History for the taking?

PERSPECTIVES ON MATERIAL HERITAGE

A REPORT PREPARED FOR THE BRITISH ACADEMY
Chaired by Professor Sir Barry Cunliffe CBE, FBA

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PREFACE

Public policy exists at the point at which social values intersect with our ability to devise measures to preserve and enhance those values. Among the many merits of this collection of essays is the demonstration of how complex is such a task in relation to questions of cultural heritage. As Barry Cunliffe points out in his introduction, even demarcating the category of cultural heritage is a complex and delicate task for which we should not expect an easy resolution. All the essays in the collection highlight the complexity of the legal, policy, ethical and international aspects of the challenges involved.

Reading this collection of essays prompts a number of questions. How best can knowledge be assembled to ensure that limited public resources are spent to good effect in an informed way so as to preserve heritage? What is the balance of responsibility between public and private actors – whether the latter are landowners, collectors or charitable bodies? What should be the relationship between the scholarly community and the military, as well as the makers of foreign policy, when heritage is threatened by war? How should the scholarly community respond to objects and artefacts where provenance is in doubt? What is it to say that some place, building or object is part of the common heritage of a society or even humanity?

The British Academy Policy Centre exists to place into the public domain informed and intelligent analysis of questions of concern to the public interest. As the Resolution of 1998 adopted by the Council of the Academy, and reproduced in Appendix 2 of this collection, goes to show, the matters covered in this volume have been of serious concern to Fellows and the scholarly disciplines to which they belong over a number of years. These essays show that such matters should be of concern to us all.

Albert Weale
Vice-President (Public Policy), British Academy

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INTRODUCTION

Barry Cunliffe

Cultural heritage is an immensely broad concept encompassing all manifestations of human activity. It includes everything from buildings and other artefacts to music, literature and film but it also embraces less tangible aspects which overlap with the natural world. We can see why a battlefield is regarded as part of the cultural heritage, but it might be less obvious that the sediments of a lake or patch of peat bog may contain evidence of past human activity. Where do we draw the line? Managed landscapes – track ways, hedgerows, and even heathlands are strictly part of our cultural heritage, but do we also include "literary landscapes"? Should a popular fantasy about precocious rabbits give a special status to an area of Hampshire downland? Cultural heritage is indeed a broad topic.

In this assessment we have been deliberately selective, focusing on archaeology and the built heritage, for the simple reason that this, we believe, is an area presently at considerable risk where clearly defined standards and firm government directives are required. We have chosen four areas for specific attention: cultural tourism, redevelopment, war and exploitative intervention. In all four, contemporary human activity driven by a variety of motives has the potential to destroy the cultural heritage. It is the task of government to identify what is nationally important and to ensure preservation for posterity, to introduce mitigation strategies where erosion of heritage assets is unavoidable, and to have in place robust legislation to curtail exploitation. These issues are explored in the essays to follow.

In Britain we have a long tradition of selective preservation, as Fiona Reynolds' paper explains. The government through the Ancient Monuments Acts has taken into guardianship many hundreds of sites (more than 400 in England alone), while many

thousands more are protected by scheduling. Local authorities too hold many heritage assets for the good of the community, while across the country a plethora of trusts, by far the largest being the National Trust, care for other sites and landscapes. Our heritage infrastructure is rich and varied. It brings quality to life and attracts huge revenues. Heritage tourism now directly contributes £7.4 billion to GDP annually – a figure which politicians overlook at their peril.[1]

But success brings with it problems. There may be a financial imperative to encourage more visitors but increased numbers come at a price. Sites and buildings are fragile and visitor wear causes damage. The more popular a monument the greater the threat. There has to be a careful balance. English Heritage long ago had to close the centre of Stonehenge to protect it from visitor erosion. Oscar Wilde's famous line "each man kills the thing he loves" is all too true.

The complex issues raised by the economic need for redevelopment are carefully analysed in Michael Fulford's contribution. Overall Britain has developed a comprehensive portfolio of controls, in England enforced through legislation, notably the Ancient Monuments Act and the Treasure Act, and through Planning Policy guidance. In general the system has worked well but proposed changes in planning legislation do not seem to have been carefully thought through and have the potential to weaken protection for the heritage seriously. Here is an area requiring particular vigilance. Among the other areas for concern, which Michael Fulford highlights, is the archaeological profession's failure to distribute in an accessible form more than a tiny fraction of the new information gained through evaluations and excavations. This is a serious indictment. Academic progress slows and the public are given little access to new understandings about their heritage – access to which they have a right. A few years ago the Irish government, facing the same problem, came up with an inspired initiative, the INSTAR

programme, a research fund dedicated to making accessible to the broad audience the results of decades of development-led excavation. It offers an example of proven worth which the British Academy could well champion.

Our third contribution, by John Curtis, addresses the special dangers faced by heritage assets in zones of conflict. One of the examples he uses, the second Iraq War, displays with worrying clarity the total failure of the coalition forces to safeguard the heritage of the country they chose to invade. It was a failure borne of the absence of any real awareness of cultural heritage by those planning the operation. Consultation was at a minimum and such advice as was given was apparently ignored. The lesson is clear. The British government must ensure that in any future conflict consideration is given to cultural heritage matters at a high level and at a preliminary stage in the planning. This should be accepted by all as an immutable international responsibility.

In the final paper Anthony Harding considers the complex issues raised by trade in illicit antiquities. While there is universal condemnation of the pillaging of archaeological sites anywhere in the world, there is a real dilemma as to how the academic world should treat artefacts of dubious provenance. Should they be ignored or incorporated into research?

Different countries have different antiquities legislation. In many, artefacts recovered from the soil are regarded as belonging to the State. England and Wales are different in that material found buried is considered to belong to the owner of the land unless the conditions of the Treasure Act apply. As a result the hobby of metal-detecting has become popular with detectorists entering into agreement with landowners to share objects found and the profits derived from them. On scheduled archaeological sites detecting can only be carried out with the permission of the Secretary of State. In an attempt to capture some of the huge amount of information dug from the ground by

detectorists the government introduced the Portable Antiquities Scheme in 1997 which encouraged the reporting of finds to a regional officer, usually through a museum. The scheme has proved to be an enormous success. As a result of the information reported over the last 14 years entirely new areas of research have been opened up and many major finds have been taken into public ownership. The Portable Antiquities Scheme is the envy of many countries and must be safeguarded at all costs, particularly at a time of financial stringency. Without it tranches of unique information will inevitably be lost. The question of illegal detecting, without an owner's permission or on scheduled sites, remains an ever present threat but new initiatives sponsored by English Heritage to combat heritage crime are likely to prove increasingly effective.

One issue which we have not addressed in this survey is the growing threat to maritime heritage by organisations who seek to identify shipwrecks for commercial exploitation. Given that costs of these activities are high and the incentive is profit, the methods adopted are seldom those of the researcher intent on recovering knowledge. Operations of this kind are increasing and it is incumbent on the British government to take a robust stand in protecting that part of the maritime heritage which is ours, and in giving strong support to international initiatives. With responsibility split between the MOD, the Receiver of the Wreck and the DCMS, the academic world needs to provide a firm steer as a matter of urgency.

The cultural heritage is a finite and diminishing resource and there is a need for constant vigilance particularly at a time of economic constraint. When there are cuts to be made by national or local government, heritage is always the soft option, as we can see in the 32% cut in government support for English Heritage in the 2010 Comprehensive Spending Review, and the savage cuts currently being made in the number of conservation officers employed in local government. Loss

of expertise on this scale will be devastating. It is even more worrying coming at a time when the Localism Bill is proposing to diminish significantly the protection given to the settings of listed buildings and to conservation areas. One cannot help feeling that insufficient thought has been given to these matters: this is not surprising since the legislation is being rushed and consultation has been minimal.

In Britain we have much to be proud of in our care for the cultural heritage and much good practice to offer as guidance to others, but as the essays which follow show there are areas of real concern where improvements should be made if we are to benefit from the systems already in place. Cultural heritage is too important and too subtle an issue to be left in the care of busy politicians unaided by sound academic guidance.

Endnotes

1. HLF and Visit Britain's 2010 report describes how this figure includes the wages and profits earned by tourism businesses, such as hotels, restaurants and shops, as well as heritage attractions themselves. Once economic multiplier impacts are added, the total GDP contribution of heritage tourism is £20.6 billion a year. This is distinct from the broader sum spent at heritage attractions, and in connection with the desire to visit heritage attractions, which is £12.4 billion.

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SAVED FOR THE NATION: CULTURAL TOURISM TODAY

Fiona Reynolds

SUMMARY

- The tourism sector is the fifth largest industry in the country by the most recent estimate and is valued at more than £115 billion per annum.
- Heritage tourism generates £20.6 billion of GDP annually (once economic multipliers are added), directly supports 195,000 jobs and makes a bigger contribution to the UK economy than the car-manufacturing industry, or the advertising or film-making sectors.
- The National Trust, museums and other heritage organisations grew up to preserve land, buildings and objects for the "benefit of the nation", and to provide access to these spaces and this knowledge for the wellbeing of people of all social backgrounds.
- However, there has always been a tension between those who see protection as an end in itself and those who want to increase people's engagement and physical contact with the past; the latter can threaten the former.
- The historic environment is also threatened by the coalition government's desire to liberate the economy from "red tape", and extend planning powers to neighbourhood level.

RECOMMENDATIONS

1. Heritage as a priority. The government must recognise the power of heritage in all its forms, and the multiple layers of value that comprise it and give it meaning for people.
2. A framework for localism. There needs to be a greater commitment, and a more solid framework, to exploring how local and non-official forms of heritage will be

protected in the future, especially given the government's commitment to localising decision-making.

3. Non-economic value of heritage. Tourism must be acknowledged for its social and cultural value, and the contribution it makes to our collective wellbeing, as well as its economic might.

INTRODUCTION

A bleak, snowy day in December 2009 was an inauspicious occasion to mark the end of nearly a thousand years of history. For then it was that the National Trust received, from the family, the keys to Seaton Delaval Hall in Northumberland, the ancestral home of the Delaval-Hastings lineage since the time of the Conquest. The moment arose as a result of a tax-funded transfer and a public fundraising appeal that enabled the house, a large part of its collection and 400 acres of parkland and gardens, to be brought into the care of the Trust to be conserved and opened as a tourism attraction, since the family could no longer bear the burden of its upkeep.

The Trust is no stranger to acquiring properties of this kind and for these reasons. Back in the 1950s and 60s in particular, when so many landed estates were being sold and broken up, the Trust stepped in as the rescuer of last resort, backed by new statutory powers and limited fiscal support from the state. With more than 300 mansion houses now in our portfolio, the Trust is the largest conservation charity in operation in the UK and a major force within the tourism sector, itself the fifth largest industry in the country by the most recent estimate.

Yet the acquisition of Seaton Delaval was different. Along with the purchase of Tyntesfield (North Somerset) by the Trust in 2001, it registered a concerted effort to highlight the many

ways in which major houses like this are an integral part of their local context and surroundings. The Delaval–Hastings' family fortune was based on industry and the coal trade, the remnants of which are evident in the blighted coastal landscape in which the property sits. John Vanbrugh's exquisite architectural design, while not on the scale of Blenheim or Castle Howard, shows its face to the sea in a conscious nod towards the family's origins and the source of its wealth.

