2010, pp. 106–107. For the second see Gill, 2012; Jason Felch (24 January 2012a). New wave of returns: hundreds of looted antiquities recovered from the Met, Princeton and others. *Chasing Aphrodite*. Retrieved from <http://chasingaphrodite.com/2012/01/24/new-wave-of-returns-hundreds-of-looted-antiquities-recovered-from-the-met-princeton-and-others/>.
11. Gill, 2010, p. 105.
12. *Ibid.*, p. 108; Silver, 2010, p. 272.
13. See Gill, 2010, pp. 107–108; Isman in Louis Godart, Stefano De Caro and Maria Gavrili (eds) (2008). *Nostoi.Repatriated Masterpieces*. Athens: Greek Ministry of Culture, p. 24.
14. J. Michael Padgett 1983–1986 [1991]. An Attic red-figure volute krater. *Minneapolis Institute of Arts Bulletin* (66): pp. 66–77; J. Michael Padgett, Influence of a satyric drama on a vase by the Methyse painter. *American Journal of Archaeology* 88 (1984): p. 255 David W.J. Gill . Looting matters for classical antiquities: contemporary issues in archaeological ethics. *Present Pasts* (1) (2009b): pp. 77–104, at p. 85; David W.J. Gill and Christos Tsirogiannis, this volume; Mike Boehm (16 September 2011). Minneapolis museum will return looted ancient vase to Italy. *Los Angeles Times*. Retrieved from <http://latimesblogs.latimes.com/culturemonster/2011/09/ancient-greece-antiquities-getty-.html>.
15. Gill, 2012a, p. 64.

16. The United States Attorney's Office (20 June 2012). Agreement paves way for Artifact's return to Italy. The United States Attorney's Office. Retrieved from <http://www.justice.gov/usao/ohn/news/2012/20junekalpis.html>.
17. Marice Richter (4 December 2012). Dallas art museum returns stolen mosaic to Turkish officials. *Reuters*. Retrieved from <http://www.reuters.com/article/2012/12/04/us-usa-turkey-mosaic-idUSBRE8B31AR2012121204>; David W.J. Gill (16 January 2013a). Icklingham bronzes: looking back. *Looting Matters*. Retrieved from <http://lootingmatters.blogspot.co.uk/2013/01/icklingham-bronzes-looking-back.html>.
18. I was the archaeologist in the Greek Task Force team which repatriated four antiquities in total (two were not in the archives) from the Getty Museum between July 2006 and June 2007, among other repatriation cases. The other members were Mr Ioannis Diotis, the former public prosecutor, the late Giorgos Grigoris, former head of the Greek police Art Squad, Mr Nikolas Zirganos, investigative journalist, Mr Konstantinos Kyriopoulos, then legal advisor to the Minister of Culture, Mrs Eirini Stamatoudi, lawyer.
19. David W.J. Gill and Christopher Chippindale (2007), pp. 205, 208; Jason Felch and Ralph Frammolino, *Chasing Aphrodite*. (Boston, MA: Houghton Mifflin Harcourt 2011), p. 290.
20. Louis Godart and Stefano De Caro (eds), *Nostoi. Capolavori ritrovati* (Roma: Segretariato Generale della Presidenza della Repubblica 2007); Godart, De Caro and Gavrili, 2008.
21. Margaret Melanie Miles. *Art as Plunder: The Ancient Origins of Debate about Cultural Property* (New York: Cambridge University Press 2008), p. 357; Felch and Frammolino, 2011, p. 284.
22. Gill and Tsirogiannis, 2011.
23. Kathryn Tully (18 August 2006). Antiquities weather the market. *Financial Times*.
24. Christie's, (14 April 2011). *Antiquities Including Property from the Collection of Baron Edouard Jean Empain* (London: Christie's), pp. 168–169, lot 261.
25. Normally, only antiquities which remained unsold during an auction or were withdrawn before an auction are omitted from the final online "Result" list of an auction, but although sold, the Sabratha Museum head does not appear in the "Results" list of Christie's website.
26. Martin Bailey (November 2011). Head sold at Christie's stolen from Libya. *The Art Newspaper*. Retrieved from <http://www.theartnewspaper.com/articles/Head+sold+at+Christie%E2%80%99s+stolen+from+Libya/24901>.
27. Artdaily.org., (January 2012). Italy returns, 2,000-year-old statue to Libya. Artdaily.org. Retrieved from http://www.artdaily.com/index.asp?int_sec=11andint_new=53170andint_mod=2#.UM-I0aOPWM8, last accessed 30/12/2012).
28. Tara Loader Wilkinson (13 March 2011). Pricing the priceless. *The Wall Street Journal*.
29. ICE (26 April 2012). *ICE returns stolen and looted art and antiquities to Italy* (Washington DC: Immigration and Customs Enforcement). Retrieved from <http://m.ice.gov/news/releases/1204/120426washingtondc.htm?f=m>.
30. David W.J. Gill. (4 November 2009c). Pots seized in NYC: Comment from Christie's. *Looting Matters*. Retrieved from <http://lootingmatters.blogspot.co.uk/2009/11/pots-seized-in-nyc-comment-from.html>.
31. David W.J. Gill (3 October 2011). Christie's on cultural property. *Looting Matters*. Retrieved from <http://lootingmatters.blogspot.co.uk/2011/10/christies-on-cultural-property.html>.

32. David W.J. Gill and Christos Tsirogiannis, this volume; Christos Tsirogiannis *Unravelling the Hidden Market of Illicit Antiquities: The Robin Symes-Christos Michaelides Network and its International Implications*. Unpublished Ph.D. thesis. University of Cambridge.
33. ICE, 2012.
34. Watson and Todeschini, 2007, p. 283.
35. Felch and Frammolino, 2011, p. 253.
36. Felch, Jason (19 January 2012b). Italian case against antiquities dealer ends. *Los Angeles Times*. Retrieved from <http://latimesblogs.latimes.com/culturemonster/2012/01/italian-antiquities-robert-hecht-case-ends.html>.
37. Watson and Todeschini, 2007, p. 258.
38. Nikolas Zirganos (2003, October 26). SOS για 17.000 αρχαία: Τα μάρμαρα του κ. Ρόμπιν Σάιμς, Κυριακάτικη Ελευθεροτυπία. Retrieved from http://archive.enet.gr/online/online_p1_text.jsp?c=110&id=81779444,95821940,10292.
39. Watson and Todeschini, 2007, p. 248.
40. Marion True (2011, January). Neither condemned nor vindicated. *The Art Newspaper*.
41. Nikolas Zirganos (2006b).
42. Peter Watson and Cecilia Todeschini. *The Medici Conspiracy* (New York: Public Affairs 2006); Watson and Todeschini 2007; Isman, 2009; Felch and Frammolino, 2011.
43. I am grateful to the journalist Mr Nikolas Zirganos for providing me access to the Medici and Symes-Michaelides archives, and to the Greek police Art Squad for accessing their entire archive.
44. Christie's (8 June 2012a). *Antiquities* (New York: Christie's).
45. Jean-Louis Zimmermann. *Collection de la Fondation Thétis*. (Geneva: Editions du Tricorne 1987), pp. 37–38, no. 72.
46. Zimmermann, 1987, p. 113.
47. *Ibid.*, pp. 37–38.
48. *Ibid.*, p. 37.
49. *Ibid.*, p. 37.
50. *Ibid.*, p. 103.
51. Sotheby's (23 May 1991). *Antiquities. The Property of Thetis Foundation and other Owners*. London: Sotheby's, pp. 8–73.
52. Each antiquities auction sale receives a unique sale number and a unique code name, usually of an ancient Greek god or goddess. It appears that this particular Sotheby's auction used the code name "Thetis" because "Thetis Foundation" here consigned antiquities at Sotheby's for the first time.
53. Sotheby's, 1991, pp. 32–33, lot 54.
54. Sotheby's mention the hook in the description of the object, but the hook is not visible in the catalog image.
55. Zirganos, 2006a, p. 24.
56. Watson and Todeschini, 2007, pp. 21–23, 54.
57. Zirganos, 2006a, pp. 22–34.
58. Christie's, 2012a, p. 56, lot 65.
59. Lots 19, 21–22, 28, 31, 34, 53–55, 58, 64, 392, 397, 401, 420, 426.
60. Lots 99–101, 104, 106–107, 110, 117, 123–124, 128, 138, 149, 162, 164, 177, 187, 322–324, 331, 367.
61. Lots, 206, 209, 439 (2 objects), 444.
62. Sotheby's (17 December 1998). *Antiquities and Islamic art*. New York: Sotheby's.

63. Lots 64, 101, 104, 106–107, 110, 117, 123–124, 162, 177, 187, 323–324, 331, 367.
64. See Gill and Tsirogiannis, this volume.
65. The Summa Galleries (1976). *Catalogue 1: Ancient Art*. Beverly Hills: The Summa Galleries Inc, no. 65.
66. David W.J. Gill and Christopher Chippindale (2007), p. 216.
67. Jason Felch (18 January 2013). Getty Museum review targets its antiquities collection. *Los Angeles Times*. Retrieved from <http://www.latimes.com/entertainment/arts/culture/la-et-getty-ambers-20130119,0,1165994.story>.
68. Gill and Chippindale, 2007, p. 229, nos., 20–21; Godart, De Caro and Gavrili, 2008, pp. 156–159, nos. 60–61.
69. Christie's (14 June 196). *Antiquities* (New York: Christie's), p. 44, lot 69.
70. Christie's, 1996, pp. 25–29, lots 31–40.
71. Christie's, 2012a, p. 75, lot 90.
72. For a recent review see Gill, 2013a.
73. Bruce McNall. *Fun while it Lasted: My Rise and Fall in the Land of Fame and Fortune* (New York: Hyperion 2003), p.41.
74. Hoving, Thomas (1993). *Making the Mummies Dance: Inside the Metropolitan Museum of Art* (Simon & Schuster), p. 338.
75. The Summa Galleries, 1976.
76. Dietrich von Bothmer et al. *Wealth of the Ancient World: The Nelson Bunker Hunt and William Herbert Hunt Collections* (Fort Worth (TX): Kimbell Art Museum in association with Summa Publications, Beverly Hills 1983), pp. 25–35.
77. See Christos Tsirogiannis. A marble statue of a boy at the Virginia Museum of Fine Arts. *Journal of Art Crime* 9 2013.
78. Sotheby's (30 May 1986). *Antiquities and Islamic Works of Art* (New York: Sotheby's), lot 24.
79. It is worth noting here that images printed on regular photographic paper, depicting the conserved front and back of one of the two kraters, were discovered during the raid of the French and Italian authorities at the flat of Robert Hecht in Paris, on 16 February 2001.
80. Christie's, 2012a, p. 82, lot 99.
81. Fabio Isman (31 May 2012). A giugno da Christie's vanno all'asta i vasi di un "predatore" condannato, Il Messaggero.
82. Maria Thermou (31 May 2012). Ελληνικές αρχαιότητες σε ξένες δημοπρασίες. Το Βήμα. Retrieved from <http://www.tovima.gr/culture/article/?aid=460317>.
83. David. W. J. Gill. (31 May 2012c). Medici Dossier and Christie's. *Looting Matters*. Retrieved from <http://lootingmatters.blogspot.co.uk/2012/05/medici-dossier-and-christies.html>.
84. Peter Watson. *Sotheby's: Inside Story* (London: Bloomsbury 1998).
85. Watson, 1998, p. 311.
86. Ricardo Elia (2001). Analysis of the looting, selling, and collecting of Apulian red-figure vases: A quantitative approach, in Neil Brodie, Jennifer Doole and Colin Renfrew (ed.): 145–153, at p. 152.
87. Christie's (25 October 2012b). *Antiquities* (London: Christie's).
88. According to Christie's online price catalog, including buyer's premium.
89. Andre de Ridder et al. *Collection de Clercq* (Paris 1911).
90. Jean-David Cahn (6 November 2011). Auction 6: Ancient Art. Basel: Jean-David Cahn AG. Retrieved from http://www.cahnauktionen.ch/catalogue/show_auction.php?auction_nr=6andpage=4andlang=en_, pp. 173–174, lot 173.

91. Christie's, 2012b, p. 77, lot 99.
92. Godart, De Caro and Gavrili, (2008). pp. 204–205; David W.J. Gill (21 April 2008). Marble Lekythos Returns to Greece. *Looting Matters*. Retrieved from <http://lootingmatters.blogspot.co.uk/2008/04/marble-lekythos-returns-to-greece.html>.
93. Document no. 3010/2/2336 – γ/6 June 2007 of the Greek police Art Squad to the Greek public prosecutor's office.
94. Patris (15 June 2007). Βρέθηκε το άγαλμα που έκλειψαν από τη Γόρτυνα. Patris. Retrieved from <http://www.patris.gr/articles/111985/58368?PHPSESSID=#.UQEGJqOjaM8>.
95. Christie's (5 December 2012c). *Antiquities* (New York: Christie's).
96. Christie's (30 January 2013). *Renaissance* (New York: Christie's).
97. *Ibid.*, p. 103.
98. For a similar ancient repair see Maya Elston. Ancient repairs of Greek vases in the J. Paul Getty Museum. *The Jean Paul Getty Museum Journal* 18: 1990 pp. 53–68. Retrieved from <http://www.jstor.org/stable/4166600?seq=1>, p. 61.
99. Sotheby's (13–14 December 1982). *Catalogue of Antiquities* (London: Sotheby), pp. 69–70, lot 232.
100. Sotheby's (10–11 July 1989). *Antiquities* (London: Sotheby), pp. 78–79, lot 202.
101. The kylix appears in two unconnected entries in the Beazley archive: No. 13718 refers only to Sotheby's 1982 auction and no. 51204 refers only to Sotheby's 1989 auction.
102. Christie's, 2012c, pp. 110–111, lot 159.
103. Sotheby's (9 December 1981). *Important Antiquities*. New York: Sotheby's, lot 239.
104. Tsirogiannis, unpublished Ph.D.
105. Martin Robertson, (1986). *Two pelikai by the Pan Painter*. Greek Vases in the J. Paul Getty Museum (3): pp. 71–90, at p. 83, fn. 54.
106. Jerome M. Eisenberg, *Art of the Ancient World (IV)* (New York: Royal-Athena Galleries 1985), p. 34, no. 104b.
107. Christie's, 2012c, pp. 118–119, lot 168.
108. *Ibid.*, p. 103.
109. See Tsirogiannis, 2013.
110. Isman, 2008, p. 24, Gill (2010), pp. 107–108.
111. Godart, De Caro and Gavrili, 2008, pp. 82–83, no. 23; pp. 106–107, no. 35.
112. Fabio Isman (January 2011). Tutto iniziò negli anni Settanta, quando il Met . . . , Il Giornale dell'Arte. Retrieved from <http://ilgiornaledellarte.com/articoli/2011/1/106082.html>.
113. Isman, 2011.
114. Nikolaos Axarlis (12 February 2001). Corinth Antiquities Returned. *Archaeology*. Retrieved from <http://archive.archaeology.org/online/features/corinth/index.html>; Isman, 2008, p. 24, Felch, 2012a.
115. Andreas Apostolides (2005). The network (documentary). Produced by Ελληνικό Κέντρο Κινηματογράφου ΕΡΤ, Γιάννης Κασπίρης.
116. Axarlis (2001).
117. Christie's (9 December 1999). *Antiquities* (New York: Christie's), lot 326.
118. Apostolides, 2005.
119. Loader Wilkinson, 2011.
120. Watson and Todeschini, 2007, pp. 135–145.
121. Fabio Isman *I Predatori dell'Arte Perduta* (Skira, 2013).

122. Maurizio Landolfi et al. *Capolavori Dell' Archeologia: Recuperi, Ritrovamenti, Confronti* (Roma: Gangemi Editore 2013), pp. 246–249, nos. 54–55, signed by Alessandra Avagliano.
123. Godart, De Caro and Gavrili eds., 2008.
124. Isman, 2008, pp. 20–31.
125. For example: Dalya Alberge (4 June 2010). Critics say Christie's should pull 3 items from auction. *The Wall Street Journal*. Retrieve from <http://online.wsj.com/article/SB10001424052748704025304575284700314002546.html>; Isman, 2012l Isman, Fabio and Melanie Gerlis (5 October 2010). Medici "loot" for sale? *The Art Newspaper*. Retrieved from <http://www.theartnewspaper.com/articles/Medici+%E2%80%9Ccloot%E2%80%9D+for+sale%3F/21569>; Gill, 2011; Gill, 2012c; Ninetta Kontrarou-Rassia (3 October 2011). Τίνοςείναι οι κόρες των "Κριστις"; *Eleutherotypia*. Retrieved from <http://www.enet.gr/?i=news.el.articleandid=314897>; Aggeliki Kotti (3 October 2011). Σεδημοπρασία πήλινες προτομές με "χαλαρή" προέλευση. *EΘΝΟΣ*. Retrieved from <http://www.ethnos.gr/article.asp?catid=22784andsubid=2andpubid=63421125>; Aggeliki Kotti (1 June 2012). "Σφυράκι" για αρχαίους θησαυρούς. *EΘΝΟΣ*. Retrieved from <http://www.ethnos.gr/article.asp?catid=22784andsubid=2andpubid=63664543>; Thermou, 2012; Tsirogianis' unpublished Ph.D. thesis.

17

Polaroids from the Medici Dossier: Continued Sightings on the Market

David W.J. Gill and Christos Tsirogiannis

The Medici Dossier

The 1995 raids on the Geneva Freeport premises of Giacomo Medici have had a profound impact on the collecting of and dealing in antiquities.¹ The set of Polaroids seized during the raids (“the Medici Dossier”) has allowed objects that had passed through the hands of Medici to be identified. Fractured, salt-encrusted and mud-covered objects were shown as they appeared to have emerged from the ground and before they passed into the hands of expert conservators who prepared them for sale. The unravelling of the story has become known as the “Medici Conspiracy.”² The photographic evidence has brought about the voluntary return of objects from a range of prominent North American museums: Boston’s Museum of Fine Art, the Cleveland Museum of Art, the J. Paul Getty Museum, New York’s Metropolitan Museum of Art, and the Princeton University Art Museum.³ To these may be added a selection of objects from the Royal-Athena Galleries in New York, and items from the Shelby White (and the late Leon Levy) collection.⁴

A further aspect of the Medici Conspiracy was the release of documentary evidence relating to consignments made to Sotheby’s in London by Medici through his Swiss agents, Christian Boursaud and later Editions Services.⁵ These lists show that large numbers of antiquities were being supplied to the London market through the 1980s and early 1990s. It is striking how

Acknowledgments: Theo Toebosch and Dalya Alberge kindly discussed various aspects of the sales with us. The research has been conducted as part of a wider project with Christopher Chippindale. Chris Marinello and William Webber, formerly of the Art Loss Register, responded generously to our enquiries. We are grateful to Julian Roup and Chris Martin for their contributions. This is an updated version of an article that originally appeared in *The Journal of Art Crime* (Spring 2011).

many of the returned objects emerged in this way. For example, three pieces returned from Boston (an Attic bell-krater, an Apulian loutrophoros, and a Lucanian nestoris) surfaced in 1982, 1984 and 1995;⁶ the Attic amphora returned from the Met surfaced in 1982 (inv. 1985.11.5);⁷ the Attic red-figured column-krater from the Royal-Athena Galleries surfaced in 1987;⁸ two Attic black-figured neck-amphoras, one from the Royal-Athena Galleries and the other from the Shelby White collection, appeared at the same sale in 1985.⁹ Some of these sales had been discussed in detail. The July 1985 sale contained “104 unprovenanced antiquities” consigned by Christian Boursaud, and the December 1987 sale, consisting of 360 lots, contained 101 lots consigned by Editions Services.¹⁰ The collecting histories of the pieces prior to their acquisition by Medici are undeclared.

In spite of the major publicity surrounding the returns from North American collections, and their display in high profile exhibitions in Rome and Athens,¹¹ some dealers seem to have been unaware of the issues. The October 2008 London sale of the Graham Geddes collection of antiquities at Bonhams was severely disputed.¹² The Italian authorities made claims on a number of key items; at least seven had first surfaced at Sotheby’s between 1984 and 1989. The antiquities section at Bonhams could have been alerted to potential problems if they had observed that the name “Geddes” appeared next to a South Italian (Lucanian) krater, sold at Sotheby’s in London that appears to have had links with Medici.¹³

Yet the following year a Corinthian krater was seized just before the June 2009 sale at Christie’s Rockefeller Plaza, New York; it had passed through Sotheby’s in 1985.¹⁴ Two further pieces, an Attic pelike and an Apulian situla that were sold in the June 2009 Christie’s sale, were seized later in the year.¹⁵ These two pieces had apparently passed through the hands of Gianfanco Becchina (as they appeared in his photographic archive) and subsequently through the Summa Gallery in Beverly Hills.¹⁶

Such activities would perhaps make dealers, especially Bonhams in London and Christie’s in New York, wary of objects that were potentially associated with Medici.

The Medici Dossier and Bonhams

The April 2010 sale at Bonhams contained a Roman statue of a youth (lot 137). The statue had originally surfaced at Sotheby’s in London in December 1986 (lot 287). This particular Sotheby’s sale appears to mark the transition to consignments by Editions Service (and apparently ultimately from Giacomo Medici).¹⁷ Indeed two of the pieces withdrawn from the Bonhams October 2008 sale were also from this auction:¹⁸ an Apulian oinochoe (lot 15; Sotheby’s London, 8 December 1986, lot 185); and an Apulian bell-krater (lot 28; Sotheby’s London, 8 December 1986, lot 188). A search of the Medici Dossier found an image of a Roman marble statue marked clearly “lotto

287." Apart from restorations to the right ankle the image in the Polaroid seems to be strikingly similar to the one illustrated in the Bonhams catalog. Why should an image of a pre-restoration Roman statue appear in the Medici Dossier? Did the staff at Bonhams contact the Italian authorities given the statue had surfaced in the December 1986 sale, one that had been linked to Medici and that had given the auction house problems only 18 months before? Such contact would form part of a natural and rigorous due diligence process.

There is one further complication. Did the statue appear on the Art Loss Register (ALR) database? It is commonplace for dealers and auction houses to consult the ALR prior to a sale. The staff of the ALR will check pieces that have been recorded and reported as stolen. However it is a database that will not contain images of recently surfaced antiquities as, to state the (frequently overlooked) obvious, cameras were not available when the objects were deposited in their archaeological contexts a couple of millennia ago. Thus items that have been stolen from a recorded public or private collection have the potential to be in the ALR database, but objects removed illicitly from the ground will not normally be there. Even so, there are indications that part of the Medici Dossier has been placed on the ALR database.

It seems that members of staff at Bonhams were possibly aware of the Medici connection. Chris Martin, the chairman of the Antiquities Dealers Association (ADA) (Bonhams is a member), commented specifically on the Roman statue (email, Chris Martin to Theo Toebosch, 27 April 2010):

I understand that Bonhams checked with ALR and that the marble piece was clear, it seems however, that some five or so years ago the piece was on the art loss register and that it was the subject of a court case in Spain where the Spanish court ruled against the Italians and that it was the [sic] legally the property of the current vendor. The ALR and the Carabinieri were instructed to remove the piece from their websites. I have not seen the paperwork to confirm this but, legally this would be a very difficult to position to attack on the grounds of this EU court ruling. I feel, based on the information received, that Bonhams have acted in good faith by withdrawing the lot and have made due diligence checks.

As a result of this comment from the ADA, Christopher A. Marinello, then General Counsel to the ALR London, confirmed, "William Webber informs me that the item is still listed on the ALR database as in dispute and the ALR has not been asked to remove it" (email, to DG, 28 April 2010). A subsequent discussion with William Webber in the ALR London office confirmed that the statue was on the ALR database, that the objects in the sale had been checked against the ALR database, and that the check would have indicated the Medici link (telephone conversation, 28 April 2010). If Webber was correct (and there is no reason to doubt him), then it would suggest that the

staff of Bonhams was aware of the Medici connection but decided to offer the statue anyway. Yet, if they were so confident that the vendor had legal title, why did they decide to withdraw the piece from auction? Why not issue a press statement giving the details of the ownership?

More recently Julian Roup, the head of PR and Marketing at Bonhams, claimed, “not a single item mentioned in your recent articles has appeared on any of the stolen art databases, namely the Interpol database, the Metropolitan Police database or indeed any of the databases checked by the Art Loss Register” (letter, to DG, 5 July 2010). Such a statement seems to contradict the information from the ALR, and the comment from ADA that was perhaps informed by Bonhams. Indeed it seems that the Carabinieri had made images available to those in the antiquities market so that they identify objects shown in the Polaroids.

There is a fundamental issue at stake here. Why does the Roman statue in a pre-restored state appear in the Medici Dossier? What was its collecting history prior to passing into Medici’s hands? Where was it found?

Bonhams is a member of the ADA. The ADA’s Code of Conduct states (www.theada.co.uk, accessed on 12 July 2010; rechecked 15 March 2011):

I undertake not to purchase or sell objects until I have established, to the best of my ability, that such objects were not stolen from excavations, architectural monuments, public institutions or private property.

If Bonhams was aware of the Medici link and the reported Spanish legal case, had the staff established, to the best of their ability, that the Roman statue had not been “stolen from excavations?” The issue for the ADA is not about ownership but the protection of the archaeological record.

The Roman statue was not the only controversial object to be offered by Bonhams in the April 2010 sale. There were also three Roman limestone funerary busts (lots 399–401). All three had been “acquired on the London art market in 1998” and were “accompanied by a French export licence.” The three had formerly been offered at the 29 April 2009 sale at Bonhams but had remained unsold; they were part of a group of six acquired in London in 1998 and accompanied by “a French passport” (lots 48–53). The statues in fact featured in the Schinoussa Archive. These images were seized in April 2006 at a villa associated with London dealer Robin Symes and his partner Christos Michaelides.¹⁹ Zirganos and Howden report that the Schinoussa Archive contained important images:

These images are said to include scores of ancient works, looted from Greece and sold to wealthy private collectors or major museums. The items were photographed while in the possession of crooked dealers and circulated to potential buyers, typically, before being sold through Swiss auction houses which operate outside EU laws on trafficking in stolen

goods. Mr Diotis will now spearhead the effort to trace the pictured items, said to include priceless statues, vases, ornate wreaths and sculpted reliefs.

The Schinoussa images of the Roman limestone busts show them still encrusted with dirt. One was photographed in a fragmentary condition; the statue had been restored prior to being offered at auction. It thus seems likely that the six items were purchased on the London market from Robin Symes in 1998. The numeration of the photographs indicates that they were taken in 1994 (nos. 94/134, 94/135, 94/136, 94/137 and 94/140). Why did Symes have images of these busts still showing the dirt? It would suggest that they had not been residing in an undocumented private collection for some decades.

The handling of these items by Bonhams has attracted severe criticism from Lord Renfrew of Kaimsthorn. In the wake of the Geddes affair he made a speech in the House of Lords (Hansard, 26 October 2009):

Bonhams the auctioneers withdrew from its London antiquities sale at the request of the Italian Government some 10 antiquities, among them items formerly owned by the now sadly notorious dealer Mr Robin Symes. I understand that the Italian authorities had already made representations to the Home Office about several warehouses in London containing antiquities formerly in his ownership – many of them, it is alleged, illegally excavated in Italy.

What is an auctioneer in this country doing, selling antiquities without a documented provenance? It is scandalous that this practice continues, and to put an end to it is one purpose of this amendment. There are serious matters here, which demand government attention.

Renfrew was also invited to comment on the items appearing in the Polaroid images in April 2010 and stated “such sales are maintaining London’s reputation as a clearing house for looted antiquities.”²⁰

The Medici Dossier and Christie’s New York

In 2009, agents of the US Immigration and Customs Enforcement (ICE) seized three antiquities from the premises of Christie’s in New York. The first was a Corinthian column-krater that was due to be auctioned in the June sale. It had first surfaced at Sotheby’s London in 1985 and is reported to have been consigned by Medici. Later in the year two pieces that had been auctioned were seized: an Attic pelike attributed to the Aegisthus painter (lot 120) and an Apulian situla (lot 132). Both had surfaced through the Summa Galleries in Los Angeles, one in 1977 and the other in the mid-1980s. Sung-Hee Park, a spokesperson for Christie’s, commented that “the transparency

of the public auction system combined with the efforts from the U.S. ICE and foreign governments, in this matter, led to the identification of two stolen artifacts" (email, to DG, 4 November 2009).

Subsequent to this, Max Bernheimer, head of Christie's Ancient Art and Antiquities department, was interviewed for *Apollo* in April 2010.²¹ Harris commented on "the negative aspects of the antiquities trade – the looting of sites, the funding of the international trade in drugs and weapons, the proliferation of restitution claims and the continuing appearance of sophisticated fakes." He wanted those involved in the trade to make their position clear: "Dealers are at pains to point out the entirely legitimate trade in objects that have been neither looted nor smuggled and which are in as much demand as ever." Bernheimer noted "the critical break-off date for the sale of antiquities is 1983, the year that Egypt declared its country's antiquities to be property of the state and their sale abroad unlawful." He emphasized that "private collectors and museum curators alike will often cultivate relationships with established and trustworthy dealers who not only have the best access to rare works but are often better suited to negotiating the auction room pitfalls associated with this market." Thus it appeared that Christie's was accepting the need for adopting benchmark dates for when objects surfaced in order to avoid potentially damaging publicity.

Three of the pieces offered in the 10 June 2010 Christie's sale at Rockefeller Plaza (sale 2323) seemed to be close to items featured in the Medici Dossier. The Roman marble torso of a youth (lot 139) was particularly distinctive, and the catalog entry noted that the youth is "holding a cockerel in his left arm, his hand at the bird's left wing, its tail feathers curving along the contours of the boy's hip." The piece, with an estimated value of \$20,000–30,000, was "the property of a Massachusetts private collector." The original catalog entry traced the statue's history from an anonymous sale at Christie's in London (11 June 1997, lot 116) to another anonymous sale at Rockefeller Plaza (10 December 2004, lot 576). A check of the collecting history in the 2004 online catalog showed that the statue had originally surfaced in an anonymous sale at Sotheby's London (9–10 July 1992, lot 527). No explanation was provided about this striking omission, though the information was subsequently added to the entry of the 2010 catalog. This raises the question about the identity of the person who consigned the statue to Sotheby's in 1992.

The second piece was an Apulian rhyton in the form of a goat's head (lot 104). The rhyton, with an estimate of \$25,000–35,000, was the property of an anonymous American private collection. It had originally surfaced at Sotheby's New York on 8 June 1994 (lot 189). It is unclear who consigned it to the 1994 sale or its full collecting history prior to 1994. The appearance of Apulian pottery on the market in the 1980s and 1990s has long been a matter of concern.²²

The third piece was a Canosan terracotta figure (lot 112). The 3rd century BCE female figure is shown leaning against a herm. The figure, with an estimate of \$6,000–8,000, was the property of an anonymous owner (“another property”). It is significant that the figure had first surfaced at Sotheby’s in London on 9–10 July 1984 (lot 551), and had then passed into an anonymous English private collection. The Polaroid image bears a sticker with “551.”

Concerns about the three pieces were raised by Theo Toebosch in the Amsterdam press (*NRC Handelsblad* 15 May 2010). Toebosch contacted the press office at Christie’s and was told, “We do not sell works that we have reason to believe are stolen.” The spokesperson also stated that Christie’s adheres strictly to all local and international laws relating to cultural property.

Shortly afterwards an extended interview with Bernheimer was released on the Christie’s website (24 May 2010) and hyperlinked to objects that were listed in the June 2010 sale. The move was presumably intended to reassure potential buyers. The interview asked specifically:

In recent years, the issue of repatriation has garnered attention as institutions like the Metropolitan Museum of Art and the Getty Museum have returned artifacts to their source countries. Where does the issue stand today, and what impact does this have on your collectors?

Provenance has always been important, and in light of recent repatriation issues, it has become paramount. In a way these issues have helped the auction business because of the transparency of our operations; buyers can have complete confidence when buying at auction. Everything we do is published, and source countries have the opportunity to review our catalogues long before the date of sale.

At this point Bernheimer already knew that questions were being asked about the collecting histories (or “provenance”)²³ of three of the pieces. Although the online catalog allowed possible identifications to be made with the Medici Dossier it seems that Bernheimer was unwilling to accept the photographic evidence.

Shortly afterwards, Paolo Giorgio Ferri, the Italian State Prosecutor, commented on the three pieces due to be auctioned at Christie’s.²⁴

Paolo Ferri, a Rome prosecutor who specializes in art theft cases, is seeking to recover the objects. He described the Christie’s sale as “very unethical,” adding: “We want to repatriate those objects.” He said he had been aware of the sale since the catalogue was published some weeks ago and was pursuing his efforts to repatriate the objects through diplomatic and international police channels.

(The phrase “adding: ‘We want to repatriate those objects’ ” was subsequently edited out of later versions of the report.) The report was explicit, quoting Ferri, “Christie’s knows they are selling objects that appeared in the Medici archive.” A spokesperson for Christie’s provided a response:

With respect to these particular lots, Christie’s has not been notified of a title claim by any government authority, nor are these lots identified as problematic by the Art Loss Register or Interpol. As an added measure, Christie’s has undertaken its own research into this matter and has found no evidence to support the need to withdraw these lots. Unless and until Christie’s receives a title claim, we plan to proceed with the sale of these lots.

The presence or absence of images in the ALR database was again seen as significant, though interestingly Christie’s only said that the lots had not been “identified as problematic.” Are the images in the ALR database? Does the ALR consider images from the Medici Dossier to be unproblematic? Does Christie’s consider the appearance of objects in the Medici Dossier as unproblematic? It would also be interesting to know the nature of Christie’s own additional research relating to these three pieces once concerns had been raised. Did they contact Giacomo Medici and ask him if he had handled the pieces? Did they contact the Italian authorities to see if the images were indeed in the Medici Dossier? Or does it mean that Christie’s took legal advice and decided to proceed? This is particularly interesting given that only the previous year a Christie’s spokesperson used the word “stolen” when commenting on the seized antiquities that had featured in the Medici Dossier. It also suggests, in the light of the comment made to Toebosch, that Christie’s did not consider ex-Medici pieces to be “stolen.” There appears to be contradictory thinking.

Christie’s continued with the sale. The youth with a cockerel sold for \$20,000, less than it had achieved in 2004 for \$22,705. The Canosan terracotta sold for \$7,500 and the Apulian rhyton appears to have been unsold.

Conclusion

The four objects that surfaced at Bonhams and Christie’s appear to be similar to images shown in Polaroids from the Medici Dossier, and three further items are similar to items in the Schinoussa Archive. But is this just the tip of the iceberg? It seems likely that less than 1% of the objects in the Medici Dossier have been identified and returned to Italy. Other items may well be linked to other countries such as Greece, Turkey, Lebanon and Syria.

Moreover there are still objects to be identified from the Schinoussa Archive and the Becchina Stache.

Some items featuring in the Polaroids have been recognized. For example, it seems that an Attic volute-krater in the Minneapolis Institute of Art also appears to register in the Medici Dossier.²⁵ In the pictures it is covered in mud and salt deposits prior to cleaning. Robin Symes sold the krater to the museum, and images of the pot also appear in the Schinoussa Archive. Objects in Copenhagen have also been linked to this same network.²⁶ As recently as January 2011 it was revealed that a New York dealer was selling 16 items that could apparently be identified from the Medici, Becchina and Schinoussa archives.²⁷

What action does the market need to take? It seems that auction houses and dealers need to be suspicious of objects that surfaced at Sotheby's in London (and perhaps also New York) during the 1980s and early 1990s. Part of the due diligence process should be to check with the Italian authorities. Secondly, there needs to be more transparency over the process of selling. Anonymity ("anonymous North American private collector;" "Belgian gentleman") is perceived as masking the true owners. Are dealers sometimes presented as "private collectors?" Third, collecting histories need to be researched rigorously. It is well-known that some dealers have fabricated such histories and it is important to look for authenticated and documented evidence. Fourth, should dealers seek to adopt 1970 as a benchmark? This would link their trade with the position adopted by the Association of Art Museum Directors (AAMD) in North America, and keep in step with the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Until such action is taken it is likely that ex-Medici pieces will continue to surface on the market and undermine the confidence of potential buyers.

Notes

1. P. Watson. *Sotheby's, the Inside Story* (London: Bloomsbury 1997); P. Watson, and C. Todeschini. *The Medici Conspiracy: The Illicit Journey of Looted Antiquities from Italy's Tomb Raiders to the World's Great Museums* (New York: Public Affairs 2006), p. 20; V. Silver. *The Lost Chalice: The epic hunt for a Priceless Masterpiece* (New York: William Morrow 2009).
2. Watson and Todeschini 2006.
3. D.W.J. Gill, and C. Chippindale. "From Boston to Rome: Reflections on returning antiquities" *International Journal of Cultural Property* 13 2006: pp. 311–331; D.W.J. Gill, and C. Chippindale. "From Malibu to Rome: further developments on the return of antiquities" *International Journal of Cultural Property* 14 2007: pp. 205–240; D.W.J. Gill. "Homecomings: learning from the return of antiquities to Italy," in *Art and Crime: Exploring the dark side of the art World*, ed N. Charney (Santa Barbara: Praeger 2009b), pp. 13–25; D.W.J. Gill. "The returns to Italy from North America: An overview" *Journal of Art Crime* 3 2010c: pp. 105–109. See

- also L. Godart, and S. De Caro. (Eds) *Nostoi: Capolavori ritrovati. Roma, Palazzo del Quirinale, Galleria di Alessandro VII, 21 dicembre 2007–2 marzo 2008* (Rome: Segretariato Generale della Presidenza della Repubblica 2007).
4. D.W.J. Gill (2010c).
 5. P. Watson (1997); see also D.W.J. Gill. "Sotheby's, sleaze and subterfuge: inside the antiquities trade" *Antiquity* 71 1997: pp. 468–471.
 6. Gill and Chippindale (2006); D.W.J. Gill and C. Chippindale. "South Italian pottery in the Museum of Fine Arts, Boston acquired since 1983" *Journal of Field Archaeology* 33 2008: pp. 462–472.
 7. See D.W.J. Gill. "Collecting histories and the market for classical antiquities" *Journal of Art Crime* 3 2010a: pp. 3–10, at pp. 5–6.
 8. *Ibid.* (2010c); 107 no.3.
 9. *Ibid.* (2010a), p. 4.
 10. Watson (1997), pp. 117, 120.
 11. Godart and De Caro 2007; L.D. Volpe. *L'Arma per l'Arte: Antologia di meraviglie*. (Rome: Sillabe 2009); see D.W.J. Gill. "Exhibition review: Nostoi. December 2007, Palazzo del Quirinale, Rome" *The Journal of Art Crime* 1 2009a: pp. 70–71.
 12. D.W.J. Gill. "Looting matters for classical antiquities: Contemporary issues in archaeological ethics" *Present Pasts* 1 2009c: pp. 77–104, at pp. 83–84; Gill 2010a, pp. 4–5
 13. P. Watson. *Sotheby's, the Inside Story* (London: Bloomsbury 1997), opp. 120; see also Gill 2009c, p. 84.
 14. D.W.J. Gill (2010a). p. 4.
 15. D.W.J. Gill. "Context matters. Italy and the US: reviewing cultural property agreements" *Journal of Art Crime* 3 2010b: pp. 81–85, at p. 83.
 16. See B. McNall. *Fun While it Lasted* (New York: Hyperion 2003); V. Nørskov. *Greek Vases in New Contexts. the Collecting and Trading of Greek Vases – an Aspect of the Modern Reception of Antiquity* (Aarhus: Aarhus University Press 2002), p. 270.
 17. Watson (1997), p. 120.
 18. Gill (2010a). pp. 4–5.
 19. N. Zircanos, and D. Howden (2006). "Greece and Italy team up to recover stolen antiquities" *Independent* 24 February 2006.; Nikolas Zircanos, "Operation Eclipse," in Watson and Todeschini 2007, pp. 306–324; See also P. Watson. "Convicted dealers: what we can learn," in *Archaeology, Cultural Heritage, and the Antiquities Trade*, ed. N. Brodie, M. M. Kersel, C. Luke, and K. W. Tubb (Gainesville: University Press of Florida 2006), pp. 93–97.
 20. D. Alberge (2010b). "Roman sculptures withdrawn from auction amid fears they are stolen" *Guardian* 27 April 2010.
 21. L. Harris (2010). "Collectors' focus" *Apollo*.
 22. R. J. Elia. "Analysis of the looting, selling, and collecting of Apulian red-figure vases: a quantitative approach," in *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, ed. N. Brodie, J. Doole, and C. Renfrew (Cambridge: McDonald Institute 2001), pp. 145–153.
 23. see Gill 2010a.
 24. D. Alberge. (2010a). "Critics say Christie's should pull 3 items from auction" *Wall Street Journal* 3 June 2010.
 25. J.M. Padgett (1983–1986 [1991]). "An Attic red-figure volute-krater" *Minneapolis Institute of Arts Bulletin* 66: pp. 66–77; J. M. Padgett. "Influence of a satyric drama on a vase by the Methyse painter" *American Journal of Archaeology* 88 1984:

- p. 255; Gill (2009c); D.W.J. Gill. "Context matters: The unresolved case of the Minneapolis krater" *Journal of Art Crime* 5 2011: pp. 57–61.
26. J. Christiansen (2008). "I mediernes søgelys" *Ny Carlsbergfondets Årsskrift*: pp. 138–45.
27. F. Isman (2011). "Tutto iniziò negli anni Settanta, quando il Met..." *Il Giornale dell'Arte* 305.

18

Illicit Trafficking and Destruction of Cultural Property in Africa: A Continent at a Crossroads

George Abungu

Introduction

The questions of plunder, theft, illicit traffic and destruction of cultural heritage in Africa continue unabated, despite the many attempts and calls, both locally and internationally, for the need to address the issue. A huge continent with diversity of peoples, languages and heritage resources Africa, as in the past decades, continue to bleed, as its heritage is ripped away for sale abroad, or destroyed at home, due to greed, ignorance, new emergent religious fundamentalism, internal conflicts or neglect.

Nearly every part of the continent has reason to be concerned. This is not a new phenomenon: for centuries, Egyptian tomb robbers looted the pyramids, tombs and other associated heritage features for treasures. Various scholars, and even military men and rulers from outside the continent, including Napoleon Bonaparte of France, made expeditions, taking away substantial rich heritage of the Pharaonic period, as spoils of war, gifts, or specimens for research, never to return and which now adorn major museums, such as the British Museum and the Louvre. The heritage of Egypt continued to be resilient in the face of all this, with scientific investigations continuing to produce even more stunning finds from the soils of this North African country.