Though Seaton Delaval Hall has shot to the top of the Trust's architectural gems, its acquisition was important less for its aesthetic significance than for the manner in which it was welcomed into the members' handbook. From the start of our fundraising efforts, the Trust's overriding concern was to ensure – by working with local residents – we understood the many layers of value that the house and estate embodied. It was held in huge affection locally, and the house was saved as much because of the beauty and amenity of its gardens and parkland – long opened by the family on high days and holidays – as for its architectural glories.

Further, the unfortunate incidence of a fire in the central block of the building in the early 1820s, after which its interior had never been restored, meant that the house was capable of many different readings and interpretations. Suggestions poured in, from those who thought the ravaged hall should be used as a gallery for contemporary arts, to those who preferred it as a concert venue, to those who wanted to restore it to how it looked before the fire. This was a property where the Trust would not be looking to impose its views on how it should be presented. Instead, it became the icon of a new approach to the management of our properties, which we call "going local". This commitment to respecting local needs and wishes, and to devolving management decisions to managers working at properties, led in Seaton Delaval's case to the decision to contract the catering to the local Crescent Café, Seaton village's

longest running eatery, as well as to inviting local volunteers to help prepare the guidebook.

Since opening in May 2010, Seaton Delaval has had over 70,000 visitors, many of whom have been from the North East but some travelling from as far afield as New Zealand. It is already a compelling example of how investment in heritage can bring significant economic benefits to a local area. This was the rationale behind the £1 million donation towards the acquisition of Seaton Delaval made by One North East, the Regional Development Agency, no doubt aiming to achieve the same return as has been seen by RDA investments at sites such as Anglesey Abbey near Cambridge (English Heritage 2010). Seaton Delaval was one of the last such investments to be made by One North East before the coalition government, elected in the same month that Seaton Delaval welcomed its first paying visitor, took the decision to close the agency down.

Balancing the need to make an economic return on the RDA's investment with the conservation needs of the property and its social function within the local community remains a distinctive but welcome demand on the Trust. This triple bottom line is something we strive for at every one of our sites, whether historic buildings with their particular sensitivities to humidity, temperature and dust, or the countryside sites we manage whose footpaths, fences and natural features require constant upkeep and maintenance. Every place we own has its own history and identity, each requiring careful investigation and research before re-presentation at the hands of conservation and curatorial experts.

Recent government policy aspires to see the tourism industry grow considerably in the years ahead, as a response to the dire economic conditions prompted by the financial collapse of 2008/09 (Penrose 2011). Tourism is finally being recognised for its economic muscle. If the government's aspirations are met the UK will become an ever more popular destination for international travellers, especially those from the growing markets of Asia and

the Americas. If the benefits are to be equitably spread, this will mean persuading tourists to leave the major cities where visits are currently concentrated (primarily London, but also Oxford, York, and Edinburgh) and to entice them to venture to less frequently visited spots. Even more important is the government's recognition of the importance of domestic tourism (UK residents choosing to remain in the UK for their holidays, as well as the millions of days out taken at all times of the year) to the national and local economy. But can these pressures be reconciled with the need to protect our heritage for future generations to enjoy?

This essay considers a vision of heritage which places it not as the victim but at the heart of a sustainable tourism economy – one which is driven as much by social concerns as by environmental or economic values. It explores whether our concern for protecting heritage values can be squared with the desire to generate more revenue on the back of the UK's unique historic environment; and whether heritage can meet our twenty-first century hunger for distinctiveness and thirst for contact with the authentic, the real and the beautiful. And it argues for the policy conditions that are needed to bring a truly sustainable heritage into effect.

WHY WE PROTECT THE PAST

Our modern concepts of heritage protection seek to make sure we conserve, for the long term, places of value and significance. Yet concepts like "value" and "significance" are open-ended and ever-shifting. What is of value now may not be of value in the future; what appears insignificant now may be of inestimable importance to future generations. Managing this dynamic relationship between people and the places that they inhabit is the primary responsibility of all those who care for the historic environment.

Different heritage values have taken precedence at different times in history. The earliest conscious interventions to protect heritage are often traced to the antiquarians of the late seventeenth and early eighteenth centuries. For William Stukeley, a member of the reconstituted Society of Antiquaries that started meeting again from 1707, the primary duty was to the past itself: "[w]e are all able to be the secretaries, the interpreters and the preservers of the memorials of our ancestors". Alive to the damage being caused to places like Avebury (Wiltshire) through the farmer's plough, Stukeley set about ensuring preservation on paper by publishing countless engravings of historic spots. Yet his anger at the destruction of the Roman inheritance in particular was visceral, and gave rise to calls for more active intervention by the state. "[W]ith what grief have these eyes seen the havoc, the desolation, the fate of Roman works", reported Stukeley to the Society of Antiquaries in 1723, while some thirty years later he was complaining of the government's "supine indolence" over the fate of Hadrian's Wall (Cowell 2008: 36–39).

It was not until 1882, however, that the first piece of statutory protection for heritage was introduced. The Ancient Monuments Act of that year was the labour of love of Sir John Lubbock, First Baron Avebury, who was also the driving force behind the introduction of bank holidays and reductions in working hours. The Ancient Monuments Act was a much watered-down version of the bill that Lubbock had originally introduced nine years earlier, which endured repeated defeats and re-introductions before finally making it onto the statute book (by which time critics had dubbed it a "Monumentally Ancient" bill). The Act's primary purpose was to safeguard archaeological relics by listing them in a schedule. This did not of itself provide protection but the Act also introduced the concept of state "guardianship" of sites, and led to the appointment of General Pitt Rivers as the first Inspector of Ancient Monuments. From this point, the logic of the need

for government protection of historically sensitive sites became harder to resist, and successive Monuments Acts strengthened and extended the protection for scheduled sites. Parallel legal protection for buildings was introduced by the Town and Country Planning Act of 1947, in part a response to the damage caused by wartime bombings.

Such regulatory interventions sought to guarantee some basic environmental protections for their own sake in the face of all manner of threats and risks, real and perceived. But another strand of thinking sought to protect the past primarily because of its value to people – as a source of inspiration, beauty and spiritual refreshment.

The founding of the National Trust was a response to a legal situation in which it had been found that there was no vehicle that allowed land to be held on behalf of a broad constituency of the population. Its novelty lay in its stated purpose of holding land "for the benefit of the nation" – by which was implied, sincerely, all social classes and all walks of life, from the poorest slum-dweller to the well-to-do. The National Trust Act of 1907 spells out what we are here for very firmly and clearly:

> To promote the permanent preservation … for the benefit of the nation, of land … and buildings … of historic interest or natural beauty.[1]

For Octavia Hill, the Trust's mission was a social cause, and an extension of her work in bettering the lives of the urban working poor. Her 1883 essay "Space for the People" set out her manifesto in the clearest of terms:

> I think we want four things. Places to sit in, places to play in, places to stroll in, and places to spend a day in. …
>
> We all need space; unless we have it we cannot reach that sense of quiet in which whispers of better things come to us

gently. Our lives in London are over-crowded, over-excited, over-strained. This is true of all classes; we all want quiet; we all want beauty for the refreshment of our souls. Sometimes we think of it as a luxury, but when God made the world, He made it very beautiful, and meant that we should live amongst its beauties, and that they should speak peace to us in our daily lives (Hill 1883).

The consequence of this socially-driven vision was that the National Trust's main emphasis in its first few decades was on open spaces, landscapes and small vernacular buildings that could bring instant pleasure to people rather than the grand houses with which we became associated in the twentieth century. "Open air sitting rooms for the poor" were Octavia's priority: "All my friends seem keener about beautiful open space", she complained at one point. "We don't seem to reach the antiquaries and artists" (Waterson 1994: 50). Early acquisitions included Dinas Oleu, a clifftop site overlooking Barmouth (Gwynedd), Alfriston Clergy House (East Sussex) and Long Crendon Courthouse (Buckinghamshire), nature reserves at Wicken Fen (Cambridgeshire) and Blakeney (Norfolk), and valued open space in the north of England (Brandelhow in the Lake District) and in the vicinity of the capital (such as Mariners Hill, Toys Hill, Crookham Hill, and the Devil's Punchbowl near Hindhead in Surrey).

The early National Trust's moral "mission" shared philosophical underpinnings with another late Victorian phenomenon – the rise of the museum. The 1860s, 70s and 80s saw the establishment of many new museums and galleries, in part prompted by the "Beetle Act" of 1845 which had given local authorities the power to fund them. Museums performed a variety of functions: as repositories of knowledge; as expressions of civic pride; and as sources of inspiration and creativity for industrialists, artists and engineers. But they were also designed consciously as places of education and self-improvement, and as democratic

spaces in which the working poor could better their lot. This was one of the driving ideas that led Henry Cole to establish the South Kensington museum (later to become the V&A), which was notable for having gas lighting (to enable evening openings for working class visitors) and the first museum café.

Nevertheless, the desire to promote access for the many, whether to historic sites or to museums, was not without its complications and critics. From the start, a running tension could be discerned between those who saw protection as an end in itself and those who saw the task in hand as being to increase people's engagement and physical contact with the past.

The case of Stonehenge is as good an illustration as any. The stone circle had long held a fascination for visitors and antiquarians alike, from John Aubrey's speculative ruminations on its Druidical origins to Stukeley's own theorising on its alignment with the solstice sunrise. In the 1820s a guide had installed himself near the stones, to service the steady stream of visitors – an influx that was to grow even bigger with the arrival of a railway line to Salisbury in the 1850s. Though they were offered to the nation in 1898, the government declined to accept responsibility, and the stones were consequently faced with the prospect of steady decline through the wear-and-tear of their repeated visitations. With the collapse of two of the stones in the outer circle on the eve of the twentieth century (on 31 December, 1900), as well as the militarisation of surrounding parts of Salisbury Plain, there were real concerns for the future of the monument. The owner, Sir Edmund Antrobus, called on the advice of the Society for the Protection of Ancient Buildings and the Wiltshire Archaeological Society, and this led to the stones being fenced off and an admission fee charged for anyone who wanted to get close. This brought the preservationists into direct conflict with the open spaces movement, as represented by the Commons and Footpaths Preservation Society, who objected in principle to any barriers

being erected against access to the stones. Despite this, the circle retained its perennial fascination for tourists and scholars, and by the 1920s the site was being visited by 20,000 people a year.

Country houses were attractive to visitors too. Jane Austen caught in fiction the fascination of the country house visitor to "Pemberley", but great houses such as Chatsworth, Longleat and Kedleston were all on the map for early country house tourism. A less well known example, Penrhyn Castle in North Wales, was open to the public from its earliest days. Julius Rodenberg, in *Ein Herbst in Wales*, (An Autumn in Wales) described his arrival in 1856:

> The whole castle grounds was full of people – ladies with leather gloves, not unlike fencing gloves, and blue silk parasols above their straw hats; gentlemen in checked caps, their necks encased in stiff collars – for a gentleman cannot make himself completely comfortable, even when on holiday. The curiosity of this monstrous crowd was satisfied in batches: every quarter of an hour the gate opened, to let two dozen out and another two dozen in…..truly it required great equanimity to allow oneself to be herded through a castle with 24 gentlemen by a withered, gloomy, suspicious old woman, and a castle of exquisite splendour, giving evidence of the warmest enjoyment of the best things in life.

Peter Mandler's account of the "fall and rise" of the country house explains how many country houses were to close their doors in the later nineteenth and early twentieth centuries, before the renewed surge of interest in country house visiting that accompanied the rise of car ownership and the transfer of many houses into public ownership or the hands of private or charitable trusts (Mandler 1997). Accounts of overcrowding at historic attractions were therefore to recur, as mass tourism took off at sites such as Beaulieu (Hampshire), Chatsworth (Derbyshire) and Knebworth (Hertfordshire). Castles, cathedrals and monasteries faced similar challenges, with some cathedrals

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introducing admission charges deliberately to reduce crowds
(as well as to raise revenue for vital conservation work).

This tension – between enabling access and needing to
protect the past from damage by the sheer number of curious
visitors – continues to inform debates today. Accounts of
excessive attendance figures at the blockbuster shows of
the main national museums and galleries are a staple of the
broadsheet press. The National Trust recorded a total of over
17 million visits to all our pay for entry properties in 2009/10.
Stonehenge meanwhile now has nearly one million visits
made each year according to the most recent figures.

HERITAGE POLITICS

Stonehenge has suffered in more ways than one over the years,
the most recent example being the withdrawal of government
funding for a new visitor centre last year (although the partners
involved, including government, have now started to find
solutions that will put the project back on track). This illustrates
the ambivalent attitude that successive post-war governments
have displayed towards heritage.

The experience of requisitioning country houses and estates
during wartime created an atmosphere in which such sites were
increasingly viewed as being, in part, nationalised assets. Yet the
Gowers Committee, which reported to government in 1950
on the parlous threats faced by many landed estates, proposed
tax reliefs rather than state ownership, and its findings were in
any case not fully acted upon by subsequent administrations.
Instead, funding was made available through the Historic
Buildings Council and the National Land Fund, the latter
enabling the National Trust in particular to step in and take
ownership of many valuable houses and collections that would
otherwise have been lost.

Yet during exactly those same post-war decades the public's appetite for the past increased exponentially. Increasing levels of leisure time, disposable income, and car travel meant boom times for the domestic tourism industry. Speaking in Parliament in 1952, Arthur Colegate MP remarked of country houses that "what is extraordinary is the rapidly growing public enjoyment of these places", likening them to an expanding industry (Hansard HC Deb 1 August 1952 vol 504 cc 2009-22). The number of privately owned houses that were open to the public grew from around 70 in 1950 to around 300 ten years later. Hence, Evelyn Waugh's much quoted words from his preface to the 1960s edition of *Brideshead Revisited*, which observed that "Brideshead today would be open to trippers, its treasures rearranged by expert hands and the fabric better maintained than it was by Lord Marchmain". Membership of the National Trust was another measure of the public's affection for the past – from 170,000 members in 1969 we welcomed our millionth member in 1980, and our two millionth in 1990 (Waterson 1994: 177). Membership now stands at 3.8 million, its highest ever.

Over the same period – and possibly not disconnected with the growing success of the "private sector" – it can only be concluded that heritage fell out of favour with mainstream government policy. While there have been moments when the spotlight has shone on the threats faced by the built environment, as with Architectural Heritage Year in 1975 and the parallel exhibition at the V&A on the destruction of the country house, at other times heritage has been accused, by politicians and critics alike, of being a blindly nostalgic brake on progress and development. By the 1980s some, such as Robert Hewison in *The Heritage Industry* (1987), were complaining that a saturation point had been reached, and that the opening of a new museum every week was having a debilitating effect on economic growth.

That, at least, has changed, and more recently emphasis has been placed on the regenerative effects that heritage can bring. The National Trust's *Valuing Our Environment* work was an early intervention in this area, demonstrating the high dependence of employment on the quality of the natural and historic landscape. Some 40% of employment in tourism was shown directly to depend on a high quality environment, and the figure rose to between 60% and 70% in rural areas. In four different parts of the country (Wales, the South West, Cumbria and the North East) every job created by the National Trust generated between five and nine additional full time equivalent posts (National Trust 2001). More recent studies of the Trust's investments in places like Tyntesfield and Anglesey Abbey confirm the continuing validity of these sorts of claims. Economic data from our investments show how every £1 committed leads to a return of £1.70 over a ten year period, as a consequence of bringing in new visitors and promoting local businesses (English Heritage 2010).

The findings support what we know about the vital importance of heritage tourism to the economy. The sector is valued at over £12.4 billion and it directly supports 195,000 jobs. When economic multiplier impacts are added, heritage tourism is judged to contribute £20.6bn to the UK's GDP every year (HLF & Visit Britain 2010). Successive editions of the *Heritage Counts* and *Heritage Dividend* reports, led by English Heritage, have highlighted the positive economic benefits that heritage brings to jobs, to local places, and to the tourist economy. However, the financial downturn has made it near impossible to carry the argument with any great conviction. It was telling that the English Heritage budget cut in the 2010 spending review was twice the size, proportionately, of that faced by the national museums.

Nevertheless, one side effect of the recession has been the revival of the social and experiential value of heritage over its pure economic value. In austere times people are reminded of what really matters to them and the limits of the meaning that

can be found within consumerism alone. Heritage is being rediscovered as a source of inspiration and life-enhancing experiences. The local value of places is increasingly recognised through events such as the annual Heritage Open Days festival, while volunteering in heritage activities continues to attract record numbers of people – the National Trust has 61,000 volunteers, double the number of ten years ago. According to English Heritage research, 93% of people agree that their local heritage creates a distinct sense of place, and 95% feel that the historic environment makes their area a good place to spend time in and meet friends (English Heritage 2010).

This reminds us that while heritage tourism is a powerful economic agent, the historic environment also supports a deeper set of values that unite people and place and provide essential spiritual refreshment in our hectic modern lives. One of the threats that the historic environment is facing is therefore the desire by the coalition government to liberate the economy from "red tape", and extend planning powers to the neighbourhood level. Both speak to a profound and utterly understandable desire to promote localism and delegate and devolve authority to the community level. But there will inevitably be risks in doing so, not least that communities will not always have the capacity or capability to make the best judgements about vitally important heritage assets. Some sort of national framework – of principles, regulations and advice – will be needed if short-term decisions are not to have long-term damaging impacts on the things that matter most in life.

CASE STUDY: GOING LOCAL WITH TH NATIONAL TRUST

Within the Trust, we have taken great efforts to meet the challenges facing cultural tourism today. Our "going local"

strategy sets out our aim to make the offer at each of our properties more compelling, inspiring and relevant to local circumstances. We want our properties to be and to be seen – as they once were – integral to the local landscape and economy in which they sit, rather than an "island" owned by a distant body.

Our analysis reveals that people visit our properties for many different reasons. They meet the needs of distinct customer "segments", from those seeking new knowledge and inspiration (the "Curious Minds") to those who primarily want a day out for the family ("Kids First Families"). But at the core of what we offer is the chance for people to experience real places with all their quirks and idiosyncrasies. So our property managers are tasked with making significance and the "sense of place" the foundation for all they do – conservation, telling stories, and giving people an inspiring experience. In this way, we are looking to bring all our places to life, through more thought-provoking and imaginative forms of interpretation and curatorial display – witness the re-presentation of Croft Castle and the display of contemporary art seen by visitors to The Vyne in 2010.

This sort of innovation has involved taking some risks, and ever-closer cooperation between curators, conservators and marketing experts to create realistic, accessible and enjoyable experiences based on historical knowledge and understanding. At Wightwick Manor in Worcestershire, visitors discover that it is 1900 again with a dinner party underway. They are invited to play billiards in the games room, amid the post-prandial detritus of cigar stubs and half-finished drinks. At Thomas Hardy's cottage in Dorset visitors experience daily life in the 1850s through the domestic realities of living, cooking, working and sleeping without running water, electricity or plumbed sanitation. At Woolsthorpe Manor in Lincolnshire rooms are found strewn with prisms, papers, books and food as it might have been when Isaac Newton returned from Cambridge during the plague year of 1666. The idea in each case is to create

a unique, multi-sensory atmosphere, creating choices for visitors to explore whatever interests them most – the private lives of former owners (as they can do with the facsimile copy of Lady Rodney's diary at Berrington) or sitting at the half-cleared dining tables at Coughton or Dyrham.

THE POLICY CHALLENGES AHEAD

The tourism sector now constitutes the fifth largest industry in the UK, and is valued at more than £115 billion per annum when the supply chain is included (Penrose 2011). Much of the activity behind this figure is in fact domestic tourism – day trips and overnight stays all over the country –which vastly outweighs the impact of inbound tourism. Research carried out for the Heritage Lottery Fund and Visit Britain showed that heritage tourism makes a bigger contribution to the UK economy than the car-manufacturing industry, or the advertising or film-making sectors (HLF & Visit Britain 2010). This is testament to the professionalism and high standards of today's heritage sector, as well as the continuing insatiability of the public's appetite for the past, often fuelled by films, TV and books.

There are, however, seemingly contradictory demands placed on heritage. On the one hand, it is viewed as an engine of growth, capable of servicing the demands of an ever increasing number of visitors and of bringing new economic vitality to the country at a time when many other sectors are in decline. On the other, it is an intensely local phenomenon, each place different and distinctive, mattering to local people for local reasons and vulnerable to commodification and over-commercialisation. Public funding which sustains the quality of valued places has been cut at the very time the government seeks to increase levels of domestic tourism on the back of a thriving and distinctive historic environment.

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RECOMMENDATIONS

While the National Trust sits, happily, outwith the reach of government as an independent charity which draws a substantial income from a variety of voluntary sources including our members, we operate within a framework of government regulatory and financial policies. From our perspective, a number of critical policy issues present themselves.

1. Heritage as a priority

First is the need for government to recognise the power of heritage in all its forms, and the multiple layers of value that constitute it and give it meaning to people. It is not enough for the primary policy responsibility for heritage to be confined to the smallest of the Whitehall departments (Department for Culture, Media and Sport). It needs to be a cause that the government as a whole and all departments adopt in equal measure, and take into account in their decision making – not least given the role that many of them (Defra, Ministry of Defence, Department for Transport) play in directly managing historic landscapes. While the coalition government has latterly endorsed the "vision statement" on the historic environment published in the dying days of its predecessor, there are still too many signs that heritage is regarded as a discrete policy area rather than as a central plank of sustainability and the place-making agenda. Hence, ministers can support a second High Speed Rail line stating that it will benefit the national economy (including tourism), while seemingly less concerned about the damage it will bring to the tranquillity of the Chilterns Area of Outstanding Natural Beauty and countless historic sites along its route.