The official antiquities and museums sectors of Egypt continued to manage the rich heritage of the country until recent developments, particularly with the Arab Spring, where the successive changes in governments in Egypt has seen serious challenges to the proper protection and management of the country's vast cultural resources, many of which still lie underground, undiscovered. The digging and illicit traffic in Egyptian cultural heritage has surprised not only Egyptologists, but the general archaeological world, as well as those with interest in heritage resources, use and protection. As the UNESCO (1970) Convention on the Means of Prohibiting and Preventing

the Illicit Import, Export and Transfer of Ownership of Cultural Property states, “the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the countries of ownership of such cultural property.”¹

As far back as 24 March 2013, *USA Today* reported on the rampant looting of Egyptian sites, following the chaos that arose from falls of the government in Egypt at that time. In a major article entitled “Egyptian tomb raiders thrive after Arab spring: Ancient burial sites looted systematically as security falls off,” a gruesome picture of the situation was brought to light, with random diggings in search of heritage. Showing dug holes in the desert, Catrina Stewart of the *USA Today* noted that, “dozens of burials, untouched for millennia, lie open and ransacked for their content. Mounds of earth signal the location of other illicit excavation.”² She quotes an Egyptian archaeologist, Monica Hanna, who had been documenting the looting at Dahshur, a 4,500-year-old royal necropolis, as saying that the looters “work from sunset to sun rise. It is open. It is in front of every one.”³ At the time, the situation was bad, as police had more or less abandoned their duties, and any guards employed to protect the sites were attacked. The unarmed custodians of the sites could only watch from afar, as the country’s heritage was looted and destroyed, a sentiment well-captured when Said Hussein, a custodian at the site, was quoted as saying “how am I supposed to approach an armed gang when none of us have weapons?”⁴

Egypt, however, is not the only country that has suffered the atrocities of heritage destruction and theft in Africa recently, especially in times of conflicts and confusion. The whole of North Africa is, more or less, in a state of uncertainty. The lawlessness in the north has not only opened these countries as transit points for arms, narcotics and heritage resources, but the destruction of heritage in Libya, and the recent massacre and destruction in museums in Tunisia, are but examples of the challenges that heritage and heritage professionals in Africa continue to face. Mali attracted world attention when some of its major sites, such as Timbuktu and Gao, were taken over by militant groups, leading to the loss of not only built heritage, but also movable heritage, like the burning of some of the Timbuktu manuscripts. A perpetual victim of looting and destruction of its heritage through illicit excavation, theft and transport of cultural heritage, Mali stands at crossroads, with a weak governmental structure, and a thriving transit point for narcotic and arms trade, that also allows trade in cultural heritage.⁵

Other parts of the continent continue to suffer through destruction and loss, ranging from lost rock art in Morocco, ritual artifacts from Congo, to lost museum pieces from galleries in museums in Western, Southern and Eastern Africa.⁶ This is a disease that is spreading, with no permanent solution at the moment.

Illicit traffic of cultural property: Cause for worry

Illicit traffic of cultural property in Africa has been, and continues to be rampant, a cause of continuous concern based on the fact that culture plays such an important role in our "being," in who we are and how we relate to others. I have noted that, "the power and role of cultural heritage in self-determination, in the promotion of interests, in ownership issues and in the whole of human existence and survival is not in doubt."⁷ This observation was also made based on the emerging role of heritage at that time, in a globalizing world where it was, and still is, becoming common "for people to turn to their cultural heritage, especially to places or items of significance, and particularly during times of difficulty."⁸ Further, the 1970 UNESCO Convention states clearly that removing property from its place of origin is a loss for humanity at large. Taken from its cultural and geographical context, cultural property may be stripped of its meaning, and its significance lost to human knowledge.⁹

Recent times have seen the destruction of places of cultural significance, as a way of destroying another's identity and history in times of conflict, especially when parties are demanding independence and new nationhoods. While the case of the Bamian Buddha is still fresh in our minds, the recent occurrences of the calculated destruction of priceless pieces of archaeological material from Iraq and Syria, in the name of religion, have bewildered the world. The shock applies to all, irrespective of background or origins, and this is what should happen when any cultural heritage, from whatever quarter, is put under threat of plunder, theft or destruction.

In the cases mentioned above, the people destroying the pieces are probably more closely related to that heritage than most others, and one would have expected them to be proud and protective of it, even if they do not believe in the religious practices of the times during which the heritage objects were made. That these objects represent the collective heritage of human achievements makes their destruction an international crime. In addition to this, the looting and plunder for sale of cultural materials in conflict areas, in order to fund more conflicts, is now prevalent.

There is, unfortunately, a rich heritage of the destruction and plunder of cultural property, from the sacking of Jerusalem by the crusaders, to the pillaging of Latin America by Spanish conquistadors, to the numerous conquering armies and colonial powers throughout history that have brought home artifacts from around the world, including the forced forfeiture of cultural objects during the rule of Nazi Germany. It is unfortunate that a semblance of this activity is taking place today, in the 21st century, in our "globalized village." On the edges of this confusion are beneficiaries, those who are willing to go to buy and sell the spoils of war and confusion. Thus today, the world, its peoples and its diversity of heritage is at crossroads, caught between world political conflicts and the thirst for

publicity and public attention, the disease of collecting the rare, and what appears to be a loss of human respect for the traditions of others: illicit traffic and destruction of heritage has reached an unprecedented and unacceptable limit.

All these happenings are, however, not because of a lack of interest in addressing the issues at hand. To the contrary, programs are constantly put into place, through bodies like UNESCO, with its Conventions; International Council of Museums (ICOM) with its Red List, calling the attention of the world to the situation; and Association for Research into Crimes against Art (ARCA) and Saving Antiquities For Everyone (SAFE), among others campaigning for a concerted international effort to address this plague.

Rooted in a historical context of dominance by the north over the south, of poverty and enticement, of helplessness, of lust for the cultural creations of Africa, and with continuing interested parties, illicit traffic, plunder and destruction of cultural property in Africa seems more present than ever before. Today, in other parts of the continent, such as Mali, the traffic in cultural goods has become intricately intertwined with illegal drug and arms trafficking. According to Interpol, "the pillage of cultural objects and the trade in these objects now rank with arms and drugs as one of the three most serious illicit international trading activities."¹⁰ The question is: what strategic rethink can be put into place to tackle these issues, especially in a continent prone to conflicts and poverty? Is it possible to eliminate trafficking? Is there the political will, at a national, regional, continental or global level, to deal with this? Is this purely an ethical and economic phenomenon, or is it political as well, as we have seen in statements of destruction elsewhere? History tells us that, rather than a decrease in these unfortunate events, we now see a rise that is even more complex, with heritage destruction and illegal trade's inclusion in the international agenda of narcotic dealings, conflicts and wars.

Africa's dilemma: History as a witness

Globalization can be considered to have both positive and negative effects. On the positive side, it opens up the world, and creates an atmosphere of collaboration between peoples and nations, ensuring that there is a sharing of knowledge and resources for human development. On the other hand, it opened up the world for the dominance of the powerless by the powerful, the rich by the poor, and also has led to human population dislocation, with some dire sequences.

Although slave trade and slavery had brought to the fore globalization at its worst, during imperial times, illicit traffic in cultural goods now follows the routes of trade in narcotics and other illegal goods, and uses the same principles of modern capitalism in this age of massive globalization, applying to both illicit and licit economy,¹¹ leading to further disruption

of societies and peoples, with grave consequences. Like drugs, the flow of cultural goods, since the times of the imperial conquests, has remained a "south to north" undertaking,¹² and has been both highly organized and well-executed. History may be seen to be repeating itself.

The British attack on Nigeria and Ghana in the 19th century, and the looting and destruction of heritage at the time, set precedence in terms of lack of respect for African peoples' heritage, greed for the "exotic other," impunity by European military officers' in dealing with African leadership and peoples, opening up the African heritage treasures, including sacred objects, to world markets, as well as the incorporation of Western museums and other research institutions into the global and competitive game of the acquisition of African heritage, with or without provenance. This was why the argument put forward by the so-called "universal museums" was a fallacy from the start. Their statement "that objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era. The objects and monumental works that were installed decades and even centuries ago in museums throughout Europe and America were acquired under conditions that were not comparable with current ones"¹³ cannot be accepted, as most were acquired through blood, hatred and domination by one group over another. The loss of context and provenance does not only make the heritage far less relevant, and stripping away most of its value, it also denies humanity the knowledge associated with this heritage of humanity.¹⁴

The destruction of the Benin Empire, the looting of its heritage and the dismantling of its age-old system of governance marked an unfortunate turn of events in the history of relations between the West and Africa. The punitive expedition that took place in 1897 saw British soldiers cart away "artwork in the form of plaques, masks, ceremonial heads, among others."¹⁵ Soon afterwards, in 1910, in the name of research on ethnology, Leo Frobenius ordered the digging up of the treasures of Ile Ife, at the grove of Okolun, carting away artwork in the name of building research collections.¹⁶

A prelude to colonial conquest and domination, the chaos and rampant destruction of Africa's heritage today is, to a large degree, a result of colonization and subsequent neo-colonization that implanted within the African states dictatorial Western-leaning regimes, dependent and catering to the North's interests.

These all-powerful regimes caused untold sufferings to their people, creating conditions of poverty and division along ethnic lines that have come to haunt many African states, in the form of cessation and rebellion. The attendant chaos has led to conducive atmosphere for destruction, looting and illicit traffic in cultural property, narcotics and arms trade, further funding wars and ensuring a state of constant confusion and instability in many of the countries in Africa. This, of course, is an ideal situation for illicit traffic.

In nearly all the states in conflict situations and the acute problem of illicit trafficking, drugs and arms trade, there is a history of “divide and rule” or, in the cases of places of French influence, the tendency “not to let go,” having till recently French “advisors” to independent states. I have noted that “the history of human relations over a long period of time between the countries hosting Western (so-called “universal”) museums and the others (such as the history of the slave trade and slavery, the expansion of Christianity and colonization) needs to be brought into consideration, as present relations do not exist outside of this historical reality.”¹⁷ A reality that still places Western powers in the middle of the political dialog within their former colonies. When the political interest is challenged, however, then military intervention follows from the West, such as the situation in Mali.¹⁸ But it is an intervention that often fails to address the root causes of the problems, leaving fertile grounds for illicit trafficking.

Colonialism and the spread of Christianity saw the mass plunder of African heritage right across the continent. Some was destroyed in the name of a new religion: the evangelization of the African continent and the “Black man’s heart,” while others were collected and transported in the name of His or Her Majesty’s government. This was not restricted to Africa but also happened in other parts of the world perceived to be in need of the White man’s civilizing influence. In the process, communities, societies, families, even states were destroyed and their heritage plundered.¹⁹

In the last decade, Africa has seen the re-emergence of new forms of religious intervention, conquests in the name of evangelization and missionary activities. A new crop of suave looking young “missionaries,” especially from the United States of America, in well-ironed spotless white shirts and ties and brown “khaki” trousers, have become a common sight in the African landscape. These people with “apostolic” messages, calling themselves missionaries, claim to come to evangelize the African population. Anything traditional and of the past is seen as bad, and not in conformity with principles of the religions being propagated. Countering the Christian evangelization are Islamic “missionaries” and jihadists, who come with both the book and the gun, in the name of defeating the infidels.

It is not uncommon to see mosques spring up in rural areas across the continent, supported, built and promoted by, among others, groups such as the Wahhabi Sect, of the Saudi Arabian Islamic persuasion. It is the soft persuasive evangelization, as opposed to the more jihadist approach in the Middle East (Iraq and Syria) and in Africa (Nigeria, Kenya and Somalia). The gun-toting bomb blasters, including al Shabab and al Qaeda, have declared war on the West but, instead, continue to slaughter helpless and innocent victims in the African continent, mostly on religious grounds. In all of this

chaos, heritage is only relevant to aggressors because it can bring in cash to fuel the war, or meet the needs of the disadvantaged poor who can sell it. It is sold, as well as destroyed, depending on what is perceived to be the most beneficial for the cause.

Nigeria

History repeats itself. Through the 1970s, 1980s, and 1990s, a country like Nigeria was in a constant state of conflict, with coup after coup, serious corruption and devastating illicit traffic of its rich cultural heritage. Together with Mali, the two countries were particularly known for the loss of important archaeological finds in great demand in the West, in the form of the Nok terracottas. Clandestinely excavated in Mali²⁰ and northern Nigeria²¹ and sold to market countries, they adorn some of the most prestigious museums of the world, including those that came to brand themselves “universal museums.”

Writing in 1999, Akinade, of the National Museums of Nigeria, gave a long list of thefts of Nigeria’s heritage, from both museums as well as sites, including the world-renowned archaeological site of Igbo-Nkwu (excavated by Thurston Shaw), Nok in the north of the country, Ife and Benin. Cataloging the danger of the illicit destruction of Nigeria’s heritage that, by all standards, could be considered catastrophic, he asserted that this was just the tip of the iceberg.²² Among the victims of robbery and burglary were Lagos Museum in the early 1980s; Owo Museum in 1992, a theft compounded by the death of a night watchman; Ife and Esie Museums in 1994 and 1995, where robbers used drugs to intoxicate the night watchmen; Jos Museum in 1995 and 1996; and the National Museums in Abeokuta and Makurdi.²³

The list further includes the Universities of Obafemi Awolowo and Ibadan, that lost artifacts on display in their museums; community museums and shrines in the south-western part of Nigeria, many of the losses being considered scandalous,²⁴ with possible cooperation from some members of the museum staff. There were also the destruction of monuments and archaeological sites and ancient towns and cities.

Highly destructive activities of illegal excavations of archaeological sites in Calabar, the Cross River State and in the “Nok Culture Areas” in the northern part of Nigeria were reported, with the affected states including Kaduna, Plateau, and the Federal Capital Territory, and communities being Kawu, Kachia, Kabacha, Ahini, etc. It is noted that during the activities of the marauders, several Nok terracotta heads and figures have been excavated and sold to foreign nationals who come to Nigeria in the guise of buying precious stone.²⁵

The Nigerian problem did not end here, but has persisted. And, like other contested heritage, Nigerian heritage, taken out of the country and to museums abroad has attracted the attention of some of the most powerful. It is

not surprising that, a few years ago, the French and Nigerian presidents at the time, Chirac and Obasanjo, reached a deal that gave France ownership on a permanent loan basis²⁶ of an object of suspect acquisition, something that incurred the wrath of scholars, heritage professionals and others, including a scathing attack on the two by Lord Colin Renfrew, during his speech to UNESCO on its 40th Anniversary, at UNESCO headquarters in Paris in 2012.

Mali

The other major victim is Mali, known for its rich heritage, including literary heritage, which has been on the receiving end of illicit traffic for a considerable time. Known for its traditional architecture, particularly its imposing and architecturally intricate mosques of Timbuktu and Djene, as well as the numerous handwritten manuscripts dating centuries ago, Mali is a treasure trove in the African continent.²⁷ With a long tradition of intellectual engagement, Timbuktu had one of the world's first universities, and Mali possesses heritage of great importance to human achievement. A country that is not rich in economic resources, and with long porous borders, mostly with its northern Sahel region bordering expansive, but politically unstable neighboring countries, Mali has become a transit point for trade in narcotics, arms and other contraband. This has further been confounded by the instability in the country, due to ethnic, tribal and factional conflicts over issues of regional autonomy or independence, creating favorable conditions for all kinds of illicit trade and traffic.²⁸

Originally a victim of thefts primarily of its valued Nok terracotta, through illegal excavations and traffic out of the country,²⁹ Mali has, since the 1990s, been caught in a web of illicit trafficking in narcotics and arms, as a transit point to the north that has led to conditions of great instability, enough to incorporate heritage into this web of illicit trade. Worse still, the instability created a situation of unprecedented destruction to Mali's heritage by religious zealots, mainly in 2013, when the World Heritage Sites of Timbuktu and Gao experienced wanton and sustained demolition, acts that attracted international wrath and condemnation, as well as international reportage. Among the valuable heritage resources destroyed during this mayhem were over 2,000 priceless and irreplaceable handwritten manuscripts from Timbuktu, dating as far back as the 13th century.³⁰

Although the militant religious zealots responsible for the destruction were later chased away by combined military forces led by France, the instability has continued, made worse by the weak governance in the neighboring Sahel countries, including Libya, through which travels most of the trade in narcotics.³¹ By association, cultural heritage finds its way to the "north" in Europe through this channel. Quoting an informant for an interview on the illicit trade through Mali to its northern neighbors, Tinti quotes the informant as stating that "there is no state in southern Libya, there is no state in northern Niger, and there is no state in northern Mali. If you know what you are doing, you can do what you want."³²

The situation is so dire that the conclusion is that “the Malian state is too weak to meaningfully wage a battle against illicit trafficking, and the continued corruption incentives presented by illicit traffic further enfeebles the state.”³³ Although this statement may be referring specifically to illicit trade in narcotics, the trifecta of illicit goods (narcotics, arms and cultural heritage), go hand in hand. Even the general population admits the dire situation, when one Malian confesses that “we have become a mafia culture – everyone wants to be part of it.” Thus “trafficking and crime has torn the social fabric that holds their societies together.”³⁴ There is no doubting that where there is a breakdown in law and order, everything comes out of the woodwork, including illicit traffic in cultural property. That is where Mali today finds itself.

Ivory Coast

Ivory Coast is another country that, until recently, saw war and destruction as a result of political contestation and disagreements. In 2011, during the battle for control of Abidjan, the capital city, by two warring parties of the former President, Laurent Gbagbo, and the incumbent, Alassane Quattara, the National Museum of Ivory Coast was raided, and thieves made off with historical gold jewelry, masks and statues, estimated at \$6 million.³⁵ In total, it is reported that around 80 objects were stolen, including royal gold jewelry, masks, sculptures, and traditional religious artifacts, dating back to the 17th century. These included, according to museum sources, “35 gold pendants, dating from the 18th century, 12 traditional necklaces dating from the 17th century, 6 miniature gold boxes from the 18th century, a 19th century royal saber and an Akan king head dress which could come from the Baoule or Anyi kingdoms.”³⁶

All these priceless collections represent a country’s and a peoples’ identity and past achievements, with the potential for defining and reaffirming its future, after the dust will have settled on long-standing conflicts that have divided the country on regional, ethnic and tribal lines. As correctly pointed out by the director of the museum, Sylvie Memel Kassi, after the theft, quoted in BBC Africa News “for a country like Ivory Coast which, at the moment, really needs to reaffirm its identity, to rediscover its own values, it is really a tragic loss.”³⁷ Indeed, those engaged in such kinds plunder and theft can be said to have violated Article 27 of the Universal Declaration of Human Rights, which affirms “the rights freely to participate in the cultural right of the community, and to enjoy the arts and share in the scientific advancement and its benefit.”

The international syndicates of thieves of heritage are not only conversant with their loot, but also incorporate insiders into their side, including staff of museums and other heritage institutions, especially in places experiencing poverty and conflicts. Illicit traffic thrives in chaos, and traffickers target such places for their actions. The case of Ivory Coast is no exception to this

rule, as summed up by a curator of the Museum of Civilization, Djowa Zoko, who is reported to have remarked that “those who came were specialists, because they knew exactly what was the most essential.”³⁸ On the other hand, the director of the museum alluded to what is often suspected, that “the thieves had someone from the inside.” She is quoted as having said that “the doors weren’t forced open and, seeing the way the objects were taken without breaking the glass... these were specialists who knew what they were doing.”³⁹

These three cases, Nigeria, Mali and Ivory Coast, are not the only ones from the western part of the continent, of plunder, theft and illicit traffic in cultural heritage. On the contrary, many countries in the region have been victims of illicit traffic in cultural property, from the colonial times to the present, with numerous reported cases (and more that go unreported). Today, West Africa is a very fragile region. The whole of the Sahel region, its countries with porous borders, large amounts of arms, especially after the collapse in Libya of the Gaddafi regime, the infiltration by al Qaeda and other groups, the long-standing conflicts for self-determination by the Tuareg of the Sahara, it is a place of little or no governance, of conflicts and the movement of goods of all kinds, including cultural heritage.

In Nigeria, Cameroon, Chad and Niger, the presence of the jihadist Boko Haram (in which Western education is illegal) has and continues to cause instability that is conducive to illicit traffic. Unless the political situation is addressed, this illicit trade will continue. Despite the reactive attempts by the international community to address the issues of illicit traffic, including in cultural property, there will be no answer, as this requires a holistic and inclusive approach that addresses all the shortfalls, including the narcotic trade, bad governance, historical injustices, poverty and the other numerous challenges facing this region.

UNESCO and attempted solutions

In April 2013 UNESCO, in cooperation with Interpol, organized a sub-regional capacity-building and awareness-raising workshop on the fight against illicit traffic of Malian cultural heritage, in the framework of emergency action for the safeguard of cultural heritage. A similar training program was held in Dakar in September 2013, where joint regional action concerning the protection of cultural goods was discussed. This meeting brought together more than 30 participants from police and customs services, from Burkina Faso, Ivory Coast, Mali, Mauritania, Niger, Senegal and Togo.⁴⁰ According to UNESCO,⁴¹

The workshop in Bamako provided the possibility for the participation to further discuss, as well as stimulate, an efficient sub-regional cooperation, to prevent the illicit exportation of cultural objects from Mali in

particular, but also from other West African countries, which is one of the main goals of the action plan adopted during the international Expert Meeting in the Safeguard of Malian Cultural Heritage.

(UNESCO HQ 16 February 2013)

The actions taken by UNESCO, among others, demonstrate the dire need to address this acute problem, as well as acknowledging that it is a major challenge to the region. While noble, like other UN-organized actions, it fails to holistically address the problem at its roots, a problem that is beyond the illicit traffic in heritage. As clearly demonstrated by Tinti,⁴² the whole situation is a complex web of illicit actions, that include narcotic and arms deals. One cannot address one in isolation from the other. Thus, the international community must tackle all these problems, if a solution is to be found for any one.

Unfortunately, despite well-publicized international meetings, such as those run by UNESCO, to address these issues, little can be achieved with the present arrangements. This is accurately summed up by Tinti,⁴³ when he states that “on the rare occasions that illicit traffic and organized crimes are discussed, they are couched within vague and largely inaccurate frameworks of ‘narco-terrorism’ or narco-jihadist.” One sees that heritage is missing even in these terminologies when, in actual sense, its looting is the looting on a peoples’ spirit and identity.

The government of Mali, as reported, has had no political will, or even means, to tackle such issues. Tinti⁴⁴ states that, “Mali simply does not have the capacity to fight illicit traffic and organized crime.” It has been suggested that there may even be complicity within the government. “At the political level, there are indications that some of the same political arrangements that compromised the state and mixed politics with trafficking interests might be taking place.”⁴⁵ If this is the case, then organizing workshops for police or customs officers in a country bedeviled by acute political and social challenges is but a show. In the absence of a holistic approach that addresses all challenges the problem will continue.

Even a military solution does not suffice, as it is noted that “the French intervention, according to sources on the ground, has done little to stem the flow of illicit traffic.”⁴⁶ Conceding that northern Mali, where the illicit traffic passes, is an “open zone,” it is noted that neither the French operation, nor the accompanying UN keeping mission (MINUSMA), consider counter-trafficking a priority. “Our priority is counterterrorism. When we stop a car we are looking for weapons and explosives. Other than that, we let them go, explained a French security source.”⁴⁷ He further noted that, since northern Mali is the size of Germany, it would be impossible to search everyone. This indeed demonstrates the magnitude of the problem that will be there as long as all the other illegal activities are taking place.

But not all is bleak.

In Eastern and Southern Africa, the situation of illicit trafficking is present, but not as aggressive and well-organized as it is in the western part of the continent. While examples abound, as shown below, most of the thefts and illicit traffic are sporadic, though calculated, it is not, however, possible to be definitive in making these generalizations, as many cases also go unreported. For example, the many Ethiopian Orthodox church objects, in the form of old scriptures, paintings, crosses and other priceless paraphernalia, that disappear every day, especially from the remote churches and monasteries in the countryside, are rarely reported.

The same is true in places like the Democratic Republic of Congo, a nation in conflict and known to lose its heritage through illicit traffic with, at times, complicity from the museums themselves. In 2006, it was noted that Africa accounted for 10% of the market in the illicit traffic of cultural property, and that Nairobi, Kenya was one of the transit points, and “has been for years a major transit point for illicitly obtained cultural material from neighboring Somalia and the Democratic Republic of Congo (DRC). While much of this trade could be due to instability, as a result of wars and conflicts, the market remains the same: museums, private galleries and private collectors in North America and Europe.”⁴⁸ The situation has not changed. If anything it has gone worse with the continuous armed conflicts in these areas.

There are, however, cases of conquests, plunder, theft and return of cultural heritage that include, among others, the *vigangos*, or carved grave posts of the Miji Kenda communities of Kenya. These culturally significant items, the *Vigango* (*Kigango* – singular) are grave posts or grave markers erected on the graves of the dead, signifying spirits of the departed ancestors. Often placed on the grave of an important elder, these grave posts, symbolically signs of respect and the presence of a spirit, acquired alternative values from the 1970s that turned them into goods of illicit traffic.⁴⁹

The *Vigango* are not mere grave posts. On the contrary, they hold great ritualistic, religious and cultural meaning. It is in them that the spirit of the dead elder is held and represented, and any desecration, through theft or removal, is believed to be a bad omen for the community. To remove or interfere with them is taboo. Yet through a vibrant illicit trade, the majority of the *Vigango* were re-moved and transported (mostly to Europe and North America), where they found their way into various museums, including university museums. It would not be surprising if some of the museums that have signed the declaration have at least a few *Vigango* in their collections.⁵⁰

In the 1980s, two *Vigango* were stolen from a family graveyard. Before their theft, they were the subject of research work, and were thus documented. The *Vigango* ended up at the University of Illinois (Springfield) and the University of Hampton, both in the USA. The researcher who had studied them recognized them in their new locations, and promptly consulted the family and the National Museums of Kenya. After long and protracted negotiations,

over a number of years, the *Vigango* were brought back to Kenya, at the end of 2006.⁵¹

Another case of historical injustice concerns a British Army officer, who shot and killed a Nandi spiritual leader and chief, Someoi Arap Koitalel, at the end of the 19th century. Koitalel had prophesied that a conquering power would come and build a line in which a long “snake” that billowed smoke would pass. He saw this as an act of aggression and, indeed, when the British came and colonized Kenya, the first thing they built was a railway, to be able to exploit the interior of Kenya and Uganda.

The prophecy coming true, Koitalel convinced his people to resist the construction of the railway through their lands, with great success. Convinced that he would not succeed in subduing the Nandi, who used guerrilla tactics of ambush, the army officer in charge of the railway construction tricked Koitalel, saying that he was interested in dialog and peace. In the meeting that followed, he shot Koitalel and took his head, walking stick, spear, snuff box and other paraphernalia to Britain. For over a century, the Nandi people and the Koitalel family kept asking for the return of the head and items in vain. However in 2007, the family of the army officer, a Major Mackenzie, returned the items, without the head, that is thought to remain in a museum somewhere in England. The government of Kenya, recognizing the power of heritage in community mobilization, constructed a museum in honor of Koitalel, where the restituted items are exhibited.⁵²

Many reasons have been given for the rampant illicit traffic in cultural property in Africa, ranging from weak legal framework, poverty and conflicts to ignorance. However the situation appears more complex today than it was in the past, especially with the African continent not only included in global conflicts, but also global trade in narcotics and arms, that go hand in hand with the trade in cultural property.

Notes

1. UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. Retrieved from http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.
2. *USA Today* 25 March, 3013 4A.
3. *Ibid.*: 4A.
4. *Ibid.*: 4A.
5. Curtis Abraham, *New Scientist*; 28 January 2013; Emily O'Dell: 1 February 2013; BBC Africa, 29 and 31 January 2013, Peter Tinti (2014) *Illicit Trafficking and Instability in Mali: Past, Present and Future* (Geneva: Global Initiative against Transnational Organized Crime).
6. G.H.O. Abungu (2009), Theft and Splendour: Stealing of Heritage and the Response from Heritage organizations. *Organized Crime in Art and Antiquities*. Stefano Manacorda (ed). ISPAC, Milano, Italy.

7. Abungu, George O. (2008), "Universal museums": New contestations, new controversies. in ed. Mille Gabriel and Jens Dahl *UTIMUT. Past Heritage – Future Partnerships: Discussions on Repatriation in the 21st Century The Greenland National Museum and Archives and International Work Group for Indigenous Affairs*. Copenhagen, pp. 32–42, at 32.
8. *Ibid.*, p. 32.
9. UNESCO (1970).
10. ICOM website, *Illicit Trade in Cultural Property: Building a Culture of Peace*.
11. Tinti (2014).
12. *Ibid.*, p. 5.
13. Abungu, (2008), p. 37.
14. N. Brodie, J. Doole and P. Watson, *Stealing History: The Illicit Trade in Cultural Material* (Cambridge: McDonald Institute 2000); Brodie, N., Doole, J. and Renfrew, C. eds. *Trade in Illicit Antiquities: the Destruction of the World's Archaeological Heritage* (Cambridge: McDonald Institute 2001).
15. OA Akinade, *Illicit traffic in cultural property in Nigeria: Aftermaths and antidotes. African Study Monographs* 20 1999: pp. 99–107, at p. 100.
16. Akinade (1999). pp. 100–101.
17. Abungu (2008). p. 34.
18. BBC Africa: 30 January 2013.
19. Abungu (2008). pp. 35, 36.
20. R. McIntosh, and S. McIntosh, *Dilettantism and Plunder: Illicit traffic in ancient Malian art*, pp. 49–57. (UNESCO Museum. UNESCO, Paris 1986); P.R. Schmidt. and R.J McIntosh (eds.) : *Plundering Africa's Past* (Bloomington: Indiana University Press and James Currey, London 1996).
21. Akinade (1999).
22. *Ibid.*
23. *Ibid.* p. 101.
24. Kingi 1996 L. K. *Cultural Genocide and the Nigerian Museums: Will the Plunder Abate? The Newsletter of the National Commission for Museums and Monuments* 1: pp. 11, 12, January–June.
25. Akinade (1999), p. 101.
26. Abungu (2008), p. 41.
27. BBC Africa: 29 January 2013.
28. Tinti (2014).
29. McIntosh and McIntosh 1986; Schmidt and McIntosh: 1996.
30. *New Scientist* 28 January 2013; BBC: 29th January 2013; 31st January 2013; O'Dell 2013 *Timbuktu: Slaying saints and Torching Texts*. 1 February 2013 <http://www.jadaliyya.com/pages/index/9915/slaying-saints-and-torching-texts> 2 May 2015.
31. Tinti (2014).
32. *Ibid.*, p. 8.
33. *Ibid.*, p. 18.
34. *Ibid.*
35. John James, BBC Africa: 13 July 2013.
36. John James (2013).
37. *Ibid.*
38. *Ibid.*
39. *Ibid.*
40. UNESCO *Culture & Development – Stop the Illicit Traffic of Cultural Property* (UNESCO, Havana: Cuba Publication 2013).

41. Ibid., p. 1.
42. Tinti (2014).
43. Ibid., p. 17.
44. Ibid., p. 17.
45. Ibid., p. 16.
46. Ibid., p. 16.
47. Ibid., p. 9.
48. Abungu (2008), p. 37.
49. G.H.O Abungu, "Examples from Kenya and Somalia," in *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, ed. Neil Brodie, Jennifer Doole and ColinRenfrew (McDonald Institute for Archaeological Research, Cambridge 2001), pp. 37–46; Abungu (2008); M. Udvardy, L. Giles, L., and J. Mitsanze. "The Transatlantic Trade in African Ancestors: Mijikenda Memorial Statues (Vigango) and the Ethics of Collecting and Curating Non-Western Cultural Property" *American Anthropologist* 105 2003: p. 3, pp. 566–580.
50. Abungu (2001), G.H.O Abungu. *The Declaration: A Contested Issue*. *ICOM News*, 57, 1, 2004 (Paris: ICOM 2004), Abungu (2008).
51. Abungu (2008).
52. Ibid.

19

Antiquities Crime as a Policy Problem

Lawrence Rothfield

As the title of this volume indicates, the topic of archaeological looting is usually thought of as a subset of the larger category of art crime, analyzable using the same general approaches as those used to describe and model the theft of artworks. That is no surprise. The underlying assumption, that archaeological materials and artworks are the same kind of things, is deeply embedded in our language and our cultural institutions. So, for example, while we do at least sometimes distinguish “antiquities” from “antiques” in everyday speech, we very seldom distinguish “archaeological materials” from either, and under “antiquities” we include all sorts of ancient artifacts and artworks that were never buried, forgotten, and subsequently excavated. Our universal museums, in turn, collect, study, and display both works of art and antiquities, including antiquities that were excavated, generally displaying the latter as if they were works of art. If there is any difference marking archaeological material (aside from the difference that makes some material saleable and other material mere detritus), it is small enough to be poo-pooed: as the Metropolitan Museum’s director, Philippe de Montebello once put it, “How much more would you learn from knowing which particular hole . . . [the Euphronios krater] came out of? Everything is on the vase.”¹

The same indifference to the specificity of archaeological material permeates our laws and regulations.² US customs require declarations of “collections and collectors’ pieces of zoological, botanical, mineralogical, historical, archaeological, numismatic and other interest goods,” but the form does not offer a check-off box that would make it possible to disaggregate this farrago, and look only at the archaeological material. Another form calls for declaring “antiques of an age exceeding 100 years” (HTS 9706), leaving researchers to speculate about what percentage of these antiques are family heirlooms or furniture and what might be urns dug up illicitly.

This failure to respect the conceptual distinction between archaeological material and antiquities or antiques creates some real practical problems for the study and policing of the crime of illicit excavation of archaeological material, hamstringing researchers and hampering investigations.

By not drawing clear lines between archaeological material and antiquities, we ourselves aid and abet the looters. What we do conceptually and inadvertently, they do deliberately: strip looted artifacts of any traces of the ground and context it was pulled from, leaving archaeological materials indistinguishable from antiquities.

This is not to say that there are not also some advantages to conflating the looting of previously unexcavated artifacts with the theft of other sorts of cultural property, including antiquities. One big gain is heuristic. Archaeological material still in the ground is by definition an unknown (and usually what Rumsfeld would call an unknown unknown), not an object whose meaning and ownership chain we can try to trace from the clues it carries. We cannot know what we don't know, can't begin the quest for understanding, without an object in hand. We cannot even know if a buried artifact has been dug up and gone missing. Once out of the ground and transformed into an antiquity, on the other hand, the same object becomes accessible as an object of knowledge, a mystery to be solved. We can set out to track the individual artifact, study clues as to its provenance left by the trail of documentation, and with luck we can seize and return it to the state that owned but did not originally know it owned it.

Hence the dominance, within the field of antiquities crime, of best-selling whodunits – Matthew Bogdanos' *Thieves of Baghdad*, Peter Watson and Cecilia Todeschini's *Medici Conspiracy*, Jason Felch and Ralph Frammolino's *Chasing Aphrodite*, Sharon Waxman's *Loot* – retracing the illicit journey of precious antiquities into or out of museums and private collections. These vivid accounts are great reads. And for those interested in protecting archaeological material, they are not without value: they illuminate networks connecting the smugglers of illicitly excavated materials to the dealers, collectors, and museums that drive the market, and show how these same networks also may be engaged in other nefarious activities like gunrunning or tax fraud. They galvanize public opinion against the illicit antiquities market, and can help clarify ways in which we might clamp down on the distributors and buyers of already-looted archaeological material. But because they fix our attention on individually identified pieces and on the smuggling and trafficking of these by dealers to collectors and museums, they also, I would argue, can distract us, leading governments and advocates of heritage protection alike to waste valuable attention and scarce resources on sideshows such as the pursuit of restitution claims by poor countries, and expensive gotcha sting operations by richer ones.

For the truth is that, while it is emotionally satisfying to see the wicked punished, and cultural property returned, neither in itself can be expected to have much of an impact on the ongoing looting of archaeological sites. That seems counterintuitive to many archaeologists and others: surely the publicity generated by these cases must have a deterrent effect, discouraging the purchase of unprovenanced artifacts. Evidence of such an effect, however, is

very hard to come by, and the continuing appearance at auction of artifacts that were withdrawn, seized by US customs and returned to their countries of origin shows that major licit dealers of antiquities in America believe they can still find buyers even for very dubious antiquities offered openly.³ One can only imagine how many even more dubious pieces are changing hands behind closed doors. But leaving aside the question of whether US dealers, auction houses, and collectors have in fact been cowed by seeing one of their own indicted and convicted or million-dollar artifacts seized, the problem with this intuition is that deterrence only works where the law is in place and being enforced. Prosecutions are few and far between even in the US and Europe, so American collectors and dealers may or may not be sweating. But demand for antiquities, once almost exclusively Western, has become globalized along with the globalization of wealth. A high-profile prosecution of an antiquities dealer or collector in New York thus may deter others in the US, but not the petro-millionaire in Moscow or the Gulf State prince. Ecuadorian and Peruvian artifacts may no longer flow to US collectors, but some have been intercepted transshipped via the US to Egypt, presumably for collectors in the Middle East.⁴ The ban on imports of Chinese materials into the US has not made any discernible dent in the massive looting afflicting China, for the obvious reason that the demand for Chinese antiquities is now primarily from wealthy Chinese collectors; China's licit internal antiquities trade was valued at more than \$10 billion, according to the research firm, Artprice.

As is clear from the difficulty involved in oil sanctions, attacking a globalized market piecemeal is problematic. But the difficulties in deterring archaeological site looting are particularly great. That is because antiquities are not normal goods, and because the antiquities market is not a normal market. Unlike drugs or ivory (two other commodities with difficult to police black markets), antiquities are non-comparable goods. Each object is unique, and some – a very small percentage – are thousands of times more valuable than others. That means that from the viewpoint of the looter (or to be more precise, of the middleman for whom the looters dig) one lucky find can be a life-changing experience. According to He Shuzhong, a Chinese scholar who has investigated archaeological site looting in his country, the saying among villagers goes: “if you want to become a rich man, you should go for excavation, you only need one night.”⁵ Richness, of course is relative to what one possesses to begin with. And, for many kinds of antiquities, those doing the looting are subsistence diggers, often impoverished, often living in economically depressed or war-torn areas. In Iraq, for instance, the per capita income in 2004 was roughly \$3,500, the price paid looters for high quality cylinder seals \$50, and a rare find was worth enough to enable one digger to afford to buy a new BMW.⁶ More generally, while there is a lot of variation, studies of high-end antiquities have shown that despite the enormous mark-up (looters receive less than 1% of the market price), the finder of a piece worth

\$1 million can expect to earn several thousand dollars.⁷ While that might not be enough of an incentive for Americans, it is more than enough to pull thousands of diggers to sites around the world.

Big scores are potent signals. Middlemen understand this, and sometimes may deliberately overpay to prime the pump when looters' enthusiasm for small-scale rewards flags. But even where the average artifact sells for as little as a dollar or two, as reported of a site in Jordan, that has proven sufficient to incentivize looters.⁸

The same dire economic conditions that make archaeological site looting economically rewarding to looters even when the reward is much more likely to be small than enormous also tend to lessen the risk they face of being caught and punished. Wealthier countries are more able to generate the tax revenues required to cover the costs of enforcing their own domestic laws against illicit excavation, but for weaker nations, the costs of enforcement are often impossible to meet. The Peruvian government, for example, admits that "it is impossible for the Ministry of Culture, with the resources it has, to keep guard of thousands of archaeological sites..."⁹ One only need to look to the surge in looting in Iraq in the 1990s following the imposition of sanctions, in Greece following the economic crisis of 2008, and Egypt in the wake of the 2009 revolution, to understand that impoverished governments cannot afford to secure and police their sites, and that looting is enabled as much by governmental weakness as by the poverty of looters and the greed of antiquities collectors.

Under the most extreme circumstances, governments may go beyond merely being unable to stop antiquities looting to condoning it, deliberately turning a blind eye. Looting was reportedly permitted, for instance, on an Iranian site "since the peasants were poor because of the drought, and [officials] thought that it was one way for them to get some money,"¹⁰ and anonymous but reliable sources have admitted privately that the US refused to push either the Iraqi or the Egyptian governments to go after looters because in a time of economic crisis looting was one of the only ways to make enough to keep one's family from starving. Some archaeologists have even suggested that enforcing laws against looting is a violation of human rights: "it is unjust to treat subsistence digging as a criminal activity when and so long as there is no viable alternative economic means for subsistence diggers to access their human rights to clean water, food and medicine."¹¹

In sum, the discourse on antiquities crime, and the legal and policing regime that corresponds to it, are both deeply flawed. They generally focus attention on antiquities rather than archaeological material, on seizures and restitution rather than site protection, and on only a portion of the market, rather than its global entirety. They fail to take adequate account of the peculiar nature of antiquities as economic goods, the incentives for looting, or the costs of enforcing laws protecting archaeological materials.

Those costs, it should be added, while often too high to bear for countries of origin, are also enormous for market nations committed to investigating and prosecuting illicit antiquities trafficking. The 2-year joint operation carried out by the FBI and the Bureau of Land Management (BLM) to obtain convictions in the “Four Corners” case in which artifacts valued at \$335,685 were recovered, for instance, ran up a bill of nearly \$500,000.¹² International conspiracy prosecutions, in which witnesses may need to be transported to the US to testify, are even more expensive, with the unsurprising result that, as a former special agent for U.S. Customs has recounted, in a number of cases prosecutors have declined to prosecute.¹³

Is it possible to reconstruct a more rational crime-fighting strategy – one that prioritized the protection of archaeological sites as the objective and that recognized the peculiar economic properties of looted antiquities (and antiquities more generally)? Neil Brodie, the world’s leading expert on the illicit antiquities trade, suggests that we do not have a clear enough view to answer that question, because the lack of transparency in the antiquities market leaves us in the dark about the social networks that hold the market together and deprives us of “verifiable evidence relating to the size of the trade and the source of unprovenanced antiquities.”¹⁴ Brodie is undoubtedly right to believe that more transparency and the more accurate information it would yield is of great value in policy research. But metrics are more valuable in policy evaluation than policy design, and it is the latter with which we are concerned here. It is not necessary to know the exact size of the trade or to establish the source of all unprovenanced antiquities in order to model the market and then look to theory and to policy responses to similar market phenomena that might hold some promise as a complement to, or substitute for, the present inadequate legal and policing regime.

If deterrence is to work (and it should go without saying that education and community engagement also have to play some role), the key issue is finding a policy mechanism to pay for improved enforcement across the board: more guards, customs officers, and archaeological protection squads; more prosecutors and market monitors; better weapons, equipment, and technology. The single biggest shortcoming of the present legal regime in fighting the looting of archaeological material is that it does not provide any mechanisms for covering any of these costs of enforcement – or even of easily determining how much is being spent. When the US signs a Memorandum of Understanding with another country, for example, the agreement is a *quid pro quo* in which each state party is simply asked to do its part, but with uneven specification of what that part is. As one example among many, the US agreement of 2011 with Greece commits the US to an import ban, while Greece agrees that it “shall consider increasing the capacity of the existing units within the Hellenic Police to monitor and protect cultural heritage sites throughout the country, and shall also consider improving the existing regulations on the use of metal detectors” and to “continue its best

efforts to protect its archaeological and ethnological resources through the enhanced enforcement of its cultural heritage protection legislation."¹⁵ It is entirely understandable why a country undergoing a huge financial crisis would wish not to be bound by stricter language, and entirely understandable why the US government would cut the Greek side some slack in this situation. Nonetheless, the fact remains that the slack is not picked up by anyone.

Such inadequate specification opens the door to repeated complaints from dealers and collecting interests in the US that the other side is not living up to its obligations. Because governmental presentations to Cultural Property Advisory Committee (CPAC), the body charged with reviewing requests for memorandums of understanding (MOUs), are not made public, there is no way to know whether such charges are justified or not. But whatever specific countries are or are not doing at present, there can be no doubt that more resources need to be brought to bear in-country. Where is the funding to be found? And how can it be sure to go toward policing?

Dealers and collecting interests have tended to answer this question by calling for the establishment of what John Merryman calls a "licit international trade" in antiquities.¹⁶ There is of course already international trade in antiquities, but what Merryman and his followers have in mind is the opening of an export trade from countries being looted. "Any such exchange," the Association of Art Museum Directors notes in a brief objecting to the extension of one MOU, "should be taxed and the proceeds of that tax should be used to protect cultural sites and to encourage related employment by the local populations and the scientific exploration, storage and conservation of objects from those sites."¹⁷

This policy proposal is difficult to take very seriously. For one thing, it is politically unrealistic to expect governments to open themselves up to pillorying for permitting the national patrimony to be bought up by foreigners. And, as the Association of Art Museum Directors (AAMD) itself points out, corruption is a major problem within these countries, making it highly unlikely that the tax the AAMD calls for would be collected or that such revenues would find their way to site protectors.

But if the specific proposal is unrealistic, the intuition guiding it – that the market for antiquities should be taxed to pay for site protection – is sound. The antiquities trade ought to be held economically responsible for the harm it does, just as other industries are held economically responsible for the harm they do, on the well-known "polluter pays" principle. The particular form of tax or combination of taxes would need of course to be specified (as in environmental law there are a variety of taxing schemes ranging from carbon taxes to gas guzzler taxes), as would the decision-making procedures for allocating the revenues raised in the most cost-effective and transparent ways. But it seems clear enough, given the enormous mark-up in price from the ground to the end-buyer that the most efficient tax scheme would focus

on the higher end of the market. A 10% tax on the 2007 Sotheby's sale of a single Mesopotamian artifact that fetched \$57 million, for example, would have raised almost \$6 million. Given that site guards in many countries earn \$600 or less per year, that one sale might have translated into an increase of thousands of guards protecting archaeological sites.

Arguing over whether a Pigovian tax should be collected, or whether, as economist Bruno Frey has proposed, a system might be set up of tradable "World Culture Certificates" modeled on the market in carbon emissions, is in no way as fascinating as arguing about whether the Elgin Marbles ought to be returned or reading about the latest arrest of a crooked antiquities dealer.¹⁸ And it offers much less of a moral *frisson* than either of those two ways of talking about antiquities crime. But if we want to see less such crime in the future, we need to refocus attention on the primary objective of stopping the crime that matters most – the looting of archaeological sites – and push the conversation toward the more arid but ultimately more promising terrain of policy-speak.

Notes

1. Randy Kennedy and Hugh Eakin. "For Met chief, no acquisitions regrets," *The New York Times*, 28 February 2006, <http://www.nytimes.com/2006/02/28/travel/28iht-mont.html>, date accessed 20 January 2015.
2. It is important to note that many laws and regulations invoke "cultural patrimony" rather than "antiquities," and that, like "antiquities" though with very different semantic valences, the term "cultural patrimony" obscures the specificity of archaeological material, with deleterious consequences for archaeological site protection. One example may suffice: Decades before Ecuador's 1979 national patrimony law, the country's central bank began buying pre-Columbian artifacts thinking they were rescuing national patrimony from being sold abroad, but "as purchases were stepped up over the years and prices climbed, in reality these well-meaning bankers unwittingly came to subsidize a growing pot-hunter subculture." Pressley Norton. "Archaeological rescue and conservation in the North Andean Area" in *Archaeological Heritage Management in the Modern World*, ed. Henry Cleere (London: Routledge, 2005), pp. 142–143.
3. See Patty Gerstenblith. "Has the market in antiquities changed in light of recent legal developments?" in *The Futures of Our Pasts: Ethical Implications of Collecting Antiquities in the Twenty-first Century*, ed. Michael A. Adler and S. Bruning (Santa Fe: SAR Press, 2012), p. 73.
4. Nevine El-Aref. "Egyptian customs seize smuggled artifacts from Peru, Ecuador" *Ahramonline*, 19 June 2013, <http://english.ahram.org.eg/News/74444.aspx>, date accessed 5 January 2015.
5. Shuzhong He. "Illicit excavation in contemporary China" in *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, ed. Neil Brodie et al. (Oxford: McDonald Institute for Archaeological Research, 2001), p. 19.
6. Lawrence Rothfield. *The Rape of Mesopotamia: Behind the Looting of the Iraq Museum* (Chicago: University of Chicago Press, 2008), p. 138.
7. See the helpful table provided by Neil Brodie and Daniel Contreras. "The economics of the looted archaeological site of Bâb edh-Dhrâ: A view from Google

- Earth" in *All the King's Horses: Essays on the Impact of Looting and the Illicit Antiquities Trade on Our Knowledge of the Past*, ed. Paula Lazarus and A. Barker (Washington, DC: SAA Press, 2012), p. 11.
8. Kantstantinos D. Politis (2002). "Dealing with the dealers and tomb robbers: The realities of the archaeology of the Ghor-es-Safi in Jordan" in *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology*, ed. Neil Brodie and K. Tubbs (London: Routledge), pp. 257–267.
 9. Minister Diana Álvarez-Calderón, quoted in Hillary Ojeda "Ministry of Culture lacks resources to protect more than one thousand archaeological sites" *Peru This Week*, 8 January 2015, <http://www.peruthisweek.com/news-ministry-of-culture-lack-resources-to-protect-more-than-one-thousand-archaeological-sites-104924>, date accessed 20 January 2015.
 10. "Looting savages new site" *Science* 302, 7 November 2003, p. 974.
 11. Sam Hardy "Virtues impracticable and extremely difficult: The human rights of subsistence diggers" in *Ethics and the Archaeology of Violence (Ethical Archaeologies: The Politics of Social Justice)*, ed. A. González-Ruibal and G. Moshenska (New York: Springer, 2015), p. 236.
 12. See Carolyn Sherburne "Operation 'Cerberus Action' and the 'Four Corners' prosecution," *European Journal on Criminal Policy and Research* 20 2014: pp. 475–486.
 13. Charles S. Kocszka "The need for enforcing regulations on the international art trade" in *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?*, ed. Phillis Messenger, 2nd edn. (Albuquerque: University of New Mexico Press, 1999), p. 186.
 14. Neil Brodie "Smoke and mirrors" in *Who Owns Objects?: The Ethics and Politics of Collecting Cultural Artefacts*, ed. Eleanor Robson, L. Treadwell and C. Gosden (Oxford, UK: Oxbow Books, 2007), pp. 11–13.
 15. Bureau of Economic and Cultural Affairs "Memorandum of Understanding between the Government of the United States of America and the Government of the Hellenic Republic Concerning the Imposition of Import Restrictions on Categories of Archaeological and Byzantine Ecclesiastical Ethnological Material Through the 15th Century A.D. of the Hellenic Republic" 17 July 2011, Article 2, sec. 2–3; <http://eca.state.gov/files/bureau/gr2011mou.pdf>, date accessed 20 January 2015.
 16. John Merryman "A Licit international trade in cultural objects" *International Journal of Cultural Property* 4 1995: pp. 13–60.
 17. Association of Art Museum Directors "Statement of the Association of Art Museum Directors Concerning the Proposed Extension of the Bilateral Agreement between the United States of America and the Republic of El Salvador," 7 October 2014, DOS-2014-0022-0004.
 18. Bruno S. Frey and P. Pamini "Making world heritage truly global: The culture certificate scheme" CESIFO Working Paper NO. 2745 2009.

Part IV

Thieves: Art Law, War and Policy

Introduction to Part IV

Noah Charney

Because conflict zones represent unusual legal and security circumstances, in which laws, expectations, and behavior patterns of civilians and soldiers alike change in often unexpected ways, it is useful to examine conflict zone or war looting as distinct from similar actions in times of peace, when existing laws are more likely to be followed and enforced.¹

Art has been looted in war since pre-history. Whether the goal of the looting is the seizure of objects for their monetary value, to express the domination of the victor over the vanquished, or to provide trophies of war for the conquerors to display back home, war has caused the greatest movements of art in history. Napoleon, Hitler, and Göring wear joint crowns as emperors among art thieves, but we will examine the phenomenon of war looting beginning in 212 BC. We will see how later armies rationalized their practice of looting art by noting that past civilizations, particularly the Romans, did so, and how looted art was seen both symbolically and practically: as a trophy and a funding source.

Sack of Siracusa (212 BC)

In 212 BC, the Roman Republican army under Marcellus sacked the Greek city of Siracusa, in Sicily. Of this, Livy wrote:

Marcellus removed to Rome the beautiful statues and paintings which Syracuse (Siracusa) possessed in such abundance. These were, one must admit, legitimate spoils, acquired by right of war; nonetheless their

This article is abridged and updated from my earlier (2013) "Art and Icons Lost in East Prussia: German Seizures from Kyiv Museums" *Jahrbücher für Geschichte Osteuropas* (Franz Steiner Verlag, Stuttgart), 61, Heft 1, pp. 47–91; at http://www.huri.harvard.edu/images/pdf/grimsted_kyiv_loss_mar_13.pdf, following a series of lectures on the subject.

removal from Rome was the origin of our admiration of Greek art and started the universal and reckless spoliation of all buildings sacred and profane which prevails today.²

Enamored by the art they saw there, this sack launched a Roman craze for collecting Hellenistic vases and sculpture, and resulted in the conscious alteration of military strategy in order to secure more looted art. This was continued in times of peace, for instance in the famous legal case which Cicero tried against the tyrannical governor of Sicily, Gaius Verres, begun 5 August 70 BC in Rome (see below).

Military-sanctioned looting from, and by, ancient Rome

General Lucius Cornelius Sulla stole the columns of the great Temple of Zeus in Athens when the city fell in 86 BC and brought them back in triumph, like fallen war heroes, to Rome, to re-use them in the Temple to Jupiter on the Capitoline Hill.³ The General and later Emperor Titus looted the Temple of Herod in Jerusalem at the end of the Jewish War (70 AD). Carved in relief on the Arch of Titus and Vespasian in the Roman Forum is a depiction of the Roman soldiers carrying off the treasures of the temple, including the horn that Joshua blew to fell the walls of Jericho and the giant silver menorah that burned in the temple on Hannukah.⁴

Titus would establish a museum in Rome to display the trophies carried back from this war and others – an outdoor sculpture gallery near the Porta Octaviana. It contained sculptures by the greatest Greek masters, including Phidias, Lysippus, and Praxiteles, all of which had been taken as trophies of war.

That very museum would be looted during one of the many Sacks of Rome (particularly those in 410 and 455 AD).⁵ For Rome herself became the victim of pillaging on numerous occasions, and in each case art was a primary target of the ravishers of the city: the Gauls sacked Rome after the Battle of Allia in 387 BC; Alaric, king of the Visigoths, did so in 410 AD; a mere 45 years later, so did Genseric, King of the Vandals, in 455 AD; Totila, King of the Ostrogoths sacked Rome when he was at war with the Byzantines in 546; the Arabs looted the old Saint Peter's Basilica in 846; the Normans tried their luck under Robert Guiscard in 1084; and finally the city was sacked by the army of Holy Roman Emperor Charles V in 1527.

The plundering during the Roman era is important not only in itself but because subsequent military looting was sanctioned by the very fact that the Romans did it. If it was acceptable to ancient Rome, seen by later empires as exemplary and the pinnacle of civilization, then it might be rationalized as acceptable for others attempting to recreate the glory of the Roman Empire. From ancient plunder through the Thirty Years' War, the Einsatzstab Reichsleiter Rosenberg (ERR), the Nazi art theft division, and their Allied

nemeses, the Monuments Men of the Second World War, to the Iraq War and the looting of the Baghdad Museum, war looting is very much an active concern.

Theft in the ancient world: Cicero against Verres (70 BC)

In addition to various charges of general corruption, wrongful imprisonment and execution, and embezzlement, Cicero focused his accusations on Verres' looting of Sicily's art and monuments.

Ancient monuments given by wealthy monarchs to adore the cities of Sicily . . . were ravaged and stripped bare, one and all, by this same governor [Verres]. Nor was it only statues and public monuments that he treated in this manner. Among the most sacred and revered Sicilian sanctuaries, there was not a single one which he failed to plunder, not one single god, if only Verres detected a good work of art or a valuable antique, did he leave in the possession of the Sicilians.⁶

Verres fled before the trial and never returned to Rome.

This was probably the first legal case wherein the right of a people or nation to retain their own cultural property was asserted in a court of law. According to Cicero, Verres should have left these valuables in "the possession of the Sicilians." At the time, Sicily was a Roman colony, with its cities primarily of Greek origin, with a smattering of other ancient peoples, like the Phoenicians, in the mix. It was certainly a multi-ethnic center. So to whose cultural heritage was Cicero referring? He was associating cultural objects with a geographic location. The possessions belonged to whoever was living around them. And they should remain where they were historically associated, he implied.

The Emperor Augustus, in his edict of 27 BC, outlawed the removal of art from "sacred localities" on the part of his army and citizenry. While looting was considered acceptable for conquerors, it was looked down upon to steal art from religious institutions, which was of course where most of the art was displayed.⁷ The implication was that the gods would be displeased – even the gods of different religions. Augustus later showed a sense of humor about art theft, in his Letter to the Ephesians, who had stolen a golden statue of Eros (god of love and sex) from the city of Aphrodisias and erected it as an offering to Artemis, their local patron goddess (who presided over the hunt and the moon, and was a virgin). In his letter requesting that this looted sacred statue be returned, he wrote:

I was informed that out of the loot a golden Eros has been brought to you and set up as an offering to Artemis. You will do well and worthily

of yourselves if you restore the offering. In any case Eros [god of love and sex] is not a suitable offering when given to Artemis [a virgin goddess]!⁸

These ancient world anecdotes are important because Rome set a precedent that art could be looted in war (as in the sack of Siracusa), and also set the precedent that it was a crime to steal art (in the legal case against Verres). These crimes were transnational in the sense that the art of one culture was being removed to the benefit of another culture, although the peacetime looting on the part of Verres was from within the Roman Empire. As Cicero noted, art was for the place in which it was traditionally associated, where traditions had grown up around it, and it should not be exported, particularly through forced purchase and theft.⁹

Sack of Constantinople (1204)

War, even when prompted by religious motivations, proved an opportunity for capturing art. While one would be hard-pressed to find a campaign of conquest that did not involve stealing art or monuments, perhaps the grossest account is that of the Fourth Crusade (1202–1204).

A combined force of Christians from Western Europe planned to recapture Jerusalem from the Muslim Ayyubid dynasty, via an invasion of Egypt. A largely French and Italian force began negotiations with the Republic of Venice in March 1201, led first by Count Thibault of Champagne and then by Boniface of Montferrat when Thibault died in 1201. Pope Innocent III had preached crusade since 1198, but the wars in Germany between the Holy Roman Emperor and papacy, and wars between England and France, meant that it was not until 1199, at a tournament held in Ecry, France, that the crusade began to muster energy.

But the story of the Fourth Crusade is largely the story of the wily and treasure-hungry Venetian Republic. Venice agreed to transport 33,500 crusaders from Venice to the Holy Land, and to supply the entire crusade. Not all the crusaders met in Venice, but around 12,000 men from the army were present in 1201, encamped on an island in the lagoon. The Venetians had prepared for an entire year, building 50 war ships and 450 transport vessels for the full-sized army, and yet only 12,000 troops arrived. The cost of transporting and supplying an army three times the size of the one that arrived in Venice had been set at 85,000 silver marks. The crusaders present could only come up with 51,000 silver marks. This meant a dramatic loss for the Venetians, taking into consideration their further promise of 14,000 Venetian men to be employed in manning the crusader fleet and supply line. The blind Doge Dandolo would not let the crusaders leave the island on which they were encamped without paying the agreed-upon fee.

And so a compromise was struck. The Venetians had two military wrongs to be righted, and now they had a massive army at their mercy. In 1182,

the Angelos dynasty in largely Christian Constantinople had expelled the Venetian population, particularly its mercantile interests, to support the Greek majority in the city. This had made Constantinople an enemy of the Venetian Republic. Further the port city of Zara (currently Zadar) on the Dalmatian coast, long under the yolk of Venice, had rebelled in 1181 and formed an alliance against Venice with Hungary and Croatia. The Venetians had been unable to take back the city.

Doge Dandolo agreed to follow through with the program to launch the Fourth Crusade at this lower fee, but only if the crusader army would make these two stops en route to the Holy Land, acting as enforcer for Venice against Zara and Constantinople.

The issue of course was that a crusade was meant to see Christians vanquishing Muslims, while Zara and Constantinople were largely Christian cities. Some crusaders refused to attack fellow Christians, while the Papal legate to the crusade, Cardinal Peter of Capua, thought that it was necessary to capitulate or else the whole crusade would be a loss. Pope Innocent III threatened to excommunicate anyone who did not participate. He also sent a letter in 1202 forbidding the army from committing any atrocities against fellow Christians in the course of the campaign – a difficult balance to strike considering that he was likewise encouraging them to lay siege to their cities. But this letter was concealed from the majority of the army.

The citizens of Zara hung banners decked in crosses on their battlements in an effort to appeal to their fellow Christians besieging them, but the attack went ahead and they were quickly subdued. The city was sacked, stripped of its treasures and gold, and largely laid waste. When Pope Innocent III heard of this he sent a letter excommunicating the crusaders involved in the sack. But the leaders of the army chose not to divulge the content of the letter, so as not to dishearten and dissolve the army.

The army then turned to Constantinople, and began a siege in July 1203. The leader of Constantinople, Alexios IV, had attempted to join the crusade and thereby avoid an attack on his city as an ally, but the crusader army was divided over whether to accept or to follow through with the Venetian plan that would, it was clear, provide a bounty of loot. Alexios III had fled Constantinople, taking 1,000 pounds of gold with him, and reducing the imperial treasury dramatically. Young Alexios IV called for the melting of gold and silver statuary in order to cast more coins to refill the treasury. This was hugely demoralizing for the population and still only raised around 100,000 in silver marks.

Alexios IV had reached out to the crusaders and sought them as an ally, but he was murdered by one of his courtiers, Alexios Doukas, who then took over as Alexios V. The crusader army finally sacked the largely Christian city of Constantinople on 12–13 April 1204. Over the next three days the city was sacked, burned, and looted. The famous library of Constantinople was destroyed, the churches and palaces stripped of gold, silver, relics, and

art. The Venetians received the balance they were owed by the crusaders, around 150,000 silver marks of value in art, coins, and jewels. The crusader army kept 50,000 silver marks' worth, and then divided another 100,000 between them and the Venetians. A further 500,000 silver marks was kept and divided among crusader knights. The accumulated artistic treasures of the great Eastern capital of the Roman Empire were scattered by the crusaders, as they returned to their homes in Europe. The irony of the Fourth Crusade is that it never made it to the Holy Land, and proved to be nothing more than a punitive expedition for the Venetian Republic and their mercenary crusader army, and an excuse to steal treasures from their fellow Christians.

Among the artworks and relics taken from Constantinople in 1204 are the famous bronze horses that were displayed in triumph on Basilica San Marco in Venice, as well as Christian relics like the Crown of Thorns and the Holy Lance, which were taken back to Paris for display in the purpose-built chapel/reliquary of Saint-Chapelle.

Thirty years' War and the sack of Prague (1618–1648)

Though largely a war fought between Protestants and Catholics in the Holy Roman Empire, the Thirty Years' War featured an infamous incident of art looting when the phenomenally rich artistic and scientific collections of Rudolf II of Prague were stolen and scattered throughout Europe. While the war led to the inhibition of Habsburg supremacy, the decentralization of the Holy Roman Empire, and a decline in the influence of the Catholic Church, historians have noted that it exemplified Cato the Elder's phrase *bellum se ipsum alet*, "the war will feed itself." The major governmental powers behind the Thirty Years' War were nearly bankrupted by disease, famine, and the cost of fighting. This resulted in unpaid troops who took out their hunger and frustration on the land that they passed. Troops began to ravage and loot any territory in their path, using extortion and other means to essentially self-fund the campaign. This problem manifested itself on a large scale, with army divisions resorting to such tactics, but also on a soldier-by-soldier basis. Other examples of this may be found in the Fourth Crusade (see above), the 1527 Sack of Rome by the unpaid mercenary troops of King Charles V, and numerous other instances. Looting in lieu of payment.

When Sweden intervened in the war and overtook Prague in 1648, the marvelous collections of Rudolf II were stolen. Swedish troops sacked Prague Castle on 26 July 1648 and hauled the majority of the collection back to Sweden, where it was absorbed into the collection of Queen Christina. Queen Christina would eventually be exiled from Sweden and while the majority of her collection remained there, she brought a large number of works with her: 70–80 paintings, of which 25 were portraits of her friends

and family, which she had bought legitimately, and at least 50 paintings that had been stolen from Prague.

This would prove important to the history of legitimate art collecting, as the best pieces from Queen Christina's catalog, 123 paintings forming its core, were passed on to the Duke of Orleans after her death. The sale of the Orleans Collection, primarily to settle the gambling debts of Louis Philippe d'Orleans, took place over several years in the 1790s. It represented the second of the great sales of aristocratic collections (the first being the dissolution of the collection of the English King, Charles I, after his execution in 1649), many others of which would follow in a new era when the aristocracy could no longer support themselves in their traditional ways, through feudal service, and had to sell off the trappings of their nobility, art and castles and titles, in order to survive. This directly gave rise to the art trade in the modern sense: not of kings and clergy commissioning large-scale works, but of *nouveau riches* merchants and industrialists now able to afford what the aristocracy no longer can. Scores of paintings that had been looted from Prague a century and a half earlier were sold at this time, including Tintoretto's *Origin of the Milky Way*, bought for 50 guineas in 1800 and now at the National Gallery in London.

Napoleonic art looting (1796–1812)

During the French Republican and Napoleonic eras, art looting became standard practice for victorious armies. Napoleon took over the leadership of the French Army during the campaign in Italy that had begun disastrously, with under-nourished, unpaid soldiers on the brink of mutiny. Stealing art from the conquered territories became a way of both raising funds to support the war effort, and to raise morale back at home in Paris, where the newly converted Louvre Museum would become a sort of trophy case for the victorious to display the treasures of the conquered. His policy was first made clear in the armistice signed by the defeated Duke of Modena on 17 May 1796, which stated: "The Duke of Modena undertakes to hand over twenty pictures. They will be selected by commissioners sent for that purpose from among the pictures in his gallery and realm."¹⁰ This established a precedent for payment and reparations in the form of art that would continue, both encouraging conquerors and dismaying the conquered, for centuries.

Napoleon established the first official military division dedicated to seizing and shipping captured artworks. Specially trained personnel would follow behind the army to inventory, pack, and ship art. All confiscations were strictly monitored in the presence of a French army official. The army would be responsible for the art and its shipping back to Paris. This division was called the Commission of Arts and Sciences.

But despite Napoleon's attempts at restricting looting to official actions, it was not only the armies that benefited. One of Napoleon's officers in charge

of art plunder, the painter Citizen Wicar, took so many prints and drawings for himself that, upon his death, after having sold most of what he stole, he still had 11,000 artworks to bequeath to his hometown of Lille.¹¹ Napoleon's art advisor, Dominique-Vivant Denon, became the first director of the Louvre Museum, and was the mastermind behind the art theft scheme that made the Louvre the treasure house of the world.

In May 1796, when the Commission came to Modena to take the specified 20 pictures detailed in the armistice, Citizen Wicar was present. He stole a further 50 paintings from the Modena collection for himself and only stopped there because Napoleon arrived on the scene. Not to be outdone, Napoleon ordered his commissioners to stop taking anymore art, but then he chose two paintings for his personal collection.

This set a precedent that was followed in the armistices in French victories over Venice, Mantua, Parma, and Milan. Ironically Venice was stripped by Napoleon of the four bronze horses that the Venetians had stolen from Constantinople in 1204. Napoleon's art thefts led to altered military strategy, for Naples and Turin were left largely un-looted because they chose to sign a treaty immediately with Napoleon before they came under attack, and therefore had more leverage in their relations. They lost the least to plunder of any vanquished Italian cities.

Napoleon extracted the most from the Papal States. Pope Pius VI signed the Treaty of Tolentine in June 1796, yielding to the Napoleonic army. In addition to the payment of 21 million livres (around \$60 million today), Article 8 of the treaty stated that the pope was to give Napoleon: "A hundred pictures, busts, vases, or statues to be selected by the commissioners and sent to Rome, including in particular the bronze bust of Junius Brutus and the marble bust of Marcus Brutus, both on the Capitol, also 500 manuscripts at the choice of the said commissions."¹² Eighty-three sculptures were taken as well, including *Laocoon* and the *Apollo Belvedere*, and paintings taken included Raphael's *Transfiguration*. As if that were not enough, Napoleon insisted that the pope pay for the shipping to Paris of the art stolen from him, a bill of another 800,000 livres (or \$2.3 million today). Forty paintings were taken from Papal lands in Bologna and ten from Ferrara. Looted art from Bologna alone required 86 wagons to transport. Of this, Napoleon enthusiastically wrote: "The Commission of experts has made a fine haul in Ravenna, Rimini, Pesaro, Ancona, Loreto, and Perugia. The whole lot will be forwarded to Paris without delay. There is also the consignment from Rome itself. We have stripped Italy of everything of artistic worth, with the exception of a few objects in Turin and Naples!"¹³

This was the first of several wars in which certain renowned masterpieces, such as Jan van Eyck's *The Ghent Altarpiece*, became prized spoils, with armies and collectors vying with one another to capture these key treasures, as valuable symbolically as they were financially. Much of the desire to possess *The Ghent Altarpiece*, which bears the dubious distinction of being the

most frequently stolen artwork in history, was due to the fact that so many other people sought it, either for personal or national collections. The result was cumulative – the desirability of the artwork accrued with each high-profile incident of its capture and return. Denon sought it for the Louvre, and because of the high esteem in which he held the painting, its fame grew, prompting others to desire it for themselves. It would be one of the top targets for the Germans during the First World War, one of only a few cultural objects listed by name and returned by the Treaty of Versailles, and would likewise top the looted art wish-lists of both Adolf Hitler and Hermann Göring.

First World War (1914–1918)

With Napoleonic looting very much in mind, Article 27 of the 1907 Hague Convention sought to keep cultural heritage remote from the machinations of men in war: “In sieges and bombardments all available precautions must be adopted to spare buildings devoted to divine worships, art, education, or social welfare, also historical monuments . . .”¹⁴ At the outset of the First World War intellectuals, artists, politicians, and journalists worldwide called for an international agreement that would protect art in war. Two preservationist officials, Paul Clemen and Otto van Falke, were assigned supervision of art and monuments during the war, and they tried throughout the conflict, largely against the desires of the officers and leaders, to minimize looting and preserve as much as possible. Clemen spent 1914 drawing up official reports on the condition of monuments entrusted to him. He published a widely praised article in the December 1914 issue of *International Monthly Review of Science and the Arts* entitled “The Protection of Monuments and Art During War.” This was largely inspired by an incident in the autumn of 1914, when Russian soldiers captured and looted the Ossolinski Museum in Lemberg, taking the treasures to Saint Petersburg. Russians claimed that they were removing the art from a border region in order to protect it, while the Germans called it looting. From that one museum the Russians stole 1,035 paintings, 28,000 works on paper, 4,300 medallions and 5,000 manuscript pages.¹⁵ None of these have ever been returned.

Despite the high-minded talk, there was widespread fear that the German army would steal or destroy art, as they had been involved in the looting and destruction of art in neighboring Louvain in August 1914. To excuse this action, the German art journal *Kunstchronik* stated:

Implicit confidence may be placed in our Army Command, which will never forget its duty to civilization even in the heat of battle. Yet even these duties have their limits. All possible sacrifices must be made for the preservation of precious legacies of the past. But where the whole is at stake, their protection cannot be guaranteed.¹⁶

This would prove portentous, because the German army stole works of art throughout the conflict, perhaps most overtly in their repeated attempts to steal *The Ghent Altarpiece* from occupied Belgium, beginning shortly after the destruction of neighboring Louvain. The wing panels of the triptych altarpiece were already in Germany, on display at the Kaiser Frederick Museum after they had been deaccessioned in 1816 and sold by a vicar and the Church Fabric to a Brussels art dealer. The wing panels eventually found their way into the art collection of Frederick Wilhelm, King of Prussia, which became the Kaiser Frederick Museum in Berlin.

The central panels of the altarpiece that remained in Ghent were hidden from the Germans by the Canon of Saint Bavo Cathedral, in which they were housed. Canon Gabriel van den Gheyn smuggled the disassembled altarpiece through the streets of Ghent on the night of 31 August 1914, and hid individual panels between the walls and under the floorboards of several private homes, and later behind the confessional of a church. He, the bishop, and the mayor were regularly questioned by Germans, both in official capacity and incognito, sometimes threatened, sometimes cajoled. The Germans argued first that they needed to know the location of the altarpiece in order to protect it, but then later demanded it be handed over as war booty. By 1918, when defeat was inevitable, the Germans threatened to blow up the entire city of Ghent if the altarpiece was not handed over to them. But before Canon van den Gheyn had to make the terrible decision as to whether to hand it over, armistice was signed.¹⁷

Under the terms of Article 247 of the Treaty of Versailles, Germany was forced to return the wing panels that had been in the Kaiser Friedrich Museum in Berlin. The altarpiece was only one of five works of art mentioned in the Treaty of Versailles – it had suddenly become a key bargaining chip in post-war reparations. The Treaty of Saint-Germain, signed 2 September 1919, which dissected the Austro-Hungarian Empire, also featured the forced return of artworks as a form of punishment after the First World War. The inclusion of *The Ghent Altarpiece* in the Treaty of Versailles would be directly involved in the next theft sparking revenge for what was perceived as unjust reparation, guiding Hitler in his own art policy during the Second World War.

Second World War (1939–1945)

The Second World War altered the map of Europe, and redistributed art on an unprecedented scale. A great deal of good scholarship has been published on the subject of art looting during the Nazi-era (one of the few categories of art crime that has received a significant amount of scholarly attention), and the subject is too large to cover in detail. We will therefore only briefly summarize the events of the Second World War in relation to art looting.

Theft as part of Nazi art policy preceded the war, and included the infamous “degenerate” art exhibition, and the fire-sale of art seized from German citizens and sold at an auction at the Galerie Fischer in Lucerne and bought by many Americans, whose desire to add to their collections helped finance Nazi armaments.

In 1936 a Kandinsky painting was forcibly deaccessioned from the Folkwang Museum in Essen and sold to a dealer for 9,000 marks. This was considered a public act of purification. The National Socialists called for a purification of art, considering what they termed “degenerate” art to be a source of moral corruption. Although less well-known than the wartime looting from Europe, the Nazis stole art from the German people prior to war, ostensibly to remove this potential source of corruption from their nation but in reality to fund the war effort. Art was considered “degenerate” if it did not adhere to strict Nazi standards: essentially the Nazis approved only of naturalistic art by Teutonic or Scandinavian artists or depicting Germanic subject matter. Modern, abstract art, even if produced by Germans, was unacceptable, as was art by non-Aryan artists, like Jews or Communists. On 30 October 1936 the Ministry of Education officially closed the modern wing of the National Gallery in Berlin (the same museum that had displayed the wing panels of *The Ghent Altarpiece*), describing the content of the wing as a “chamber of horrors.”¹⁸ The closure was just months after the end of the Berlin Olympic Games, suggesting that the Nazis knew that their art censure would not be well received by the world at large.

These events were followed quickly by the large-scale forced seizure of art from German citizens. On 30 June 1937 Hitler commanded Adolf Ziegler, president of the Reich’s Department of Plastic Arts, to seize for the purpose of exhibition examples of German degenerate art found within Germany. What resulted with the Exhibition of Depraved Art, shown in München, Berlin, Leipzig and Düsseldorf. The 730 works in the show were curated in the least flattering way possible and hung with slogans like “Until today such as these were the instructors of German youth,” meant to frame the works on display as morally repugnant.¹⁹ The show, having determined what was unacceptable in terms of art, was quickly followed by Ziegler’s theft of such art from German citizens. Approximately 12,000 drawings and 5,000 paintings and sculptures were taken from 101 public collections alone, and far more from private collection. Hitler inspected the confiscated works in a storeroom in Berlin, consulting a carefully prepared six-volume catalog of its contents, which listed: 1,290 oil paintings, 160 sculptures, 7,350 watercolors, drawings, and prints, 3,300 other works on paper stored in 230 portfolios, for a total of 12,890 items cataloged as having been taken from Germans by Germans, and surely far more which were not featured in this multi-volume catalog.

The plan for this art was to sell it to finance the war effort. The Nazis were interested in collecting naturalistic and Old Master works – these

“degenerate” works were recognized as having financial value for foreign collectors and would be sold abroad. The largest sale was at the Galerie Fischer in Lucerne, Switzerland. Though the war had not yet begun, few of the foreign collectors, many British or American, who bought art there could not have known that their purchases were of stolen art and their price would fund the Nazi war effort. Any works that had not sold by 20 March 1939 were burned in an enormous pyre in Berlin: 1,004 oil paintings and sculptures and 3,825 works on paper.

Prior to the war, Hitler conceived of a plan to capture every important artwork in Europe and gather it in a *kulturhauptstadt*, a sort of “super museum” that he would construct in his native town of Linz, Austria. To fill this collection, a military unit was established called the ERR. On 17 September 1940 Hitler announced the formation of the *Sonderstab Bildende Kunst* (Special Operations Staff for the Arts), the primary task of which was to seize art from Jewish collections in France. This unit was later transformed into the *Einsatzstab Reichsleiter Rosenberg* (Rosenberg Operational Staff, or ERR), run by Alfred Rosenberg. The ERR began on 5 June 1940 when Rosenberg proposed that all libraries and archives in occupied countries be searched for documents of value to Germany. The seizure of documents quickly led to the theft of artworks, as the mission of the ERR broadened.

While Hitler planned his “super museum,” head of the Luftwaffe Hermann Göring raced Hitler to steal art that he wanted for his personal collection of over 7,000 masterpieces, amassed at his country home, Karinhall. At the war’s end, dozens of secret caches of stolen art were discovered, including the motherload at Alt Ausee, Austria, a salt mine that had been converted into a high-tech storage depot, holding the thousands of masterpieces destined for Linz.²⁰ In the Alt Ausee mine alone, Allied soldiers (led by the Monuments, Fine Arts, and Archives officers, who were charged with protecting and recovering art and monuments in conflict zones) found 6,577 oil paintings, 2,030 works on paper, 954 prints, 137 statues, 128 pieces of arms and armor, 79 containers full of decorative arts, 78 pieces of furniture, 122 tapestries and 1,500 cases of rare books.

The repatriation of art after the Second World War is a complicated, multifaceted issue, but it is further compounded by the fact that not only the Nazis were to blame. The Red Army was responsible for enormous looting schemes, stealing largely what the Nazis had stolen from Europe. The Red Army considered the art to be a form of reparation for the casualties suffered by Russia during the war. But it was also a source of income, and it did not stay their hands to consider that they were stealing from art that had itself been stolen from civilian victims. The institutional thefts aside, countless opportunistic thefts on the part of individual soldiers and citizens must not be discounted, nor the thankfully infrequent thefts on the part of Allied soldiers.

The Second World War resulted in the complete redistribution of art on a scale only previously seen during the Napoleonic campaigns. The destruction of cultural heritage and human lives is so staggering that even now, decades later, scholars and lawyers are still picking up the pieces. From the perspective of the history of art theft, the war spread the contents of thousands of public and private collections across the globe. Owners were lost, forgotten, or killed. Some prominent recovery lawsuits have found their way to the headlines in recent years, as the proliferation of the Internet has allowed people to see art in foreign collections, and to search, without leaving their offices, for art taken from their family more than half a century ago. And as the post-war period saw the rise of international organized crime, so too did it see a rise in the scale and repercussions of art theft, as organized crime groups began to involve themselves in the illicit traffic of cultural heritage.

Baghdad Museum (2003)

In 2003, the Baghdad Museum of Art was looted, with an estimated 15,000 objects disappearing in a matter of days. The anarchy of the invasion of Baghdad by United States forces was to blame for the looting spree, but not entirely. There was no contingency plan to which the museum could turn in times of conflict such as this and, after the smoke cleared, both literally and figuratively, it was determined that at least two different types of theft had taken place at the museum. It was initially assumed that the thefts had been a crime of opportunity on a massive scale: frightened, impoverished locals took advantage of the chaotic situation to make off with selected antiquities, on the assumption that they might prove valuable in the future if the need to sell them arose. That did happen. But the investigations of the Marine officer and New York attorney Matthew Bogdanos also uncovered organized looting. Groups of looters had taken some artworks, including large ones that were broken or sawn into smaller, more portable parts that were clearly premeditated and required insider knowledge due to their locations. It seems clear that several groups of organized looters had planned what they *would* take if the invasion of Baghdad provided them with an opportunity to loot the museum. Here we have an example of crimes of opportunity, by definition unpremeditated, standing beside premeditated, organized theft.²¹

Such looting in conflict zones is, sadly, a common, with a combination of regime-sanctioned, opportunistic and organized civilian criminal looting in Iraq, Syria, Egypt, Cambodia, Libya, Mali – throughout the regions rich in portable cultural heritage in shot through with turmoil and military activity. These few examples should suffice by way of introduction, and may be extrapolated upon and adapted to other parallel settings and times.

This chapter offers a variety of investigations into the looting of art in war and art reparations law, while offering concrete recommendations for policy changes that could help prevent such issues in the future.

Patricia Kennedy Grimsted's chapter tells a little-known story. We tend to focus on the looting of art from Western Europe by the Nazis, or of the Soviet "trophy brigades" re-stealing it back to Russia as a sort of remuneration for loss of life. But with the upheaval in Ukraine the year this book was put together, it is fitting to dedicate a chapter to the looting of art from Kyiv during the Second World War, and the hunt for its traces. Grimsted's thorough, remarkable, readable chapter details the fate of Ukrainian collections during and after the Second World War, shedding light on a lesser-known corner of the well-tread subject of art and the Nazis.

There is but a small number of truly important, internationally renowned lawyers who specialize in the recovery or repatriation of artworks (especially those seized during the Second World War). **Howard Spiegler** is one of them. His chapter deals with the case of the heirs of Kazimir Malevich versus the City of Amsterdam, wherein the heirs sought to recover artworks by their ancestor that Malevich had left in central Europe for safekeeping when he was briefly there, outside of the Soviet Union. He was never able to return and retrieve them, and a large cache of them made their way to the collection of Amsterdam's Stedelijkmuseum. When 14 of these works were sent on loan to exhibits in the United States, the heirs employed Spiegler's firm to try to recover the works, which the family felt had been unfairly denied them. The chapter provides an insider's view at the legal process, which resulted in a settlement that satisfied both the heirs and the Stedelijk. But the case was influential enough to have prompted a new law, passed in 2012 in the U.S. House of Representatives and, to date, awaiting ratification in the Senate. It is a rare privilege to be given this inside peek at the legal process from a renowned specialist in the field and, thankfully, one who writes clearly and fluidly, in a manner that non-legal-specialists can learn from and enjoy.

Christopher Marinello and **Jerome Hasler** explore the definition of due diligence, as it pertains to the art market. In order to avoid legal liability for having purchase, even accidentally, a looted or stolen artwork, a buyer must be able to prove good faith and due diligence. Good faith demonstrates that the buyer genuinely thought that the item in question was legitimate when the purchase was made – an amorphous concept, and one difficult to prove or disprove. Due diligence requires the proactive investigation of a work that a buyer wishes to acquire, to ensure that it does not appear on any stolen art databases. The assumption is that, if due diligence is performed and an object does not appear listed as missing or stolen, then it can safely be purchased. However there is no single way to demonstrate due diligence, and most buyers and dealers think of due diligence as something necessary but to be dealt with as quickly and simply as possible. The authors

argue for a different way to think about due diligence, and write from many years' experience researching art objects and helping to resolve art world disputes.

Former Italian State Prosecutor **Paolo Giorgio Ferri**, best known as the leading prosecutor and face of the repatriation motions brought against major US museums, like the Metropolitan Museum of Art and the Getty, in order to return looted antiquities to Italy, suggests the establishment of a network of "national prosecution services" focused on art crime, a "judicial body" with both national and international legal powers, in order to best combat a type of crime that inevitably crosses borders, often intentionally, to weave a bureaucratic trip-wire or to evade a country with stricter laws on dealing in cultural property. Ferri has played a one-man version of such a role, invited by various states to investigate and develop legal cases for the recovery of looted artifacts. Here, he outlines how a more expansive team of legal specialists might act as free agents, perhaps under the auspices of UNESCO or some other international organization, to build up cases for the recovery of cultural property. His chapter nicely dovetails with Judge Arthur Tompkins', which recommends the establishment of a judicial body to decide on contested cultural property cases.

Judge **Arthur Tompkins** who, for many years, has taught a course on art in war on the ARCA Postgraduate Program, offers a specific and ingenious suggestion for an international tribunal charged with moderating transnational disputes related to art and cultural heritage. His decades of experience as a judge gives him unique insight into how such a tribunal might function, what its role would be, and how it might be reasonably constructed and made a reality. Too often academic essays exist only in the realm of theory, or bemoan an issue without offering a tangible, concrete, step-by-step suggestion as to how the situation can plausibly be improved. Authors in this collection have been encouraged to offer such specific advice, and this chapter represents a fine example of something that could, and should, be implemented.

Asif Efrat's chapter looks at a question that might not, at first, seem like something that requires consideration: why did the United States and Britain join the 1970 UNESCO Convention on the protection of cultural heritage? The increase in policing of their own borders was encouraged thanks to three factors set out by Efrat: advocacy on the part of archaeologists, who made policymakers aware of illicit trade in antiquities and its scale; a number of high-profile scandals that applied public pressure to curb further such affairs; and the agreement of stakeholders in the righteousness of the convention. There has been much skepticism at UNESCO's efforts, as well as the subsequent enforcing on the policies laid-out in the convention by its signatory countries. Those in the field complain that UNESCO meetings consist of

hand-wringing and lamentation, but little in terms of concrete action. Yet we tend to be shy to condemn what seems to be a well-meaning effort in the right direction. This chapter compares the British and American experience of looting and joining the famous 1970 UNESCO convention, taking a critical stance at the level of international policy.