2. A framework for localism

Second, there needs to be a greater commitment to exploring how local and non-official forms of heritage will be protected

in the future, especially given the government's commitment to localising decision-making. The Localism Bill introduces largely untested new powers at the neighbourhood level, while the government at the same time plans to simplify the national planning policy framework. This raises the contentious question of whether heritage designations such as conservation areas are "national" in scope, or whether they were only ever intended to be local badges of recognition (and can therefore be more lightly treated within national planning guidance). The National Trust is passionate about localism, but we are clear that it needs a framework – where rules and expectations are clearly agreed in advance, and points of principle marked out for all to see. The protection of heritage is one of those points of principle.

3. Non-economic value of heritage

Finally, we need a discourse around tourism that speaks to its social and cultural value as well as its economic might. Governments are often keen to champion the economic power of tourism, and yet there may be other, social reasons why more people than are currently able to ought to be given have the chance to experience a break from the norm. Lives are becoming more frantic and rushed, and many people are excluded from opportunities to enjoy "time out" because of lack of money, lack of access to transport, or responsibilities for close dependents. We need to retain a sense of the value of tourism, heritage and the historic environment to our collective happiness and social wellbeing, as well as to the financial bottom line. This was the driving idea behind the foundation of the National Trust, and it is one that resonates as strongly today as it did in the late nineteenth century. We should not be the generation that marks its passing.

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Endnotes

1   The 1907 Act and subsequent Acts can be viewed at http://www.nationaltrust.org.uk/main/w-nt_acts_1907-1971.pdf

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THE IMPACT OF COMMERCIAL ARCHAEOLOGY ON THE UK HERITAGE

Michael Fulford

SUMMARY

- 1990: Planning Policy Guidance (PPG) 16 in England embedded the principle of developers paying for the mitigation of any damage, or loss to the archaeological heritage that might result from their proposals by means of preservation by record. In 1994, PPG 15 extended the principle to the above-ground, built historic environment in England.

- 2010: Planning Policy Statement (PPS) 5 replaced PPGs 15 and 16. Further revision of planning guidance in respect to heritage assets is anticipated in 2011.

- 90% of all the investigations carried out in England since 1990 were undertaken by commercial archaeological organisations, mainly on development projects.

- In these interventions, responsibility for quality control and assurance lies between the planning authorities and the archaeological contractors. There may not be academic involvement until a final publication stage, if at all.

- In theory the "grey literature" – the reports created throughout the process – is accessible to the public, but in practice local communities have found it difficult to access because of the problems of finding out what is available and its highly restricted distribution.

- Only 6% of investigations carried out between 1990 and 1994 had reached final publication 12 years later, i.e. by 2006. An assessment of significance of the historic environment is very difficult if the most recent syntheses and regional research

agenda still rely heavily on research undertaken and reported before 1990.

RECOMMENDATIONS

1. Improve access to the results of commercial archaeology. Identify effective systems for ensuring the completion and publication of archaeological projects undertaken through the planning process.
2. Strategic research. Identify ways of enhancing developer-funded archaeology on regional and national themes. This would provide the foundation for PPS 5's ambitions to advance understanding, significance, publication and public benefit.
3. Increase collaboration across the university and commercial sectors. It would be helpful to develop structures and methodologies to encourage the closer working of university academics and commercial archaeologists.

INTRODUCTION

In excess of 90% of the archaeological investigations currently undertaken in the UK are carried out by commercial archaeological organisations, mainly in connection with development projects. This arises from the implementation of Planning Policy Guidance (PPG) 16 in 1990 in England, which embedded the principle of developers paying for the mitigation of any damage or loss to the archaeological heritage that might result from their proposals by means of "preservation by record" where "preservation *in situ* is not possible or not merited". Prior to 1990 some developers had contributed to the costs of archaeological work on a case-by-case basis, either voluntarily or under planning policies, but there was variable practice among planning authorities in England. The principles of PPG 16 were also adopted by

Wales and Scotland. Although PPG 15 extended the principle to the built historic environment in England in 1994, PPG 16 has secured a high level of investigation into above-ground historic remains. Developer-funded archaeology is also established across the European Union through the EU Environmental Impact Directive and the Council of Europe's "European Convention on the Protection of the Archaeological Heritage" (1992), known more commonly as the Malta or Valletta Convention.

These policies have been carried forward in England with Planning Policy Statement 5 (PPS 5), implemented in the spring of 2010, which replaced PPGs 15 and 16. It enshrines the important qualification that any proposed archaeological work will demonstrate significance in its contribution to our knowledge and understanding of England's heritage: "Where the loss of the whole or a material part of a heritage asset's significance is justified, local planning authorities should require the developer to record and advance understanding of the significance of the heritage asset before it is lost." (PPS 5, HE12.3) This supports the overarching government aim set out in the introduction to PPS 5 "that the historic environment and its heritage assets should be conserved and enjoyed for the quality of life they bring to this and future generations." Thus a key objective for planning and the historic environment is to "to contribute to our knowledge and understanding of the past by ensuring that opportunities are taken to capture evidence from the historic environment and to make this publicly available, particularly where a heritage asset is to be lost." (PPS 5 Introduction, paragraph 7)

Further revision of planning guidance in respect to heritage assets is anticipated in the context of the proposed National Planning Policy Framework for England expected later in 2011, but no further information is yet available (April 2011). There is a particular concern over the potential impact of the loosening of planning controls at the local level in the context of proposed neighbourhood development orders.

The implementation of PPS 5, as with PPGs 15 and 16, is in the hands of local planning authorities who determine the nature and scale of the response to the threat to the heritage. Typically, if desktop studies identify potential remains ("heritage assets with archaeological interest" in the language of PPS 5) which may be threatened by the proposed development, the planning authority will require an evaluation to be undertaken to assess the significance of what is present in order to determine how the resource should be managed in the context of the planning application. Evaluations use a variety of techniques such as surface collection, geophysical survey and trial-trenching. If it is deemed that destruction of the archaeological resource is justifiable the planning authority will impose conditions on its consent to the development. These will require a record to be made of the remains prior to destruction and will involve a variety of methods such as open area excavation, strip, map and sample excavation, and watching brief.

The overall process produces a variety of documents (desk-based assessment reports, field evaluation reports, written schemes of investigation, post-excavation assessment reports) which are generally submitted at particular stages in the planning process. These reports are generally produced in very small numbers and copies are normally deposited in the local Historic Environment Record (HER). However, in the case of the "post-determination" reports there is an expectation that these will be published. Release of funding for this work requires the production of a post-excavation assessment of the research potential of the results with recommendations of the nature and level of work to be undertaken with costings to bring the work to publication. Development-led archaeological work is often put out to tender. Sometimes, each individual stage of work from evaluation through post-determination fieldwork and post-excavation analysis and publication may be separately tendered. This is not the norm, but can result

in different contractors being engaged for the different stages of the work at any one development. A larger problem is that, in areas of intensive development (e.g. a particular town or landscape), a variety of different organisations may be working in related or even adjacent sites; this may result in fragmented approaches and reporting.

QUALITY CONTROL AND ASSURANCE

Responsibility for quality control and assurance is divided between the planning authorities, which require pre-determination evaluations and then impose post-determination conditions where the heritage asset will be destroyed by development, and the archaeological contractors who undertake the evaluations and, where required, subsequent excavation and post-excavation analysis of the results of the fieldwork (Hinton and Jennings 2007). There is one standard-setting, professional organisation for archaeologists, the Institute for Archaeologists (IfA), and planning authorities increasingly require membership of this body on the part of contracting archaeologists both at organisational level, as Registered Organisations, and as individuals (PIfA, AIfA and MIfA). Continued Professional Development (CPD) is a requirement of individual IfA members (cf *Ibid*.: 110–11).[1] While independent consultants are sometimes engaged to monitor major projects in the field and in the post-excavation phase, academic peer review of commercial work may not otherwise take place until it is brought to final publication, rather than being deployed at the outset, at the planning and research design stage prior to the commencement of fieldwork.

Insufficient resources outside of commercial archaeology mean that it is hard for university and museum researchers to put together research projects to develop new approaches and methodologies in the field that could then be applied in the

commercial sector. Equally, universities also lack the resources to keep pace with those new methodologies and approaches which are primarily being generated in the commercial sector.

THE RECORD

Where there are two tiers of local government it is normally the responsibility of the County Council to capture the outcomes of commercial work undertaken as part of the planning process; otherwise the responsibility falls to District Councils. These reports (described above) form the principal component of the "grey literature". In theory this is accessible to the public, notably through local authority Historic Environment Records (HERs), but in practice local communities have often found it difficult to access because of the problems of finding out what is available and its highly restricted distribution. Some "grey literature" reports are available on-line, via the web-sites of individual contractors or organisations like the Archaeology Data Service (ADS), but coverage is far from complete. The need to make the results of developer-funded work more readily accessible has been recognised as a priority by English Heritage and others in the archaeological community and the increasing number of reports available via the ADS and the Online Access to the Index of Archaeological Investigations Project (OASIS) has been an improvement (over 9000 reports on-line at the end of 2010). A single, national record, the Archaeological Investigations Project (AIP) based at Bournemouth University, aims to capture brief reports of all archaeological interventions undertaken in England, drawn from a review of the "grey literature" reports themselves and from county or regional "round-ups", but it relies on the goodwill of HERs and of contracting organisations to supply this information. The AIP classifies fieldwork investigations by the categories of field evaluation,

geophysical survey and post-determination/research (the latter including both excavation and watching briefs/ "archaeological monitoring").

Of concern is the fact that a number of investigations do not produce published documentation, either shortly after fieldwork or at all. The most significant of these are either excavations undertaken as a condition of planning permission or else for purposes outside the planning process. Interim reports are rarely produced for post-determination excavations (perhaps mainly because there is no requirement of the planning system for the submission of a formal document at that stage in the process), and the same may be true for other classes of excavations; final reports may only be published many years later or not at all. Although there are no hard figures, anecdotally this appears to be a widespread problem, often because of developers reneging on contracts combined with a lack of legal enforcement action on the part of planning authorities.

THE VOLUME OF ARCHAEOLOGICAL WORK UNDERTAKEN IN ENGLAND SINCE 1990 AND ITS RESULTS

The Archaeological Investigations Project at Bournemouth University records more than 60,000 planning-related archaeological investigations since 1990 at an estimated cost of greater than £2 billion.[2] At a superficial level it is possible to characterise this work and its results. Field evaluations have been undertaken very widely across the landscape of England, in particular, including in areas previously unexamined. Preservation *in situ* policies have resulted in some of the most important assets being left untouched (although much of great importance has been excavated). Many small post-determination recording projects have been undertaken, some (but by no

means all) with results of limited value. Some very large-scale landscape projects have been done on quarries, motorways and other infrastructure schemes, in which tens or even hundreds of hectares of ancient landscape have been investigated. Published examples producing results of outstanding national importance include the Heathrow and Stansted airports, the M6 Toll, the A120 and A421 projects (Framework Archaeology 2006; 2008; 2010; Powell *et al.*, 2008; Timby *et al.*, 2007a&b). One overall result from all this work is that archaeological remains of all periods are now seen to be much more abundant than previously recognised (with implications for assessments of significance).

There has, however, been no systematic attempt to capture, characterise and assess the significance of all the developer-funded work undertaken in England since the implementation of PPG 16 in 1990. English Heritage has promoted the development of Regional Research Frameworks, but with limited success in relation to achieving national coverage and in exploiting the grey literature. However, Professor Richard Bradley has recently demonstrated the research potential of the results of developer-funded archaeology for the study of prehistoric Britain and Ireland. He concluded that syntheses based purely upon conventionally-published data contain serious lacunae in a number of important areas (Bradley 2006; 2007; Phillips and Bradley 2005). A second project has recently been undertaken to assess the volume and significance of the grey literature relating to Roman England. In its first phase this surveyed the period between 1990 and 2004 revealing that 9,428 fieldwork projects had identified Roman remains (Cotswold Archaeology 2008). A key-word search of the summary text field of the post-determination or research projects found that 2323 projects included the term "watching brief" and 2751 "excavation". Overall it appears that about half of the investigations which encountered Roman remains were evaluations, with the remainder divided broadly between

excavations and watching briefs /archaeological monitoring. About 90% of all the interventions carried out in England since 1990 were undertaken by commercial archaeological organisations. The small number of geophysical surveys, typically undertaken pre-determination, probably indicates under-representation in this database (Fulford and Holbrook 2011).

The project then went on to examine how many reports, comprising all categories of fieldwork investigations, including excavations, evaluations and watching briefs had actually been published between 1990 and 2006, i.e. extending the survey two years beyond the cut-off date of the initial search, through a search of the Council for British Archaeology (CBA)'s annual *British and Irish Archaeological Bibliography* (BIAB). While 5% of reports had reached some form of publication, only 3% had reached final publication. Even allowing for the time-lag between fieldwork and publication only 6% of investigations carried out between 1990 and 1994 had reached final publication 12 years later, i.e. by 2006. This survey embraced all types of investigation, including desk-based assessments and evaluations, whose results may not merit publication in their own right, but which nevertheless inform the HER.

The second phase of the assessment of the grey literature pertaining to the archaeology of Roman England involved a cleaning of the data to remove duplications and negative evidence (Cotswold Archaeology 2009). Five counties were targeted where it was established that there was a slightly higher rate of publication overall (16%) than previously estimated. There was a lower incidence of publication of evaluations and watching briefs, respectively 9% and 6%, but relatively higher for excavations at 34%. Translating the percentages into actual numbers of reports reveals a total of 772 commercial projects for the five counties. The pilot study unequivocally established that the "grey literature" contained reports of great significance to our knowledge and understanding of

the Roman past (*Ibid*.: 106-115). The pilot counties represent 9.5% of England by area and, in terms of investigations, 12% of the national resource of the 9,428 investigations listed in the first phase of the project. However, the cleaning process associated with the second stage of the study, suggested that the total number of reports with important information for the archaeology of Roman Britain could be reduced to 6,600. If we extrapolate from this figure to include all 21 years of PPG 16 from 1990 to 2010, the total number of reports with significant potential for the study of Roman England is estimated at about 10,500. There is every reason to suppose that the volume of reports with a potential to contribute to our knowledge and understanding of prehistoric, medieval, post-medieval and industrial archaeology is on a comparable scale. These figures, it needs to be remembered, only apply to England, and do not include comparable work undertaken in Wales, Scotland and Northern Ireland. Nor do they include the results of maritime archaeology where commercial archaeology is also making an invaluable contribution.

RATE OF PUBLICATION

In the stage 2 study of the "grey literature" pertaining to Roman England it was established that it becomes increasingly unlikely that a report will be brought to publication if it has not been published within five years of the fieldwork having been undertaken. Thus within the pilot counties 52% of reports of fieldwork undertaken between 1990 and 1994 remained unpublished by 2006. For fieldwork undertaken between 1995 and 1999 the proportion of those reports remaining unpublished by 2006 was similar at 53%.

The sheer volume of information available for synthesis and for the development of new research agenda is huge and the

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relative inaccessibility of much of it remains a major problem (although the volume of *published* project reports is in itself sufficiently large to present a very considerable challenge when it comes to analysis and synthesis). For coherent, nation-wide and UK-wide approaches to be made to these data, appropriate resources need to be identified. No such resources are available from commercial archaeology itself which is project based. Some notable achievements have been made through support derived from the Aggregates Levy Sustainability Fund (ALSF) (e.g. Booth *et al.*: 2007) but this funding has now, from April 2011, been withdrawn by the Treasury. Another recent approach, also lapsed, is the initiative developed by the Heritage Council of Ireland with their Irish National Strategic Archaeological Research (INSTAR) Programme. In the University context it is sobering to reflect that the maximum research resources available for a single research project from research organisations such as the Arts and Humanities Research Council (AHRC) and Leverhulme only amount to about £500,000. Though the maximum size of research grant from AHRC for up to five years is £1 million, in practice, because of the full economic costing regime (fEC), only about half is actually available to spend on research personnel and support costs such as travel and subsistence. These resources do not go far when time needs to be spent in accessing the data in the first place from local authority HERs and commercial organisations up and down the country. It has been estimated that the basic cost of recovering reports from HERs for a national survey of the archaeology of Roman England in terms of travel, subsistence and time is of the order of £200,000. If one adds to that figure the cost of the time needed for researchers to evaluate and synthesise the information in timely fashion, it is safe to conclude that it is not possible to conduct a national (i.e. England only) assessment of the contribution of commercial archaeology since 1990 to data-rich periods from later prehistory onwards with the level

of resources currently available from individual grant-awarding organisations. While more "grey literature" is now being made available electronically through OASIS and the Archaeology Data Service (ADS) at the University of York, the overwhelming majority of PPG 16 reports remain stored locally. Commercial organisations are also encountering significant delays from some authorities before reports are signed off by HER officers for publication in OASIS. This is attributable to a lack of local authority resources and concerns about the ability to import OASIS data into HERs.

Given that PPS 5 (Policy HE12) stipulates that "investigating the significance of the historic environment" (Policy HE12.2) and "local planning authorities should require the developer to record and advance understanding of the significance of the heritage asset before it is lost" (HE12.3), the problem generated by both the relative invisibility of large amounts of the results of archaeological investigation and the lack of synthesis and research of that resource is clear. Assessment of significance will be very difficult if the most recent syntheses and Regional Research agenda still rely heavily on research undertaken and reported before 1990. It remains to be seen how Policy HE12 will be translated into the National Planning Policy Framework and what arrangements will be put in place for safeguarding the heritage in local contexts where planning controls are relaxed.

UNIVERSITY RESEARCH AND COMMERCIAL ARCHAEOLOGY

It would seem obvious, if it is not to be addressed through the planning process, that the challenge of research and synthesis presented by the enormous output of commercially generated archaeology in the UK since 1990 should be met by the HE sector. However, there are several barriers to such engagement.

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As set out above, one such obstacle to work being taken forward is the lack of resources to conduct research at national or UK level. Only one survey, that by Professor Richard Bradley of later prehistory (fourth millennium to first millennium BC), has been undertaken across Britain (and Ireland) with research grants from the Arts and Humanities Research Board (now AHRC) and English Heritage (Bradley 2007). It explored the contribution that the first 10 years of developer-funded work since 1990 had made to the study of this period at the level of a UK and Ireland-wide synthesis. As with the study of the potential of the "grey literature" for the study of Roman England, it was clear that additional resources, beyond that of the time of the academic concerned, were required to assist with the research. While it is implicit in PPS 5 that resources should be made available to address questions of significance, there is no process by which these might be attached to projects of a synthesising nature except in the case of large-scale infrastructure projects, such as, for example, the proposed high-speed rail link between London and Birmingham.

A second barrier to the engagement of academics in the study and synthesis of commercially-generated archaeology in the UK is the Research Assessment Exercise (RAE), now the Research Excellent Framework (REF) and the associated definitions of quality levels. In RAE 2008 the best work (4★), which includes an assessment of impact, is judged to be "quality that is world-leading in terms of originality, significance and rigour", while "quality that is recognised internationally in terms of originality, significance and rigour" is rated 2★. 1★ rated research is considered of a "quality that is recognised nationally in terms of originality, significance and rigour". No funding was attached to 1★ rated research after RAE 2008 and it is likely that no funding will follow 2★ research in REF 2013.

That commercially-generated research was generally not assessed from the first RAE in 1992 onwards as of the highest

quality is reflected in the tendency towards low gradings of departments of archaeology with affiliated commercial operations which submitted staff members from their commercial units as well as from the academic department. As the RAE became more and more competitive universities chose to return fewer and fewer staff working in their commercial archaeology units in the UK. This was not a judgement on the intrinsic quality of individual pieces of work, but a reflection of their generally parochial character. Published outputs tended to be related to individual sites which had been excavated through reasons of development control, not in order to address research questions that might be claimed to be of international importance. In the RAE (now the REF) context it is hard to see how high ratings could be achieved except at the level of synthesis or through larger-framed research projects where the achievements of commercial archaeology could be seen to be more than just the sum of the individual parts. However, as we have suggested, to exploit commercial archaeology to address large research questions which might attract the highest ratings requires two conditions to be met: accessibility of the outputs and the appropriate resources to undertake research which is drawing on such a large volume of new data.

Academic research could also articulate with commercial archaeology at the research design stage when fieldwork is being planned. The right specialist advice (e.g. about period priorities, sampling strategies, etc) could make a significant difference to a commercial project. Modest inputs of time by academics could substantially shape the way large amounts of money are spent, to the benefit of all. This would very much be in line with the aspirations of PPS 5. Encouraging appropriate and consistent sampling strategies may be one area where such input could be very useful; many insights will now come from inter-site comparisons, but this requires a wide view of approaches and methods.

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CATCH 22 AND THE DEMONSTRATION OF SIGNIFICANCE

If PPS 5 requires, where appropriate, development management to investigate the significance of the heritage asset, this in turn requires an understanding of the broader context of the heritage asset in question. How can we assess the significance of the investigation of, for example, another prehistoric, Roman, medieval rural settlement of the last two millennia, unless we have an idea of how it might contribute to a larger pool of knowledge and the associated debates? Equally, if we do not have a grasp on the current state of knowledge and understanding, how will we know what constitutes an advance in the context of PPS 5's requirement "to advance knowledge and understanding"? There is a serious risk of ossification of the system unless resources are put in place to help us assimilate the results of archaeological investigation since 1990 and establish how that resource, in turn, fits into the pre-existing knowledge base.

RESEARCH AND ARCHIVES

Up to now we have considered the problems of assimilating the new knowledge generated by the volume of published and unpublished "grey literature" deriving from the work of commercial archaeology. However, we also need to appreciate that, in tandem with the production of written reports, the process is generating large archives of excavation records, finds and associated documentation. Some of this material, such as metalwork or waterlogged wood, requires controlled environments for its storage. The overwhelming majority of these archives comprise the bulk finds of flint, pottery and faunal remains, and documentation, among which there are few items of such intrinsic interest that they merit public exhibition.