20

Nazi-Looted Art from Kyiv Destroyed in East Prussia – New Hope for More Survivors?

Patricia Kennedy Grimsted

Dedicated to the retrieval of more cultural treasures lost during the Second World War and their restitution to a free, peaceful, and stable Ukraine

Wartime cultural plunder and restitution issues on the Eastern Front have still been understudied and are little understood in the West. The context of art looting and clamor for cultural restitution for Holocaust victims and their heirs in Central and Western Europe stands in blatant contrast to the occasional cry for restitution of a few newly discovered survivors from museum seizures in Soviet lands. Unlike the extensive private Jewish cultural losses in Western Europe, given Bolshevik nationalization and abolition of private property, Nazi loot from within pre-1939 Soviet borders was mainly from state institutions. The brutal Holocaust on the Eastern Front was not accompanied by the same private world-class art losses experienced by stricken victims in other parts of Europe. Yet as we are about to see in the case of art and icons destroyed from three Kyiv state museums, Nazi destruction of cultural heritage in the East could be even more brutal, indeed among the worst art crimes on the Continent. The cry for restitution of the few survivors of the ‘people’s’ cultural heritage may prove more difficult to accomplish. Furthermore, as our present case reveals, the long suppression of accurate information has sadly impeded the search for Ukrainian losses.

In the 1990s, a research project on Soviet cultural losses from the Second World War at the East European Research Centre (Forschungstelle Osteuropa) at Bremen University brought together the most extensive sources available on the subject. Already in 1995, Professor Wolfgang Eichwede, who headed the project reminded us, “Two-thirds of all cultural losses suffered by the former Soviet Union were losses of Ukraine.”²² With all the symbolic focus on the Amber Chamber and other Russian imperial treasures, the magnitude of Ukrainian losses has been too often forgotten, or at most underplayed,

especially before independence.²³ Now with more open archives in Moscow and Kyiv, at last the present story can be told, and the hope of a few symbolic retrievals can assume a higher place on the cultural agenda.

The account that follows of wartime destruction of art and from Kyiv museums in East Prussia is based largely on long suppressed documentation in Moscow as well as Kyiv. The key collection of German records in Kyiv is now on the Internet, thanks primarily to concern for the losses of Jewish victims in the West. The key collection of Soviet documents in Moscow from the search for the Amber Chamber and other cultural treasures lost in East Prussia has remained virtually unknown to Ukrainian specialists, who were never included in that search.

Occupation and art seizure in Kyiv

What is today the Bohdan and Varvara Khanenko National Museum of Art, with its name honoring the most impressive pre-revolutionary art collection in Ukrainian lands was known in the Soviet period as the Museum of Western and Oriental Art, an outgrowth of the earlier Art Museum of the Ukrainian Academy of Sciences in the 1920s.²⁴ Next door on what is now Tereshchenko Street, facing the park named in honor of Ukraine's heroic Taras Shevchenko, is the National Museum of Russian Art. First opened as the Kyiv Picture Gallery in 1922, based on the collection of the Tereshchenko family of sugar-beet magnates, it celebrated its 90th anniversary in November 2012.²⁵ Today both museums still occupy the impressive homes of their pre-revolutionary owners. In both cases, large parts of those rich private family collections were dispersed or sold off by Soviet authorities after the Revolution and Civil War. Much of the remainder was destroyed in the winter of 1945, when the Red Army arrived to 'liberate' and annex East Prussia.

On the eve of the German invasion Soviet authorities managed to evacuate some 600 pieces of art from the Museum of Russian Art. They also evacuated about 200 paintings and other works of art from the Museum of Western and Oriental Art next door, including some of the original Khanenko Collection. The evacuated art spent the war safely in Ufa and returned to Kyiv in 1944.²⁶

When the Germans arrived in Kyiv in the fall of 1941, they found most of the city center destroyed, with mines left in many other buildings set by Soviets partisans under Stalin's "scorched earth" policy. The German invaders had every intention of staying on and controlling the area as a source of manpower, food, and raw materials. Aside from ravages of the Künsberg "trophy brigades" from the German Foreign Office and a few priority library and archival seizures, they initially had no plans to remove the art works remaining, or destroy historic monuments.²⁷

Alfred Rosenberg, as Reich Minister of the Occupied Eastern [i.e. Soviet] Territories, initially used his Special Command Force, the *Einsatzstab*

Reichsleiter Rosenberg (ERR) for cultural operations, including surveys, registration, and seizures – as a Nazi Party as opposed to state agency. The ERR Main Working Group Ukraine (HAG [Hauptarbeitsgruppe] Ukraine) working out of Kyiv was headed by the noted professional Prussian archivist Georg Winter, who came to Ukraine in October 1941. Winter simultaneously served the Reichsarchiv, based in Potsdam and Berlin-Dahlem, having earlier organized Reichsarchiv operations in Paris.²⁸ In the early years of occupation, the ERR and other German agencies seized comparatively few cultural treasures. Most important for the ERR, several major collections of Jewish books and archives – long since nationalized in state repositories – were shipped to Frankfurt for the Institute for Research on the Jewish Question (IEJ). But they found many of the most valuable pre-revolutionary Jewish collections had been sold off to the West by the carload in the 1920s. They discovered Soviet-ordered destruction of many key archives including local archives of the Communist Party (CP) and vital statistics records. The ERR found, for example, what remained of the CP archives in Dnipropetrovsk and Uman, and shipped them out in 1943 for their Bolshevik research center in Ratibor Silesia (*now Polish Racibórz*).²⁹ During their initial period of occupation they were anxious to safeguard other archives and art treasures that remained.

Rosenberg, somewhat against his will, appointed Erich Koch as Reich Commissar of Ukraine, headquartered in Rivne (Rus. Rovno), and was frequently at odds with him.³⁰ During the war, however, Koch spent more time in East Prussia, i.e. the Königsberg region, where he had earlier settled and held forth as Nazi Gauleiter (since 1928) and Oberpräsident of East Prussia (since 1934) until arrival of the Red Army in the winter of 1945. He set himself up on an impressive estate outside of Königsberg, constructed with all the trappings of the high Nazi elite, including secret underground bunkers. And to be sure he had his own personal collection of art and amber, to which a number of choice pieces of art from the two Kyiv museums considered here were destined, as is analyzed in a sequel.³¹

Under German occupation in 1942 the two museums now on Tereshchenko Street were combined as divisions of the German-reorganized Kyiv Provincial Museum (Landesmuseum Kiev). In December of that year they came under the newly established Provincial Authority for Archives, Libraries and Museums (Landesverwaltung der Archive, Bibliotheken und Museen – LV ABM), under state authority of the Reichskommissariat of Ukraine, headed by Koch. The LV ABM took over many staff and shared some cultural operations with the Einsatzstab Reichsleiter Rosenberg (ERR), as well as its chief Georg Winter. To head the Kyiv Provincial Museum during occupation, Winter took on two prominent Ukrainian art historians who had been purged by the Soviet regime in the 1930s.

Polina Kul'zhenko. Ukrainian art historian, professor, and museum curator, Polina Kul'zhenko had worked in the Russian Museum until 1936, when she was fired in the purge of Ukrainian intellectuals.³² She was glad to resume

museum work under the Germans. Initially, denounced as of Jewish background, the Gestapo questioned her but found no proof. She was able to convince them that she was confirmed in the Orthodox Church in 1912 and listed as “Ukrainian” in her Soviet passport, as was her father who had died in 1920; although it turns out her mother, of Lithuanian Jewish roots, was shot at Babi Yar.³³ With her fluent German, wide knowledge of the museum, and willingness to speak out again Soviet cultural practices, Winter needed her, and she willingly served as the director of the Division for East European Art, as the Museum of Russian Art was reorganized. Under Winter’s recommendation and Koch’s order, the Germans took Kul’zhenko with them to catalog and look after the plundered art when they retreated in the fall of 1943.

Serhii Hyliarov (*Rus. Giliarov*). The devoted Ukrainian art historian and senior curator Serhii Hyliarov (born in Moscow as *Rus. Giliarov*) had served as a deputy director of what became the Museum of Western and Oriental Art from 1923 until his arrest in 1933. Parallel to the case of Kul’zhenko, as an outcast from Soviet museum work in the late 1930s, he willingly resumed work at German request and served as director of the Division for West European Art. Like Kul’zhenko, he did his utmost to protect and account for the holdings during occupation. As a reward he was arrested and imprisoned as a collaborator and died during KGB interrogation in early 1946. Since Ukrainian independence he has been rehabilitated with a publication from a 2002 symposium devoted to his memory.³⁴

“Borrowed Art”

Soon after arrival in Kyiv, German authorities started removing exhibits from the Museum of Western and Oriental Art under ERR auspices, “on loan” for offices and living quarters of the occupation elite. Fifteen original German receipts for “borrowed art” were found in a Moscow archive in 1990/1991, and copies transmitted to the Kyiv museums.³⁵ They identify the art objects removed with museum registration numbers, which can be meshed with notations in a pre-war inventory register held today by the Khanenko Museum.³⁶ For example, on 26 November 1941, four paintings were signed out for the “Casino” of the General Commissariat; and a month later (20 December 1941), 11 paintings and several large vases were taken for the lodgings of the General Commissar in Kyiv. Four paintings were removed for the apartment of Brigade Commander Haltermann on 10 March 1942, including a landscape by Courbet, an Italian landscape, and a view of the Naples harbor by Carlo Ciappa. Another 41 paintings seized in March 1942 were also destined for the General Commissar in Kyiv.³⁷ Museum records in Kyiv also bear witness to ‘borrowings’ of at least 78, 17th–18th century Dutch, Flemish and Italian paintings and 65 pieces of antique furniture, most of which were never returned.³⁸

That March 1942 list is of particular interest because at least three paintings named coincide with those appearing on a list found in Weimar for that portion of Erich Koch's personal collection that he managed to evacuate from Königsberg to Germany in February 1945.³⁹ Two paintings on the same March list were recovered in the 1970s from a museum in Perm, having surfaced in Königsberg after the war and taken home by Soviet Army officers.⁴⁰

German documents likewise detail items "borrowed" from the Museum of Russian Art. Receipts remain, for example, for 17 paintings "borrowed" by the General Commissariat in Kyiv, and for 24 objects in bronze and ceramic, among others. The original German receipts in Moscow are now reclassified, but fortunately copies were obtained from another Moscow archive.⁴¹ Koch issued an order on the 19th of March to stop the "borrowing process." Some 16 receipts for "borrowed" art, preserved in Kul'chenko's KGB file in Kyiv, indicate that nine of the objects were returned in April and seven in July.⁴²

Clearly the borrowing process did not stop, however, even by Koch himself. Koch had no respect for Ukrainians but apparently he did like young ladies! After his visit to the museum later in the summer of 1942, a receipt remains for a painting of a Ukrainian *Maiden in Peasant Dress (sarafan)*, "borrowed" for Commissar Erich Koch.⁴³ That painting is still missing, but it is not listed on remaining inventories of the Koch Collection evacuated to Weimar in 1945.

Of special importance today, these little-known "borrowed" receipts now need to be prepared for wider distribution, because the items recorded, at least those that were not returned to the museums before the German retreat, turn out to be items that may possibly have survived the war and still be at large. In other cases, many of the "borrowed" items returned for example to the Russian Museum during occupation, could be verified with museum registers and matched up with listings on German shipping inventories to Königsberg.⁴⁴

Icons from the Kyivo-Pechers'ka Lavra

During occupation, the Germans significantly reshuffled exhibits among the various museums in Kyiv, a fact that now greatly complicates compilation of data about removals and losses. Most significant for our analysis was the transfer of icons, which were not a high priority art form under Soviet rule, and many of which the Soviets had not evacuated from Kyiv. Earlier Soviet authorities had sold many valuable ones from Ukraine in the "treasures into tractors" sales abroad under the First Five-Year Plan. On the eve of the war Museum of Russian Art had registered only 56 icons. Reportedly a total of 60 icons were evacuated to Ufa from that museum with a few from the Khanenko Collection in the museum next door. But the largest and most important icon collections in Kyiv remained in the Kyivo-Pechers'ka Lavra

(Kyiv Monastery of the Caves) – many relegated to secret storage, and others held by the Central Museum of Atheism. After the Germans discovered mines remaining in the Lavra soon after arrival, the ERR had removed the icons and other valuables for “safekeeping” elsewhere in Kyiv.

A series of transfers to the Russian Museum starting in mid-October 1942 are confirmed in a surviving acquisition register, indicating the Lavra as source for some 294 icons, while more icons and religious paintings were received from the ERR in February 1943. By later in 1943, the Russian Museum could report 570 icons.⁴⁵ Kul’zhenko, as a specialist in icons, recognized some from the collection of Porfirii Uspenskii, from the pre-revolutionary Kiev Theological Academy.⁴⁶ One of the oldest and most sacred was the Ihorivs’ka icon of the Mother of God from the Uspenskyi Cathedral in the Lavra, by then in ruins. The cathedral was destroyed in November 1941 when a German ordinance squad tried unsuccessfully to remove the mines laid by Soviet partisans.

Cultural plunder in retreat

With the German retreat after Stalingrad in the summer and fall of 1943 came major systematic removals of art and archives from Kyiv. The departing Germans anticipated the ferocity and devastation of the Red Army “liberation” of Ukraine and were anxious to save the cultural treasures they deemed most valuable. Many of the art and museum exhibits seized from other major Ukrainian museums were sent west, ending the war in ERR art repositories in Bavaria. For example, according to wartime reports, some 567 icons and paintings from the Lavra transferred to what is now the Museum of Ukrainian Art, were evacuated with other treasures under ERR auspices.⁴⁷ Many found after the war and identified by American MFA&A (Monuments, Fine Arts and Archives) officers and processed for restitution to their home countries, most especially at the München Central Collecting Point (MCCP) under the U.S. Office of Military Government for Germany (OMGUS). Soviet authorities never permitted Ukrainian specialists to visit the MCCP. Besides they admitted the restitution by US authorities of over 500,000 cultural items, two-thirds of them from Kyiv.⁴⁸ Although many of them were then restituted to the USSR, not all of those were returned to Kyiv, a story that still deserves more exhaustive analysis.⁴⁹ Here by contrast we follow the fate of Kyiv museum collections that were instead transported northwest to East Prussia, under orders from Erich Koch, a story never before adequately documented.

First stop: Kamianets-Podilskyi

When the Germans retreated from Kyiv in September and October 1943, Winter seized some 80 crates of art and icons from those two Kyiv museums,

together with many more archives from state repositories, and even a few crates of rare books from the Library of the Academy of Sciences. Winter also took Polina Kul'zhenko with him, whom he enticed to accompany the art by warning her that the museum building would be mined with the German departure, and undoubtedly destroyed by the Red Army recapture of Kyiv.⁵⁰ Surviving German shipping lists prepared by Hyliarov from the West European Division (now Khanenko Museum) verify that five crates of their first priority art (65 paintings and 38 frames) were sent by truck to Reichskommissariat Ukraine (the Nazi leadership in occupied Ukraine; RKU) headquarters in Rivne on 16 September.⁵¹

Winter secured only two freight wagons for transport to his designated evacuation point in Kamianets-Podilskyi (SE Ukraine). He left on 22 September with ten priority crates from the Western Division with 43 paintings and 4 ancient statues (two Roman marble busts, and 2 sculptures in bronze (one from Egypt and the other from Pompeii)).⁵² From the East European (Russian) Division Winter took 15 crates of exhibits – 9 crates with icons and 6 with paintings. The largest part of the transport were the priority holdings from the Kyiv Archive of Early Acts from the Polish period, some with municipal charters granting rights of Magdeburg Law and related documentation that was to exemplify the early German influence in Ukraine and justify the N-S policy of *Drang nach Osten* (drive toward the East).⁵³ Winter set up the Provincial Authority (LV ABM) in the building of the Kamianets-Podilskyi Oblast Archive. The crates of art were deposited in the Turkish fortress, where Polina Kul'zhenko was to prepare inventories.⁵⁴

Winter returned to Kyiv for more, remaining until 21 October, and commandeered another five freight wagons for cultural valuables. That second larger transport from Kyiv included one and a half wagons of art from the Western Division, including engravings, as well as more from the East European Division.⁵⁵ As Winter wrote Reichsarchiv Director Zipfel at the end of October, "security of cultural goods in Kyiv was no longer possible." Earlier, he had seen "no reason to evacuate more Ukrainian archives, libraries, and museums... since those should remain with their institutions in the region. Only very special archives and politically important materials would have been an exception... But because of the way the war is being conducted," he wrote, "there is a danger that these cultural goods would be destroyed by mines, by burning, and by plunder." Personally, he admitted, he "had deep scruples about having to take them out of Ukraine."⁵⁶

Among the archives brought to Kamianets-Podilskyi, those deemed most important Winter evacuated further west to Troppau (*now Czech Opava*), where during the final years of the war the German Reichsarchiv established a Reich center for archives evacuated from the Soviet Union. Some taken further west, after Troppau was bombed in January 1945, ended the war in a castle in Western Bohemia. Found by the American Third Army, they

were returned to Ukraine in October 1945. Those left behind in Kamianets-Podilskyi and Troppau were found by Ukrainian archival scouts in the summer of 1945. Ironically, the archival treasures the Germans left behind in Kyiv, however, perished and/or disappeared during the Red Army recapture in October–November 1943.⁵⁷ Most vital to our present account, the detailed records of the LV ABM were also retrieved in Opava in the fall of 1945 by Ukrainian archival scouts. Long held secret in Kyiv, those files are now on the Internet, as part of the large trove of ERR records captured after the war.⁵⁸

Destination Königsberg

Under orders from Erich Koch at the end of 1943, all of the art shipped from the two Kyiv museums in Kamianets-Podilskyi was redirected to Königsberg. Further transfer papers have not surfaced for the Kyiv crates of Western art shipped to Rivne, but we know that at least part of the Rivne shipment to Königsberg arrived safely: four paintings by 19th-century German artists from Crate I and possibly a Dutch 17th-century painting from Crate II coincide with listings from part of Koch's collection that was evacuated to Germany in February 1945.⁵⁹

The first shipment from Kamianets-Podilskyi arrived in Königsberg on 19 December and at least some of the crates were undoubtedly opened before Kul'zhenko arrived in mid-January. One Dutch painting by Cornelius van Poelenburgh (1586–1667), removed at some point from Crate I, recently surfaced in Western Europe, as explained below, but further details of its migration are unknown.⁶⁰ Kul'zhenko arrived in Königsberg via Troppau on 14 January 1944 with the remaining crates of art.⁶¹

Well-known German art historian and amber specialist Alfred Rohde (1892–1945) directed the Königsberg museums and art treasures brought to East Prussia under Erich Koch. In addition to the Amber Chamber, he was in charge of Kul'zhenko and the art from Ukraine. Kul'zhenko together with 78 crates of art from Kyiv, was first housed on the Richau family estate – 70 kilometers east of Königsberg. In a post-war memoir, Kul'zhenko describes a monograph, *qua catalog*, she was preparing about the East Slavic icons, with six chapters devoted to different icon schools.⁶² The fate of that manuscript is unknown. She did not mention preparing more inventories in Richau for the paintings from Kyiv, and it is unlikely she would have dealt with the Western art. The icons were her main interest; her brief listings of 320 icons survive in the inventories prepared for the Germans.

In a memorandum to the RKU office in Königsberg at the end of January, Winter summarized the contents of 78 crates that were sent from Kamianets-Podilskyi:

- A. from the Kyiv Provincial Museum – West European Division
 - (a) crates MW 1–11

crates W 1–13

(b) 21 large and 30 small cartons (engravings)
six packets, and one roll (engravings).

B. from the Kiev Provincial Museum – East European Division
crates MO 1–15 J (icons)

“ MO 1–6 B (paintings)

“ O 1–33 (paintings and icons).

He explained that inventories were enclosed for a total of 47 crates from the Kyiv museums, and that Kul’zhenko would be preparing inventories for the remaining crates.⁶³

Copies of all of those 47 inventories have recently been found – not with Winter’s January memo among the LV ABM records in Kyiv, but rather attached to a later German report to Berlin. That July 1944 report addressed to the Rosenberg’s Ministry (RMbO) in Berlin references inventories for 65 crates, although the accompanying 47 crate lists bear the title “sent from Kamianets-Podilskiyi” and correspond exactly to the same 47 crates that Winter sent to Königsberg. An original German carbon copy of that report, with the earlier inventories remains with US Nuremberg records in College Park.⁶⁴

The July RMbO report has an important paragraph with timely recommendations for further evacuation of the art from East Prussia:

... since in Richau there is only a woman custodian of the Kiev museum constantly near the collections, proper supervision and safeguarding in the present situation is not possible. . . . Immediate storage in the Reich appears to be desirable, suggested in Central or Southern Germany. Furthermore it is necessary to have the inventories checked and continued by a German expert and to have photographs made.⁶⁵

If those Berlin recommendations reached Königsberg in 1944, they were never followed. The art in East Prussia was under Koch’s control, and neither Koch nor Rohde were suggesting evacuation to central Germany. Significantly, that paragraph is missing in the September 1944 version of the same report forwarded to Reich Minister Rosenberg. The September version, in a copy prepared by US specialists, was submitted as a Soviet Exhibit for Rosenberg’s trial in Nuremberg, as will be explained below.⁶⁶ No additional inventories have been found.

Kul’zhenko remained in Richau with the 78 crates of art until November of 1944, when she appealed to Rohde as the Red Army was closing in on East Prussia. Rohde came out to Richau with trucks on the 13th November to move the 78 crates and Kul’zhenko, confirmed in remaining fragments of Rohde’s own correspondence.⁶⁷

The next home for the 78 crates from Kyiv and Kul’zhenko was the impressive baroque palace on the von Schwerin estate of Wildenhoff (*now Polish* Dzikowo Haweckie), 70 kilometers south of Königsberg.⁶⁸ Kul’zhenko was

well received by Countess Esther von Schwerin (1904–1985), whose husband had been called to the front.⁶⁹ Unless Rohde had lost a sense of geography or was only thinking of aerial attacks after the British bombing of Königsberg in August and September of 1944, it is hard to imagine why he would have chosen to move the captured art to Wildenhoff, which would be on the Red Army's direct route to Königsberg. Rohde was in good relations with the family, and perhaps had no better alternative; in December 1944, he also evacuated 21 second priority paintings from Königsberg Castle to Wildenhoff.⁷⁰

With the Red Army approaching closer in mid-January, Countess von Schwerin offered to take Kul'zhenko with her to her family estate in Brandenburg, when she departed on 22 January 1945 (her husband had just been killed at the front). Kul'zhenko refused and stayed with the plundered art. She supervised Polish prisoner-of-war laborers on the estate moving the crates to the cellar, when the Germans turned the mansion into a military hospital.⁷¹

The Red Army started bombardment of Wildenhoff on 17 February. The fateful night of 17–18 February, when Soviet soldiers arrived, the Germans fled the estate. But not without an SS commando setting the mansion ablaze, reportedly remarking they couldn't "leave all this for Ivan." Kul'zhenko could get no help to move the art. She was arrested and taken away to a neighboring village by Soviet SMERSH/NKVD officers. When Kul'zhenko returned to Kyiv, she was ostracized to a village in Kyiv Oblast to work in a sugar refinery, while awaiting trial.⁷²

Under interrogation in Kyiv later in 1946 (as quoted from her KGB file), Kul'zhenko explained: "On the 18th of February, together with a colonel and major of the Red Army, we returned to Wildenhoff, but it was impossible to save the museum exhibits.... On the 19th I was taken to Bartenstein to a filtration-repatriation center and there was interrogated extensively."⁷³ Sentenced in Kyiv to ten years in prison as a collaborator, she served nine and was subsequently exiled to Kostroma, where she died in 1983.

While the Assumption Cathedral in the Lavra was undoubtedly the most symbolic monument destroyed in Kyiv, the paintings and icons from the Lavra that perished in Wildenhoff were among the most substantial Ukrainian cultural heritage lost in the Second World War. Details were never published about their destruction before Ukrainian independence, when Kul'zhenko was rehabilitated. The memoir Kul'zhenko wrote while awaiting trial in Kyiv Oblast in 1946 about her trip to East Prussia, was finally published in Ukrainian in 1998.⁷⁴ Germany contributed significantly to the restoration of the Cathedral in the Lavra. The gilded icon cover for the Ihorivs'ka icon of the Mother of God was found after the war in the ruins of the cathedral, but the more elaborate jeweled cover had been removed and sold in the 1920s, when the icon itself had been restored. An account in tribute was published in 2012.⁷⁵

Rosenberg blamed in Nuremberg

Erich Koch was one of the most major Nazi war criminals not brought to trial in Nuremberg. The British found him disguised with a new name as an agricultural worker in a village near Hamburg in 1949. He was turned over to the Poles for trial.⁷⁶ After his 1959 his death sentence was commuted to life, he lived until the age of 90 and died in 1986 in a Polish prison in Barszewo (*earlier German Wartenburg*), not far from Wildenhoff.⁷⁷ He never admitted anything about the destruction of the art or the whereabouts of the Amber Chamber.

Ironically, when Alfred Rosenberg, the former Reich Minister for Occupied Eastern Territories (RMbO) was tried at the International Military Tribunal (IMT), in a session of 21 February 1946 the Soviet prosecutor read excerpts from an RMbO report to Rosenberg in Berlin dated 14 September 1944 about the art looted from Ukrainian museums that the Koch had ordered to East Prussia:

The Reich Commissioner for Ukraine has stored the paintings and art objects which were brought back from Kyiv and Charkow in East Prussia in the following safe places:

1. The estate of Richau near Wehlau,
2. Wildenhoff Manor (Owner Count Schwerin).

Exact list of the contents 65 wooden crates is attached. As to the other 20 crates, 57 portfolios and one roll of engravings, their inventory has not been taken to date. Among the paintings there are a great number of very early icons, works by famous masters of German, Italian and Dutch schools of the 16th, 17th and 18th centuries, as well as works of the best Russian masters of the 18th and 19th centuries. [They comprise] the most valuable works of the known Ukrainian art possession, ... the only collections of this sort with international repute now within German territory.⁷⁸

The Soviet prosecutor submitted the document (received from the U.S. Paris-Storey series) as an official exhibit to the court (USSR-372/ 055-PS).⁷⁹

The Soviet prosecutor did not mention the destruction of the art in Wildenhoff five months after that report, if indeed the Soviets preparing for the trial had known the full story. Obviously, since Kul'zhenko was still awaiting trial as a collaborator in Kyiv, she could not be trusted or her name even mentioned. Perhaps the still-secret Red Army reports from East Prussia were not available. The text of the German memorandum itself read before the court (exhibit USSR-372) was issued within the IMT proceedings in Russian, English, French, and German editions, but the "list of contents ... attached" was never published. Nor were they ever made available to

Ukrainian authorities.⁸⁰ Accordingly, it is little wonder that curators in the Kyiv museums, while they were aware of the published Nuremberg citation, were not aware of the existence of the inventories, or even about the details of destruction in Wildenhoff.⁸¹

The three archival copies of that document USSR-372/055-PS among the official Soviet IMT records in Moscow (GA RF, fond 7445) are all photostats in German and similarly incomplete. The first three pages (with title) of the inventories covering art from the Western Division (covering 11 crates) are lacking; those attached covered only 36 crates from the Russian Museum.⁸² They conform exactly to the 'PS' version in the official IMT records in the U.S. National Archives.⁸³ The official British copy of USSR-372 – used for the U.S. microfilm publication (with inventories) – coincides with the Russian one. No copies survive in the French IMT records.⁸⁴ The original German typescript has not been located.

The earlier July 1944 variant (Nuremberg document NG-4353), closely resembles the September memorandum used for the Soviet Exhibit, but by contrast, as mentioned above, has attached all 47 of the crate inventories from the two Kyiv museums. Soviet authorities obtained copies of those inventories only in the early 1980s, as apparent in the records of the top-secret Kaliningrad Commission now held in Moscow. The printout from the US microfilm edition in GA RF (from a copy in Potsdam) is accompanied by Russian translations of the memos and inventories. The original paper copy in the U.S. National Archives is an original German carbon copy. Like the microfilms, it includes the item-level inventories for the 11 crates from the Western Division (now the Khanenko Museum), missing from the September 1944 version submitted at Nuremberg (USSR-372).⁸⁵ Specialists in the Kyiv museums never had copies before 2011.

In the immediate post-war years, Soviet occupation authorities in Germany submitted claims to their Western Allied counterparts for the paintings lost during the war from the Kyiv museums, although they had few and inaccurate details and no images. When more information was requested, they sent excerpts of the lists of losses prepared by the official Soviet commission on war losses (ChGK).⁸⁶ At the end of 1946, for example, Soviet restitution officers furnished French authorities a list of 151 paintings plundered from the Museum of Russian Art, including an opening list of 88 icons, all with museum registration numbers. Similar lists of lost Western paintings were submitted to French authorities in 1949, but again with inaccurate explanation of the German seizure and no mention of their transfer to East Prussia, although the German LV ABM files were already in Kyiv.⁸⁷

The post-war search for amber and icons

Since the end of the war, an endless series of Soviet and foreign expeditions have combed the long-closed Kaliningrad region first and foremost to search for the Amber Chamber, brought there under Koch's orders and under the

scrutiny of the amber specialist Alfred Rohde. Kaliningrad regional studies specialist Avenir Petrovich Ovsianov has assiduously followed and assisted with many of the post-war investigations, as revealed in his two published somewhat popular volumes (1997 and 2000) on the subject. Both devote space to Wildenhoff and Polina Kul'chenko.⁸⁸ He reported that from Ukraine, at the end of April 1945 in a remaining room of the Königsberg Castle, a Moscow expedition found 12 empty frames for paintings from the Russian Museum, including one for a painting by Ivan Aivozsovskii, *In Constantinople . . .*, which could have corresponded to one on the German shipping lists to Königsberg.⁸⁹

Many of the records of these investigations are preserved in archives in Moscow and Kaliningrad, only recently declassified. Most extensive are the impressive working records with collected documentation of the key top-secret Soviet Commission directed from Moscow from 1967 to 1983, with a working group under the Kaliningrad Geological-Archeological Expedition; the records are now held by GA RF in Moscow. My extended access to the Commission archive now in Moscow revealed many details for this account.⁹⁰ As far as can be determined, no specialists from Ukraine were involved in the search for the lost art from Kyiv. The Commission had requisitioned copies of relevant documents from many archives, although they did not find the LV ABM reports from Kyiv. In the GDR Central State Archive in Potsdam, German Stasi researchers had uncovered and sent the Commission printouts from microfilms of U.S. Nuremberg documents, with the above-mentioned German reports and crate-list inventories of over half the works of art the Germans had removed from Kyiv to Königsberg.⁹¹

One of the most important early Soviet expeditions to Königsberg in June–July 1945 led by Aleksandr Iakovlevich Briusov, a prominent Soviet archaeologist from the State Historical Museum (GIM) in Moscow, found what they determined were some burned out traces of the Amber Chamber in the ruins of the Königsberg Castle. He and his colleagues briefly visited the former von Schwerin estate of Wildenhoff together with Alfred Rohde.⁹² Briusov reported only fragmentary walls remaining of the mansion. Despite Rohde's denial, he speculated and remained suspicious about the possible survival of some of the crates of Ukrainian art, but he had no time to investigate. He could not return as requested, nor could he prepare for transport the fragments of the Van Schwerin family archive he found in an inner basement room.⁹³

Before his death in December 1945, Rohde testified in his Soviet interrogation:

IV. Kiev Museums.

In addition to Western European paintings the 98 crates contained approximately 800 icons [sic]. That was the most significant collection of icons in the world. Besides those were many paintings and lithographs. I last saw the 98 crates and Kulchenko in December 1944.⁹⁴

Rohde's figures of 98 crates and 800 icons would clearly appear to be exaggerated, although widely cited. Kul'zhenko accounted for only 320 icons of the German crate lists, but possibly there were as many as 500, as inventories are lacking for many crate.⁹⁵

The Germans engaged in similar "scorched earth" destruction on retreat throughout the Königsberg area, including Koch's own estates and the estate Göring' had taken over as his East Prussian "dacha"! Many details are described in Ovsianov's two books, and even more in the Moscow Commission reports. That would have paralleled Hitler's destruction order for the most important Nazi repository for looted art from Western Europe in the salt mines above Altaussee. Fortunately the intended Altaussee tragedy was averted by sabotage. But the tragic destruction of the Ukrainian art treasures in Wildenhoff was apparently German revenge for defeat in Stalingrad and the 'liberation' of East Prussia by the Red Army and Soviet intended annexation.

No records have as yet been found of further official Soviet investigation of the local area around Wildenhoff, undoubtedly because it ended up on the Polish side of the international frontier after August 1945. Ovsianov cites a local report that some crates were removed from Wildenhoff before the fire, but no confirmation has been found. A Polish investigation of the ruins in August 1960 found "a folder of charred drawings and etchings, some Chinese porcelain fragments, and remnants of seven other badly destroyed sculptures... and metal pieces used in icon frames. But no sign of the Amber Room."⁹⁶ At present those surviving remnants could not be located in Poland, although an illustrated Polish report survives.⁹⁷

The head of the Kaliningrad investigation team interviewed Kul'zhenko in Kostroma in April 1972, but she denied the possibility that the Amber Chamber was in Wildenhoff.⁹⁸ So far none of Kul'zhenko's own papers from East Prussia have surfaced. Ovsianov was ill-informed when he wrote that some of her papers were found in Potsdam. His quotations coincide precisely with the 1943–1944 inventories she had prepared for the Germans that are now traced to the Moscow Commission printout copies of the U.S. Nuremberg microfilmed documents.⁹⁹ Ovsianov interviewed Kul'zhenko in Kostroma in 1979 and recounts that as he and his wife were departing, Kul'zhenko was on the verge of revealing "something important," but then changed her mind. Ovsianov concluded mysteriously, "We will never ever know the secret of Polina Arkad'evna, but a secret there was."¹⁰⁰

Two survivors from Kyiv

The most significant suspicions about survivors from Wildenhoff during the Soviet invasion resulted from two paintings from the Kyiv Museum of Western and Oriental Art Kyiv that surfaced in Perm in the 1960s and 70s. Ovsianov and others mistakenly assumed they had been "saved" from

Wildenhoff.¹⁰¹ It turns out, however, that both the two 17th-century paintings had been “borrowed” on behalf of the Kyiv General Commissar and appear on a German receipt dated 23 March 1942. Neither was returned to the Kyiv museum before the German retreat and do not appear on German lists of paintings shipped to Königsberg. The painting by the Flemish artist Jan Miel (1599–1653), *Lazzaroni (Scene from the Life of Tramps)*, was gifted to the Perm Art Gallery in 1966 by an army wife, having been purchased from a German in Königsberg in 1946. Similar was the story for *On The Beach*, by the Dutch artist Cornelis Beelt (d. c.1702) from the Khanenko Collection.¹⁰² Apparently Soviet Army officers purchased them in the active black market in Königsberg at war’s end. There is no evidence either was in Wildenhoff.

Reporting and retrieving war losses after independence

It was only following Ukrainian independence that those two Kyiv museums issued catalogs of their wartime losses. First in 1994, the Kyiv Museum of Russian Art listed minimal data for over 800 paintings and ca.350 icons, as well as watercolors, miniatures, and graphic works. There were no images in the poor quality limited offset edition, but only a handful of surviving images were discovered later.¹⁰³ Earlier registration numbers for the icons from the Lavra could not be identified, because of all too brief wartime acquisition register listings lacking provenance data.¹⁰⁴ In 1998 the Khanenko Museum (then still the Museum of Western and Oriental Art) listed 474 lost paintings (14th–19th cc.) in a better quality catalog in English with scattered black and white illustrations.¹⁰⁵ Neither publication references any German documentation. Unfortunately, in both cases, the compilers did not have access to most of the German documents on which the present article is based, most noticeably the German shipping crate inventories that provide at least initial verification for approximately half of the art seized by the invader from the two museums. They did attempt to correct and update the long-classified Soviet immediate post-war reports of the Soviet Extraordinary State Commission on War Losses (ChGK).¹⁰⁶

Efforts have been underway in Kyiv for more professional updated catalogs, but inadequate staff and funding have impeded progress. Recently copies of all of the German documents utilized in the present essay have been furnished to both museums, but some curators educated in Soviet times are distrustful and still reluctant to reference German sources. When the Khanenko catalog appeared in 1998, the sponsoring Commission suggested a more sophisticated database, but that has yet to be developed. Regrettably, the successor Ukrainian Commission was abolished in September 2011. It can only be hoped today that a revitalized Ukrainian Ministry of Culture could provide the future leadership and obtain funding sources to continue the effort.

Most important, the Khanenko Museum submitted listings to the Art Loss Register (London) and, thanks to the German-Ukrainian Commission on War Losses, they also submitted data and images for the 474 paintings in the 1998 catalog to the centralized German database “lostart.de” in Magdeburg.¹⁰⁷ The fruits of that submission are already paying off.

Recently a 17th-century Dutch painting by Cornelis van Poelenburgh (1586–1667) from the Khanenko Collection consigned to auction was identified by the Art Loss Register (London) as corresponding to the oil-on-panel entitled *Acadian Landscape* listed in the Magdeburg “lostart.de” database.¹⁰⁸ The Khanenko Museum curator in charge of European Painting, Elena Zhyvkova, authenticated the painting in Amsterdam as the first to have turned up in Western Europe among the many cultural trophies removed by the retreating Germans. The painting further coincides with the Poelenburgh listed in German as *Nimphen und Silen* on both the September 1943 German receipt for the first crate from the Western Division shipped to Kamianets-Podilskyi and similarly on the crate inventory for the shipment to Königsberg. Most likely that painting would have been removed when the German shipment from Kamianets-Podilskyi first arrived in Königsberg in December 1943, rather than continuing to Richau and Wildenhoff, but the gaps in its post-1943 provenance have yet to be discovered. The Dutch “good faith” purchaser having been confronted with its Khanenko provenance was prepared to offer the painting to the Khanenko Museum for a reasonable sum, and the museum was able to find a private sponsor in Ukraine.¹⁰⁹ As this article goes to press, formal announcement of the return of painting is soon expected.

A second painting from the Khanenko Museum, surfaced on auction scheduled for 29 January 2013 by Doyle’s New York. Fortunately identified by the Art Loss Register (London) thanks to its listing in the Magdeburg database, Doyle’s withheld the early 18th-century French painting *Loving Glance* (earlier known as *An Amorous Couple*), attributed to Pierre Louis Goudreaux (1694–1731).¹¹⁰ Examination of the stretcher suggested that the original canvas had been cut and hence the dimensions significantly reduced, which would account for the discrepancy with Kyiv museum records.¹¹¹ As verified by the Khanenko Museum, the painting was acquired by the predecessor Art Museum of the Ukrainian Academy of Sciences in 1925 with other paintings bequeathed by Vasyl Shchavins’kyi (1868–1923), then attributed to Jean-Honoré Fragonard.¹¹² Its wartime and post-war migration have yet to be determined, but it does not appear either on any of the German “borrowed” lists, packing lists, or the inventories mentioned above of paintings shipped to Königsberg in 1943. Given the fact that the Khanenko Museum has submitted detailed, convincing provenance documentation, U.S. and New York laws should enable government seizure as stolen property enabling its return to Ukraine.¹¹³ As of the present writing (March 2015), two years after its discovery, Doyle is still

holding the Goudreaux painting in New York, pending official subpoena and negotiations for return to Kyiv.

Much more frustrating, a few years ago, the Khanenko Museum received a call from London about a Dutch late 17th-century oil painting from the Khanenko Collection that reportedly was spotted in a private collection in London, namely *the Portrait of the Family of van der Meer, the Dutch Ambassador to Italy*, by Isaack Paling (active ca.1664–1703). The caller failed to provide contact information, and hence no follow-up has been possible. Again, identification was probably thanks to the Magdeburg database.¹⁴ The Paling painting has not been found on any of the available German “borrowed” lists, or the shipping lists to Königsberg from 1943 to 1944; its re-emergence in London remains a mystery. Pending verification of the painting itself, we may now assume it was not destroyed in Wildenhoff. Hence we can only hope that it will again resurface as a candidate for return to Kyiv.

Curiously, we now find that all three of these recently revealed wartime survivors all resurfaced first in London. These cases raise frustrating problems for state museums in the former Soviet Union, such as Ukraine, that are dependent on the Ministry of Culture with its limited resources for claims and recovery of their wartime lost treasures. In the case of the Van Poelenburgh in The Netherlands, in addition to the documented Khanenko provenance, the preserved German shipping lists should help establish a legal basis for claim, even as the gap in provenance remains. But laws in many European countries favoring “good faith” purchasers over post-Soviet museums, and appropriate mechanisms in Ukraine for such claims remain uncertain. Nevertheless, these cases raise lingering hope of retrieval abroad of more Ukrainian wartime losses and a “just and fair solution” for restitution. These should clearly be recognized, however, as falling under a different category than the private Holocaust-related Jewish art losses involved in most recent restitution cases in Western Europe and the United States.

More survivors in the Koch Collection?

In connection with the art transports to Königsberg ordered by Reich Commissar Erich Koch discussed above, we are now discovering that some of those paintings from Kyiv were destined for Koch’s own personal collection. Subsequent documentation about their fate is accordingly in preparation. Ironically, in contrast to the art treasures from Kyiv museums that perished in fire in Wildenhoff, that same month of February 1945, Gauleiter Koch succeeded in evacuating a part of his own art collection from his Königsberg estates to Weimar (soon to be under Soviet occupation in East Germany).¹⁵

While the Stasi did not find the Amber Chamber – rumored to have been evacuated in the same shipment – they did find some information about the

Koch Collection and the SS officer responsible for the transport to Germany. Thanks to inventories and other documents from Weimar, copies of which were discovered in the Stasi Archive, it has already been possible to suggest provisionally a number of paintings listed that would appear to have come from Ukrainian museums. It has also been possible to document that the Soviet Military Administration in Germany (SVAG/SMAD) removed part of that collection from a bank in Weimar. Claiming the paintings were from Ukrainian museums, they justified transport to the USSR, yet none were returned to Kyiv. Of particular interest some of the paintings Koch sent to Weimar have now been documented as belonging to Western Holocaust victims from The Netherlands and France. The Koch Collection thus takes on added significance as the only known cases of a Nazi elite collection combining seized art from private victims in the West with seizures from state museums on the Eastern Front, thus providing an important case study of the major divergence in Nazi patterns of art plunder in Eastern and Western Europe.