Yet their potential intellectual contribution is inestimable as new research questions and ideas demands fresh approaches to the study of material culture and biological remains. The recent and ongoing debate to allow regulations to be revised to permit the long-term retention of human remains discovered during archaeological investigations for research purposes provides a pertinent example. The same arguments could be rehearsed for almost any category of find, such as faunal remains or building materials, categories of material which were routinely disposed of before the 1970s. Indeed there has been a transformation in the quality of archaeological archives corresponding with the systematisation of excavation and its documentation, though there are still major issues around accessibility and the ease with which they can be used.

However, the volume of excavation archives is exceeding the capacity of local and county museums to store and manage in terms of cataloguing and the facilitation of access for research purposes. Access to excavation archives is becoming as great a problem as that to the written outputs. Just as the trend is growing towards making available records, such as the excavation "grey literature", electronically from central repositories such as the ADS based at the University of York, so a start has been made to concentrate the surviving physical remains of these investigations into larger archive centres. An excellent example of this is the Museum of London's London Archaeological Archives Research Centre (LAARC) based in Hackney, north London, which houses the archaeological archives of over 7,500 sites investigated within the last 100 years within the Greater London area. Economies of scale and the sharing of costs among numbers of stakeholders in such a collaborative enterprise provide the basis for a more secure service in terms of cataloguing and managing access to researchers. Volunteers provide an invaluable resource to assist in the day-to-day running of these resources. Could the LAARC model be rolled out

regionally as the Archaeological Archive Forum advocates (see www.britarch.ac.uk/archives)? Can we envisage multi-county excavation archives organised on a sub-regional basis with on-line catalogues of their contents? How would these be funded as capital and revenue projects? Is there a role here for the Heritage Lottery Fund (HLF) to assist with capital costs with development-derived resources to assist with running costs?

CONCLUSIONS

There have undoubtedly been enormous gains in our knowledge and understanding of the UK's past since the introduction of PPG 16 in England in 1990 and equivalent guidance in the planning controls of Wales, Scotland and Northern Ireland. However, there is significant wastage in the industry: too much of the outcome of this multi-million pound expenditure is invisible to the academic research community and the wider public. The problem is not merely confined to the mass of partly published projects, the grey literature, but to those excavations undertaken as a condition of consent for which no post-excavation work has been undertaken at all, and for which there may be no publicly available documentation or summary. In a related problem, the volume of finds and the documentation from commercial archaeology is posing significant challenges to the museums and archives sector in terms of storage and providing access to researchers.

Funding of commercial archaeology is project-based through the planning system. There is very little resource for research and synthesis at regional and national levels to determine the significance of the hundreds of million pounds of investment into the UK's past since 1990. Although there is a professional body, the IfA, it is small with insufficient resources to improve quality of work across the UK and while there is control

through the planning process, practice across the industry is very largely self-regulated.

University archaeologists and historians are well-placed to take forward research into the results of commercial archaeology, but there are grossly insufficient resources to do this work on a systematic basis. In addition, the UK's classification of research quality through the RAE and the REF is a disincentive for university academics to devote significant amounts of time to engaging with project-based commercial archaeology within the UK. However, PPS 5, with its emphasis on advancing understanding, significance, publication and public benefit does potentially change the ground rules quite radically from "the preservation by record" approach of PPG 16. This could open up new opportunities for the academic community to engage with commercial archaeology and its results in new and positive ways.

RECOMMENDATIONS

1. Improve access to the results of commercial archaeology
The need to identify effective systems for ensuring the completion and publication of archaeological projects undertaken through the planning process is pressing. One contribution would be to promote the practice of "interim" reporting of post-determination investigations, the full publication of which may lie some years ahead. In this context it would be helpful to undertake an audit of commercial excavations conducted since 1990 for which no post-excavation analysis has been undertaken at all. This would identify projects where a strong case could be made for taking work forward to publication for public benefit. Equally, it is essential to undertake an audit of the published and grey literature resource since 1990 to provide the quantified basis for establishing strategic regional

and national research objectives to determine the significance of results.

2. Strategic research

It is essential to identify ways of enhancing the narrowly focused, project-based, developer-funded archaeology by resourcing strategic research on regional and national themes as well as new methodological approaches. A fresh approach with carefully targeted resources will provide the basis for addressing the aspirations of PPS 5 of advancing understanding, significance, publication and public benefit.

3. Collaborate across sectors

The need for better collaboration has been identified. In the context of strategising research it would be helpful to develop structures and methodologies to encourage the closer working of university academics and commercial archaeologists. However, it is not clear that academe has the capacity to address the research potential unlocked by commercial archaeology in areas such as, for example, industrial or maritime archaeology. An audit of the research capacity of academia would clearly be helpful. Museums and archives which hold the results of commercial archaeology are under great strain. It is essential to explore the potential for extending the collaborative model of the LAARC "super" archive centre outside of London and the means by which that need might be addressed.

ACKNOWLEDGEMENTS

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Endnotes

1   In a survey conducted in 2007-8 the highest qualification for 43% of paid archaeologists was a first degree; for 23% it was a Masters; and for 9% it was a doctorate (Aitchison and Edwards (2008): 55, Table 40).

2   Estimates derived from Aitchison (2001) and Kenneth Aitchison in Hinton and Jennings (2007: 100). This compares with English Heritage's budget for "rescue archaeology" in the late 1980s of the order of £7 million per annum.

4 ARCHAEOLOGY AND CULTURAL HERITAGE IN WAR ZONES

John Curtis

SUMMARY

- War and the destruction of cultural heritage have almost always gone hand-in-hand.
- Best publicised and most recent cases: Afghanistan and Iraq. The examples below indicate the effects of war on cultural heritage:
- Afghanistan:
  - 70% of the National Museum's artefacts were stolen between 1992 and 1994; and between 1996 and 2001, 2500 objects and sculptures in the museum were smashed, defaced or stolen.
  - In parts of the country, the trade in antiquities has become an important staple of the economy alongside the heroin trade.
  - Trading of antiquities on military bases has been confirmed.
- Iraq:
  - 2003 looting of Iraq Museum in Baghdad: 40 iconic objects stolen; statues smashed; 16,000 objects stolen from the study collection.
  - Military bases established at Babylon and near Ur of the Chaldees. Damage caused by: digging of trenches; contamination of the archaeological record by earth from outside and imported gravel; large quantities of fuel spilled; lack of maintenance to heritage. In particular, damage to the foundations of the Ishtar Gate.
  - Rampant looting at other archaeological sites without military protection.
  - Explosion of dome of Al-Askari mosque, left unprotected, in Samarra by insurgents.

RECOMMENDATIONS

1. Protection of cultural heritage in war zones. The UK should ratify the Hague Convention.
2. Professional advice. Governments and military authorities should take heed of the advice of cultural heritage experts before, during and after military conflicts, working through appropriate national bodies.
3. International coordination. Efforts to salvage cultural heritage in war zones should be coordinated through a single international body such as UNESCO.

INTRODUCTION

The protection of cultural heritage in war zones is a subject that has attracted much attention in recent years, largely because of recent conflicts in the Middle East and the Balkans. It is a regrettable fact, however, that war and the destruction of cultural heritage have almost always gone hand-in-hand. For example, classical authors describe how Alexander burnt Persepolis in 330 BC, but not before his soldiers had removed vast amounts of booty. In medieval times, the destructive powers of the Mongols and the disastrous effects on the cultural heritage of many parts of Central Asia and the Middle East have been well-documented. Throughout history, but particularly from World War One onwards, archaeological sites and monuments have been badly affected by military activities. The widespread destruction of cultural property in World War Two, of which Monte Casino and Dresden are but two examples, led directly to the 1954 Hague convention on the "The Protection of Cultural Property in the Event of Armed Conflict". Since then, however, the destruction of cultural heritage has continued apace. Many archaeological sites and monuments must have been destroyed in the Iraq-Iran

War of 1980-1988, but as yet little information is available about this. By contrast, the destruction of cultural property in the Balkan Wars (1992-1999), particularly the shelling of the Oriental Institute and the Bosnian National Library in Sarajevo, is well-known in the west. In fact, there are so many recent instances of destruction of cultural heritage in war zones that it is impossible to cover them all in a short paper, so I am proposing to refer to just two of the best publicised cases, Afghanistan and Iraq.

CASE STUDY 1: AFGHANISTAN

In terms of the destruction of cultural heritage, one of the worst affected areas in the world has been Afghanistan, directly resulting from its turbulent history during the last 30 years. Following the Soviet invasion of 1979-1989, Kabul was occupied in turn by the mujahedin and the Taliban until 2001, and since 2001 NATO troops have been involved in Helmand and Kandahar Provinces.

Looting of the museum started soon after the mujahedin captured Kabul and continued during the time of the civil war between 1992 and 1994. During this time, the National Museum was badly damaged by rockets, causing the roof to collapse (*Encyclopaedia Iranica* 2009). Museum staff transferred what could be salvaged to vaults in the basement of the museum, but during subsequent fighting, the museum came frequently under rocket and machine-gun attack, and in due course it was more or less completely gutted. At the same time, mujahedin soldiers systematically looted the vaults, stealing some objects to sell to antiquities dealers and smashing others. Omara Khan Masoudi, the Director of the Kabul Museum, estimates that 70% of the museum's artefacts were stolen during this period (Tavernise 2009). Amongst the objects stolen were the museum's world-renowned collection of 40,000 coins

(Massoudi in Hiebert and Cambon 2011: 38), as well as objects from Begram and other famous sites representative of the Bactrian, Kushan, Gandharan and later civilisations.

After the cessation of fighting in 1994 curators were able to return to the Museum, but soon the Taliban arrived on the scene. In fact, there was no looting of the museum in the time of the Taliban (1996–2001), but there was an appalling amount of damage following Mullah Omar's declaration in February 2001 that graven images were idolatrous and un-Islamic and should be destroyed. As a result, 2500 objects and sculptures in the museum were smashed, defaced or stolen. The same decree also led to the destruction in March 2001 of the two monumental Buddha statues at Bamiyan. In 2003 the "Cultural Landscape and Archaeological Remains of the Bamiyan Valley" were belatedly listed by UNESCO as a World Heritage Site, but even if they had been inscribed earlier it is unlikely that this would have saved them.

In the period 1994–96 the private organisation the Society for the Preservation of Afghanistan's Cultural Heritage (SPACH) made valiant efforts to retrieve as many items stolen from the museum as possible, including where necessary buying them from antiquities dealers, and in this way they were able to return 48 items. They were also instrumental in 1996 in making an inventory of remaining museum objects. Many of the looted objects are probably irretrievably lost, but they continue to turn up. Thus, 20 carved ivory and bone panels in Indian style from Begram, belonging to the Kushan culture, have been purchased outside Afghanistan by a generous benefactor, and will be returned to Kabul after being displayed in a special exhibition about Afghanistan in the British Museum in spring 2011. This travelling exhibition that was first shown in France includes groups of precious objects that were hidden in 1988 in Kabul because of the deteriorating security situation towards the end of the Soviet occupation and were "rediscovered" in 2004.

They comprise the spectacular gold jewellery from the first century AD tombs at Tillya Tepe (the so-called "Bactrian gold") and various items from the sites of Begram and Ai Khanum (Massoudi in Hiebert and Cambon 2011: 36).