Notes

1. Adapted from a talk prepared for the 2014 conference of the UIA (Unione Internazionale des Avocats) and ABA (American Bar Association), held in Florence, Italy. Sections of this introduction also appear in Gerben Bruinsma ed. *Histories of Transnational Crime* (Springer 2015).
2. Livy (2002). "Ab Urbe Condita," 24.40.3, available in Livy *The Early History of Rome* (Penguin).
3. Plutarch (2009). *Roman Lives* (Oxford University Press), the biography of Sulla is on pages 169–215.
4. Josephus (1984). *The Jewish War* (Penguin Classics).
5. See Miles (2008).
6. Cicero (1960). "Against Verres," available in Cicero *Selected Works* ed. Michael Grant (Penguin).
7. Inscriptions of Kyme, no. 17 from the Edict of Augustus (27 BC).
8. Letter of Augustus to the Ephesians.
9. For more on looting in the ancient world, see Margaret M. Miles (2008) *Art as Plunder: The Ancient Origins of Debate about Cultural Property* (Cambridge University Press).
10. Charney, Noah *Stealing the Mystic Lamb: the True Story of the World's Most Coveted Masterpiece* (New York: PublicAffairs, 2010), p. 89.
11. Charney (2010), p. 90.
12. *Ibid.*, p. 91.
13. *Ibid.*, p. 92.
14. *Ibid.*, p. 123.
15. *Ibid.*, p. 120.
16. *Ibid.*, p. 122.
17. See *Ibid.* for more on this story.
18. *Ibid.*, p. 194.
19. *Ibid.*, p. 195.

20. For the story of art looting in the Second World War, see Charney (2010). Edsel and Witter (2010). *Monuments Men*, and Dagnini (2009). *The Art Stealers*.
21. This case is detailed in Matthew Bogdanos (2005). *The Thieves of Baghdad* (Bloomsbury).
22. Wolfgang Eichwede (1997) "Models of Restitution (Germany, Russia, Ukraine)," in *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property*, ed. Elizabeth Simpson (New York: Henry N. Abrams), p. 219. Eichwede described the Bremen research project in a brief appendix to his article, "Trophy Art as Ambassadors: Reflections Beyond Diplomatic Deadlock in the German-Russian Dialogue," in *Spoils of War v. Cultural Heritage: The Russian Cultural Property Law in Historical Context*, published as (2010) *International Journal of Cultural Property*, 17, no. 2, pp. 403–405; the bibliography that follows lists many of the project publications. See especially the essays in "Betr.: Sicherstellung." *NS-Runstraub in der Sowjetunion*, ed. Wolfgang Eichwede and Ulike Hartung (1998). (Bremen: Edition Temmen).
23. See one of the first reports by Grimsted (1991) 'The Fate of Ukrainian Cultural Treasures during World War II: The Plunder of Archives, Libraries, and Museums under the Third Reich', *Jahrbücher für Geschichte Osteuropas* 39: pp. 53–80; Ukrainian monograph version with appended documents in collaboration and translation of Hennadi Boriak (1991) *Dolia ukrains'kykh kul'turnykh tsinnosti pid chas druhoi svitovoï viiny: Vynyshchennia arkhiviv, bibliotek, muzeïv* (Kyiv; 2nd edn, Lviv, 1992).
24. The museum website sketches its history, but gives no details about wartime losses and retrieval efforts: <http://www.khanenkomuseum.kiev.ua/>.
25. The museum website likewise gives no details about wartime losses: <http://www.kmrm.com.ua>.
26. See Lidiia Pel'kina and Mykhailo Faktorovych (1994). "Evakuatsiia i hrabunok: Kyïvski mystets'ki tsinnosti pid chas viiny," *Pam'iatky Ukraïny*, 1994, no. 1–2, pp. 111–119.
27. See Grimsted (2001) *Trophies of War and Empire: Trophies of War and Empire: The Archival Heritage of Ukraine, World War II, and the International Politics of Restitution* (Cambridge, MA), especially pp. 177–213.
28. Georg Winter (1895–1961) held the somewhat hybrid title as of May 1942, "Beauftragter des Generaldirektors der Staatsarchiv und Kommissars für Archivschutz beim Einsatzstab Reichsleiter Rosenberg – Hauptarbeitsgruppe Ukraine." After the war he became the first president of Bundesarchiv (BArch) in Koblenz in 1949. Regarding Winter's archival activities in Ukraine with the ERR and the LV ABM, see the dissertation by Stefan Lehr (2007) *Ein fast vergessener "Osteinsatz": deutsche Archive im Generalgouvernement und im Reichskommissariat Ukraine* (Düsseldorf: Droste; = *Schriften des Bundesarchivs*, Band 68), especially pp. 182–227. See the obituary of Winter by Wilhelm Rohr (1961) in *Der Archivar* 14, no. 3 (July), cols. pp. 179–190. Some of Winter's personal correspondence from Ukraine, especially during German retreat, is found among the LV ABM records in TsDAVO, fond 3206, *ops* 5.
29. See Grimsted (2001) *Trophies of War and Empire, passim*, and Grimsted (2005). "Roads to Ratibor: Library and Archival Plunder by the Einsatzstab Reichsleiter Rosenberg," *Holocaust and Genocide Studies* 19, no. 3 (Winter), pp. 390–458; at: <http://socialhistory.org/sites/default/files/docs/err-ratibor-pkg.pdf>.
30. Alexander Dallin (1981) *German Rule in Russia, 1941–1945: A Study in Occupation Policies*, 2nd edn (London: Macmillan), especially pp. 84–85, and pp. 123–151.

31. See the analysis of the provenance and fate of the art collection of Erich Koch in the sequel, Grimsted (2015) 'Nazi – Looted Art from East and West in East Prussia: Initial Findings on the Erich Koch Collection,' *International Journal of Cultural Property* 22, no. 1, pp. 7–60. That article also updates data in the present account.
32. Polina Arkadiievna Kul'zhenko (1891–1982; née Golubkova). Kul'zhenko was married to the son of the most important Kyiv pre-revolutionary publisher. See the appreciative memorial article by Serhii Bilokin' (1998), "Hirkyi spohad. Pro Polinu Arkadiivnu Kul'zhenko," *Pam'iatky Ukrainy*, 1998, no. 1, pp. 134–153. The final three pages present the edited text of Kul'zhenko's report after her return to Kyiv Oblast in 1946, "Spomin" (Siniava, Kyiv Oblast, April 1946), translated from the original Russian MS she had given Ukrainian historian Serhii Bilokin before her death in Kostroma. Additional biographic data and copies of some of Kul'zhenko's wartime writings in Kyiv are found in her KGB file in Central State Archive of the Security Services of Ukraine (Haluzevyi derzhavnyi arkhiv – Hereafter HDA SBU), fond 6, file 74305 fp. (Sled. fond, delo no. 148743). See also Lehr, *Ein fast vergessener "Osteinsatz,"* pp. 350–351.
33. After return to Kyiv, her arrest warrant (27 August 1946) identifies her as "Jewish (presenting herself as Ukrainian)," as found in her KGB file. The Protocol of her 11 September interrogation (fol. 16) lists her as "Jewish." See also the Protocol of interrogation, 16 September 1946, HDA SBU, fond 6, file 74305, vol. 1, fols. 26–29; and 17 September 1946, fols. 30–32. Her father had died in 1920; her mother was shot by the Nazis in Kyiv, 29 September 1941.
34. Serhii Oleksiiiovych Hyliarov (Rus. Sergei Alekseevich Giliarov; 1887–1946). See the booklet with materials from a memorial conference at the Khanenko Museum on the occasion of the 115th anniversary of Hyliarov's birth, *Khanenkivs'ki chytannia*, no. 4: *Materialy naukovo-praktychnoi konferentsii* (Kyiv, 2002).
35. Gosudarstvennyi arkhiv Rossisskoi Federatsii (hereafter, GA RF), fond 7021 (ChGK)/116/250, fols 52–62. Hennadii Boriak and I first found these documents in 1990 and ordered copies to be transferred to Kyiv. See also the report by Tetiana Sebta at the 1994 conference in Chernihiv, "Ukraïns'ki muzei pid chas okupatsii v roky druhoi svitovoï viiny (Ohliad arkhivnyukh materialy)," in *Povernennia kul'turnoho nadbannia Ukraïny: problemy, zavdannia, repsektivnyy*, no. 6: (*Materialy national'noho seminaru "Problemy povernennia national'no-kul'turnykh pam'iatok, vtrachenykh abo peremishchennykh pid chas druhoi svitovoï viiny," Chernihiv, veresen' 1994*) (Kyiv, 1996), pp. 132–133.
36. Khanenko Museum, "Inventar muzeiu mystetstv Vseukraïns'koï Akademii nauk, 1–2476." Notes on a right-hand column document borrowings during the war and items recorded in the official Act of Loss (*Akt usherba*).
37. GA RF, fond 7021/116/250; those cited are from fols 55, 56, 62, 59 and 60. The "copy" of the list of 41 paintings is not dated, but the entries correspond with museum registration book notations for removal 23 March 1942.
38. Olena Roslavets (2002), "Kyïvs'kyi muzei zakhidnogo i skhidnogo mystetstva u roky Velykoï vitchyznianoi viiny," *Khanenkivs'ki chytannia*, no. 4 (2002), p. 89.
39. The original is found in Weimar with copies this author obtained from the Stasi Archive in Berlin. One was published by former Stasi official Günther Wermusch (1991), *Die Bernsteinzimmer-Saga. Spuren, Irrwege, Rätsel* (Berlin: Ch. Links Verlag; also available from GoogleBooks), pp. 145–151. See also the website <http://www.amberroom.org/>.

40. See details below, notes 81 and 82; both paintings are now in the Khanenko Museum.
41. GA RF, A-659/2/46, fols. 138–147; those copies are marked as coming from TsGALI (now RGALI), fond 962/6/1180; the originals in RGALI could not be verified because that series (*opis' 6*) of fond 962, previously declassified, has been closed to public access in 2011. Most of the lists and receipts for “borrowed” objects from the Museum of East European-Russian Art are signed by Kul’zhenko as director. Some details with examples and statistics about such loans are reported by Bentzing to Jantke, 11 April 1942, TsDAVO, 3296/5/4, folio 561. See additional notes about removals from the museums during July, fol. 575 (cc fols 576 and 645).
42. HDA SBU, fond 6/74305 fp, vol. 2, the German slips, together with slips in Ukrainian translation attached, are enclosed in a loose envelope at end of the second volume. When a Kyiv museum curator tried to obtain copies in 2012, however, she was told they could not be found.
43. A German receipt (4 July 1942) lists this painting with inventory no. 1872 by an unknown artist from the Vinnitsa region from the first half of the 19th century with dimensions of 98 x 80 in good condition: GA RF, A-659/2/46, fol. 147; that seizure was noted without details in the introduction to *Katalog proizvedenii Kievskogo muzeia russkogo iskusstva, utrachenogo v gody Velikoi Otechestvennoi voiny 1941–1945 gg. (zhivopis', grafika)*, comp. Mikhail D. Faktorovich, Ekaterina I. Ladyzhenskaia, and Lidiia A. Pel’kina; ed. Mikhail D. Faktorovich (Kyiv, 1994), p. 5.
44. The Head Curator kindly checked these items against my notes during my visit in August 2012.
45. Russian Museum, “Invenarna kniga – Kniga postuplenii, 1939–1948.” Most fall within the registration numbers Zh 216–Zh 789, suggesting there were over 500 accessions, with some suggestions of as many as 600. Hryhorii Polushko cites the number of 294 from the Central Museum of Atheism in the Lavra. Others were received from the ERR. Given the brief entries with lack of previous registration numbers, provenance details are impossible to trace for most of them. I am grateful to the head curators in the Russian Museum and the Lavra for explanation and showing me their registers.
46. Kul’zhenko, “Spomin,” p. 150. See for example, N.I. Petrov (1912–1915). *Al’bom dostoprimechatel’nostei Tserkovno-arkheologicheskogo muzeia pri Kievskoi dukhovnoi akademii*, 5 vols. (Kiev: Tip. shkoly pechatnago dela,). The figure of 294 was kindly provided to me by Hryhorii Polushko, head curator of the Kievo-Pecherska Lavra Museum.
47. Polushko reported on the icons to the author.
48. See *U.S. Restitution of Nazi-Looted Cultural Treasures to the USSR, 1945–1959: Facsimile Documents from the National Archives of the United States*, compiled with Introduction by P.K. Grimsted, CD-ROM edn (Washington, DC: NARA, 2001).
49. See, for example the recent initial article by Serhii Kot (2010). “Amerykans’ka polityka restytutsii kul’turnykh tsinnosteï pislia Druhoï svitovoï viiny ta Ukraïna,” in *Mizhnarodni zv’iazky Ukraïny: Naukovi poshuky i znakhidky. Mizhvidomchyi zbirnyk naukovykh prats’*, 19 (Kyiv), pp. 243–264.
50. She recounted that explanation in an interview with the head of the Kaliningrad investigatory commission, M. Popova (18–19 April 1972), GA RF, A-659/2/44, fol. 194. Fortunately, the building was not mined.

51. The handwritten Akt (21 September 1943), signed by S.A. Giliarov attests to the removals: GA RF, 7021/116/250, fol. 35. The same ChGK file includes German item lists for the five crates to Rivne, 7021/116/250, fols. 36–40: Crate I – 24 paintings; II – 11; III – 15; IV – 8; V – 7 [total 65 paintings].
52. . The German content lists for the ten crates sent to Kamianets-Podilskyyi are in GA RF, 7021/116/250, fols. 41–50.
53. Regarding the archival seizures, see Patricia K. Grimsted (2005). ‘The Fate of the Kyiv Central Archive of Early Acts: A Triple Tragedy of Destruction, Plunder, and Propaganda’, in *Synopsis: A Collection of Essays in Honour of Zenon E. Kohut*, ed. Serhii Plokhyy and Frank E. Sysyn (Edmonton: Canadian Institute of Ukrainian Studies Press); also published serially as *Canadian Journal of Ukrainian Studies* 29 (Summer-Winter 2004), pp. 73–114; updated from the Ukrainian 2004 version in *Arkhivyy Ukraïny*. Lehr, *Ein fast vergessener “Osteinsatz,”* also cites details about the archival seizures under Winter and their wartime migration.
54. Winter to RKU, Kamianets-Podilskyyi, 26 and 28 September 1943, TsDAVO, 3206/5/8, fols. 14–15.
55. Winter to RKU, Kamianets-Podilskyyi, 26 October 1943, TsDAVO, 3206/5/8, fols. 196–198; cc file 9, fols. 166–168).
56. Winter to Zipfel, Kamianets-Podilskyyi, 26 October 1943, TsDAVO, 3206/5/9, fols. 163–165.
57. See Grimsted (2005). “The Fate of the Kyiv Central Archive.”
58. Remaining LV ABM records are now held as the fifth series (*opys* 5) of the fond devoted to the Reichskommissariat of Ukraine (fond 3206) in the Central State Archive of the Highest Agencies of Power and Administration of Ukraine (TsDAVO), displayed as part of the ‘Records of the ERR’ at <http://err.tsdavo.org.ua>. See Grimsted (2011). *Reconstructing the Record of Nazi Cultural Plunder: A Survey of the Dispersed Archives of the Einsatzstab Reichsleiter Rosenberg (ERR)*, Internet edn. (Amsterdam: IISH; <http://www.iisg.nl/publications/errsurvey>), with notes about the ERR and LV ABM records in the Ukrainian section.
59. Details will be presented in my forthcoming analysis of the Koch Collection.
60. See below notes 88 and 89.
61. Kul’zhenko, “Spomin,” p. 151. The referenced extract of Kul’zhenko’s report is found in GA RF, A-659/2/44, fols. 189–191. Kulzhenko’s travel orders were issued on 31 December 1943, TsDAVO, 3206/5/24, fols. 284–285, 291, 293–296. Documents in the LV ABM files in TsDAVO confirm the shipping dates, Kul’zhenko’s arrival in Königsberg, and other details: TsDAVO, fond 3206, *opys* 5, especially file 8.
62. Kul’zhenko, “Spomin,” p. 151. That memoir was written when she awaiting trial back in Kyiv Oblast in 1946.
63. Winter to Reich Commissariat for Ukraine (Dr Köhlbach), Troppau, 29 January 1944, TsDAVO, 3206/5/8, fols. 120–121. Copies of the referenced inventories are not preserved with the outgoing copy in the LV ABM files, or with Winter’s earlier handwritten draft, fols. 117–18v.
64. Chief, Directorate Group [Göpel] P 4 (Führungsgruppe P 4, Kulturfragen) to Reich Minister [Rosenberg], Berlin, July 1944, NG-4353(a); and Chief, Directorate Group P 4 to Chief, Political Directorate Staff [signed von der Milwe-Schroeden], Berlin, 12 September 1944, NG-4353(b), *NARA Microfilm Publication T-1139* (Washington, DC: NARA, 1971, roll 44). See discussion of the September 1944 version (USSR-372; 055-PS) presented at Nuremberg, notes 58–59 and 61–64. Printout copies of NG-4353 from the microfilm with typescript

- Russian translation (c.1980) are in GA RF, A-659/2/48, fols. 13–155. See below, note 64.
65. Chief Directorate Group to Reich Minister, July 1944, NG-4353 (a), p. 1, *NARA Microfilm Publication T-1139*/roll 44.
 66. The initial paragraphs of the July report characterizing the Ukrainian collections were repeated in the 12 and 14 September memoranda within RMbO in Berlin (and later used as Soviet exhibit USSR-372/055-PS – see note 61), but the paragraph with reference to Kul'zhenko and transfer to Germany was not included.
 67. Kul'zhenko recounted her move to Wildenhoff in "Spomin;" see also her interview in GA RF, A-659/2/44, fols. 194–195, where she explained her appeal to Rohde in Königsberg for an. Rhode's accounts of the move are referenced below, note 74.
 68. A brief historical note and elegant engraving the Wildenhoff estate with its baroque castle built in the early 18th century are found at http://en.wikipedia.org/wiki/Dzikowo_Łławeckie; there is a colored 19th-century engraving at: http://commons.wikimedia.org/wiki/File:Schloss_Wildenhoff_Sammlung_Duncker.jpg.
 69. See Countess von Schwerin's memoirs: Esther Gräfin von Schwerin (1986) *Kormorane, Bromeeerranken, Erinnerungen an Ostpreussen* (2nd edn. Munich: Langen-Müller).
 70. BStU, AR 8, Archiv der Centralstelle, Sekretariat Neiber 392, fols 41–42; the untitled lists with evaluations indicate the intended locations. The source of the untitled document is not indicated.
 71. Kul'zhenko, "Spomin;" and later reaffirmed in GA RF, A-659/2/44, fols. 194–195.
 72. Kul'zhenko recounted her move to Wildenhoff and subsequent developments there in "Spomin," later reaffirmed in an interview preserved in GA RF, A-659/2/44, fols 194–195.
 73. Kul'zhenko interrogation of 11 November 1946, HDA SBU, fond 6/74305 fp, vol. 1, fol. 59. Texts of her interrogations in East Prussia have not been located.
 74. Kul'zhenko, "Spomin," above note 10.
 75. Hryhorii Polushko (2012) *Ihorivs'ka ikona Bozhoi Materi. Istorii i dolia sviatyni* (Kyiv,). Russian Museum registration # Zh-280. See also Ivan Bentchev [Benchev] (1997) 'Zur Ikone "Entschlafen der Gottesmutter vom Höhlen kloster zu Kiew" und der Kiewer Beutekunst', in *Hermeneia. Zeitschrift für ostkirchliche Kunst* 1; illustrations also include several other icons from the Lavra; at <http://bentchev.tripod.com/Entschlafen-Ikone.htm>.
 76. Published details of his trial lack reference to his cultural and artistic seizures: Sławomir Orłowski and Radosław Orłowski (1959) *Erich Koch przed polskim sądem* (Warsaw: Wyd. Ministerstwa Obrony Narodowej); and in Russian translation, *Erikh Kokh pered pol'skim sudom* (Moscow: Izd-vo Instituta mezhdunarodnykh otnosheniĭ, 1961).
 77. See Nikolai Petrovskii (2004). "Zagadka Reikhskomissara Kokha," in *Sokrytye stranitsy istorii*, 2nd edn, pp. 165–168.
 78. As presented by Lt. Gen. M.Iu. Raginsky (State Counsellor of Justice Second Class, Assistant Prosecutor for the USSR), 64th Day, Thursday 21 February 1946, in *Niurnbergskii protsess nad glavnyimi nemetskimi voennymi prestupnikami: Sbornik materialov*, ed. R. A Rudenko et al., 7 vols. (Moscow: Iuridicheskaiia literatura, 1955–1961), vol. 4, p. 414 (2nd edn, 8 vols. 1987–1999). An English translation of the court proceedings is published in *The Trial of German*

Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945–October 1946, 42 vols. (Nuremberg: IMT, 1947–1949; [Blue Series]), vol. 8, pp. 61–62. French and German versions were also published. Raginsky stated that the quoted text was from Document Book 6, p. 21. No information has yet been found about the mentioned Kharkiv component.

79. The text of the document appears in English (without appended inventories) in *Nazi Conspiracy and Aggression*, 10 vols. (Washington, DC: GPO, 1946–1948; [Red Series]), Red Series, vol. 3, pp. 99–101 (USSR 372/055-PS): RMbO, Director Group P4 Göpel to Chief, the Political Directorate Staff [SS-Ogruf Gottlieb Berger], RMbO (Berlin, 12 September 1944); with a repeated copy of the same text addressed to the Reich Minister (14 September 1944) [signed by von der Milwe-Schroeden], Subject: Works of art shipped back from Ukraine [Secret]; with a further request that a copy be transferred to the Führer. The document (with appended inventories) appears in *NARA Microfilm Publication T988, Prosecution Exhibits Submitted to the International Military Tribunal* (Washington, DC, n.d.), roll 5, in German and English translation from the British copy, the same as the Soviet copies in GA RF.
80. *Prestupnyye tseli – prestupnyye sredstva* (Moscow: Politizdat, 1963), p. 291. The 1963 edition includes a facsimile of the 14 September 1944 memorandum on a facing page [p. 290]; later editions (2nd edn, 1968 and 3rd edn, 1985) include a few more documents, but omit the facsimile. A footnote on page 291 refers to the inventories describing the looted art in the IMT records in GA RF (then TsGAOR SSSR), fond 7445/2/125, fols. 177–214 (see note 58).
81. Roslavets', "Kyivs'kyi muzei... u roky Velykoi vitchyznianoï viiny," pp. 86 and 90. Even if they had found the GA RF inventories in Moscow, the first six pages covering 11 crates from the Western European Division (i.e. their museum) were missing in all three GA RF copies. Curators in that museum were quite surprised in August 2011 when I showed them samples of the inventories I had found in Moscow.
82. GA RF, 7445/2/125, fols 176–214; 7445/2/127, fols. 164–204; and 7445/2/138, fols 311–348. The negative photostats from the German originals are now badly faded and some pages are out of order. All three copies of the inventories start on p. 4 (section IIa), lacking the title and section I. The rest of the inventories are exactly the same in format and content as those presented in NG-4353 (see note 65), although not copied from the same original.
83. NACP, RG 238, PS (Paris-Storey) Files, NM 66, Entry 1, Box 71, Document 055-PS. An attestation that "Witness: Rosenberg" was shown the document (28 September 1945) and asserted its authenticity is found with the U.S. file for IMT document 055-PS (USSR-372). I am grateful to Greg Bradsher of the US National Archives for helping me track down the various extant copies of the Nuremberg documents.
84. RG 238, IMT Prosecution Exhibits, USSR. Available in *NARA Microfilm Publication T988*, roll 5 (see note 58). The Staff Evidence Analysis (SEA) at the start of the microfilmed version indicates the source of the original. This author found no copies of 055-PS or USSR-372 either in the French Archives Nationales or the IMT Collection held by Mémorial de la Shoah in Paris.
85. The original is in NACP, RG 238, NG-Series (one of the series prepared later for the subsequent U.S. war crimes trials in Nuremberg) but that document was apparently not used in court. Available in *NARA Microfilm Publication*

- T1139, roll 44; both the original German text and a certified English translation are included. Printout copies with Russian translations available in GA RF, A-659/2/48, fols. 13–155.
86. Copies of the ChGK compilations for losses from the two museums lists are found in the Commission records, GA RF, 7021/116, files 250, 270, and 298. See discussion of deficiencies of ChGK reports in Grimsted (2001) *Trophies of War and Empire*, pp. 177–198.
 87. RGAE, fond 413/16/182, fols. 44–54 and 125–155 – “Opis’ muzeinykh tsennostei, uvezennykh gitlerovtsami v Germaniiu i v strany ee soobshchnikov” (2009 file no. 182, but subsequently reclassified). French restitution records in La Courneuve (AMAE, 209SUP, carton 132/A76) retain copies of the Soviet claims and French dismissals for both museums – Corresponding outgoing copies of the Soviet claims, related correspondence, and incoming French dismissals among the SVAG files in RGAE, fond 316, *opis’ 16*, have now been withdrawn and reclassified.
 88. Avenir Petrovich Ovsianov (1997). *V ruinakh starogo zamka. Dokumental’nye ocherki o poiskakh utrachennykh kul’turnykh tsennostei* (Kaliningrad: “Iantarnyi skaz”; series “Tainy starogo goroda”); and Ovsianov (2010). *U nikh est’ rodina: Sud’ba peremeshchennykh kul’turnykh tsennostei* (Moscow: ROSSPEN), see especially pp. 106–124. See also Ovsianov’s brief report about the post-war expeditions, including the top-secret Commission, “Kenigsberg – Kaliningrad v kontekste peremeshchennykh kul’turnykh tsennostei,” for an international seminar (24–25 April 2001) at the All-Russian State Library for Foreign Literature (VGBL) – at <http://www.libfl.ru/restitution/conf01/ovsianov.html>. I am grateful to Avenir Petrovich for responding to many inquiries.
 89. Ovsianov (2010). in *U nikh est’ rodina*, p. 50. In section IIc, Item No. 10 in crate O 7, no. 10, with a registration no. 507 was a painting by Ivan Aivazovskii, *Lunnaia noch’ nad morem na beregu vostochnogo goroda (Konstantinopol’)*, which indeed could be the painting in question, GA RF, A-659/2/48, fols. 56–57.
 90. GA RF, fond A-659: “Kolleksiia dokumentov po rozysku na territorii Kaliningradskoi oblasti Iantarnoi komnaty i drugikh muzeinykh tsennostei, pokhishchennykh v gody Velikoi Otechestvennoi voiny, 1941–1945” (Collection of documents on the search in the territory of Kaliningrad Oblast for the Amber Chamber and other museum valuables stolen in the years of the Great Patriotic War). Copies of the collection and additional working files are held in the State Archive of Kaliningrad Oblast (GAKO), fond R-1173. Head Curator Polushko from the Lavra, the only Kyiv researcher to have had brief access, kindly advised me about the inventories; he had not realized were from U.S. Nuremberg microfilms.
 91. GA RF, A-659/2/48. Head Curator Lavra Museum, Polushko, the only Kyiv researcher to have had brief access, kindly advised me about the inventories; he had not realized were from U.S. Nuremberg microfilms.
 92. As quoted by Ovsianov (2010). in *U nikh est’ rodina*, pp. 123–124, and (1997) *V ruinakh starogo zamka*, pp. 264–265. Ovsianov quotes documents in the Kaliningrad archive; the originals are now held in GA RF.
 93. A.Ia. Briusov, typed copy of diary (received from GBL), entries for 12 June 1945, GA RF, 659A/1/2. fol. 118 and fol. 120. Additional manuscript documentation with Briusov’s report to the Committee for Cultural Affairs about his 1945 expedition, together with recovered fragments of Rohde’s correspondence are in GA RF, fond 534/2/2, fols. 213–220.

94. Interrogation report of Alfred Rohde, "O sud'be russkikh muzeev, kotorye byli vrucheny mne dlia sokhraneniia i pod moiui otvetstvennost'," [archival source of original not indicated], as published in *Viartanne: Dakumenty i arkhhiunyia materyialy pa problemakh poshuku i viartannia natsyianal'nykh kashtounastsei, iakiia znakho-veiatstsza za mezhami Respubliki Belarus'*, compiled by Arkadyi Tolstykh (Minsk: Belaruskii fond kul'tury, 1992), p. 146. Also quoted by Ovsianov, *V ruinakh starogo zamka*, p. 43. Section I of the statement pertains to Minsk museums; Sec. II to the Amber Chamber. An original handwritten transcript of this text is found with the Rohde documents collected by Briusov, GA RF, 534/2/2, fol. 221–221v. The source and dates of the interrogation are not available.
95. Cf Bruisov's compendium of Rohde's correspondence submitted to the Committee for Cultural Affairs, GA RF, fond 534/2/2, fol. 214v. In Document 10v, Rohde to the Kulturamt, 27 October 1944, he specifically mentions moving 78 crates with Kyiv art collections from Richau to Wildenhoff, *ibid.*; subsequent letter fragments confirm the move on the 13th of November, fol. 215, with the same number.
96. See Ovsianov, *U nikh est' rodina*, pp. 116–122. See the website report on "Dzikowo Haweckie – Wildenhoff": http://www.ostpreussen.net/index.php?seite_id=12&kreis=16&stadt=04. That is undoubtedly the same investigation that Ovsianov mentions, *U nikh est' rodina*, pp. 119–120.
97. I appreciate the assistance of archivists and curators from the National Museum and Archeological Museum in Warsaw, but they were unable to verify the fate of the fragments that were reportedly deposited in their museums.
98. M. Popova, "Sprava o komandirovka nachal'nika Kaliningradskoi geolo-arkheologicheskoi ekspeditsii v gorod Kostromy," GA RF, A-659/2/44, fols 192–196; Ovsianov, *U nikh est' rodina*, p. 109. One website featuring the Amber Chamber suggests it may have been moved to Wildenhoff: <http://www.amberroom.org/locations-castles-wildenhoff.htm>.
99. Ovsianov, *U nikh est' rodina*, pp. 123–124. In a July 2011 telephone conversation, Ovsianov admitted to me that he had seen only the inventories from Potsdam and had never been there himself; he had not known they were from U.S. Nuremberg documents.
100. *Ibid.*, p. 123.
101. *Ibid.*, p. 120.
102. See the article by Khanenko Museum curator Olena Zhyvkova, "Uriatovane uzbezhzhia," *Kul'tura i zhyttia*, 2010, no. 13–17, p. 5; she documents the borrowing on the basis of a receipt "Empfangsbescheinigung" (23 March 1942) in the museum archive; the copy cited earlier in GA RF, fond 7021/116/250, fol. 62, is undated.
103. *Katalog proizvedenii Kievskogo muzeia russkogo iskusstva, utrachennoho v gody Velikoi Otechestvennoi voiny 1941–1945 gg.* (Kyiv, 1994), printed in 500 copies. The Introduction cites one of the published IMT copies, p. 9 (note 4), but does not identify it as IMT exhibit USSR-372 (055-PS); the authors were unaware of the inventories.
104. Previous registration numbers were not entered in the surviving museum acquisition register (above note 15).
105. *Catalogue of Works of Western European Painters Lost During Second World War*, compiled by Olena Roslavets (Kyiv, 1998); see also Roslavets, 'Kyiv's'kyi muzei zakhidnoho', pp. 86–95.

106. See above, notes?? and??.
107. A search on the term “Khanenko” at “lostart.de” will produce display of the listings, although images are not available for all of them.
108. The painting from the original Khanenko Collection, entitled in the 1998 Museum catalog of losses as no. 207 *Acadian Landscape*. Listed in German on the receipts and shipping inventories as *Nimphen und Silen*).
109. Listed on lostart.de with the ID: 237262; Kyiv registration #2610; 39 x 71 cm. The same image in the 1998 catalog (no. 207, pp. 60–61) is from an initial printed signature of an early 20th century unfinished album of the Khanenko Collection, covering the Dutch paintings – *Tableau des écoles neerlandaises* (Kiev, 1911–1913), p. 51; the title there in French as *Sylène et bacchantes dans un paysage*. Olena Zhyvkova kindly showed me that printed signature in 2012, but I have not been permitted to examine other documents in the museum archive.
110. See Magdeburg Lost Art-ID: 237450; *Catalogue of Works of Western European Painters*, p. 100, no. 395 (with small image), entitled in English, *An Amorous Couple*, oil on canvas, 67 × 82 cm, Kyiv inventory no. 5144. I am grateful to Olena Zhyvkova for informing me about this painting in New York the day before my lecture on this subject in New York. The Goudreaux was pictured in the Doyle printed catalog, but that sale lot has since been withdrawn from the Doyle website. According to provenance indications supplied by Doyle and the current owner, the Spanierman Gallery in New York, it first surfaced after the war in 1953 in a private collection in London; later sold from a private collection on auction in Deerfield, Massachusetts, it was purchased by Spanierman; see <http://www.spanierman.com/Goudreaux,-Pierre-Louis/Loving-Glance/widescr/6159/>.
111. The canvas as now mounted on the stretcher (including the new canvas) has dimensions of 59.5 × 77.2 cm. as opposed to the original 67 × 82 cm; the original canvas remaining measures 57.2 × 75 cm. Doyle specialists suggest that the present stretcher is probably not the original. Except for a small label at the top of the stretcher with presumably a British owner’s name, there are no visible ownership markings remaining; there is evidence of scraping and plaster in several places. I greatly appreciate the assistance and cooperation of Doyle’s vice-president and curator for paintings, Dr Elaine Stainton.
112. The painting is pictured as attributed to J.S. Fragonard in V.A. Shchavyns’kii’s published catalog of his collection in French and Russian editions (Petrograd, 1917), p. 180, no. 148 (with image). See the article about the collection by Olena Zhyvkova (2001) “Kolektioner V.O. Shchavyns’kyi” in *Khanenkivs’ki chytaniia*, no. 3 (2001), pp. 3–18.
113. Olena Zhyvkova kindly shared with me her prepared a detailed provenance account of the painting, intended as part of an article being prepared for publication.
114. Magdeburg Lost Art-ID: 237259. Dimensions recorded are 115 × 130, with a Kyiv inventory number 28. I appreciate Olena Zhyvkova’s report on this matter.
115. See the Grimsted 2015 article cited above in note 11.

21

Surviving War and Peace: The Long Road to Recovering the Malevich Paintings

Howard N. Spiegler

In April 2008, the 37 living heirs of Kazimir Malevich ended an epic struggle with the City of Amsterdam, when they reached an historic settlement in which five paintings by their renowned ancestor were returned to them, 81 years after he had been forced to leave them in Europe. This struggle, which spanned almost two decades, created groundbreaking new precedent in the field of art recovery and finally returned artworks that had been kept by war, politics and the Iron Curtain from their rightful owners.¹

In 1927, Russian artist Kazimir Malevich, the father of “Suprematism,” considered the first systematic school of abstract painting in modern art, traveled to Poland and Germany to promote his radical artistic theories and non-objective painting in Europe.

Malevich had initially been influenced by Cubism and primitive art, which were both based on nature but, in 1915, he created Suprematism, based on geometric forms that enabled him to construct images that had no reference at all to reality. He defined Suprematism as “the supremacy of pure feeling or perception in the pictorial arts” (Malevich, 2003). He viewed the Russian Revolution as having paved the way for a new society, in which materialism would eventually lead to spiritual freedom. Ironically, however, Suprematism, and abstract art as a whole, were disapproved of by the Stalinist regime, so Malevich was careful not to reveal to the Soviet authorities the true purpose of his trip.

Malevich brought more than 100 of his paintings, drawings and other works and manuscripts, which he believed were his best works to date, on this trip. In March 1927, he arrived in Warsaw and held an exhibition of his works at the Polish Artistic Club. This first exhibition outside of Russia

An earlier version of this chapter appeared in *The Journal of Art Crime* (Spring 2009).

was received very positively, and it readied Malevich for the Berlin leg of his journey. In Berlin, his works were exhibited at the prestigious Grosse Berliner Kunstausstellung, where the German public was introduced to his revolutionary paintings, in May 1927. The exhibition was a great success and Malevich, for the first time, received international recognition for his work. Germany was a hotbed of creativity in the arts at the time, an ironic prelude to what was to come only a few years later.

The Soviet Union at the time, however, did not share a similar interest in abstract art. In June of that year, Malevich was unexpectedly called back to Leningrad and, fearful that his artworks might be in jeopardy in Stalinist Russia, he left them in Germany. Since he expected to return soon to the West, in order to continue showing his artworks and promote Suprematism, he entrusted them for safekeeping to several friends there.

Upon his return to the Soviet Union, Malevich's life began to crumble around him. In 1930, a retrospective of his work in his birth city of Kiev closed almost immediately after it opened and, shortly thereafter, he was arrested, detained and questioned for three months in Leningrad about the contacts he had made in Germany, and his artworks, which were considered by the Stalinist regime to be "bourgeois" in that they did not express social realities.

In 1933, Malevich, ill with cancer, requested the opportunity to go abroad to receive medical treatment. This request was denied by the Soviet authorities. Making matters even worse, under official pressure from the Soviet government, Malevich abandoned Suprematism, and began to paint portraits and small-scale works on porcelain.

In 1935, Malevich died a defeated man. In a few short years, he had gone from being a well-respected artist in his home country – a member of the Soviet Museums Commission and the Commission for the Protection of Monuments who taught at the Vitebsk Practical Art School, the Leningrad Academy of Arts, and the Kiev State Art Institute – to a man who had been forced to abandon abstraction, in favor of some approximation of Socialist Realism, in order to appease governmental officials. He died penniless, without ever being able to return to Germany to reclaim his artworks. Until the end he remained concerned about the fate of the works he left abroad.

Meanwhile, in Germany, the Grosse Berliner Kunstausstellung exhibition closed in September 1927, and all of the Malevich works were packed and stored in Berlin. Years later, the works were transferred from the storage facility to one of Malevich's friends, Dr. Alexander Dorner, one of those to whom he had entrusted the works. At that time it would have been futile to return the works to Malevich in the Soviet Union because Stalinist condemnation of abstract art would undoubtedly have led to their confiscation, and possible destruction.

For some time, Dorner, the director of the Landesmuseum in Hannover, exhibited some of the Malevich works there. The rising Nazi influence

in Germany and the corresponding attacks on so-called “degenerate art,” however, eventually compelled him to conceal the works in the museum’s basement. In 1935, when Alfred Barr, the then director of the Museum of Modern Art in New York (MoMA), visited Dorner and expressed an interest in Malevich’s works, Dorner arranged to ship some of them to MoMA to be held by the museum on loan. Two years later, when Dorner fled Nazi Germany for the United States, he brought two other Malevich works with him. When he died in 1957, he bequeathed these works to Harvard University’s Busch-Reisinger Museum in Cambridge, Massachusetts, to be held on loan and for the benefit of “the rightful owners.”

Before Dorner fled Nazi Germany, however, he took steps to ensure that the Malevich works he was leaving behind would be kept secure, for the benefit of Malevich’s heirs. Those to whom Malevich had entrusted his works in 1927 had already fled Nazi Germany or, like Dorner, were about to leave. All, that is, except one: Hugo Häring, a German architect and writer best known for his works on “organic architecture,” who lived and worked in Berlin.

Therefore, Dorner had the crate containing Malevich’s paintings and drawings sent to Häring, to whose care alone the works were now entrusted. Häring safeguarded the works in Berlin, until the bombing of the city in 1943, and then moved them to his native town of Biberach. Remarkably, the works survived. During the time that the works were in Biberach, Häring’s friends attempted to convince him to secure the works against loss or dispersal by entrusting them to the care of a museum. For years Häring refused to do so, repeatedly emphasizing that he was only the custodian of the works, responsible for their safekeeping, and that he had no right to transfer them to anyone else.

In 1951, Dr. W.J.H.B. Sandberg, the then director of the Stedelijk Museum, the modern art museum owned by the City of Amsterdam, The Netherlands, visited Häring at his home in Biberach, upon discovering that he was holding a cache of Malevich works. From 1951 to 1956, Sandberg repeatedly sought to obtain the works for restoration and exhibition by the Stedelijk. Häring again and repeatedly responded that he had no right to transfer the works.

In 1956, after a prolonged illness, however, Häring finally gave in to these entreaties and agreed to lend the works to the Stedelijk Museum. He entered into a loan contract with the museum that contained an option to purchase all of the Malevich works. The Malevich heirs alleged that the documents on which this loan contract were based – which purported to effect transfer of the ownership of the artworks from Malevich to Häring upon Malevich’s death – were obvious frauds created while Häring was on his sickbed by Häring’s brother-in-law, a German notary and lawyer named Ernst Böhme.

Despite the fact, as alleged, that Sandberg was fully aware that Häring did not own the Malevich artworks, however, he proceeded with the loan and

sale transaction. As a result, the Malevich Collection has been housed at the Stedelijk since 1958.

At this time, the vast majority of Malevich's heirs resided in the Soviet Union, or elsewhere in Communist Eastern Europe. Living in desperate conditions behind the Iron Curtain, the heirs were unable to find and communicate with each other, let alone take any measures to discover and redress the expropriation of Malevich's property.

It took several years after the fall of the Iron Curtain for all of Malevich's living heirs to locate and contact each other, and then begin the difficult process of recovering the family's property, including the expropriated works in Amsterdam. An art researcher, Clemens Toussaint, was instrumental in helping them in this endeavor. Beginning in 1996, and for many years thereafter, the heirs repeatedly asked the City of Amsterdam and the Stedelijk Museum to return the Malevich Collection. In September 2001 Amsterdam formally advised the heirs that it would not return the artworks to the heirs or even to continue to negotiate with the heirs to try to achieve an amicable settlement.

Meanwhile, however, the heirs turned their sights to the United States with the aid of Toussaint and the author's New York law firm: Herrick, Feinstein. Their first stop was MoMA from which they requested the return of the Malevich works that Dorner had shipped there over 60 years before. In June 1999, MoMA and the heirs agreed to amicably resolve the heirs' claims and MoMA returned one of the works. The heirs then approached the Busch-Reisinger Museum, which decided, in November 1999, to return to the heirs both of the Malevich works that Dorner had bequeathed to it. In gratitude, the heirs donated one of the works to the museum.

But the heirs' efforts in Amsterdam were stymied by the Stedelijk's refusal to return any of the Malevich works in its collection. In 2003, however, the Stedelijk made what turned out to be a fateful decision. It included 14 of the 84 artworks claimed by the heirs as part of a temporary exhibition in the United States, at the Solomon R. Guggenheim Museum in New York City (from 22 May 2003 until 7 September 2003) and the Menil Collection in Houston (from 2 October 2003 until 11 January 2004).