The looting of archaeological sites started in a limited way during the Russian invasion (1979-89) and gathered pace with the growth of mujahedin power. It was on a large scale after 1992, and continues until now. The worst affected areas are Badghis and Ghowr provinces in North-West Afghanistan, in the latter case with the encouragement of the local authorities who expect a share of the proceeds (pers. comm. Abdul Wasey Feroozi), but sites in North-East Afghanistan such as Ai Khanum have also been targeted. Helmand province where NATO forces are operating is a largely desert area, but there are many sites in the fertile valleys and the trading of antiquities on military bases has been confirmed. In parts of Afghanistan the trade in antiquities has apparently become an important staple of the economy alongside the heroin trade. The objects from these illicit excavations, often sent via Pakistan, have flooded onto antiquities markets in the west from 1992 onwards, and continue to do so. In an attempt to salvage some of this looted Afghan heritage, an "Afghan museum-in-exile" was established in a house in Bubendorf in Switzerland in 1999, with the aim of collecting as many as possible of the objects on the market. Most of them were donated. In this way, Paul Bucherer, the Director of the Bubendorf Museum, was able to return 1400 cultural and archaeological objects to the National Museum in Kabul in March 2007. The Bubendorf Museum has now closed. Artefacts have also been returned from Norway, Denmark, the USA, and the UK (Tavernise 2009). In Britain, a number of consignments of Afghan antiquities that had been seized by the police and customs authorities were returned to Kabul Museum and put on display on 6 October 2009. Following up on this initiative, the British Museum has now signed a memorandum of understanding with the Afghan Ministry of Information and

Culture authorising them to provide a safe haven for stolen Afghan material prior to its return to Kabul. Already, three consignments comprising several hundred pieces in all have been impounded by the UK Border Agency, at Manchester, Birmingham and Heathrow Airports, and now await return to Kabul.

Other bodies remain active in Afghanistan. The UNESCO office in Kabul recently (18-20 October 2010) organised a conference on "Safeguarding Cultural Heritage for Sustainable Development", the first of its kind since 2003. Before that, its sister organisation ICOM (the International Council of Museums) produced a "Red List of Afghanistan Antiquities at Risk" in an effort to bring to the attention of the international community the types of objects that were stolen from the Kabul Museum and are being looted from archaeological sites. This Red List was released at a press conference in the British Museum on 30 September 2008.

Although the looting of archaeological sites in North-West Afghanistan apparently continues apace, there have been some marked improvements in the Afghan situation. The Kabul Museum has now been repaired, albeit rather crudely, and at the time of writing there are several galleries containing objects as well as exhibitions of photographs. With regard to the restoration of monuments, the Aga Khan Trust for Culture is doing valuable work through its Historic Cities Programme, particularly in Kabul and Herat. There is also a limited amount of new archaeological work going on, including excavations by the French Archaeological Mission at two sites in Balkh Province in North Afghanistan and an Afghan rescue project at Mes Aynak.

CASE STUDY 2: IRAQ

The Second Gulf War in Iraq, the insurgency following it and the continuing foreign military presence in Iraq have

resulted in substantial damage to the Iraqi cultural heritage. Of the many cultural heritage atrocities that have occurred in Iraq, it is the looting of the Iraq Museum in Baghdad that has provoked the greatest outrage (Polk and Schuster 2005). This occurred between 10 and 12 April 2003, when American troops penetrated to the centre of Baghdad but left the museum unguarded. The disaster might have been much worse if museum staff had not had the foresight to remove as many objects as they could from the exhibition halls before the war and take them to a so-called "secret store" that was never discovered by the looters. However, they were forced to leave behind some iconic objects and about 40 of these were stolen. Other objects such as statues were smashed *in situ*, as were many of the showcases. In addition, the looters broke into the offices and storerooms and apart from inflicting a great deal of wilful damage they stole as many as 16,000 objects from the study collection including the renowned collection of 5000 cylinder and stamp seals. Approximately half of these objects, excluding the seals, have now been retrieved. Dr Donny George on the Iraqi side and Colonel Matthew Bogdanos of the US Marine Corps played key roles in tracking down some of the missing items (Bogdanos 2005a; 2005b). At the time of writing, the Iraq Museum is still mostly closed, although a few galleries have been refurbished and are open on demand. In Mosul Museum, the second most important museum in the country, exactly the same thing happened as in Baghdad at exactly the same time, namely 10–12 April 2003. Cases were smashed, statues thrown to the ground, and objects stolen. The museum in Basra had been empty since the First Gulf War in 1990, so was not a target for looters, but in 2007 the occupying British army in conjunction with the Iraqi authorities proposed that it should be relocated in a former palace of Saddam Hussein. It was hoped initially that this palace could be refurbished with British government funds, but these were not forthcoming and now a charitable

organisation known as The Friends of the Basrah Museum has been set up with the intention of raising the funds privately (www.friendsofbasrahmuseum.org.uk).

Apart from the looting of museums, the Second Gulf War also saw damage to some well-known archaeological sites, sometimes by the military. The most widely-publicised case here has been Babylon, arguably one of the most famous sites in the ancient world, where Camp Alpha was established on 2 September 2003. It is true that in the time of Saddam Hussein there was a great deal of restoration work and landscaping that by modern conservation standards would be completely unacceptable (Curtis 2008), but this does not excuse the decision to turn Babylon into a military camp, which was irresponsible, foolish and insensitive. The camp was established right in the heart of ancient Babylon, straddling the northern part of the inner city wall. It covered 150 hectares and at its busiest period accommodated 2000 soldiers. It is true that the presence of the camp may have prevented looting, but this was never the intention and inevitably a great deal of damage was caused to the ancient site. In fact, a small detachment of troops (as for example at Nimrud) would have been sufficient to deter looters.

The full extent of the damage at Babylon may not yet be apparent, but observers are agreed on some of the worst aspects of the damage. These include the digging of trenches, often through previously undisturbed archaeological deposits, and the removal of large amounts of surface soil, sometimes to a considerable depth. These operations turned up pottery, bones, and fragments of brick with cuneiform inscriptions of King Nebuchadnezzar. All around the camp were placed sandbags and so-called HESCO containers filled with earth sometimes scooped up from the site, but sometimes brought from outside Babylon. In the latter case, when the containers disintegrate, as they are designed to do, the contents will contaminate the archaeological record at Babylon. Then, at various locations

around the ancient site, areas were flattened for use as helicopter landing pads and parking lots. These spaces were covered with imported gravel, sometimes compacted and chemically treated. Further pollution occurred at the so-called Fuel Farm, where large quantities of fuel were spilled onto the ground. The movement of heavy military vehicles around the site has caused damage such as the breaking of the ancient brick pavement in the south part of the sixth century BC Processional Way. Perhaps worst of all, there has been damage to nine of the dragon figures in the foundations of the celebrated Ishtar Gate, probably caused by coalition soldiers trying to remove moulded bricks as souvenirs.

Following an international outcry, Camp Alpha was closed and the Babylon site handed back to the Iraqi authorities on 22 December 2004. In response to the crisis, UNESCO's International Coordination Committee (ICC) Iraq established a sub-committee "for the protection, conservation and management of the archaeological site of Babylon", but UNESCO's *Final Report on Damage Assessment in Babylon* (Van Ess and Curtis (eds.) 2009) was not published until 10 July 2009, some four and a half years after the camp was closed. In the meantime, the US State Department hired the World Monuments Fund to prepare a site management plan for Babylon. This is still in course of preparation, and no emergency repairs have yet been undertaken. The ICC Iraq has been kept informed of progress, but there has been little consultation. An important matter for debate is whether the "damage" to Babylon, both in the time of Saddam and when it was a military camp, should be rectified, or whether it should be allowed to remain as part of the historical record at the site.

There has also been intensive military activity in the vicinity of another famous and iconic site, Ur of the Chaldees, where excavations by Sir Leonard Woolley between 1922 and 1934 uncovered the remains of a prosperous Sumerian city state.

The ancient site is immediately next to Tallil Airbase, now reputedly the largest in the Middle East. After 2003 the Airbase was taken over by coalition forces and the ancient site of Ur was included within the perimeter fence surrounding the airbase, incidentally precluding access to Iraqi visitors including in 2007 the then Chairman of the State Board of Antiquities and Heritage. Although this was not the intention, fencing off the site certainly had the effect of protecting the site from looters, but it also meant that large numbers of coalition troops had unrestricted access to the site, which they could roam around at will. For a site without signage and designated walkways, this was clearly bad practice, although there is no firm evidence that it led to damage. In fact, the obvious deterioration of the exposed and sometimes reconstructed monuments, including the tombs of the kings of the Third Dynasty of Ur, is largely due to lack of maintenance extending over a period of many years. There is, however, one clear case of damage that was avoidable. This is the building of a Visitor Control Centre (VCC), the main gate to the whole compound, directly on top of one of the suburbs of ancient Ur known as Diqdiqqa. Although there have never been proper excavations at Diqdiqqa, it is clearly an important site, and if there had been consultation with archaeologists the coalition contractors would have been advised not to build structures in this place. In this case, however, as in so many others, there was no consultation. The site of Ur was eventually handed back to the Iraqi authorities in 2009.

Further instances of damage to famous archaeological monuments by coalition military activities may be noted at Kish, where a military installation was established on the ancient mound, and at the desert city of Hatra (first or second century AD), where the blowing up of munitions just a few miles from the site has caused cracks to appear in some of the arches.

At the same time, extensive damage has been caused to the Iraqi cultural heritage by insurgents protesting against the

coalition occupation or attempting to incite sectarian violence. The best known example of this is the Al-Askari mosque in Samarra, where the gilded copper dome was blown up in a bomb explosion in February 2006. Even though this mosque is of particular religious significance, containing the remains of the tenth and eleventh imams, no special efforts were made by the coalition to protect it.

The other major cause of damage to cultural heritage in Iraq has been looting, both of historic buildings and monuments and archaeological sites. Again, much of this could have been prevented by the rapid restoration of law and order and by proper policing. At the great Assyrian site of Nimrud, for example, a detachment of American troops was stationed at the site in 2003 and there was relatively little damage. At Nineveh, on the other hand, where there was no protection, the corrugated iron roof protecting the excavated remains of the palace of the Assyrian king Sennacherib was stripped off by looters in 2003, causing further deterioration of the Assyrian reliefs below.