United States law, however, prevented the heirs from having a court "seize" the artworks pending a resolution of their claim. The United States Immunity from Seizure Act (22 U.S.C. § 2459) provides that the United States Department of State may certify that artworks to be loaned to museums and similar institutions located in the United States shall be immunized from judicial seizure. The heirs had requested that the State Department refrain from certifying the Malevich artworks, but to no avail. Based on the artworks' presence in the United States, however, the heirs nevertheless – a few days before the works were to be returned to The Netherlands – brought a lawsuit against the City of Amsterdam for their return. The suit was brought pursuant to the Foreign Sovereign Immunities Act (FSIA), which provides that a foreign state and its agencies and instrumentalities (which includes

the City of Amsterdam) are immune from suit in United States courts unless certain exceptions apply, all of which are set forth in 28 U.S.C. § 1605 (a)–(e). These exceptions include any case “in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state” (28 U.S.C. § 1605 (a)(3)).

The heirs’ lawsuit was brought pursuant to this provision, also known as the “expropriation exception.” The heirs argued that (a) the defendant, the City of Amsterdam, through the Stedelijk Museum, took the Malevich artworks without compensation to them, their true owners, in violation of international law; (b) at the time when the lawsuit was commenced, in January 2004, the 14 Malevich works at issue were on exhibit at the Menil Museum in Houston, Texas, and were, therefore, “present in the United States,” vesting jurisdiction over them in the United States pursuant to §1605 (a)(3); and (c) because the loan of the 14 artworks to the Guggenheim and the Menil Museum was a transaction that could be engaged in by a private party, it comprised a “commercial activity” under the FSIA.

The City of Amsterdam moved to dismiss the heirs’ complaint, arguing, *inter alia*, that they could not claim a violation of international law, because they had not exhausted their remedies in a court in The Netherlands; the artworks were not “present in the United States” as a matter of law during the course of the exhibitions, because they had been immunized from seizure by the U.S. government, and that the loan of the Malevich artworks to the U.S. museums was not a “commercial activity carried on in the United States,” as the FSIA requires.

In an opinion dated 30 March 2005, the U.S. District Court for the District of Columbia denied the City’s motion to dismiss. First, the Court found that the City’s arguments concerning exhaustion of remedies were not a basis for dismissing the suit on jurisdictional grounds, because the Court could “not require Plaintiffs to take their case to a Dutch court unless the City of Amsterdam waiv[ed] its statute of limitations defense and the Dutch court accept[ed] that waiver” (*Malewicz*, 362 F. Supp. 2d at 308). Second, the Court held that the paintings were present in the United States at the time of the filing of the suit and, therefore, were present for purposes of FSIA jurisdiction, i.e., the works’ immunization from seizure did not negate their presence in the United States for FSIA purposes. In other words, the Court drew a distinction between the heirs “seizing” the works or preventing their return to Amsterdam, which they were not attempting to do (indeed the works were returned to Amsterdam a few days after the lawsuit began), and their suing to effect their return to the heirs pursuant to the FSIA.

Lastly, as to whether the exhibition loan was a “commercial activity,” the court based its analysis on the “rule of thumb” adopted by the courts in the

District of Columbia: “If the activity is one in which a private person could engage, it is not entitled to immunity” (*Malewicz*, 362 F. Supp. 2d at 313). The Court concluded that it was “clear that the City of Amsterdam engaged in ‘commercial activities,’ when it loaned the 14 Malevich works to museums in the United States” because there is “nothing ‘sovereign’ about the act of lending art pieces, even though the pieces themselves might belong to a sovereign” (*Malewicz*, 362 F. Supp. 2d at 314). As the Court further explained, even if the loan were purely educational and cultural in purpose, as the City alleged, it still would be “commercial activity” under the FSIA, citing the language of the FSIA itself: “[t]he commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose” (FSIA, 28 U.S.C. §1603(d)).

It is interesting to note that the United States government filed a Statement of Interest in the case supporting the position of the City of Amsterdam, contending that “§1605 (a)(3) requires a sufficient nexus with the United States to provide fair notice to foreign states that they are submitting themselves to U.S. jurisdiction and abrogating their sovereign immunity” and that “foreign states are unlikely to expect that this standard is satisfied by a loan of artwork for a U.S. government-immunized exhibit that must be carried out by a borrower on a non-profit basis.”

The Court responded by holding that although “the opinions of the United States are entitled to ‘great weight’” the Court “concludes that §2459 granting immunity and §1605(a)(3) establishing jurisdiction for certain claims against a foreign sovereign are both clear and not inconsistent” and, therefore, “the Court is bound to the plain meaning of these statutes,” that is, that they are “unrelated except that a cultural exchange might provide the basis for contested property to be present in the United States and susceptible, in the right fact pattern, to an FSIA suit” (*Malewicz*, 362 F. Supp. 2d at 311).

There was one issue that the Court left open for its later decision. On the factual record before it, the Court could not ascertain the substantiality of the City’s contacts or activities with, or in, the United States, in connection with the loan of the Malevich artworks, which the Court held was required by the relevant definition of “commercial activity” in the FSIA itself: “A commercial activity carried on in the United States by a foreign state means commercial activity carried on by such state and having substantial contact with the United States” (FSIA, 28 U.S.C. §1603(d)). Therefore, although it denied the City’s motion to dismiss, the Court requested further development of the factual record in order to make a final determination of the substantiality of the city’s contacts with the United States and conclusively determine the question of whether or not the City of Amsterdam was immune from suit and thus whether or not the Court had jurisdiction to hear the case. As a result, the City submitted additional evidence to support

its position that it did not have substantial contacts with the U.S., and that it was immune from suit under the FSIA.

In a 27 June 2007 opinion, the Court held that the record contained “sufficient contacts to establish jurisdiction under the FSIA’s expropriation exception” (*Malewicz*, 517 F. Supp. 2d at 340). The Court found that “the City contracted with the American Museums knowing that the paintings would be displayed in the United States – and knowing of the heirs’ claim that the City had unlawfully taken the paintings without just compensation. The City received nearly €25,000 as consideration for the contract with the American Museums, a substantial sum. More critically, it agreed to send several employees, including its Chief Curator for Paintings and Sculptures, to the United States to oversee the safety of the paintings while they were on loan” (*Malewicz*, 517 F. Supp. 2d at 332). The Court thus conclusively denied the City’s motion to dismiss, paving the way for the case to go to trial. The City immediately appealed to the United States Court of Appeals for the District of Columbia Circuit.

Before the parties completed their submissions to the Court of Appeals, a settlement was reached between the heirs and the City of Amsterdam. The City and the Stedelijk Museum agreed to transfer five important Malevich paintings to the heirs, in exchange for the dismissal of all litigation between them, and an acknowledgment from the heirs that the City has title to the works in the collection remaining with the City.²

After 81 years, the heirs of Kazimir Malevich, who reside throughout the world, were able to achieve a just resolution that preserved Malevich’s legacy and his contributions to the history of 20th century art, kept a representative portion of the collection together on public display for all to see and cherish, and provided them with a representative group of five important paintings by their illustrious ancestor.³

The effects of the *Malewicz* case continue to be felt to this day. In 2012, federal legislation was introduced in the U.S. House of Representatives to overrule the decision in *Malewicz*, and essentially provide immunity from lawsuits for foreign states that obtain immunity from seizure for artworks on loan to the United States. The legislation, apparently strongly promoted by the museum community and called the “Foreign Cultural Exchange Jurisdictional Immunity Clarification Act” quickly passed the House, but the Congressional session ended while it was pending in the Senate. The bill was reintroduced in March 2014 and passed the House of Representatives in May 2014. Currently, the proposed law is pending in the Senate.⁴

Notes

1. The author thanks his partner, Mari-Claudia Jiménez, and his associate, Yael Weitz, for their invaluable assistance in the preparation of this article. The author and his law firm, along with Thomas R. Kline and L. Eden Burgess of Andrews Kurth LLP in

Washington DC, represented the claimants in the case of *Leonard Malewicz v. City of Amsterdam* in the United States District Court for the District of Columbia. All of the facts and legal issues discussed in this article are based on the record in the case, including the claimants' complaint, as recited by the Court in its opinions. (*Malewicz v. City of Amsterdam*, 362 F. Supp. 2d 298 (D.D.C. 2005) and *Malewicz v. City of Amsterdam*, 517 F. Supp. 2d 322 (D.D.C. 2007)). The City of Amsterdam disputes many of the facts alleged by claimants.

2. Images of the five paintings are available at www.malevichpaintings.com.
3. In 2008, *Suprematist Composition*, 1916, one of the five works restituted to the Malevich heirs, was sold at auction by the heirs for \$60 million, setting a record for works by Malevich, and, indeed, a record price for any Russian artwork. In 2011, the Art Institute of Chicago acquired *Painterly Realism of a Football Player*, 1915 from the heirs, and the work is currently on exhibit there. Another restituted work, *Desk and Room* 1913, was sold privately in 2012. In July–October 2014, the Tate Modern in London exhibited another of the recovered works, *Suprematism, 18th Construction*, 1915, as part of its Malevich retrospective, entitled “Malevich: Revolutionary of Russian Art.”
4. Both the current and earlier versions of the bill contain a Holocaust-looted art exception, but that exception is limited to works actually seized by the German government or by governments occupied or allied with Germany during 1933–1945 and does not therefore cover works that were the subject of forced sales or sales under duress, which were common for many art transfers during the Nazi era. As a result, there are ongoing attempts to amend that portion of the legislation to provide for the broader exception.

22

What Is Due Diligence? Making the Case for a More Responsible Art Market

Christopher A. Marinello and Jerome Hasler

Due diligence is not a term that individuals unfamiliar with the art market might associate with it. It seems more familiar in the vocabulary of corporate takeovers and car insurance. Worryingly, due diligence isn't even always a term associated with the art market for those directly involved in the trade, either. But should this come as a surprise? What does due diligence have to do with buying and selling works of art? The answer falls somewhere between maintaining the market's integrity and mitigating risk within it.

Every picture, every sculpture, print or photograph that is sold today has a history. The longer the work has been circulating through the market, the more complicated that history can become. And within those complications can lie issues that may affect the clear title of a work. In the past, this history has been treated purely as a value-adding element to a work of art, with ownership by particular collectors, galleries or dealers lending credence to objects handled. But the prominence or prestige of a dealer or collector is no guarantee of clear title, and this has been a hard-learned lesson in the art market. The emphasis on provenance has since shifted slightly, moving away from the neat and compelling narratives of dealer-artist relationships, to examining the movement of works and their ownership history in greater detail. But even with greater emphasis now placed on the history of works of art, it seems that the market, in general, is still not sensitive enough to the issues that can plague their clear title, import, export, transport and, ultimately, value. In part, this is a problem with the perception of due diligence across the board. Often, and understandably, given the prominence of cases in the popular media, due diligence is confused with simply checking a single issue, such as ensuring that the work hasn't been stolen, or if it is subject to a World War II-era claim. Granted, the massive displacement of cultural objects brought about by the hostilities of the 1930s and 1940s has left, in its wake, a legacy of problematic sales, court cases and humbling restitution

ceremonies at a private, national and international level. But the problem is far more complex than this, and instances of impropriety that are beginning to appear in the international press reveal the variety of these issues.

Among the more high-profile cases of 2014, two in particular illustrate well the complexity and diversity of the issues attached to works of art and cultural heritage. Christie's and Sotheby's have made headlines in the last 12 months for their astonishing auction results, and prices achieved, for exceptional works of Impressionist, Modern and Contemporary art.¹ However, both have also amassed their fair share of column inches for another area of mutual interest: Cambodia. The two salerooms offered 10th-century sandstone statues of gods, with price tags in the millions of dollars, each object advertised as a brilliant example of its type, prestigious both in quality and condition.² When both works were identified as the spoils of Cambodia's 1970–1975 Civil War, looted from temples deep in the country's jungle, allegations flew from all sides with trafficking, illegal export and stolen property chief among them. Nowhere, however, among the extensive coverage of both cases in the international media, was due diligence discussed – not even once reports that Christie's had already sold their statue twice before were substantiated. The presence of looted antiquities in an internationally renowned saleroom was nowhere discussed as a problem that might have been averted. As the art market widens and grows to encompass objects whose origins are less well-documented, there should to be a corresponding growth in the mandatory need to ensure that the commercial history of works handled contains no wrongdoing. It would be unfair to suggest that either Christie's or Sotheby's were negligent in their handling of the Cambodian works, particularly considering their respective commitment to provenance research and, in this case, their prompt restitution of claimed works, once the dispute had been established. However, as the world's most prominent salerooms, they set an example to regional and provincial auction houses globally and, arguably, the art market in general. That two giants of the industry could have been drawn into a dispute such as this one demonstrates the crucial need for greater awareness for the importance of thorough due diligence in the market today.

The past 12 months have seen a new menace appear in the sphere of cultural heritage that will surely have a long-term impact on the international art market. The continued unrest and hostility that has plagued the Middle East since the outbreak of the Arab Spring and the Syrian Civil War, has fueled the growth in illicit excavation and trafficking of cultural objects. In some established media outlets, estimates on the value of looted objects taken from sites in Syria alone have been reported to be as high as \$36 million, and commentary on the revenue channels utilized by the Islamic State of Iraq and the Levant (ISIL) often includes the trafficking of antiquities.³ World War II and the Cambodian Civil War both demonstrated that the displacement of objects within the unrest of conflict will continue to affect

the international art market, many decades after the original instance of looting or confiscation. But the channels for the trafficking of illicit antiquities by ISIL are already well established and the emergence of such objects on the open market in the very near future is inevitable. Established, too, are the modes of disguising illicit objects within the black market supply chains. In our work, we have seen the efforts taken to remove the suspicion of illegality when objects are transported, from examples of Egyptian funerary busts painted crudely to imitate tourist souvenirs, to items rigorously cleaned or restored, to hide their recent excavation. Therefore, due diligence is now more crucial than ever before, for buyers and dealers of antiquities with Middle-Eastern provenance. Establishing a model of best practice for this part of the market is essential for ensuring that only objects exported from the Middle East lawfully are able to enter the legitimate market. Raising awareness of the need for a better due diligence model for antiquities will also help to ensure that any illicit antiquities illegally excavated in today's conflict zones will be identified, even if there is a significant delay before their sale is attempted.

These examples, whose looting dates back between 2 and 40 years, show that the range of issues attached to works of art and cultural heritage, from illicit excavation and looting to international trafficking and unlawful imports, may be historic in their nature, but are very much present in their relevance. Moreover, they reinforce the notion that due diligence isn't simply an insurance policy against issues such as residential theft or World War II claims – rather, it's a commitment to best practice in the market.

This, among a range of other issues, is the cornerstone of Art Recovery Group's practice. We exist as much to help those who have suffered from the loss or dispute of works of art and cultural property, as we do to emphasize and spread the importance of thorough, meaningful due diligence. When we built our ArtClaim Database, it was with this in mind: an ultimate due diligence resource that has the ability to record and identify any single issue or claim that might affect the clear title, transit or sale of a work of art or cultural property. A search of the ArtClaim Database is the most thorough example of web-based due diligence available to the market today, both in the range and quality of data assessed and in the technological advancement, including integrated image-recognition software, that a search encompasses. Additionally, the 500 data fields that build the structure of registrations on our database allow our clients to register all types of claims and interests, as well as losses, fakes and forgeries, in a depth of detail that has, hitherto, been unavailable. We are also committed to working with the victims of theft and to recording all losses on our ArtClaim Database free of charge.

But what is more important than any single resource for due diligence in the art market is the awareness of how useful databases can be in the due diligence responsibilities of auction houses, galleries and dealers alike.

Among the most important questions a buyer should ask prior to purchase are those relating to the clear title of the work in consideration but, unlike authenticity or condition, clear title is rarely as readily apparent. The purchase of a simple title insurance policy, protecting the buyer from any costs associated with any future claim, is one solution to the “caveat emptor” philosophy of the market, but it is not widely offered by insurers, and it hardly leads by example, in terms of good practice. Simply put, we cannot advocate for an art market that operates on the principle to “blind” buy now and deal with the consequences later. Instead, resources such as international databases can offer buyers an efficient resource for undertaking a title check on a work, finding an issue rather than being found by one. Access to accurate, up-to-date and reliable data relating to works of art, and the interests to which they are subject, is only really possible through databases and reliant on the quality of information they hold.

In an increasingly litigious society, to which the art market is no exception, the risks associated with poor practice increase in turn. Opportunities to fall victim to a dealer’s insufficient provenance research or assurances of clear title are more abundant, and carry far graver consequences, than they have done previously. Due diligence in the art market is often compared to buying a car insurance policy or going to the dentist – a reluctant obligation with largely unrealized benefits. However, due diligence should be promoted not as insurance against future liability, but as the common-sense option, the choice to undertake business in a responsible and transparent manner, protecting one’s liability whilst reducing the risk of claims and disputes within marketplace as a whole. We are determined to work across the international art market and cultural heritage sector to popularize this new interpretation of due diligence as the foundation for safer and more responsible transactions.

Notes

1. E. Kinsella, (2014). “The biggest auction year ever – Artnet News.” [online] *artnet News*, <https://news.artnet.com/market/the-biggest-auction-year-ever-202520>.
2. T. Blumenthal, (2015). “Christie’s to return Cambodian statue.” [online] *Nytimes.com*, http://www.nytimes.com/2014/05/07/arts/design/christies-to-return-cambodian-statue.html?_r=0.
3. M. Chulov, (2014). “How an arrest in Iraq revealed Isis’s \$2bn jihadist network.” [online] *The Guardian*, <http://www.theguardian.com/world/2014/jun/15/iraq-isis-arrest-jihadists-wealth-power>.

23

Outline of the Benefits Coming from a National Prosecution Service in Cultural Heritage Protection

Paolo Giorgio Ferri

It is a well-known fact that the first and most important step in counteracting the illicit trafficking in cultural items is made through an efficient cooperation between the institutions of the State responsible in this field, and a national prosecution service – or, at least, a pool of prosecutors devoted to art crime investigations as a way to enhance such national and international cooperation.¹ This specialized body should be preferably organized with national powers, since the illegal trade in cultural heritage is often beyond regional and even national borders, and a prosecution service acting on a national scale – having also an international dimension, via joint investigative teams or other forms of international cooperation – is better prepared for fighting against such widespread crime.

It must be stressed that the adequacy of a given judicial space appears to be of vital importance, not only for the cultural heritage of a single nation, but for all the other countries, at least within the same cultural area; and it is a known fact that the criminals acting in this sector, and especially through the use of the Internet, take advantage of the weak links in the various legal systems, adopting for their laundering maneuvers the country most permeable to the illegal traffic. They then send the cultural items from these countries to those where protection is more effective and congruous. It is important to counteract the de-contextualization of cultural goods, especially those of “outstanding cultural importance,” and to cut out those economic advantages criminals think of gaining with their traffic, just because they know that it is not possible that the customs barriers exist only for the investigating agencies.

In order to improve international cooperation, at least in countries which are currently at risk for large-scale trafficking in cultural goods, a national prosecution service should be organized, one with the ability to monitor the internal and, as far as possible, the international markets of artistic

goods. These prosecution services, in cooperation with other specialized units, may consider enacting and implementing a “cultural heritage hotline” to grant the swift and discreet reception of suspected cases reports, and should provide a comprehensive survey of the items illegally exported, working in close contact with foreign authorities, which could be required to report on suspicious cultural goods, helping in their restitution and simplifying, or at least clarifying, the procedures that are often slow, complicated and expensive.² In this regard, there is currently a worldwide cooperation between archaeologists, often reporting on suspicious trading of archaeological goods. As commonly acknowledged, this happens only on a spontaneous and episodic basis, and not as standard practice.

The proposed national prosecution service could provide a comprehensive survey of the phenomena, of the laws ruling them, of their interpretation and, generally speaking, of the recurrent problems. They could also be supportive of a permanent forum in developing policies specifically referring to repatriation claims, which require expert advice and assistance to assess them: their political, juridical, social and moral issues and the consequent complex negotiations or procedures. In order to fully develop those tasks, the national prosecution service might collect data on requests for international cooperation, including the content and volume of decisions and of incoming and outgoing requests for assistance; countries from which requests are lodged or received, or to which requests are made; the outcome of trials and requests; the types of offenses; the time required for completion; any grounds of refusal and the legal basis used for the request; and ought to establish databases to maintain such information, so that the efficiency of the restitution process, and of the international cooperation, might be monitored, by identifying and addressing shortcomings. Moreover, a network established to explore ways to facilitate communication and problem-solving ought to be set up by these national prosecution services, considering also the establishment of a discussion forum. Practitioners would then begin to learn about the legal systems and practices of other states, which would lead to the elaboration of a practical guide for civil claims and for penal procedures, formulating effective requests for mutual legal assistance and setting up special investigative technique and/or joint investigation schema. Web pages to promote an awareness of the existence of different regional problems and their current solutions should be organized and updated by this national prosecution service. Their commitment would improve the cooperation network, taking into account gaps in the coverage of existing international cooperation networks, in particular with respect to least developed countries.

It may prove useful to provide help-desk-type services, managed by these national prosecution services, acting as contact or reference points for cultural heritage procedural problems. In this respect, these bodies could assist in solving concrete cases for which cooperation is at risk or hindered

and, whenever opportune, bring together prosecution services in different states, including origin, transit and destination states along trafficking routes. These national prosecution services could also gather reliable statistics related to illicit activities concerning cultural property, which are a useful tool for monitoring the art and antiquities market, and the collection of official statistical data can have great positive effects.

For this judicial body, it would be necessary to make prompt provision also to upgrade the normative and economic instruments at its disposal. In this sense, it is highly advisable for rules and regulations to be drawn up, to ensure that, in the national context, it could act as a center of information and analysis in the art sector, being a privileged contact point of reference for investigations of international character.

There is no doubt that the investigations of a national prosecution service specialized in cultural heritage protection, and in recovering items illegally removed, can often lead to developments, even outside of national borders. Particular care should be reserved for this aspect, and personnel of the unit should be encouraged to participate more frequently, and with greater facility, in meetings periodically organized for members of the various specialized units.³ This would not only increase their experience and competency, but allow them to engage in appropriate direct contacts with professional peers, who are increasingly of great importance in facilitating investigations, and in overcoming possible bureaucratic obstacles, particularly on short notice. The members of the national prosecution service should also be allowed the opportunity, whenever possible, to take part in international conferences on the subject, or to form part of national delegations appointed in particular circumstances to tackle specific problems, particularly in collaboration with international organizations. Indeed, the point of view of the prosecution service can frequently be of extreme utility in comprehensively addressing problems of the sector, in particular those involving the international aspects of investigations.

It will also be advisable for these national prosecution services to be connected with the Ministry of Culture (where one exists), to enable a more efficient performance of their functions, and to use continuously, and with greater facility, the contribution (often indispensable during the phases of the corroboration operations) of officials and technicians of said ministry, whose competencies and professional capacities can immeasurably support the activities carried out by the members of the prosecution office.

Obviously, factors of motivation of the individual prosecutor to perform this specific type of work, and knowledge of foreign juridical procedures and laws, as well as languages, must be given due consideration. Furthermore, as soon as the staffing components have been formed, the individual members must be provided with, and allowed to participate in, training activities on an ongoing basis, which are targeted not only on increasing their juridical and technical/professional preparation, but also on providing information

on the variegated cultural panorama, and the detailed background necessary for them to become properly oriented in this particular sector. In favor of all these prosecutors, it is necessary to provide case analyses, including information on the offenders involved, *modus operandi*, routes, means of transport, methods of concealment used, and their links to other criminal activities and networks.

Greater use should also be made of the investigative and probative instrument to be developed, especially abroad, by means of international rogatory commissions.⁴ It is well-known that this is the mechanism whereby judicial authorities in one country can officially pursue investigations in another. Generally speaking, only judicial authorities can send rogatory letters (official legal requests), and a well-trained prosecution service is of utmost importance when asking for international investigations, which could be hampered by requests not in line with the requested legal system requirements. As much as for rogatory letters, seizure procedures and *exequatur* decisions of confiscation orders require knowledge of the crimes which will be recognized by the requested country (the dual criminality principle).⁵ Thus, it will be necessary to examine the keys of access to the procedural system.⁶

It is also important to stress that a national prosecution service could take advantage of a close connection with foreign authorities, who are supposed to provide the legal assistance, organizing pre-meetings, in order to explain reasons, modalities, timing and concrete goals of the international cooperation requested. In fact, in the cultural field, there are often problems connected to crime awareness (e.g., trafficking in cultural goods that is not seen as so serious a phenomenon by the requested country, especially in relation to its damages; the converse happens regarding cultural contexts when archaeological items are looted), to insufficient adherence to international legal instruments, and to conflicting perceptions of other issues, often erroneously considered as public order problems. In this respect, it is obviously useful to improve international cooperation by direct personal contact and through speedy, informal problem-solving.

The intensification of investigations in the international field, which will very likely lead to the limiting of illegal purchases, especially with reference to those known as the "major purchasers," will be carefully assessed by the dealers, and serve as a deterrent to those who will, in response, reduce their demands in proportion to the investigative capacity of the national prosecution office. The responses to the requests for international assistance will also enable internal controls to be tightened up and made more incisive, thanks to the data obtained abroad. Eventually, a typology or net diagram or map will be drawn up of crime and criminals in this sector, tracing the avenues of the flow of illicit trafficking in cultural property. In fact, one consistent characteristic of the criminals involved in the trafficking of cultural items is that the individuals involved (at least at a certain level) are inevitably the

same handful of personages, are highly specialized and possess economic resources.

The individual targets of investigations and the final outcomes of the investigations are often connected to the collection of evidence used to defeat criminal organizations with a strong sense of belonging, and which are usually deeply rooted in a given community. The "*omertà*" is increasing its involvement in these areas of criminal activity. Confidential tips from informants to the authorities are immediately rewarded by expulsion from the criminal group, and exclusion from the benefits of its lucrative traffic. In addition, the criminal organizations are often acting through many legitimate and illegitimate companies, well-articulated in foreign territories and composed of multiple offshore firms. At the same time, investigations in the cultural field have a wider spectrum, because the ordinary police activities must take into account other contradictory and conflicting aspects. Thus, the recovery of cultural goods could sometimes hinder the efforts to defeat and punish the criminals when, for instance, they make reprisals on cultural items to obtain impunity.

In this regard, the creation of a national prosecution service or, at least, of a specialized group of public prosecutors, could consider these different aspects from a well-balanced perspective. More generally, a national prosecution service will lead, among other things, to: (a) a deeper knowledge of the laws concerning the cultural property sector, often difficult to coordinate, seeing that it can involve different disciplines, from international to constitutional law, and ecclesiastic, administrative, penal, and private law; (b) a better knowledge of crimes and criminals involved in cultural heritage offenses and their highly sophisticated operative modalities; and (c) a better coordination with other national and international law enforcement.

A national prosecution service will set up a flexible approach toward mutual legal assistance, and direct personal contacts should be fostered, along with the sharing of information between relevant practitioners, by facilitating speedy, informal problem-solving. In line with this, many networks include information on legal resources and the creation of model forms or guides, while some networks also provide for online communication. Despite the recent interest in establishing regional and interregional cooperation networks, there are still large regions without such a network, particularly in Africa and Asia. It is of some significance that, currently, those regions are the most endangered by the illicit trafficking in cultural items.⁷

In conclusion, the recommendation is that a national prosecution office, or a pool of prosecutors devoted to cultural heritage protection, highly specialized and motivated, should be created. It is also important that, along with a specialized police, a group of specialized experts at a central level should also be established, as a centralized store of investigatory data and of stolen cultural items. With regard to the indication now under examination, this is fundamental with respect to other medium and long-term strategies.

In fact, through the creation of a national pool of magistrates, a pool of experts and a centralized, autonomous pool of investigators, effective results can be achieved. This is especially true with regard to the understanding of criminal methodology, the techniques in this area, and to developing and establishing internal and international investigatory models and processes. In other words, all these activities should create a system of real management for the fight against cultural goods trafficking, amplifying the knowledge of the problems related to the art sector which, currently, are worryingly still limited.

Notes

1. I would like to point out that the struggle against the illegal traffic in cultural goods could be also enhanced when made by a “roving public prosecutor,” a role I inhabited in the past. This prosecutor, in compliance with the laws of the country requesting assistance, and following standard forms of acquisition, should gather evidence and investigate directly, obviously in the most important cases.
2. In this respect, the preventative cooperation in fighting trade in illicit cultural goods is, to date, rarely initiated. On the contrary, this preventative cooperation would lead to continual vigilance by the authorities of those countries which have ratified one of the many conventions in this sector since, albeit not expressly, these conventions ultimately impose the obligation of coming forward with spontaneous information, without necessarily waiting for information and input from the investigative authorities of another country. The exportation country would obviously have more information at its disposal and, what’s more, the market of artistic goods would come under the required scrutiny in foreign territories. Thus, not only clandestine trafficking would be discouraged, but honest dealers would be rewarded and would no longer be exposed to unfair competition nor to actions of vindication by previous private owners, perhaps after several years. If preventative cooperation were to begin, many situations, seriously prejudicial to the cultural patrimony, would disappear. At the same time those areas of privilege would be limited (free-ports, auction houses, etc.), which in the past, and still today, represent places in which trading in artifacts of illicit provenance was and still is flourishing. Therefore, it seems no punitive to call responsibilities on those States, which do not prevent, with appropriate measures, the illicit trafficking in cultural goods, notwithstanding they have ratified conventions imposing such obligation. And especially with an item of outstanding cultural importance, time could be ripe for a general extension of the principle established by the Hague Convention I Protocol, 14 May 1954. The present Protocol states “the High Contracting Party whose obligation it was to prevent . . . shall pay an indemnity to the holders in good faith of any cultural property which has to be returned”
3. It must be stressed that, in Rome and in other important Italian prosecution offices, there are very efficient pools of magistrates specializing in cultural heritage protection. Recently, other countries have established their own art prosecution services, for instance in the United States, where the Department of Justice assigned three Special Trial Attorneys to the Art Crime Team, for prosecutorial support. Currently, the need to create a specialized prosecution service is envisaged by the “guidelines” for crime prevention and criminal justices responses, as recently approved by the intergovernmental meeting held in Vienna on 14–17 January 2014; and by the

Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Properties (Paris, 1970), adopted by consensus on 18 May 2015 by the Meeting of States Parties to the 1970 Convention. These Guidelines stress the importance of prosecutors training and specialization.

4. In this respect, a relevant aspect should be considered that could contribute to curb either the illicit trafficking, or its damages. In fact, the international comity has assured a twofold instrument of protection and consideration for the international public order, currently well-established in the cultural sector. Firstly, there are the UNESCO Conventions, and all the other specific treaties which bind the member states and force them to take into account the cultural heritage of other nations, even if only foreign laws are infringed. And in this respect, the reservations sometimes expressed by those convention member states are not always well-balanced or founded. Secondly, there are the treaties in force on judicial assistance whose target is very important, too. In fact, when the sector of judicial cooperation is involved, a complementary level should be fully examined and evaluated, that is whether the decision of disregarding the laws of a foreign country should put at stake in the fight against criminality and the rendering of justice in a given area. In brief, cultural goods are to be protected, not only because of their universal value, but also because they are objects of criminal concern. In addressing all the above aspects, not only a "static" protection will be offered, limited to cultural items, as far as they are discovered or excavated, and when they are of outstanding importance, but also a "dynamic" safeguard, one which is directed toward the protection of the cultural good's context, and of the scientific value it represents.
5. Cultural goods can be considered for confiscation orders because they: (a) direct profit of "trafficking crimes"; (b) involve properties into which the illicit assets have been converted or transformed; (c) involve illicit assets that are intermingled with licit ones; and (d) manifest "illicit enrichment" by criminals. Indeed, antiquities are often chosen by criminality in order to launder the proceeds of their crimes.
6. Especially in the cultural sector, the procedures of the requested legal system should be applying the imperative legislation of the origin country, at least to the extent not contrary to fundamental principles or basic rules of the legal system of the requested State, at least when evaluating all the subjective elements (intent, good or bad faith, due diligence, etc.) of the case. And the establishment of such a standard is, by implication, envisaged by the above-mentioned "Guidelines" for crime prevention and criminal justices responses.
7. Preventative cooperation should be effectively implemented to try to solve cultural goods trafficking challenging those regions.

24

A Permanent International Art Crime Tribunal?

Judge Arthur Tompkins

Introduction

In an article arguing for the return of the Parthenon marbles, Christopher Hitchens asserted, in response to the oft-made argument that return of the sculptures presently held in the British Museum to Athens would set a precedent: “There is in existence no court or authority to which appeals on precedent can be made.”¹

In early 2014, the German Federal government, in response to the discovery of a hoarded collection of potentially looted or misappropriated art, announced the creation of a multi-national Task Force, to assist in determining the provenance of the works apparently assembled during and after World War II by Hildebrandt Gurlitt, a Nazi-era art dealer, and bequeathed secretly to his son, Cornelius.² That proto-Tribunal was not able to progress its work much before Herr Gurlitt’s death, in early May 2014, at which point it was revealed that he had unexpectedly left his entire collection to the Kunstmuseum Bern, in Switzerland. As at the date of writing, the Kunstmuseum Bern is pondering whether to accept the bequest, freighted as it is with “very many not only legal but particularly ethical issues.”³

This essay argues for the creation of a Permanent International Art Crime Tribunal to function as the kind of court noted as presently absent by Hitchens, that would carry out, among other tasks, the kind of work that would and should have been done by the Gurlitt Task Force, and which, the author believes, should now be undertaken by the Kunstmuseum Bern.

Such a tribunal could be an important contemporary support for the contribution art, both ancient and modern, makes to civilization, and

This chapter is an edited and expanded version of an address delivered to the inaugural Art Crime Conference, sponsored by the Association for Research into Crimes against Art (www.artcrimeresearch.org) held at Amelia, Italy, on 11 July 2009; and subsequently published in ARCA’s *The Journal of Art Crime* 2.1(2009): pp. 35–41. Unless otherwise noted, all Internet resources were accessed on 26 February 2014.

a potential route to the righting of injustices, some of which are long-standing, but still remembered and keenly felt. It could be one response, albeit initially muted but, as the tribunal's jurisdiction develops and matures, potentially more potent, to the frustrations, delays, costs (both financial and emotional), and uncertainties unavoidably involved in protracted litigation in national courts, to recover stolen, looted or illicitly obtained art and items of cultural, heritage or historical significance, where such litigation often occurs far removed in both time and place from where the object was first created, stolen or misappropriated.

Over the years,⁴ UNESCO's 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,⁵ the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects,⁶ and other such international agreements have sought to establish underlying principles, and a framework for united and consistent action by independent sovereign states in this area. A series of international gatherings have similarly highlighted related Holocaust era problems and worked toward solutions: examples are the 1997 London Conference on Nazi-Looted Gold, the 1998 Washington Conference on Holocaust Era Assets (which resulted in the Washington Principles),⁷ the January 2000 Stockholm Declaration,⁸ and the October 2000 Vilnius Conference on Cultural Property.⁹ In this context, the Terezin Declaration, issued by the 46 countries gathered in Prague for the Holocaust Era Assets Conference in July 2009,¹⁰ urged:

... all stakeholders to ensure that their legal systems or alternative processes... facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties. Governments should consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.

The creation of a Permanent International Art Crime Tribunal, proposed here as a way to address these and other deficiencies, is not a new idea¹¹ but, as has been argued elsewhere,¹² a number of developments have now come together which may herald sufficient changes in the legal landscape so as to make it both possible and desirable. Owen Pell, in the opening section of his call for such a tribunal, and referring to the Nazi genocide of the Jews in World War II and the associated very extensive program of orchestrated looting of art, commented:

The results of that genocide have never been completely addressed with respect to art looted or stolen by the Nazis. The subject is a peculiarly [an]

international one. As noted, looted art often was dispersed. In addition, as it has developed since World War II, international law appears to support the return of looted art, but provides no forum or clear remedies to aggrieved claimants.¹³

Those words were written in 1999. A decade later, Stuart Eizenstat, opening the Plenary Session of the 2009 Prague Holocaust Era Assets Conference, commented:

While there has been some progress in the way the art market functions and some important artworks have been returned, there have also been some areas where there has been only minimal progress, or no change at all. Large gaps remain between the Washington Principles and the current reality. It is high time that all states here fulfill the promise of the Washington Principles... Too few people have recovered too few of their Nazi-looted art works and too many works remain in museums in Europe and around the world.¹⁴

The discovery of the Gurlitt hoard, and the controversy that it triggered when the discovery was belatedly revealed in the German media,¹⁵ serves to highlight that exactly these issues remain unsolved and, in part, unaddressed. What is now needed to bridge the gulf between the islands of excellence that exist amid a sea of indifference or resistance, is a sufficient consensus of political will and a tangible manifestation of that collective will.

Background

Art crime is very big business. Although detailed evidence of the actual size of global illicit art trade is hard to come by,¹⁶ a number of the essays collected in *Art and Crime: Exploring the Dark Side of the Art World* (Praeger 2009) discuss various aspects of that global business. Of particular concern is the link between such crimes and the drugs and arms trades.¹⁷ Art crime is no respecter of national boundaries and often national legal systems, fundamentally based as they inevitably are on the concept of a stand-alone sovereign nation state, struggle equitably to deal with the problems created when, as so often happens, stolen artworks re-emerge far removed in time, place and circumstance from the place and date of its theft.

Commentators have described the present state of the relevant laws in different nations that deal with this issue as “chaotic” and “universally unattractive.”¹⁸ That is hardly surprising, given the variety of sources that underpin modern national legal systems – the common law, the Napoleonic Code, the wider civil law, and other foundation sources such as Islamic Law (Sharia Law). Most national legal systems have grown in an incremental fashion from systems developed when international criminal law was

either non-existent, or very limited in its scope and application. As a result, consistency of approach or outcome is now conspicuous by its absence.

If resolution of the issues which arise in international art theft cases, in all their myriad forms and circumstances, is left to domestic or internal resolution by local legal systems, then inevitably inconsistencies will arise from what are essentially accidents of circumstance and history stemming from the sometimes random or arbitrary, often decades later, re-emergence of stolen art often in a country unrelated to the work's origin, prior place of residence, or prior ownership. The most frequently cited problematic issues are the variance of ways in which different legal systems resolve the competing interests of, on the one hand, the original owner (or the descendants of the original owner) and, on the other hand, an honest purchaser who, often many years after the theft and in a different country, has paid a fair market price for the artwork without knowledge that it was stolen,¹⁹ and secondly, widely varying local Limitation Act laws.²⁰

There are no objectively "right" answers to those problems. Different legal systems approach them differently. Some, mainly common law countries, take the view that a thief can give no better title to a subsequent purchaser than the thief had, and that the original owner's title should always prevail. Others, mainly civil law countries, impose time limits on the innocent purchaser's vulnerability to challenge, or impose varying obligations of diligence on the deprived owner.

The results of such contests often are reached only after a long, tortuous, expensive and emotionally draining process. This is well-illustrated by the protracted journey of Gustav Klimt's luminous portraits of Adele Bloch-Bauer. The decades-long dispute over these portraits, together with others owned originally by Ferdinand Bloch and his wife Adele Bloch-Bauer, involved the Austrian national courts, the United States courts all the way to the United States' Supreme Court, and finally an Arbitration Panel agreed to by both sides. Some 65 years passed between the unlawful forfeiture to the Austrian Gallery in 1941, and the return of the paintings to Maria Altmann in early 2006.²¹

The time is right for a solution

An appropriately Gordian solution,²² to avoid such drawn-out tales in the future, is the establishment, by international treaty, of a Permanent International Art Crime Tribunal to resolve international disputes relating to stolen, looted or misappropriated works of art and items of cultural, heritage or historical significance. Thus will be avoided localized legal differences, parochial or national political influences, and inconsistencies of result and enforcement.

International law has now matured to the point where international tribunals of varying kinds are now a permanent feature of the international legal landscape. Tribunals, or institutions comparable to what is proposed,

now exist and function in a wide variety of areas, and much can and should be learned from the processes by which they came into existence – there is no need to reinvent the wheel. Some examples are the International Criminal Court,²³ the ad hoc War Crimes Tribunals,²⁴ the Dispute Resolution Process of the World Trade Organization,²⁵ the International Commission for Missing Persons (ICMP),²⁶ and the World Anti-Doping Agency.²⁷ Those examples are chosen to illustrate not only the breadth of the areas where such international tribunals can operate – war crimes and crimes against humanity, trade, disaster victim identification, international sport – but also the variety of ways in which they can be brought into being. The International Criminal Court is based on an international treaty,²⁸ the ad hoc tribunals were established by the United Nations,²⁹ and the World Trade Organization's dispute resolution process is a consensus-based set of processes founded on ongoing multilateral trade agreements.³⁰ The ICMP is an independent commission established at the initiative of U.S. President Clinton in 1996 at the G-7 Summit in Lyon, France, established to support the Dayton Peace Agreement, which ended the conflicts in Bosnia and Herzegovina,³¹ and the World Anti-Doping Agency is a Swiss private law foundation, established by the Lausanne Declaration on Doping in Sport, which resulted from the International Olympic Committee's World Conference on Doping in Sport held in Lausanne in February 1999.³²

So, the establishment of such international tribunals is not novel. It can be done. It is, perhaps, unlikely to be a quick process. By way of example, it took about 70 years for the International Criminal Court to come into being. In the period following the end of World War I, a number of attempts to establish international criminal institutions all failed. Following World War II, the Nuremberg and Tokyo Tribunals were established and operated. There then followed about 40 years when, in a sporadic fashion, work was carried out on developing a system of international criminal law and drafting what ultimately became the Statute of the International Criminal Court. The early 1990s saw the establishment of the ad hoc tribunals for the former Yugoslavia, Rwanda, and following those, for Sierra Leone and Cambodia. Finally, in 1998 the statute establishing the International Criminal Court was adopted in Rome, and that court began sitting in 2003.³³

It may not happen overnight. But it will be worth the time and the effort.

Proposed functions

What might the Permanent International Art Crime Tribunal do? Clearly, one of its primary functions would be to rule definitively on rights of ownership and possession in relation to disputed works of art, or items of cultural, heritage or historical significance, such as are appropriately brought before it for resolution. In so doing, it would develop its own jurisprudence relating to the legal and other issues that will inevitably arise. In reaching those decisions it would likely receive not only submissions or

arguments from the directly affected (and contesting) parties, but also views and arguments from independently interested parties, such as institutions, non-governmental organizations, and private companies and individuals. That much is unremarkable.

However, such a tribunal could do more than simply act as an adjudicative tribunal imposing a solution on the parties who appear before it, within the confines of the Tribunal's jurisdiction and the parameters of the forms of relief available to it. Three main additional but overlapping functions are here envisaged – there are likely to be others.

The first is that it could act as a central repository of information, and a physical home and catalyst for research and education. This function would build on and enhance the kind of work that entities such as the Association for Research into Crimes against Art already do. International institutions often perform functions supplementary to their main or central role. For example, the ICMP has become a leader in developing innovative forensic DNA techniques, processes and protocols that are used around the world when specialist skills are required to identify victims of natural and other disasters.

Secondly, the Permanent International Art Crime Tribunal could, and should, act as a central repository, or a clearinghouse for stolen art registries. There are a variety of stolen art databases already in existence around the world. Examples include Interpol's Stolen Works of Art database, available online to authorized users.³⁴ The FBI's Art Theft Program similarly maintains a National Stolen Art File.³⁵ The Art Loss Register,³⁶ a large private database, operates on a commercial model.

However, none of these databases can claim to be comprehensive. In addition, a number of the larger databases presently limit public access. Maybe comprehensibility is an unattainable goal, but it is nevertheless a worthwhile one, and a central clearinghouse of the kind envisaged may well be able to overcome the obstacles of distance, language, differing formats and proliferation by, for instance, instituting universally accepted stolen art database protocols so as to develop and operate one central registry where provenance could be properly and confidently queried.³⁷

The last function envisaged for the tribunal would be to act as "neutral ground" where, short of formal adjudication, disputes between parties could be mediated or otherwise solutions found by the parties themselves, rather than having solutions imposed on them by the tribunal whose ability to craft creative solutions will necessarily be limited by procedural and jurisdictional constraints. The idea of attaching mediation or other alternative dispute resolution services to a court or tribunal is not novel. It happens frequently around the world, and under the umbrella of existing international institutions. In the context of the World Trade Organization Dispute Settlement Body, for example, resolution of disputes by consultation, rather than judgment, is the primary goal. Resolving a dispute by a binding

determination is seen as a last resort, and countries are encouraged to settle disputes themselves. Negotiation, conciliation, mediation, and expert review are available and encouraged at all stages of a dispute.³⁸

The encouragement of such alternative dispute resolution processes operating in parallel, or as an adjunct to a formal adjudicative structure is a recognition of the fact that a civilized community should not only provide a dispute resolution mechanism involving adjudication to which its citizens have free access, but should also facilitate the resolution of those disputes by other methods short of traditional judgment. The international art community is no different.

Moral and legal considerations

This author has argued that the just resolution of difficult disputes arising from looted art and other forms of art crime require not only that the tribunal be empowered and required to determine such disputes in accordance with legal principles, but also that the moral arguments involved must also be considered:

The [proposed International Art Crime] tribunal should be entrusted with the task of resolving the fate of each work of art, not only by deciding the historical and legal claims to it, but also by explicitly evaluating, and giving equal weight to, the moral claim of the claimant. This is crucial. In the past claims to art looted in wartime have been undermined or destroyed by insufficient legal evidence to establish prior ownership, even though the moral claim for return of looted art is clear.³⁹

Such an approach is not new. The Spoliation Advisory Panel, established in the United Kingdom in February 2000 to resolve claims to Nazi-era objects within the UK's national collections, is expressly mandated, by Article 6 of its Constitution,⁴⁰ to adopt such an approach, and that it has successfully done just that is amply reflected in the Panel's published decisions.⁴¹

Conclusion

Not addressed above are the thorny and intensely practical issues of the way in which the required international treaty might be initiated, drafted or negotiated, the terms of such a treaty, or indeed the practicalities of the operation of the proposed tribunal. Matters such as jurisdictional parameters, detailed rules of procedure, and crucial matters such as financing, resourcing, and the locating of the tribunal's physical home are all important issues which will require extensive research, debate and resolution. In addition, determination, or perhaps a mechanism allowing for determination, it will adopt to fundamental questions such as the bona fide purchaser versus the

original owner issue, the limitation period issue, and others. These will all need to be settled.

Much has been done in a variety of contexts and most particularly and most valuably in the area of Nazi-looted art, to address some of those issues already. But the world's practical response to international art crime is still uneven and uncoordinated. Between the goal of consistent, effective action and the harsh realities of the present fragmented response lie the daunting hurdles erected by national, institutional and private self-interest, entrenched attitudes, the complexities of conflicting legal systems, and, inevitably, deficits of funds, resources, research and information. Despite that there are, for those who care to see, scattered signs of the beginnings of the maturing of the study of international art crime, and a willingness to address, substantively and effectively, its far-reaching consequences. A Permanent International Art Crime Tribunal would provide a sure foundation on which the international response to these challenges could both find a permanent home, and flourish.

Notes

1. Hitchens, C. "The lovely stones," *Vanity Fair*, July 2009, pp. 44–47. Mr. Hitchens earlier expanded on his response to this and other arguments in his book, *The Parthenon Marbles: The Case for Reunification* (2008).
2. *The New York Times*, 28 January 2014: http://artsbeat.blogs.nytimes.com/2014/01/28/authorities-name-the-rest-of-task-force-on-seized-german-art/?_php=true&_type=blogs&emc=edit_tnt_20140128&intemail=0=y&_r=0.
3. Correspondence from Kunstmuseum Bern to the author, 14 July 2014.
4. See generally the collection of research, commentary and documents in E. Simpson (ed.) *The Spoils of War* (1997).
5. Available at http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.
6. Available at <http://www.unidroit.org/instruments/cultural-property/1995-convention>.
7. Available at <http://www.state.gov/p/eur/rt/hlcst/122038.htm>.
8. See <http://www.hmd.org.uk/page/stockholm-declaration>.
9. The website for the Vilnius International Forum on Holocaust Era Looted Cultural Assets apparently no longer exists, but the Forum's Declaration can be found at <http://www.lootedart.com/MFV7EE39608>.
10. The website for the Prague Holocaust Era Assets Conference is <http://www.holocausteraassets.eu>; Some materials are gathered at <http://www.state.gov/p/eur/rt/hlcst/c32073.htm>.
11. Such proposals have been advanced before, particularly in relation to Nazi-era looted art: J.A. Kreder. (2007) "Reconciling individual and group justice with the need for repose in Nazi-Looted art disputes: Creation of an international tribunal," *Brooklyn Law Review* 73, 155, available at: http://works.bepress.com/jennifer_kreder/1; B.E. Pollock. (2006) "Out of the night and fog: Permitting litigation to prompt an international resolution of Nazi-Looted art claims," *Houston*

- Law Review* 43, 193; O.C. Pell. "The potential for a mediation/arbitration commission to resolve disputes relating to artworks stolen or looted during World War II" (1999–2000) *Journal of Art and Entertainment Law and Policy* 10, 27.
12. A. Tompkins. "Art theft: Heralds of change in the international legal landscape," in ed.N. Charney. *Art Crime: Exploring the Dark Side of the Art World* (2009).
 13. Pell, *supra*, n.9, at 28.
 14. Available at <http://www.state.gov/p/eur/rls/rm/2009/126158.htm>.
 15. See for example the articles assembled at http://www.spiegel.de/international/topic/munich_art_trove/.
 16. Interpol formerly stated on its website (<http://www.interpol.int/Public/WorkOfArt/Default.asp>): "The illicit trade in cultural objects is sustained by the demand from the arts market, the opening of borders, the improvement in transport systems and the political instability of certain countries. It is difficult to gauge the extent of the trade for two reasons, the theft is very often not discovered until the stolen objects are found on the official arts market, and countries send very little information to INTERPOL and many do not keep statistics on this type of criminality." The second sentence from this quotation is now not to be found on the Interpol website.
 17. See, for example, the discussion of the links between stolen art, money and drugs (plus, for good measure, diamonds) in M. Hart (2005). *The Irish Game*, particularly at pp. 144–146; the FBI's Law Enforcement Bulletin for March 2012 at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march-2012/protecting-cultural-heritage-from-art-theft>.
 18. P. Reyhan. (2001). "A chaotic palette: Conflict of laws in litigation between original owners and good-faith purchasers of stolen art." *Duke Law Journal* 955, at 955 and 962.
 19. See, for example, M.I. Turner. (1999). "The innocent buyer of art looted during World War II" *Vanderbilt Journal of Transnational Law* 32(5), 1511.
 20. "Overcoming a good-faith purchaser's statute of limitations defence is often the owner's most significant hurdle." R.S. Kaufman. *Art Law Handbook* (2000), 286, paragraph 5.01.
 21. The US Supreme Court's decision in *Republic of Austria -v- Altmann* 541 U.S. 677 (2004) is available at <http://supreme.justia.com/cases/federal/us/541/03-13/>; see also Pollock, *supra* n.9, at pp. 209–212. The story is told Anne-Marie O'Connor's (2012) *The Lady in Gold: The Extraordinary Tale of Gustav Klimt's Masterpiece, Portrait of Adele Bloch-Bauer* (Knopf).
 22. Shakespeare, *Henry V*, Act 1 Scene i. 45–47: "Turn him to any cause of policy, The Gordian Knot of it he will unloose"; *Cymbeline*, Act II Scene ii. 34: "As slippery as the Gordian-knot was hard."
 23. <http://www.icc-cpi.int>.
 24. Primarily, the International Criminal Tribunal for the former Yugoslavia (<http://www.icty.org>); the International Criminal Tribunal for Rwanda (<http://www.ictcr.org>); the Special Court for Sierra Leone (<http://www.sc-sl.org>); and the Extraordinary Chambers in the Courts of Cambodia (<http://www.eccc.gov.kh/en>).
 25. <http://www.wto.org>.
 26. <http://www.ic-mp.org>.
 27. <http://www.wada-ama.org/en>.
 28. The Rome Treaty, available at <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>.

29. Or, in the case of the Cambodian Tribunal, by agreement between the United Nations and the Royal Government of Cambodia: see http://www.unakrt-online.org/01_home.htm.
30. "Understanding on Rules and Procedures Governing the Settlement of Disputes" is available at http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#Understanding.
31. <http://www.ic-mp.org/about-icmp>.
32. See <http://www.wada-ama.org/en/About-WADA/History/WADA-History/>.
33. For a condensed overview of the events summarized in this paragraph, see A. Cassese, P. Gaeta and J.R.W.D. Jones. (2002). *The Rome Statute of the International Criminal Court: A Commentary*. Vol. I, 3–19.
34. As noted at <http://www.interpol.int/Crime-areas/Works-of-art/Works-of-art>.
35. <http://www.fbi.gov/hq/cid/arttheft/arttheft.htm>.
36. <http://www.artloss.com>.
37. An analogous example of the way in which a centralized clearinghouse can, by utilizing agreed protocols, overcome such obstacles is the DNA Gateway developed and operated by Interpol: <http://www.interpol.int/Public/Forensic/DNA/Default.asp>. Forensic DNA profiles can be compared across international borders using Interpol's DNA Gateway.
38. See, for example, http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm. Care must be taken, however, not to exacerbate disputes by creating a 'better' dispute resolution system: see Alter, K. "Resolving or Exacerbating Disputes: The WTO's New Dispute Resolution Mechanism," A Paper Presented at the Annual Meeting of the American Political Science Association, Chicago, IL, 2 September 2004, and available at http://citation.allacademic.com/meta/p_mla_apa_research_citation/0/5/9/8/8/p59884_index.html.
39. Letter to *The Economist Newspaper*, 7 December 2013: <http://www.economist.com/news/letters/21591148-puerto-rico-climate-change-economics-fred-sanger-stolen-art-jazz-obamacare-germany>.
40. Available at <http://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/UnitedKingdom/sapconstitution09.pdf>.
41. For example, in relation to Ruben's *The Coronation of the Virgin*: available at <https://www.gov.uk/government/publications/report-of-the-spoilation-advisory-panel-in-respect-of-an-oil-sketch-by-sir-peter-paul-rubens-the-coronation-of-the-virgin-now-in-the-possession-of-the-samuel-courtaultd-trust>. The Panel's Reports are available at <https://www.gov.uk/government/publications> under the Keyword filter 'Spoilation.'

25

Getting Governments to Cooperate against Looting: Insights from the American and British Experience

Asif Efrat

Introduction

In 1960, Mexico and Peru put the illicit antiquities trade on UNESCO's agenda and appealed for an international convention to address the problem,¹ marking the beginning of an intense international controversy. Archaeologically rich countries, mostly in the developing world, have attempted to stem the plunder of their archaeological sites through stringent control of the antiquities trade. By contrast, rich market countries have sought to keep that trade free, in order to enjoy its cultural and economic benefits.² This divergence of interests has hindered the UNESCO-led regulatory efforts against plunder, as manifested in the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter the 1970 UNESCO Convention). In the view of market countries, this convention was highly undesirable: it constrained art markets and imposed a bureaucratic burden – to the benefit of foreign countries that failed to protect their archaeological heritage.³ Indeed, market countries argued that the convention unjustifiably shifted the responsibility for suppressing the illicit antiquities trade – a responsibility that, in their opinion, rested primarily with the source countries.

And yet, market countries ultimately reversed their resistance to the UNESCO Convention and joined the efforts against looting. The United States was skeptical of UNESCO's endeavors throughout the 1960s, doubting the necessity and practicality of an international agreement. Soon after the 1970 adoption of the convention, however, the United States began the process of ratification and implementation. The British government maintained its opposition much longer. Only in 2002 did Britain accede to the convention which it had previously seen as “unrealistic and totally disproportionate to the end... which it is designed to achieve.”⁴

The decisions of the United States and Britain to join the UNESCO Convention were critical turning points in the international efforts against the looting of antiquities. Given their status as major markets, the two countries' endorsement of the convention was of practical and symbolic importance. It signaled their acknowledgment that antiquities markets bore certain responsibility for looting and should contribute to its prevention. Although the two decisions were far apart in temporal terms – separated by some three decades – they had much in common in terms of their underlying causes. Similar influences and circumstances brought the United States and Britain to reverse their liberal approach to the antiquities trade and to support UNESCO's regulatory efforts. By identifying and highlighting these similarities, this essay solves an intriguing puzzle: why would countries that had long resisted the efforts against looting choose to join these efforts? This question is of academic interest as well as practical importance. By understanding how long-standing skepticism of UNESCO's efforts turned into a willingness to cooperate, we may be able to facilitate other initiatives for the protection of cultural heritage.

I identify three key commonalities in the American and British experience. First, advocacy by archaeologists raised policymakers' awareness of the illicit antiquities trade, including the damage it caused and the art world's involvement. Second, highly publicized scandals revealed unethical behavior in the American and British art markets. These scandals generated public concern and convinced policymakers that government regulation was necessary. Third, both the U.S. and British governments established advisory panels in order to forge a consensus among all stakeholders. Most importantly, these panels allowed the two governments to obtain the dealers' approval for the regulatory measures, an approval that was deemed essential. This essay examines these similarities in order, and concludes with an important distinction: divergent bureaucratic attitudes explain why the U.S. government has ultimately been more vigorous in its efforts against the illicit antiquities trade than has the British government.

The beginning: American and British resistance to UNESCO's efforts

During the interwar period, American and British opposition thwarted the League of Nations' effort to regulate the movement of cultural objects – an effort inspired by the destruction of such objects in World War I as well as an increasing illicit trade.⁵ The subject reappeared on the international agenda in the 1960s. Booming demand and the opening up of previously inaccessible areas resulted in unprecedented levels of looting, and developing countries asked UNESCO to fashion a response. Once again, the United States and Britain expressed serious concerns and reservations about the international protection of cultural objects. Specifically, the two countries

were reluctant to establish import controls that would compensate for source countries' failure to enforce their export controls. In 1963, UNESCO proposed a recommendation stipulating that "[a]ll imports of cultural property from another State should be subject to control."⁶ Britain responded with the assertion that "[t]he burden of control should not be shifted to the importing countries."⁷ Similarly, the United States criticized the draft recommendation as "unworkable" and doubted "the practicability of controlling illicit traffic in cultural property at the international level." The U.S. position was "that the problem of illicit traffic of cultural property cannot best be solved through an international agreement." Rather, it was the responsibility of source countries "to control the export from their territory of materials which they believe should be retained."⁸ Despite these objections, the 1964 recommendation prohibited the import of cultural property, unless cleared from any restrictions imposed by the exporting state.⁹

The next step was to establish a legally binding agreement. American and British non-enthusiasm greeted the draft convention put forth by UNESCO in 1969. Britain indicated that it "could not adhere to a Convention on the lines of the present draft, which conflicts at so many points with the well-established principles on which the subject is dealt with in this country."¹⁰ The United States suggested that UNESCO's efforts should not only aim to suppress the illicit trade, but also promote legitimate "international movement, exhibit, and study of artifacts and art objects of cultural importance." In the American view, an obligation on importing countries to enforce foreign export controls undermined the legitimate trade and imposed a heavy administrative burden. Given the difficulties presented by the draft convention, the United States concluded "consideration should be given to alternative arrangements for international cooperation."¹¹

Throughout the 1960s, the United States and Britain were skeptical of UNESCO's efforts against looting. From that point, however, their trajectories diverged. An American delegation attended the April 1970 meeting of governmental experts that negotiated the final text of the UNESCO Convention. The United States played a key role in the negotiations and soon thereafter launched the process of ratification and implementation. By contrast, Britain declined to attend the 1970 negotiations. In the three decades that followed, the British government kept insisting that the UNESCO Convention was onerous and impractical and that source countries should exercise the responsibility for controlling antiquities.¹² As late as February 2000, the government announced that it would not join the convention "because significant practical difficulties remain in implementing its provisions into UK law."¹³ Yet in August 2002, Britain joined the convention it had long rejected.

As described above, both the United States and Britain initially judged the UNESCO Convention to be inconsistent with their interests. The two countries believed that the convention would harm their art markets and impose

a heavy bureaucratic burden, while yielding little benefit in return. What, then, led the U.S. and British governments to reverse course in the early 1970s and early 2000s, respectively? Three key factors triggered and facilitated the change of policy: the advocacy of archaeologists; public scandals; and advisory panels that brought together the major stakeholders and forged a compromise.

Archaeologists' advocacy

American and British archaeologists played a major role in bringing their governments to join the international efforts against the illicit antiquities trade. The archaeologists raised awareness of the problem of plunder and the complicity of art markets. They called for ratification of the UNESCO Convention and imposition of controls on antiquities.

United States

The initial American interest in the problem of looted antiquities can be attributed to a single archaeologist: Clemency Coggins. As a doctoral student of pre-Columbian art and archaeology at Harvard University, Coggins published in 1969 an article entitled, "Illicit Traffic of Pre-Columbian Antiquities" in *Art Journal*.¹⁴ The article documented the illicit removal and export of stelae from archaeological sites in Guatemala and Mexico. Coggins explained how looters had been cutting the large stones into small pieces, which were then sold separately. While not the first account of archaeological plunder, the article was groundbreaking in the amount of attention it generated in policy circles. This political impact, however, was unintended. Coggins's goal was to make museums aware of the dubious source of the antiquities they had been acquiring.¹⁵ Why, then, did the article resonate so strongly with policymakers? The key to the article's policy impact was a two-page fine-print list of specific looted items that came to rest in the collections of major American museums. The detailed information dramatized the problem and cast the breaking-into-pieces of monuments in tangible terms that were difficult to dismiss. Most importantly, by identifying museums as the beneficiaries of looting, Coggins ended their pretense of non-involvement with the illicit antiquities trade. Respectable American institutions, it was now evident, were directly tied to the destruction and theft of archaeology abroad.¹⁶

In additional publications in the early 1970s, Coggins sought to reach a broad audience, outside the scholarly and museum communities. The establishment of the UNESCO Convention in 1970 made looted antiquities a policy issue, and educating policymakers was imperative. In articles published in *Smithsonian* and *Science*, Coggins repeated the charge against the U.S. art world in stronger terms, arguing that archaeological "plunder has

been financed by the international art market, by collectors, and by most museums." She explained the motivations of the actors involved: the looter who is desperate for money to buy food; the art dealer who "has tempted the digger to destroy a part of his own past in order to offer" antiquities for sale, while at the same time enticing collectors to buy those antiquities and presenting them as a wise investment; collectors who see antiquities as beautiful objects or as manifestations of their own wealth; and American museums, whose educational aspirations resulted in "omnivorous" behavior and the acquisition of looted material. Coggins argued that a looted antiquity is devoid of historical meaning and can only be "beautiful but dumb."¹⁷

Other archaeologists and archaeological associations, concerned about the plunder of antiquities and the role played by the U.S. art market, joined Coggins in educating policymakers about the problem and demanding American action against it. In December 1970, a month after UNESCO adopted the convention, the Archaeological Institute of America (AIA) issued a resolution expressing wholehearted support for that agreement and urging its earliest possible ratification by the United States; the Society for American Archaeology expressed similar support in 1971.¹⁸ The Senate gave its advice and consents to ratification in August 1972, yet the process of enacting legislation to implement the convention stalled. That legislation was the subject of a fierce political battle throughout the 1970s and early 1980s, as antiquities dealers and art museums tried to weaken the legislation or altogether prevent its passage.¹⁹ The archaeological community sought to counter these pressures and convince Congress to implement the convention. Having witnessed archaeological destruction in Turkey and Iran, archaeologist Oscar Muscarella argued before Congress that the art market's demand is the culprit: "numerous antiquities, the great majority, reach the West because of the conscious looting both encouraged and financed by dealers and their agents in the field. Every peasant in the world knows that dealers eagerly purchase antiquities, no matter how they are acquired, and they work vigorously to supply the never ending demand." Muscarella maintained that the United States should bear some of the responsibility for protecting mankind's archaeological heritage: "It is our ancient history, our heritage, we are discussing, and not merely the contents of tombs and mounds located in some far off land."²⁰ In their statements before Congress and in meetings with and letters to legislators, the archaeologists argued that the United States should fulfill its responsibility by implementing the UNESCO Convention: "an important first step toward redressing a cultural and economic drain the United States has long imposed on many of these countries."²¹ The archaeologists further argued that implementation of the UNESCO Convention would curb the loss of historical knowledge that was looting's result – looting motivated by market demand for antiquities.²² As the legislative process slowly progressed, the archaeologists protested the delays as well as

the revisions of the implementing legislation to accommodate the dealers' demands. They also sought to refute the claims that the dealers had made in opposition of the legislation. In particular, the archaeologists countered the argument that the United States should only restrict import of antiquities in concert with other market countries, but not alone. The archaeologists insisted that the United States should act unilaterally, assert leadership, and set an example for additional countries to follow.²³

The archaeologists' continued pressure contributed to the successful, if belated, completion of the legislative process: the Convention on Cultural Property Implementation Act (CPIA) was signed into law in January 1983, allowing the United States to officially become a party to the UNESCO Convention. As I discuss below, the American participation in the convention was not only the product of the archaeologists' advocacy efforts; additional influences contributed to the United States' decision to join UNESCO's efforts. Yet the archaeologists did play a major role in placing the problem of looting on the national agenda. They educated policymakers about the consequences of archaeological plunder, the art market's complicity, and the necessity of a U.S. response. Their advocacy in favor of the UNESCO Convention was an important influence on the American decision to block the import of looted antiquities. The CPIA authorizes the establishment of import restrictions through bilateral agreements or on an emergency basis; to be imported into the United States, archaeological material that is subject to restrictions must be accompanied by documentation certifying the legality of export.

Britain

Whereas archaeological plunder became a political issue in the United States in the early 1970s, the same occurred in Britain only three decades later. This had to do with the fact that Latin America was the main target of looting early on. As the main market for pre-Columbian antiquities, the United States had greater responsibility for the looting than Britain, where pre-Columbian archaeology had a smaller presence. Yet the expanding scale and geographical scope of archaeological plunder in the 1990s motivated Britain's archaeologists to take political action. Like their American counterparts, they had a key role in placing the illicit antiquities trade on the national agenda and urging participation in UNESCO's efforts. Colin Renfrew, a prominent archaeologist and a member of the House of Lords, had long rebuked the London art market as a center of trade in looted antiquities; he also criticized the British government, denouncing the freedom to import looted material as a "thieves' kitchen" and calling the British rejection of the UNESCO Convention "a scandal."²⁴ Over the years, Renfrew repeatedly brought up the issue in the House of Lords by posing questions, which the government had to answer.²⁵ David Gill and Christopher

Chippindale also raised awareness of the illicit antiquities trade. In seminal articles published in the *American Journal of Archaeology*, they documented the deleterious consequences of the looting fueled by antiquities collecting: destruction of the archaeological context and loss of historical knowledge.²⁶ These publications and others generated public awareness and concern; so did the activities of the Illicit Antiquities Research Centre.²⁷

The Centre was founded in 1997 under Renfrew's directorship at the University of Cambridge's McDonald Institute for Archaeological Research. Through lectures, conferences, exhibitions, and publications, the Centre worked to "raise public awareness of the problems caused by this trade [in looted antiquities] and seek appropriate national and international legislation... to place restraint upon it."²⁸ In 2000, the Centre released its most influential publication: a report entitled *Stealing History: The Illicit Trade in Cultural Material*. Commissioned by the UK's Museums Association, *Stealing History* analyzed the causes and consequences of the illicit trade in antiquities as well as the involvement of the British art market. The report suggested that the vast majority of antiquities sold in London were without provenance and that these antiquities were likely looted. The report also contained specific policy recommendations for museums and for the government. Importantly, *Stealing History* urged the British government to ratify the 1970 UNESCO Convention and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereafter the UNIDROIT Convention). Ratification of the two conventions, the report suggested, would "prevent the United Kingdom [from] being used as a market place for material which was, in the first instance, obtained illegally." The report repudiated the argument that the ratification of the UNESCO Convention would harm the London art market. Rather, it was argued that elimination of the illicit trade may, in fact, improve the market's reputation. "By failing to ratify," the authors warned, "it can be argued that the United Kingdom condones criminal behaviour abroad."²⁹

Like Clemency Coggins's article in *Art Journal* three decades earlier, *Stealing History* had a policy impact. Both publications brought attention to the illicit antiquities trade and raised awareness of looting outside the archaeological community. Both publications linked the plunder of antiquities in developing countries to art markets in rich countries and argued that the United States and Britain should do their part to address the problem. *Stealing History's* comprehensiveness made it a useful source of data and specific recommendations that policymakers could draw on. The Illicit Trade Advisory Panel, discussed below, indeed made use of this report. Yet in order to understand why archaeologists' publications managed to achieve a policy impact, one has to take into account the public atmosphere that grew increasingly concerned of the art market's practices. Policymakers were open to persuasion by archaeologists following a series of scandals that exposed the unethical behavior of the art community.

Public scandals

In both the United States and Britain, highly publicized scandals revealed the involvement of esteemed institutions and individuals with looted objects. The embarrassing revelations made policymakers realize that absence of art-market regulation had detrimental consequences and that a policy change was necessary.

United States

Several scandals in the late 1960s and early 1970s revealed that American museums had been acquiring plundered material. Two of the most notable affairs involved the Metropolitan Museum of Art. In the first case, the Metropolitan acted responsibly. In 1968, the museum was offered the façade of a Mayan temple plundered from Mexico. Parts of the façade had arrived at the museum, but the museum ultimately declined the acquisition, and the façade returned to Mexico.³⁰ But only a few years later, in 1972, the Metropolitan chose to acquire an object that turned out to be looted: a Greek vase known as the Euphronios krater. The museum was vague about the krater's origin. The official story was that the vase had been in a private family collection *circa* World War I and that the owner's identity had to remain confidential. Appearing on NBC's *Today* show in November 1972, the director of the Metropolitan, Thomas Hoving, made claims to that effect. Yet three months later *The New York Times* published a different account, suggesting that the krater had been robbed from a tomb in Italy in 1971. The Italian authorities made a similar charge. Their investigation revealed that the robbed vase had passed through several convicted dealers before it was sold to the Metropolitan. The museum, however, vigorously defended the acquisition and rejected the tomb-robbing story. Only in 2008 did the Metropolitan return the vase to Italy.³¹

Additional scandals brought public attention to the unethical conduct of the U.S. art market. In several cases, antiquities illegally removed from Turkey turned up in American museums, prompting angry responses of the Turkish government and demands for return. These included Byzantine silver objects acquired by Dumbarton Oaks in 1963 (the "Sion Treasure"); a collection of Lydian objects that the Metropolitan bought between 1966 and 1968 (the "Lydian Hoard"); and pieces of gold jewelry bought by Boston's Museum of Fine Arts (MFA) for its 1970 centenary celebration.³² Another acquisition for that celebration triggered a major scandal: the 1969 purchase of an unknown portrait by Raphael. The MFA argued that the painting had been bought in Switzerland from an old European collection, yet Italian authorities revealed an altogether different story. The museum apparently purchased the painting in Genoa; it was smuggled from Italy; and the seller was a criminally convicted dealer who had been barred from dealing art.

Furthermore, U.S. Customs found that the museum had not declared the painting when bringing it to the United States. The portrait was seized by customs and returned to Italy.³³

Several other incidents deserve mention.

- In 1965 it was revealed that stelae stolen from Guatemala were exhibited at the Brooklyn Museum and the Museum of Primitive Art. After prolonged negotiations, the Brooklyn Museum returned the stela, and the Primitive Art Museum kept the stela as a long-term loan.
- The Afo-A-Kom – a sacred wooden statue stolen from Cameroon in 1966 – appeared at a 1973 Dartmouth College exhibition. The College had received the object on loan from a New York art dealer who had obtained it from a Swiss dealer. Cameroon demanded the statue's return, and under pressure from the media and the State Department it was indeed returned shortly after its discovery at Dartmouth.
- In 1972, Californian collector Norton Simon bought a statue of dancing Shiva – the Sivapuram Nataraja – that had been stolen from a temple in India. The Indian government demanded the return of the object and pressured the Metropolitan to cancel an exhibition featuring it. A lawsuit filed by India was settled out of court.³⁴

The various scandals received wide coverage in the American and international press. They led to further journalistic inquiries into the U.S. art market and its involvement with looted antiquities. In 1973 *The New York Times* published a series of articles by Robert Reinhold on the plunder of Mayan archaeology.³⁵ That same year, Karl Meyer exposed the American art market's unethical norms in his book *The Plundered Past*. “[N]o one who makes even a cursory inquiry,” Meyer argued, “can doubt that the great majority of antiquities offered for sale are indeed smuggled goods.”³⁶

What was the impact of the media scandals and investigations? One response was within the museum community. Several museums – especially university museums – voluntarily adopted ethical acquisition policies. In April 1970, shortly before the UNESCO Convention negotiations, the University of Pennsylvania Museum announced it would only purchase antiquities accompanied by a pedigree, including information about the place of origin and the legality of export. In 1971, Harvard University prohibited the acquisition by its museums of illegally exported objects. Several other museums adopted similar policies.³⁷ These self-regulatory measures were intended to serve as precautions and as means to preserve the public trust in museums amid the scandals.

Yet the scandals heavily damaged museums' image and reputation and shook the public's confidence in them. Heretofore, museums were perceived as respectable institutions committed to high moral standards. The scandals,

however, revealed a reality in which museums were complicit in crime and in the destruction of cultural heritage. That reality shocked and embarrassed policymakers, making them sympathetic to the demands of archaeologists and foreign countries that the United States stop the import of looted antiquities. This was the case with Mark Feldman, the official most responsible for the U.S. policy shift. Then assistant legal advisor for inter-American affairs at the State Department, Feldman was introduced to the subject in 1969. A diplomatic note from Mexico requested that the United States assist in protecting Mexico's archaeological heritage in exchange for Mexico's cooperation in the return of stolen American cars. Influenced by the scandals and by the strong evidence that archaeologists provided, Feldman became convinced that the U.S. art market was a part of the problem: the acquisition of plundered antiquities provided an incentive for the looting of archaeological sites abroad. He therefore recommended that the United States reverse its traditional policies of free trade in antiquities and non-enforcement of foreign legislation. Instead, Feldman suggested that measures be taken to control the antiquities trade – measures that would help foreign countries to prevent the illegal excavation and export of their antiquities.³⁸ The State Department accepted this position, as did the Justice and Treasury Departments. The new position recognized that the responsibility for the protection of archaeology is to be shared between source countries and market countries. In 1970, Feldman expressed this view in his statement before the committee of governmental experts that negotiated the final text of the UNESCO Convention:

The cultural products of the civilization of man constitute an important element both of the national patrimony of the countries of origin and of the common heritage of all mankind. Thus, no country can be indifferent to clandestine activities that ravage the cultural heritage of another country. United States representatives have emphasized the importance of effective measures of prevention and control being taken by each country to safeguard its own cultural heritage, as no international approach can hope to be effective if determined local efforts are not made. The critical effort must be made at home. However, we recognize that there are limitations as to what any one country can do to meet this problem. We also recognize that the international art market does provide an inducement for exports that may aggravate the situation in certain countries. For these reasons the United States Government believes that measures of international cooperation should be taken to support the separate efforts of states to help create conditions in which irreplaceable cultural assets can be preserved for the benefit of the future generations of all countries.³⁹

The various scandals, in fact, had a dual effect. By raising awareness of the problem of looted antiquities and exposing the questionable norms

prevailing in the art market, the scandals convinced policymakers that “the U.S. art market is a major consumer of pillaged treasures;”⁴⁰ hence, “the United States has a responsibility to put its own house in order to the extent that the American art market is a major, if not the single most important, incentive for this despoliation.”⁴¹ Since the market, left to its own devices, was prone to unethical conduct, the U.S. government had to take regulatory action and prevent the import of looted antiquities. Beyond their impact on policymakers, however, the scandals moderated the art community’s resistance to regulation. In principle, antiquities dealers would have liked to maintain the traditional working of the art market based on the principle of free trade and without government control. Art museums held a similar preference.⁴² Yet amid the scandals and the growing public concern, the dealers realized that the status quo was no longer sustainable and that the introduction of regulation was inevitable. In this changing environment, they could not remain adamantly opposed to any regulatory measure: it was in their interest to act cooperatively and strike a compromise. By adopting a conciliatory approach and working toward a solution, the dealers reasoned, it may be possible to minimize the U.S. government’s interference with the antiquities trade. Such an approach, it was hoped, would also improve the art world’s public image that had been tarnished by the scandals. As I discuss below, the dealers’ pragmatism – while temporary – greatly facilitated the change of U.S. policy.

Britain

In the 1990s, several scandals shook the London art market. In terms of their effects, these scandals were similar to the incidents involving American museums in the 1960s and early 1970s. The scandals undermined the respectable image of the art market, called public attention to its questionable practices, and raised the need for governmental regulation.

In 1994, the Royal Academy of Arts exhibited antiquities from the collection of George Ortiz. That exhibition generated controversy, as most objects had no verifiable provenance, that is, information on their find-spot and ownership history. As Christopher Chippindale and David Gill showed in their detailed analysis, even when objects in the Ortiz collection had known provenances, these were “not necessarily archaeologically secure.” They also cast doubt on the belief, expressed by Ortiz and other collectors, that the majority of antiquities surfacing on the market were “chance finds”⁴³ (Gill and Chippindale 2000).

Another controversy occurred in 1995 over the Royal Academy’s exhibition *Africa: The Art of a Continent*. For the exhibition, the Academy decided to borrow collectors’ terracotta figurines that had been looted from Mali and Nigeria. Museums criticized the decision and demanded that the Academy receive the African governments’ approval for the display of the objects.

The issue received wide publicity, as it turned into a confrontation between the Royal Academy and the British Museum (Brodie, Doole and Watson 2000).⁴⁴ The Sevso Treasure was the subject of a third scandal. This collection of Roman silver objects, bought by the Marquis of Northampton, sparked a legal dispute in the early 1990s: before a U.S. court, both Croatia and Hungary claimed ownership. The involvement of an aristocrat with antiquities that might be looted garnered wide media attention (Riding 2006).⁴⁵

The most highly publicized scandal concerned Sotheby's involvement in the illicit antiquities trade, as exposed by Peter Watson on television and in his 1997 book. Based on documents provided by a former Sotheby's employee, Watson revealed that many of the unprovenanced antiquities sold by the reputable auction house in London had come from a Swiss dealer – Christian Boursaud – who acted as a “front” for the Italian dealer Giacomo Medici. Medici smuggled looted antiquities from Italy to Switzerland, a country whose loose regulation permitted the legal export of antiquities that had been plundered from the countries of origin. This allowed Sotheby's to argue that the antiquities had arrived in London legally. The immediate result of the exposé was investigations by the Italian and Swiss police, leading to Medici's trial and conviction, and to the discovery of thousands of antiquities in several warehouses in Geneva. Also found were a large number of photographs of antiquities that Medici had handled. More broadly, this scandal contradicted the conventional story about the origin of the antiquities sold in London (Watson 1997).⁴⁶ Dealers and auction houses typically argued that many unprovenanced antiquities came from old family collections or were found in attics.⁴⁷ The Sotheby's scandal, however, showed that many of those seemingly legitimate antiquities were, in fact, illegally excavated and exported.

As in the United States, the various scandals cracked the respectable image of the art market, generating public debate and concern. There was a growing recognition that the unethical behavior in the market was pervasive and that the market's self-regulation was insufficient: the problem required an official response that would deviate from the traditional *laissez-faire* approach to the antiquities trade. The scandals were particularly disconcerting for the Labor government that came to power in 1997. Upon assuming office, the new government committed to an ethical foreign policy (Wickham-Jones 2000),⁴⁸ one that was difficult to reconcile with British participation in the illicit antiquities trade. The government found the revelations of Britain's involvement in looting harmful to the national reputation; it wanted to reassure foreign countries that Britain would not knowingly be complicit in the plunder of antiquities. By taking measures against the illicit trade, the government meant to signal Britain's moral behavior and commitment to international cooperation. Labor's lesser dependence on business support

compared with its Conservative predecessor facilitated the introduction of art-market regulation.

The scandals had two additional effects that were also seen in the American case. First, the London dealers and auction houses moderated their opposition to government regulation and adopted a more cooperative position. They sought to protect their reputation, while at the same time guarding against a heavy regulatory burden.⁴⁹ Second, the Museums Association (MA) took a serious look at museums' acquisition policies and found that ethical policies had been adopted without procedures for implementation. To raise the awareness of museums and establish measures to prevent the acquisition of looted material, the MA commissioned the Illicit Antiquities Research Centre to produce a report. *Stealing History* was the result.⁵⁰

Advisory panels

In the United States in the early 1970s and in Britain in the late 1990s, conditions were ripe for reversing the long-standing liberal approach to the antiquities trade. Thanks to the archaeologists and the public scandals, policymakers decided to participate in the efforts for the protection of the cultural heritage. Yet both the U.S. and British governments recognized that the establishment of regulation required a consensus and compromise among all relevant stakeholders: archaeologists, museums, and dealers. The latter's approval was deemed particularly essential. Without the trade's consent, policymakers reasoned, any plan for introducing regulation would be doomed: the American and British dealers possessed political influence that would have allowed them to derail regulatory initiatives. Their cooperation thus had to be secured. The means to forge a consensus among the stakeholders and obtain the trade's support was the same in the United States and Britain: a government-initiated panel that issued policy recommendations. While the history of the efforts against looting is replete with examples of panels that had limited impact,⁵¹ the panels addressed here – domestic bodies that included all relevant stakeholders – have proven effective.

United States

In 1969, at the State Department's request, the American Society of International Law (ASIL) established a Panel on the International Movement of National Art Treasures (hereafter the ASIL Panel). The 22 members of the panel represented archaeologists, dealers, museums, collectors, and the State Department; experts in international law were included as well. The panel brought together rivals: Clemency Coggins, who led the charges against the

U.S. art market, and dealer André Emmerich, who represented that market, were both on the panel. Attorney William D. Rogers served as the panel's chair.

Through the ASIL Panel, the State Department gained support for a three-part program designed to control the movement of antiquities and prevent the import of looted material into the United States. The first measure was a bilateral treaty with Mexico for the recovery and return of stolen archaeological material, signed in July 1970.⁵² The second measure was a 1972 statute prohibiting the import of pre-Columbian monumental art that was illegally exported from Latin America.⁵³ But it was the third part of the program that was the most significant: American membership in the 1970 UNESCO Convention.

The ASIL Panel examined the drafts circulated by UNESCO in preparation for the negotiations of the convention. Influenced by the panel's advice, the State Department heavily criticized the drafts as "unacceptable" documents that sought to establish a "blank check system of import controls."⁵⁴ (Bator 1983) Yet on April 3, 1970, ten days before the start of the negotiations in Paris, the panel submitted to the Secretary of State a supportive resolution:

Members of the Panel are of the view that the Congress of the United States should adopt legislation to enable the President to prohibit importation into the United States of such archaeological, architectural and other artistic and historic works constituting an essential part of the national cultural heritage of the country of origin as the President may from time to time designate and as shall have been exported, after such designation, from the country of origin contrary to its laws.⁵⁵

(Congressional Record 1970)

In this resolution, the ASIL Panel recommended, in effect, a significant policy change. The United States had traditionally allowed unrestricted import of antiquities, including antiquities whose export from the countries of origin was illegal. Instead, the panel recommended that the U.S. government regulate the import of antiquities and assist foreign countries in the enforcement of their export controls. Yet the recommended policy change was more circumscribed than what source countries had hoped for and what the UNESCO draft conventions envisioned. The panel did not recommend that the United States prohibit the import of *all* illegally exported antiquities. Such a broad prohibition would have been unacceptable to the dealers and art museums. Rather, the prohibition was to apply to precisely designated objects. Furthermore, the panel recommended that the designation be based upon the advice of a commission representing U.S. museums, scholars, dealers, and collectors. That commission would have

to determine that the import prohibition was necessary to prevent serious jeopardy to the cultural heritage of the country of origin; and that the export policies of that country took into account the legitimate interests of the United States and other countries in the movement of cultural objects. The panel also recommended that “the United States should work with other countries toward a reexamination of their import and export programs and policies to assure that these reflect fair accommodation of the various values affected, including . . . the significant educational and cultural values served by the lawful movement of art across international boundaries.”⁵⁶ (Ibid.)

The panel’s recommendations reflected its goal of building a broad consensus for the U.S. policy shift. On the one hand, the panel endorsed an important new measure: the establishment of import controls to enforce foreign export controls. This recommendation gave the State Department the go-ahead. It allowed the U.S. government to join the international efforts against plunder, responding to the pressures of the media, the archaeologists, and foreign countries. On the other hand, the dealers and art museums obtained important concessions: the import of antiquities would not be entirely blocked; art-market representatives would be consulted in the process of establishing import restrictions; and the United States would encourage foreign countries to allow greater export of antiquities. These concessions allowed the dealers and art museums to come on board. Although they would have preferred to maintain the trade free from restriction, the compromise was palatable to them.

It is important to note that the consensus did not last. The ASIL Panel examined the final text of the UNESCO Convention and recommended its ratification. Following this recommendation, the Senate gave its advice and consent in 1972, subject to one reservation and six understandings. In 1973, the State Department proposed legislation to implement the UNESCO Convention, based on the compromise forged by the ASIL Panel. Yet the dealers withdrew their consent. They argued that the legislation exceeded the restrictions that the panel had envisioned and “would tend to remove the United States from the flourishing international art market.”⁵⁷ (DuBoff et al. 1976) When a revised legislation came before Congress, the dealers waged a lobbying effort against it. They condemned the legislation as a “Draconian” measure that spelled “a cultural disaster to the United States”⁵⁸ (US House 1977). The dealers’ resistance prolonged the legislative process and managed to weaken the legislation. Yet without their initial consent through the ASIL Panel, the Convention on CPIA would not have come into existence. Indeed, the CPIA broadly conformed to the ASIL Panel’s recommendations. In particular, the authority to recommend the establishment of important restrictions was given to a Cultural Property Advisory Committee whose members represent the interests of museums, archaeologists, dealers, and the general public.

Britain

Britain had opposed UNESCO's efforts against looting from their onset in the 1960s. In 2000, however, following the revelations of unethical behavior in the London art market, the British government decided to reverse its long-standing opposition and join UNESCO's efforts. Yet, like the U.S. government three decades earlier, the British government wished to forge a compromise that would be accepted by all stakeholders. Most importantly, that compromise had to receive the dealers' approval. To establish the necessary consensus, the Minister for the Arts appointed the Illicit Trade Advisory Panel (ITAP) in May 2000.⁵⁹ Law professor and barrister Norman Palmer chaired the panel; the other eight members represented the archaeologists, the museums, and the trade. Like the ASIL Panel, ITAP brought together bitter rivals. The panel included archaeologist Colin Renfrew, the fiercest critic of the London art market, together with leaders of that market: Anthony Browne (chairman of the British Art Market Federation) and James Ede (chairman of the Antiquities Dealers Association).

ITAP was asked to examine the extent of Britain's involvement in the illicit antiquities trade and to consider how the country can contribute to the prevention of that trade. Submitted in December 2000, the panel's report captured Britain's conflicting motivations, the same motivations that the United States had faced: on the one hand, the desire to maintain a thriving market in cultural objects and to enjoy its economic and cultural benefits; and, on the other hand, the need "to ensure that the UK is not used either as a repository or a transit point for [looted] material."⁶⁰

Like the ASIL Panel, ITAP sought to establish a compromise between the archaeologists' preference for strict regulation of antiquities and the dealers' preference for minimal constraints. This compromise was clearly evident in the panel's recommendations concerning the two international agreements: the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. The archaeologists on the panel wanted Britain to join both conventions; this was also the view of the MA that was represented on the panel.⁶¹ Yet the dealers strongly opposed the UNIDROIT Convention as excessively onerous, especially in light of the length of the limitation periods it established and the limited factors that triggered them. Although ITAP identified some virtues of the UNIDROIT Convention, it did not recommend joining this agreement that was unacceptable to the dealers. By contrast, the panel recommended that Britain accede to the 1970 UNESCO Convention.⁶² This was a remarkable reversal of the long-standing British position that had seen the convention as overly burdensome for the trade and the bureaucracy. ITAP concluded that Britain, in fact, was already in compliance with the convention's provisions. Accession therefore did not require significant legislative or administrative changes.

ITAP's other recommendations included a new criminal offense of dealing in cultural objects while knowing or believing that the objects were stolen or illegally excavated; export controls to ensure that objects re-exported from London had been legally exported from the countries of origin; and databases that would assist the dealers in ascertaining objects' legal status: a database of international legislative information and a database of cultural objects unlawfully removed from any place in the world. The government adopted the panel's recommendations, but was less wholehearted about implementation.

American-British divergence: Implementation of the Panels' proposals

Thus far, I have identified several similarities in the American and British experience. Public scandals and archaeologists' advocacy led to the ASIL Panel and ITAP: two bodies that achieved an unprecedented consensus between the archaeologists and the dealers on a set of regulatory measures. Yet when it came to the implementation of the proposed measures, the U.S. and British governments differed. The ASIL Panel's recommendation was implemented: the executive branch received the authority to prohibit the import of illegally exported antiquities. This authority has indeed been exercised. As of February 2014, the United States was restricting the import of archaeological material from 16 countries.⁶³ By contrast, the British government only partially implemented ITAP's recommendations. Britain acceded to the UNESCO Convention in August 2002 – a step that, as per ITAP's report, did not entail changes to British law and practice. Yet the government was in no rush to enact the new criminal offense. That legislation was passed with the government's full support only after the 2003 invasion of Iraq.⁶⁴ In the aftermath of the looting of the Baghdad Museum, the government wanted to avoid the embarrassment of Iraqi objects appearing on the London market. The two other recommendations, however, were not carried out. The government's lawyers thwarted the establishment of export control on the grounds of incompatibility with EU law, and the databases were ultimately considered too complex and expensive. In contrast to the American import controls, Britain has not established significant restrictions on the movement of antiquities. Furthermore, the impact of the new criminal offense has been rather small, as the British government failed to invest in enforcement.⁶⁵ By contrast, American dealers were prosecuted and criminally convicted for dealing in looted material.⁶⁶ Indeed, the U.S. art market has not come into full compliance with ethical restrictions on acquisition,⁶⁷ but the import restrictions and the specter of criminal prosecution did produce a certain constraining effect.⁶⁸ The impact on U.S. art museums has been especially palpable. These museums, whose demand for antiquities has been a primary driver of looting, have increased their reliance

on loans of objects and have become more cautious concerning gifts from collectors.⁶⁹

This American-British difference is surprising. In fact, one would have expected the British government to be more cooperative than its U.S. counterpart. First, the American participation in the efforts against looting was opposed by antiquities dealers as well as art museums. In Britain, by contrast, only the dealers resisted these efforts, while the museum community supported government action against the illicit antiquities trade. Second, Britain had a stronger incentive to participate in UNESCO's efforts, compared with the United States. In the 1970s, U.S. policymakers chose to join the UNESCO Convention out of concern about foreign antiquities. At the time, the looting of American archaeology was not seen as a major problem. By contrast, Britain was motivated by concerns about looting abroad *as well as concerns about the loss of Britain's cultural heritage*. In the 1980s and 1990s, with the rise of metal detecting, Britain experienced increasing archaeological plunder and destruction. In addition, Britain suffered from an outflow of non-archaeological cultural objects stolen from local museums, churches, and historic houses.⁷⁰ The UNESCO Convention was seen as a means to recover objects illegally removed from Britain.

Why, then, has the U.S. government taken stronger measures against the illicit trade than the British government? The answer lies in the divergent attitudes of the American and British bureaucracies. The State Department has led the American efforts to stem the illicit antiquities trade, from negotiating the UNESCO Convention to drafting the implementing legislation to establishing import restrictions through bilateral agreements with source countries.⁷¹ As the foreign affairs arm of the U.S. government, the State Department was attentive to foreign countries' requests, concerned for the American image abroad, and interested in fostering international cooperation. Moreover, the State Department's status within the American bureaucracy allowed it to obtain the support of other U.S. agencies. In Britain, by contrast, it was not the Foreign Service that addressed the issue, but the Department for Culture, Media and Sport (DCMS). Compared with the State Department, the DCMS was less foreign-minded and less inclined to international cooperation. The DCMS had no equivalent of the State Department's Mark Feldman – a bureaucrat who strongly pushed for the ratification and implementation of the UNESCO Convention. Unlike the State Department, the DCMS also had a limited ability to lead an interagency effort and, in particular, to secure the commitment of the Home Office to the efforts against the illicit antiquities trade. Finally, the British bureaucracy paid greater deference to the dealers than did the American bureaucracy. Whereas U.S. government agencies were willing to confiscate antiquities and prosecute dealers, their British counterparts were less vigorous.⁷²

This is not to say that the measures taken by the British government were immaterial. The establishment of ITAP, the accession to the UNESCO

Convention, and the new criminal offense – all these raised the pressure on the market to ascertain antiquities' legal status. Internationally, the British accession made additional market countries reconsider their long-standing opposition to the convention. Japan and Germany, among others, followed Britain's example and joined the UNESCO Convention. Yet as the British bureaucracy was not fully committed to combating the illicit trade, Britain's efforts have been weaker than those of the United States.

Conclusion

The international efforts against the looting of antiquities have faced significant hurdles. Art markets and the governments that support them have long been reluctant to join these efforts. In their view, cooperation against the illicit antiquities trade compromised local interests to the benefit of foreign countries. Yet the experience of the UNESCO Convention demonstrates that previously non-cooperative countries may reverse course and join the international efforts. This essay has identified several factors that may explain the change of policy. Public scandals put pressure on governments to ensure the ethical conduct of the art market and made the dealers more conducive to compromise; archaeologists reinforced the pressure for a government response and provided evidence of the looting fueled by the art market; and the policy response was facilitated through consultative mechanisms – advisory panels – that brought together all stakeholders and issued mutually agreed recommendations. This essay has also found that the willingness to take action against looting varies across governments and bureaucracies as a function of their ideologies and constituencies. The Labor government in Britain was more inclined to impose constraints on the art market, as it was more committed to an ethical foreign policy and less dependent on business support than its Conservative predecessor; the State Department was responsive to foreign countries' pleas and concerned for the United States' international standing, while the British bureaucracy was more attentive to the dealers. This experience may prove useful for resolving other contentions and debates over the protection of the cultural heritage.

Notes

1. UNESCO Doc. 11 C/DR/186, 1 December 1960.
2. For a scholarly expression of the contrasting approaches to the movement of antiquities, see Merryman (1986) and Gerstenblith (2007).
3. Market countries cited a variety of reasons for their reluctance to ratify the 1970 UNESCO Convention. The Netherlands, for example, argued that import "checks by customs officials have appeared impractical, if not impracticable." UNESCO Doc. 22 C/93, 30 August 1983, p. 3. West Germany argued that the convention "may create considerable uncertainty for all persons concerned in trading in

works of art." *Ibid.* Switzerland believed that the convention entailed a "complicated and costly administrative apparatus." UNESCO Doc. 20 C/84, 15 September 1978, p. 42.

4. Quoted in UK House of Commons 2000, 1: pp. 20–21.
5. Jote (1994), 193; O'Keefe (2000), pp. 9–10, 14.
6. UNESCO/CUA/123, 15 July 1963, Annex, 14.
7. UNESCO/CUA/123 Add. I, 21 March 1964, Annex I, 22.
8. *Ibid.*, pp. 23–24.
9. Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property, 1964, Art. II(4).
10. UNESCO Doc. SHC/MD/5 Add. 2 22 April 1970, p. 3.
11. UNESCO Doc. SHC/MD/5, 27 February 1970, Annex I, pp. 21–23.
12. UNESCO Doc. 20 C/84, 15 September 1978, pp. 43–46; Office of Arts and Libraries, "1970 UNESCO Convention concerning the Illicit Import, Export and Transfer of Ownership of Cultural Property," n.d.
13. Hansard HC, vol. 344 col. 222W (9 February 2000).
14. Coggins (1969).
15. Author's Interview with Clemency Coggins, Boston, June 2008. At the time of writing, Coggins is professor emerita of archaeology and art history at Boston University.
16. Bator (1983), pp. 2–4. At the insistence of *Art Journal*, Coggins's original article did not name the museums, instead referring to them as "American museums." Coggins identified the museums in a list published in 1970. See that list in Meyer (1973), pp. 213–218.
17. Coggins (1970), pp. 10–14; Coggins (1972), 264.
18. Resolution adopted by the Archaeological Institute of America, 30 December 1970, reprinted in DuBoff (1975), p. 569; Resolution 2 of the Society for American Archaeology, adopted at the 1971 annual business meeting, *ibid.*, pp. 571–572. In December 1973 the AIA issued a resolution calling on museums to adhere to the UNESCO Convention in determining the appropriateness of acquisitions. See the text in <http://www.archaeological.org/news/advocacy/101> (accessed 6 February 2014).
19. See, for example, U.S. House (1976), pp. 17–23 (the American Association of Dealers in Ancient, Oriental, and Primitive Art); U.S. House (1979), pp. 68–69 (Minneapolis Institute of Arts).
20. U.S. Senate (1978), pp. 68–69. At the time, Muscarella was chairman of the AIA's Committee on Professional Responsibilities.
21. U.S. House (1976), pp. 53–54.
22. U.S. House (1976), p. 65; U.S. Senate (1978), pp. 60–61, 68–69.
23. U.S. Senate (1978), pp. 72, 75.
24. UK House of Commons (2000), 2: pp. 28–29, 33.
25. Author's interview with Colin Renfrew, professor of archaeology at the University of Cambridge and a member of the House of Lords, Cambridge, UK, June 2007.
26. Gill and Chippindale (1993); Chippindale and Gill (2000).
27. See, for example, a 1995 volume edited by Kathryn Walker Tubb of the Institute of Archaeology at University College London, *Antiquities: Trade or Betrayed: Legal, Ethical and Conservation Issues*.
28. Website of the Illicit Antiquities Research Centre, <http://www.mcdonald.cam.ac.uk/projects/iarc/info/us.htm> (accessed 6 February 2014). The Centre closed in 2007.

29. Brodie, Doole, and Watson (2000), pp. 26–30, 38, 42.
30. Freidel (2000); Meyer (1973), pp. 22–26.
31. Bator (1983), pp. 4–5 footnote 12; Meyer (1973), pp. 86–100, 302, 305; Elisabetta Povoledo, “Ancient Vase Comes Home to a Hero’s Welcome,” *New York Times*, 19 January 2008. On American museums’ return of antiquities see also Gill and Chippindale (2006 and 2007).
32. Meyer (1973), pp. 56–69; Waxman (2008), Chapter 6. Between 1987 and 1993, The Lydian Hoard was at the center of a legal battle between Turkey and the Metropolitan. In 1993, the Metropolitan returned the objects to Turkey after admitting that museums staff had acquired the objects knowing them to be looted. Yet the rumors about the treasure’s purchase by the museum began to swirl in the early 1970s.
33. Bator (1983), 4 fn 11; Meyer (1973), pp. 102–106.
34. Bator (1983), 5 fn 13–14, 7; Meyer (1973), pp. 26–27, 144–145; “The Lost Totem,” *Time*, 5 November 1973.
35. “Looters Impede Scholars Studying Maya Mystery,” *The New York Times*, 26 March 1973; “Traffic in Looted Maya Art is Diverse and Profitable,” *New York Times*, 27 March 1973; “Elusive Maya Glyphs Yielding to Modern Technique,” *The New York Times*, 28 March 1973.
36. Meyer (1973), pp. 123–124.
37. Among them were the Field Museum of Natural History in Chicago, the Brooklyn Museum, the University of California Museum in Berkeley, the Arizona State Museum, and the Smithsonian Institution.
38. Author’s interview with Mark Feldman, Washington, DC, May 2008. Throughout the Congressional debate over the UNESCO Convention, Feldman was the U.S. government’s chief proponent of the implementing legislation, which he had drafted. He argued that the United States was morally obligated to act against archaeological plunder and could not continue to provide a market for looted antiquities. See, for example, U.S. House (1979), pp. 3–8; U.S. Senate (1978), pp. 16–19, 26–29.
39. Reprinted in Feldman and Bettauer (1970), p. 41.
40. U.S. Senate (1978), p. 19.
41. DuBoff et al. (1976), p. 115.
42. Author’s interview with lawyer James Fitzpatrick, Washington, DC, May 2008. Fitzpatrick has represented antiquities dealers since the mid-1970s.
43. Chippindale and Gill (2000), pp. 484, 500.
44. Brodie, Doole, and Watson (2000), p. 53.
45. Alan Riding, “14 Roman Treasures, on View and Debated,” *The New York Times*, 25 October 2006.
46. Watson (1997); Brodie, Doole, and Watson (2000), pp. 26–27.
47. See, for example, UK House of Commons (2000), 2: pp. 59–60.
48. Wickham-Jones (2000).
49. Author’s interview with Anthony Browne, chairman of the British Art Market Federation, London, June 2007.
50. Author’s interview with Maurice Davies, deputy director of the Museums Association, London, June 2007. A 1972 statement issued jointly by the Museums Association, the British Academy, and the Standing Commission on Museums and Galleries reaffirmed that museums in Britain would not acquire illegally exported material. Successive codes of conduct issued by the MA since 1977 required museums to conform to ethical acquisition guidelines.

51. An example is UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin and Its Restitution in Case of Illicit Appropriation.
52. Treaty of Cooperation between the United States of America and the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, 1970.
53. Regulation of Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals. The ASIL Panel's recommendation was that "urgent steps should be taken to prohibit the importation into the United States of pre-Columbian monumental and architectural sculpture and murals hereafter exported without the consent of the exporting country, and that, for their part, these countries should take effective action to deter defacement, destruction and illegal export of these works." Congressional Record, 18 June 1970, p. 20,366.
54. Bator (1983), pp. 95–97. See text accompanying note 11 above.
55. Congressional Record, 18 June 1970, p. 20,366.
56. *Ibid.*
57. DuBoff et al. (1976), p. 111.
58. U.S. House (1977), 31, p. 42.
59. ITAP's official title was Ministerial Advisory Panel on Illicit Trade. The immediate trigger for the establishment of ITAP was an inquiry into the illicit trade in cultural property launched by the House of Commons' Culture, Media and Sport Committee. That inquiry increased the pressure on the government to conduct its own investigation.
60. ITAP (2000), paras. pp. 8–10.
61. Brodie, Doole, and Watson (2000), 42; UK House of Commons (2000), 2: pp. 11–22.
62. ITAP (2000), paras. pp. 41–65. ITAP's endorsement of the UNESCO Convention and rejection of the UNIDROIT Convention were the reverse of the recommendations made by the House of Commons' Culture, Media, and Sport Committee. That committee's report, published in 2000, recommended that Britain join the UNIDROIT Convention, rather than the UNESCO Convention. UK House of Commons (2000), 1: p. 29. See also Gill and Chippindale (2002).
63. <http://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements> (accessed 6 February 2014).
64. Dealing in Cultural Objects (Offences) Act (2003). On the legislative process, see Mackenzie and Green (2008).
65. Mackenzie and Green (2009).
66. *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977); 593 F.2d 658 (5th Cir. 1979); *United States v. Schultz*, 333 F.3d 393 (2nd Cir. 2003).
67. See, for example, Elia (2009).
68. Pearlstein (2005).
69. See Association of Art Museum Directors, *Survey Shows Museum Antiquities Purchases are Less than 10% of Global Trade*, 7 February 2006.
70. Brodie, Doole, and Watson (2000), pp. 21–22; ITAP (2000), Annex A, paras. pp. 14–32. One of the most notable losses was the Icklingham Bronzes. See Gill (2010).
71. The United States Information Agency (USIA) initially received the authority for the implementation of the CPIA. With the dissolution of the USIA in 1999, the State Department became responsible for the CPIA's implementation.
72. See Mackenzie and Green (2008), p. 148; Pearlstein (2005).

Index

- Abdulac, Samir, 146
Abdulkarim, Maamoun, 146
ADNAS (Applied DNA Sciences), 51
advocacy, 278, 338, 340, 342, 353
Afghanistan, xviii, 85, 121, 123, 124, 128
Africa, x, 57, 103, 156, 240–2, 324, 347
Allonge, René, 10, 13, 17
Al Qaeda, xviii, 143, 245
Al Shabab, 245
Amsterdam, 235, 277, 296, 308, 310–15
Ansar Dine, x
antiquities, illicit trafficking in, 318,
 337–8, 340, 342–3, 348–9, 352,
 354–5
antiquities, looted, xii, xiv, xxi, 78, 83,
 127, 129, 139, 152, 156–7, 197,
 200–1, 203, 222–3, 233, 237, 259,
 278, 317, 340, 342–3, 345–8, 357
antiquities, market in, xii, 117, 127, 169,
 172, 176, 198, 200–1, 203, 217, 232,
 256–7, 259, 261, 315, 322, 338
Antwerp, xii
Aramaic, 169, 172–3, 176–7
ARCA (Association for Research into
 Crimes against Art), ix, xiii–xiv, xvi,
 xix, xx, 57, 83–4, 101, 132, 149, 243,
 278, 327
archaeologists, xvi, 64, 74, 85, 122,
 127–8, 138, 140, 145, 147, 154,
 163–4, 166, 170, 185, 188, 222, 241,
 256, 258, 278, 293, 321, 338, 340,
 341–3, 346, 349, 351–3, 355
Arch of Titus and Vespasian, 265
art theft, xiv, 5–6, 78–82, 84, 96, 103,
 105–8, 112–15, 156, 235, 265–6,
 271, 276, 330, 332, 335
art, value of, 5–6, 10, 21–5, 27, 30, 34–7,
 39, 43, 46, 48, 53, 78, 82–3, 89–90,
 92, 108, 110, 113, 121, 129, 135–6,
 138, 143, 146–7, 159, 163, 167, 181,
 234, 244, 247–8, 251, 256–7, 269,
 275, 316–17, 326, 351
artefacts (disambiguation “artifacts”), xi,
 xvii–xviii, 85, 118–21, 126, 128–9,
 134, 155, 160, 163, 165, 167,
 169–70, 172, 174–6, 179–81, 192,
 197, 199, 202, 224, 235, 241–2, 246,
 248, 255–7, 259, 261–2, 234, 278,
 325, 339
Art Loss Register, 57, 111, 114–15, 229,
 231–2, 236, 296, 332
Art Recovery Group, xxii, 318
Art security, 84, 106, 107, 109, 112–13,
 115, 265
auction, xii, xxvii, 9–10, 12–14, 17, 23,
 35, 42, 44–5, 48, 51, 53, 105, 114,
 140, 153–6, 161, 180, 200–2, 237,
 257, 274, 296, 307, 317–19, 325,
 348–9
authenticity, 5, 9, 12–13, 16, 23–4, 26,
 28, 35, 39, 48, 51–2, 74, 222, 304,
 319
Baghdad, xviii, 85, 118–19, 129, 133,
 141, 144, 148, 222, 256, 266, 276,
 299, 353
Baghdad Museum, 85, 266, 276, 353
Bamiyan, 144
Bangkok, 154, 182, 185–8, 192–5, 199
Banteay Chhmar, 182, 185, 187–9, 191
Bartman, Nick, 43, 46, 54
Becchina, Gianfranco, xvii, xxvii, 145,
 156, 200, 202–3, 211, 219–20, 222,
 230, 237
Beltracchi, Wolfgang and Helene, 3, 6,
 9–19, 145
Beuys, Joseph, 5
Bhima, 152, 154–5
Biro, Peter Paul, 6, 27–31
Blue Shield, ix, xxii, 135, 141
Bonaparte, Lucien, 155, 162–4
Bonaparte, Napoleon, 78–83, 155, 161–2,
 166, 240, 264, 270–2, 276, 329
Bonhams, 203, 230–3, 236
Boon, Marcus, 22, 26
Bothmer, Dietrich von, 201
Bowls, Aramaic incantation, 155, 169–77
Britain, *see* United Kingdom

- British Museum, 111, 122, 126, 145,
159–60, 171, 215, 240, 348
- Brodie, Neil, 155, 259
- Bucceluch, Duke of, 87
- Cahill, Martin, 83–4, 95–6
- Cambodia, vi, xx, xxi, 152–5, 179, 182,
184–91, 193–4, 198–9, 276, 317,
331, 335–6
- Campana, Marquis, 165–8
- Campendonk, Heinrich, 12, 14, 17
- Canino, Prince of, 162–4, 168
- Carabinieri TPC, 36
- Caserta, 159–60
- Caveat emptor, 4, 48, 319
- CCHAG (Combatant Command Cultural
Heritage Action Group), 139, 141–2
- Cerveteri, xvii, 155, 165–6
- China, xvii, xix, xxvi, 7, 25–6, 41, 47,
50–1, 53–5
- Christianity, 125, 145, 245
- Christie's, vi, 14–15, 42, 48, 51, 156, 161,
200–16, 218–22, 224–8, 230, 233–6,
238, 317, 319
- Cicero, 79, 265–7, 298
- Citizen Wicar, 78–80, 82, 271
- Cleveland Museum of Art, xvii, 119, 129,
201, 229
- Coggins, Clemency, 340, 343, 349, 356
- collecting, 33, 42, 130, 140–1, 155–6,
162, 171, 197, 201–5, 207–22, 226,
229–30, 232, 234–5, 237–8, 243,
254, 260–2, 265, 270, 274, 286, 343
- Commission of Arts and Sciences, 79,
270
- conflict resolution, 138
- Connoisseurship, v, 6, 21, 27–31
- Constantinople, Sack of, 267
- context, archaeological, 169, 172, 231,
343
- cooperation, governmental, 118, 241,
258, 260, 269, 309, 339, 346–7
- COPAT (Council for the Prevention of
Art Theft), 114
- COPIA, 22
- craquelure, 64
- criminology, xiii, xix, xx, xxiv, 115–17,
153, 179–80, 198–9
- Cuchulainn II, 95–104
- cultural heritage, vii, ix, xi, xvii, xix, xx,
xxi, xxii, xxiv, xxv, xxvii, xxviii, 57,
62, 75, 79, 85, 118, 125, 135,
139–41, 143, 145–9, 176, 193, 197,
203, 240, 242, 247, 250, 260, 266,
272, 276, 281, 290, 317, 319–22,
324–6, 346, 350–1
- cultural property, vi, ix, x, xi, xix, xxii,
xxv, xxvi, 36, 126, 132, 136–8, 149,
199, 221, 223, 237, 240, 242–3,
252–3, 256, 262, 266, 298–300,
324–5, 337, 339, 351, 358
- cultural property crime, xix, xxv, 36, 199
- Cuno, James, 130
- Daesh, 143, 146
- Dalrymple, Mark, 92
- database, stolen art, 112, 157, 232, 277,
332
- Davis, Tess, vi, xx, 153, 155, 179, 181,
183, 185, 187, 189, 191, 193, 195,
197, 199
- degenerate art, 274, 310
- Denon, Dominique-Vivant, 81–2, 271–2
- Der Spiegel*, 19, 123
- DNA, xix, 36, 49, 51, 332, 336
- Downey, Maureen, 45, 51
- Drewe, John, 39–40
- Drumlanrig Castle, 87
- Dublin, xxiii, 84, 95–6, 98, 100, 102
- due diligence, vii, xxiv, 48, 202, 211,
218, 221, 231, 237, 277–8, 316–19,
326
- Duryodhana, 152–5
- Ebay, 36
- Egypt, 118, 164, 167, 169, 171
- ERR (*Einsatzstab Reichsleiter Rosenberg*),
82, 275, 283–4, 286, 288, 299, 302
- Etruria, vi, 140, 159, 163, 168
- Etruscan, xii, 162, 164–5, 201, 214–15
- Euphronios krater, 119–20, 255, 344
- expropriation, 311–12, 314
- fakes, v, xii, xviii, xix, xxv, 1, 4–6, 10, 12,
14–18, 20–6, 28, 30, 32, 34, 36, 38,
40, 42–6, 48, 50, 52–4, 56, 58, 60,
62, 64, 66, 68, 70, 72, 74, 76, 193–4,
234, 318

- FBI, 30, 42, 103, 126, 128, 131, 220, 259, 332, 335–6
- Ferdinando IV, 160
- Ferri, Paolo Giorgio, vii, xv, xxi, 119, 200, 203, 206, 212, 215, 235–6, 278, 320–1, 323, 325
- Fingartprint, 57–8, 62–4, 66, 68, 72–5
- fingerprinting art, 57
- fingerprints, viii, 30, 58, 62, 64, 66–7, 69–71, 73–4
- First World War, xxi, 82, 272–3
- Flechtheim collection, 13
- Fleischman, Lawrence and Barbara, 120–1
- FMV (Fair Market Value), 121
- forgery, v, xiv, xx, 2–6, 9–11, 13–14, 16, 18, 20–1, 25, 27–30, 32–4, 37–9
- fraud, v, xiv, xviii, 2–5, 7, 10–11, 17–18, 33–8, 40–2, 46, 48, 53–4, 111, 209, 256, 310
- Fraud Act, 33
- Furstenhofer, B. G., 137, 142
- Gardner Museum, Isabella Stewart, 78
- Geneva Free Port, xvii, 17, 121, 167, 204–7, 214, 225, 229, 252, 300, 348
- Germany, viii, xxii, xxiii, 18–19, 62–3, 75, 121, 242, 250, 267, 273–5, 285–6, 288–90, 292, 297–9, 303, 308–10, 315, 336, 355
- Getty Museum, J. Paul, xvii, xxvii, 119–212, 130, 197, 201, 203, 208–9, 223–4, 226–7, 229, 235
- Ghent, 271, 273–4
- Ghent Altarpiece*, 271, 273–4
- Gheyn, Canon Gabriel van den, 273
- Glasgow, xix, xx, xxi, xxiii, xxiv, xxvii, 90, 92–3, 153, 155
- good faith purchase, 231, 277, 296–7, 335
- Göring, Hermann, 52, 272
- Grann, David, 6, 27, 29–32
- Greenhalgh, Shaun, 18, 39
- Grozev, Christo, ix
- Guardi, Francesco, vi, 83, 95–103
- Gulf War, 120, 169–70
- Gurlitt Collection, 327, 329
- Hagens, Gunther von, x
- Hamilton, Sir William, 155, 159–62, 168
- Harvard University, xxii, 26, 120, 310, 340, 345
- Hebborn, Eric, 24
- heritage preservation, xx, 132–3, 139–40
- Hitler, Adolph, 79, 82–3, 264, 272–5, 294
- Hong Kong, xix, 7, 43–5, 47–8, 51, 53–4, 105, 121, 198
- Hope, Thomas, 161
- Hory, Elmyr de, 2
- Hoving, Thomas, 210, 226, 344
- Hussein, Saddam, 133, 138, 241
- ICOM (International Congress of Museums), xvii, xix, 57, 149, 156, 200, 243, 253–4
- iconoclasm, vi, x, 85, 134, 143–5, 147–8
- IFAR (International Foundation for Art Research), 27
- Igbo-Nkwu, 246
- IMCuRWG (International Military Cultural Resources Working Group), 135
- insurance, fine art, xxiv, 32, 83, 105–6, 109–10, 112–14, 117, 156, 318–19
- Internet, 37, 39, 180, 276, 282, 288, 302, 320, 327
- Interpol, xiv, xviii, 57, 85, 106, 115, 118, 126–7, 131, 232, 236, 243, 249, 332, 335–6
- IR (infrared reflectogram), 89–91
- Iraq, xviii, xxv, 85, 118–19, 122–9, 131, 133–4, 136, 138, 141, 143, 146, 148, 155, 169–78, 197, 242, 257–8, 261, 266, 276, 317, 319, 353
- Iraq Museum, xviii, xxv, 118, 127
- ISIS, vi, xiv, 78–9, 85, 119, 123, 143, 145–9, 157, 317, 319
- Islam, vi, 79, 83, 119, 125, 136, 143, 145, 148, 211, 225–6
- Islamic State, 119, 317
see also ISIS
- ITAP (Illicit Trade Advisory Panel), 352–4, 358
- Ivory Coast, 248–9
- Jägers, Werner, 12, 19
- Jewish, xxii, xxvi, 144, 169–70, 172, 176–7, 265, 275, 281–4, 297–8, 300
- Jewish War, 265, 298
- Jordan, xix, 129, 146, 170–2, 258, 262

- Journal of Art Crime*, xxiii, xvi, xix, xx, xxvii, 94, 169, 200, 223, 226, 229, 237–9, 308, 327
- Kabul, xxv, 85, 134, 141–2
- Kapoor, Shubash, 121, 122, 130
- Khmer, xxi, 152–4, 156, 182–4, 187–91, 199
- Khmer Rouge, 152–4, 156, 184, 187–9, 191
- Kila, Joris, ix, xxii, 199
- Koh Ker, 153–4, 182–3, 185, 189, 191
- krater, 119–20, 160–1, 167, 208, 212, 230, 233, 237, 344
- Kurniawan, Rudy, 42, 51–2, 54
- Kyiv, vii, 264, 281–97, 300–2, 305–7
- kylix, 164, 210, 217–20, 227
- Lafite-Rothschild wine, 43
- Leonardo da Vinci, vi, xiii, xxiii, 28–30, 82, 84, 87–8, 91–4
- Leptis Magna, 135
- Libya, 85, 135–6, 141–2, 156, 202, 224, 241, 247, 249, 276
- London, iv, vi, xix, xxii, xxiii, xxiv, xxv, 6, 14, 36–8, 50, 84, 88, 95–101, 103–7, 112, 114–17, 121, 129, 146, 160–3, 166–7, 170, 176–8, 197–9, 203–8, 213, 215, 217–18, 220, 224–7, 229–35, 237–8, 253, 261–2, 270, 296–7, 299, 307, 315, 328, 342–3, 347–9, 352–3, 356–7
- loss adjusting, 106, 109–10, 112, 114
- Louvre Museum, 78, 80–2, 270–1
- MacKenzie, Simon, vi, xv, xxiv, 152, 155, 179, 181, 183, 185, 187, 189, 191, 193, 195, 197, 199
- Madonna of the Yarnwinder*, vi, 84, 87, 91
- Magna Graecia, vi, 159, 161
- Mahabharata, 152, 154–5
- Malevich, Kazimir, vii, xxvi, 277, 308–15
- Mali, ix, 85, 141–2, 156, 241, 243, 245–50, 252–3, 276, 347
- market, art, vii, xix, xxiv, 5, 10, 12, 14–15, 17, 22–4, 27, 33, 35–6, 38, 40, 42–5, 84, 105, 180, 186–7, 214, 219, 232, 277, 316–19, 329, 337–8, 350–3, 355, 357
- market, illicit art and antiquities, xii, xiv, xxi, 78, 83, 127, 129, 139, 152, 156–7, 197, 200–1, 203, 222–3, 233, 237, 259, 278, 317, 340, 342–3, 345–8, 357
- McLendon Collection, 208–9
- McNall, Bruce, 208, 210, 226, 238
- Medici, Giacomo, vi, xvii, 80, 129, 156, 200, 203–14, 219, 222, 225–6, 228–37, 256, 348
- Meegeren, Han van, 6, 13–14, 26, 52, 55
- Metropolitan Museum of Art, 154, 201, 203, 235, 278, 344
- Michaelides, Christos, xxvii, 200, 203, 217–20, 222, 225, 232
- micro-roughness, 58, 75
- Middle East, xxii, 57, 119, 123, 134, 149, 245, 257, 317–18
- middlemen, 180, 195, 200, 258
- Mimesis, 22
- misattribution, 34
- MoMA (Museum of Modern Art in New York), 310–11
- Mosul Museum, 145–6
- Moussaieff, Shlomo, 169, 173, 175, 177
- MPS Art and Antiques Unit (Scotland Yard), xii, xiii, xxv, 6, 34, 36, 38, 84, 106, 108, 110, 112
- Munch, Edvard, 108
- museums, xvii, xix, xxiv, xxv, xxvii, 14, 16–17, 38, 80, 106, 108, 112, 118, 121, 126, 128–30, 139, 159, 163, 165, 167–9, 171, 179–80, 197, 200, 220–1, 237, 240–1, 243–6, 248, 251, 253, 256, 282, 285–8, 291–2, 297–8, 301, 305, 309, 311–12, 314, 329, 340–1, 343–7, 349, 351, 353, 356
- Myatt, John, 3–4, 39
- Naples, viii, 67, 73, 80, 82, 155, 159–62, 167–8, 197, 271, 284
- Napoleon, 78–83, 162, 166–7, 240, 270–1
see also Bonaparte, Lucien; Bonaparte, Napoleon
- National Gallery of England, 88, 270
- National Gallery of Scotland, 90, 93
- National Museum of Iraq, 133, 135, 141
- National Museum of Afghanistan, 134, 135, 142

- NATO, xxv, 85, 124, 131
 Nazis, 83, 274–5, 328
 necropoli, xvii, 162–6, 168, 241
 Nelson, Captain Horatio, 161, 226
 Networks, trafficking, 153, 179, 180, 184
 New York, iv, xiii, xv, xviii, xx, xxi, xxiii, xxiv, 2, 4–5, 14, 21, 28, 32, 85, 98, 101, 120, 122, 129–31, 134, 141–2, 154, 178, 202, 208, 212–13, 216, 220, 221, 234, 237, 257, 261, 276, 296, 310, 311, 334, 344, 345, 357
New Yorker, The, xviii, 6, 24, 27, 29, 31–2
New York Times, The, xiii, xv, xx, 2, 4–5, 21, 32, 98, 122, 129–31, 134, 178, 261, 334, 344–5, 357
 NFC (Near Field Communication), 49–50
 Nigeria, 33, 244–7, 249, 253, 347
 Nimrud, 124, 145–6
 NRC (National Research Council), 32, 235
 Nok terracottas, 246–7
- Parthenon marbles, 122, 126, 327, 334
 Picasso, Pablo, 3
 Pigovian tax, 261
 Poland, 294, 308
 Polaroids, vi, 156, 211, 213, 229, 232, 236, 237
 policing, v, xii, xiii, xix, xxi, xxiii, xxiv, xxv, 34, 36, 77, 80, 82, 84, 88, 90, 92, 94, 96, 98, 100, 102, 104–17, 120, 122, 124, 126, 128, 134, 136, 138, 140, 142, 144, 146, 148, 198–9, 255, 258–60, 278
 policy, vii, xii, xxv, 30, 75, 105, 114, 116, 121–2, 130, 157, 181, 255, 259–63, 266, 268, 270, 272–4, 276–9, 282, 284, 286–8, 290, 292, 294, 296, 298, 300, 302, 304, 306, 310, 312, 314, 318–19, 322, 324, 326, 328, 330, 332, 334–6, 338, 340–4, 346–52, 354–6, 358
 Pollock, Jackson, 2, 5, 27–8, 31–2, 334–5
 Prasat Chen, 154
 Princeton University, xviii, 142, 201, 223, 229
 private collection, 14, 83, 144, 160, 169, 201, 206–7, 212, 216, 219, 231, 233–5, 256, 274, 276, 297, 307
 profilometry, viii, 61–2, 75
 ProofTag, 51, 55
 provenance, 9, 12–13, 27, 36, 39, 43, 75, 120, 156, 169–71, 174–5, 177, 235, 244, 256, 295–7, 300–1, 307, 316–17, 319, 325, 327, 343
 Pumeditha, 175
 pyramids, 80, 240
- Ravivaddhana Monipong Sisowath, Prince, 152
 Re, John D., 2
 restitution, 10, 42, 234, 256, 258, 281, 286, 292, 297, 299, 301, 305, 316–17, 321, 328, 358
 RFID (Radio Frequency Identification), 49, 52
 Rikuzentakata City Museum, 136
 Rohde, Alfred, 288–90, 293–4, 303, 305–6
 Rome, xvii, xx, xxi, xxvi, 41, 79, 119, 130, 144, 147, 159, 162, 165, 167, 222, 235, 264–5, 267, 269, 271, 298, 325, 335–6
 Russborough House, 83
 Russia, xxii, 80, 167, 275, 277
- Schinoussa Archive, 232–3, 236–7
 Schøyen, Martin, 169–74, 176–7
 Schulte-Kellinghaus, Otto, 9, 11–12, 18
 Schultz, Frederick H., 66
 Scotland Yard, xii, xiii, xxv, 6, 34, 36, 38, 84, 106, 108, 110, 112
 Second World War, xiv, 12, 144, 266, 273, 275–7, 290, 299, 306
 Selinko, 49–50, 55
 Sharia law, x, 329
 Shiite, 125
 Sicily, 79, 99, 161, 208–9, 211, 223, 264–6
 Sidi Yahva mosque, x, 143, 245, 247
 Siracusa (Sicily), 264, 267
 Sisophon, 153, 185–6, 188–9, 191–2
 social media, 85
 Sogoba, Siratigui, ix
 Sotheby's, xix, 14–15, 152–4, 204–7, 211–13, 217–20, 225–7, 229–31, 233–5, 237, 261, 317, 348
 Soviet Union, xxii, 277, 281, 287, 297, 309

- Spies, Werner, 12, 14, 17–18, 20
 Spurzem, Jeanette, 9, 11
 statue trafficking, vi, 179, 189
 Stedelijk Museum, 310–12, 314
 sting operations, 256
 Sufi, x, 136
 Sulla, Lucius Cornelius, 265, 298
 Summa Galleries, 208–11, 226
 Sunni, 125
 Suprematism, 308–9, 315
 Switzerland, 201, 344, 356
 Symes, Robin, xxvii, 156, 200, 203,
 217–20, 222, 225, 232–3, 237
 Syria, xi, 119, 123–5, 129, 141,
 143, 146–8, 236, 242, 245,
 276, 317
- Taliban, 79, 85, 123, 134–5, 141, 145
 Tanucci, Marquis Bernardo, 160
 tax on art, 53, 55, 121, 129, 157, 209,
 256, 258, 260–1
 temple looting, vi, 179, 189, 199
 terrorism, v, xii, xviii, xxiii, 3, 77, 80, 82,
 84, 88, 90, 92, 94, 96, 98, 100, 102,
 104, 106, 108, 110, 112, 114, 116,
 118, 120, 122–4, 126, 128–30, 134,
 136, 138, 140, 142, 144, 146, 148,
 153, 250
 terrorists, iii, iv, vi, xii, xiv, 85, 118,
 123–5, 156
see also Terrorism
 Thailand, 153–4, 182, 185–9, 192, 199
 Thetis Collection, 204–8, 213–14, 225
 Timbuktu, ix, x, 136, 241, 247, 253
 trafficking, v, vi, viii, xix, xx, xxiv, 57–8,
 74, 125, 129, 132, 147, 152–3,
 179–81, 184–6, 188–9, 191, 198,
 222, 232, 240, 247–8, 250–2, 256,
 317–18, 320, 323–6
 traumascapes, xi
 tribunal, vii, 278, 291, 304, 327–8,
 330–6
 trophy brigades, 277, 282
- UCL (University College London),
 170–2, 174, 177
 Ukraine, xxii, 277, 281–3, 285–8, 291,
 293, 296–7, 299–300, 302, 304
 UN, 124–5, 128, 144, 148–9, 250
 UNESCO, xvii, xxvi, 36, 74, 85, 124–5,
 127, 130, 138–9, 144–6, 149, 156,
 170–1, 198–201, 213, 216, 237, 240,
 242–3, 247, 249, 250, 252–3, 278–9,
 326, 328, 337–43, 345–6, 350–8
 UNESCO Convention of, 1970, 36
 UNIDROIT Convention, 328, 343, 352,
 358
 United Kingdom, iv, xix, 18, 34, 75, 333,
 343
 United States, iv, xx, 32, 42, 119, 123,
 129, 138–9, 149, 154, 199, 202, 224,
 245, 262, 276–8, 301, 310–15, 325,
 330, 337, 357–8
 Universal museum, 244, 246, 253, 255
 Ur, xxv, 124
 US Army, xxv, 85, 96, 132–3
- Vermeer, Johannes, 13, 52
 Verres, 265, 267, 298
 Versailles, Treaty of, 272–3
 Victoria and Albert (V&A) Museum,
 xxiii, xxv, 6, 108
Vigango, 251–2, 254
 Viterbo, 164
 Vulci, 155, 162–5, 168
- White, Shelby, xxvii, 120, 130, 201, 203,
 210, 229–30
 wine, xvii, xix, xx, 7, 41–55
 wine crime, 42
 World Heritage Site, 139, 145
 World War One, xxi, 82, 272–3
see also First World War
 World War Two, xiv, 12, 144, 266, 273,
 275–7, 290, 299, 306
see also Second World War
- Zhou dynasty, 41