As we have seen, a coalition presence at Babylon and Ur saved those sites from being looted, even though that presence caused damage, particularly in the case of Babylon. At other archaeological sites, where there was no military protection, there was rampant looting, particularly in the area to the south of Baghdad. Well-known sites that have been particularly badly affected include Isin, Umma, Umm al-Aqarib, Larsa, Zabalam, Adab and Bad Tibira. Using high resolution Digital Globe imagery, Elizabeth Stone has ascertained that many other sites in Southern Iraq were also looted (E. Stone 2008). The looting between 2003 and 2005 was undoubtedly very bad, although the figure given by some commentators (e.g. Rothfield 2009: 137) of 400,000-600,000 artefacts illegally excavated at this time is difficult to substantiate. In an attempt to establish the condition of some of the archaeological sites in southern Iraq, and ascertain whether looting was ongoing, Major-General

Barney White-Spunner, in charge of the British Third Division stationed at Basra, facilitated in June 2008 an inspection of selected sites within reach by helicopter of Basra (Curtis *et al.* 2008). The Iraqi-British team visited eight different sites, namely Ur, Tell al-Ubaid, Eridu, Warka (Uruk), Larsa, Tell el-Oueili, Tell al-Hiba (Lagash) and Tell al-Lahm. The results were surprising. There had evidently been extensive looting at Larsa and Tell el-Oueili, and limited looting at Tell al-Hiba and Tell al-Lahm, probably in 2003-04, but there was no certain evidence of very recent looting. At both Eridu and Larsa guard-towers had been erected in late 2003 and it is possible that these might have deterred looters. Lastly, at both Tell al-Ubaid and Tell al-Lahm there was military damage through the sites having been turned into defensive positions. It was assumed that this had been done by the Iraqi army in advance of the coalition invasion of 2003.

Although the survey seemed to indicate that there was no evidence of recent looting, it is important to bear in mind that the sample of sites was very small and it did not include sites in the north part of Dhi Qar province where there was known to have been bad looting in 2003-04. The same applies to some of the sites in the more northerly provinces of Qadisiyah, Wasit and Babil. Even if the looting is on the wane, however, there is certainly evidence at the time of writing (2011) of ongoing looting at selected archaeological sites.

To summarise, the main damage to the archaeological heritage in Iraq has been caused by:

- Preparations for war, e.g. military earthworks on archaeological sites;
- Damage during war, e.g. bomb craters and shell damage;
- Looting of museums and archaeological sites in the aftermath of war;
- Establishment of military camps on archaeological sites;
- Lack of maintenance at archaeological sites and monuments during wartime.

CONCLUSIONS

The conclusions below are drawn from the studies on Afghanistan and Iraq, particularly the latter. Although this might seem limited, Iraq in fact encapsulates everything that might happen in a war zone: damage during fighting, damage caused by military installations, failure to protect monuments and archaeological sites, looting, insurrection and sectarian violence. In thinking through how we might respond to military crises affecting cultural heritage, the following points deliberately target the UK.

(i) Hague Convention

Although many states signed the Hague Convention in 1954, a number (including the UK) have failed to ratify it, even though the USA did so in March 2009. While the UK claims to work within the spirit of the convention, this would have more credibility if it signed as a matter of urgency the 1954 Convention and its two protocols of 1954 and 1999. This is one of the principal recommendations of the submission to the Iraq Inquiry (Chilcot Inquiry) coordinated by the UK National Commission for UNESCO and signed by the British Academy (2010). The ratification of the Hague Convention would be facilitated by the revival of a stand-alone Draft Cultural Property (Armed Conflicts) Bill.

(ii) Pre-war planning

Especially in the case of Iraq, there was a lamentable lack of planning for the protection of archaeology and cultural heritage in the run-up to the Second Gulf War, both in the USA and in the UK. The situation on both sides of the Atlantic has been well-documented by Professor Lawrence Rothfield, formerly director of the Cultural Policy Centre at the University of Chicago, in his book *The Rape of Mesopotamia* (Rothfield 2009). Professor McGuire Gibson, also of the University of Chicago, was

invited to meetings in the Pentagon and the State Department, but his warnings about the dangers of looting at museums and archaeological sites, based on what happened in 1990–91 when many provincial museums in Iraq were looted and burnt, fell on deaf ears. In the UK, there was even less involvement with archaeologists who knew the region, and letters to government departments went unheeded, as did representations by Lord Renfrew to senior government figures including the prime minister, Tony Blair. The Ministry of Defence did at least consult Peter Stone, Professor of Heritage Studies at Newcastle University, who, after consultation, provided them with a list of major sites (P.G. Stone 2005), but there was no attempt to make contact with bodies that were familiar with the archaeology of Iraq, such as the British Museum or the British School of Archaeology in Iraq (now the British Institute for the Study of Iraq). Nor did the Ministry of Defence liaise with its sister Department of Culture, Media and Sport, which might have been expected to have some general responsibility for cultural heritage. It is difficult to see when an invasion is imminent what possible reason there can be for this failure to consult, and it is to be hoped that in similar critical situations (whether in war or peace) the roles and responsibilities of individual government departments will be clear. With regard to consulting experts in cultural heritage, government departments could do this through the British Academy, which is well-placed to advise on where the necessary expertise might be found, or through other organisations such as the International Council on Monuments and Sights (ICOMOS) or the International Committee of the Blue Shield (ICBS).

(iii) The role of the military

There can be no doubt that the military authorities have made some serious errors of judgement in Iraq, ranging from the failure to protect the Iraq Museum to decisions to build military installations on archaeologically sensitive sites such as

Babylon, Kish and Ur. Even though in several of the latter cases the actual construction work was done by civilian contractors (who must surely take some of the blame), these contractors were presumably working to the orders of the military. The main problem would seem to be that the coalition forces simply did not have access to the advice of archaeologists or specialists in cultural heritage, or if they did, they simply ignored it. The likelihood is that such advice was not available. The fact is that US and UK forces may have had in their ranks people trained in archaeology, but if they existed these people certainly did not have a remit to protect cultural heritage. In 2003 US forces did actually have two civil affairs officers with responsibility for culture, but they did not have senior positions and were not in the frontline. This lack of cultural heritage experts in the coalition forces contrasts strongly with the situation in World War II, when archaeologists such as Sir Leonard Woolley, Sir Mortimer Wheeler and J. B. Ward Perkins (Woolley 1947; Wheeler 1955) were embedded in the British army and did much valuable work protecting monuments and archaeological sites particularly in North Africa and Italy.

This leads on to the highly emotive subject of archaeologists working with the military. This matter is so controversial that when it was discussed at the World Archaeological Conference in Dublin in summer 2008, police presence was deemed necessary.[1] The extreme view is that of Professor Yannis Hamilakis of Southampton University, who believes that embedded archaeologists legitimise military intervention (Hamilakis 2003). I have some sympathy with this position, but take the view that once conflict is underway it is the duty of archaeologists to try and minimise damage to sites and monuments. Rene Teijgeler makes the interesting suggestion (in Curtis 2009) that archaeologists should only cooperate with the military if a mission has been approved by the UN Security Council. Even then, they should follow the same guidelines as emergency

workers in humanitarian organisations. In the case of the UK, one possibility might be to use archaeologists who are employed by the Ministry of Defence as members of Defence Estate staff, but employing them on active service would change their role and require them to have new contracts. In any case, it is clearly imperative that archaeologists should be available to give advice to military authorities to prevent a repetition of what happened in Iraq. There have been some improvements since 2003-4 in that the US Embassy in Baghdad now has a senior cultural advisor who liaises on cultural matters with the Iraqi authorities. This is a step in the right direction, but does not go far enough.

Some incidents in Iraq, such as the collecting of archaeological souvenirs, make it clear that more training is necessary for military personnel. In both the USA and the UK there is actually evidence of more emphasis on training, even in cultural awareness. For example, the British Ministry of Defence has recently published a small booklet on *The Significance of Culture to the Military*, but it does not refer specifically to archaeology. Recent US army initiatives include the issuing of packs of playing cards which highlight the value of cultural material.

(iv) Looting

In the cases of Afghanistan and Iraq, there has been looting of both the national museums and archaeological sites, in the latter cases sometimes ongoing. It is clear that looting of cultural heritage is liable to break out anywhere when there is a breakdown of law and order.[2] Before the First Gulf War in 1990, Iraq had one of the best records in the Middle East for conserving its cultural heritage. Looting only began on a large scale when central authority weakened to such an extent that it could no longer protect sites and monuments. Similarly, in Afghanistan there was comparatively little looting before 1979 when there was a strong central government. If any confirmation were needed that looting is an ever-present threat,

we have only to look to Egypt where there has been looting of cultural heritage during the recent troubles.

To return to Iraq, the outbreak of looting can be attributed directly to the failure of the coalition to establish law and order during and immediately after the invasion. The consequences of disbanding the Iraqi army and local police forces should have been obvious, especially in view of the looting that had occurred in 1990-91. Some measures taken belatedly, such as the creation of a special police force to protect sites and monuments and the erection of guard towers (financed by grants from Japan and Italy) at certain sites at the end of 2003, may have helped to curb the looting, but much of the damage had already been done.[3]

(v) Lack of international body to take charge

In terms of protecting cultural heritage, one of the main problems in Iraq has been the lack of an international body to take charge. In the beginning, the US was intent on doing everything through the Office of Reconstruction and Humanitarian Assistance (ORHA) and its successor, the Coalition Provisional Authority (CPA). At a British Museum seminar on 29th April 2003, attended by Dr Donny George and Tessa Jowell, Minister of Culture, it was agreed that "foreign assistance in addition to ORHA should be coordinated through the British Museum in consultation with UNESCO and in collaboration with the (Iraqi) Department of Antiquities". In fact this proved impossible because of the worsening security situation, but it was probably never a realistic option. In response to the crisis, UNESCO established an International Coordination Committee (IIC) for Iraq, which to date has had four plenary sessions and a number of other meetings. This has certainly been a useful forum for discussing problems, and UNESCO has provided a conduit for some countries wishing to make donations to protect Iraqi cultural heritage. It also circulated in 2004, through ICOM, an Emergency Red List

of Iraqi Antiquities at Risk. However, UNESCO did not emerge in Iraq as a body that could be proactive and take charge of the situation. One difficulty here has been the reluctance of the US to work closely with UNESCO, even though they rejoined in 2002 (the UK rejoined in 1997). By contrast, UNESCO has been more effective in Afghanistan than in Iraq, and clearly has an important role to play there.

A possible solution in future situations might be for the International Committee of the Blue Shield to work in conjunction with UNESCO. The Blue Shield was founded in 1996 "to work to protect the world's cultural heritage threatened by wars and natural disasters". It comprises representatives from five international NGOs dealing with cultural heritage, and takes its name from the blue shield emblem that is specified in the 1954 Hague Convention to protect cultural sites (see Sue Cole in Stone and Bajjaly 2008).[4] Blue Shield is still a relatively young organisation, and does not yet have the capacity to manage major disaster situations, but it is growing in authority and influence. In 2009, for example, the UK and Ireland Blue Shield Committee became a standing committee of the UK National Commission for UNESCO, and in due course Blue Shield might be the body that should take overall responsibility for the protection of cultural heritage.

(vi) The British Response

The official British response to the cultural heritage crisis in Iraq has been muted, although two pieces of legislation have been passed.[5] In spite of the promises of substantial help made by Tessa Jowell at the British Museum meeting on 29 April 2003 (see above), little has been done. It is true that a small team of people was sent to Iraq in the summer of 2003, with representatives drawn from the Department of Culture, Media and Sport (DCMS), the British Museum and the British Institute for the Study of Iraq (BISI), and DCMS has funded

subsequent British Museum initiatives, such as inspecting sites in South Iraq in 2008. There has also been training of Iraqi archaeologists and curators at the British Museum, also funded by DCMS. On the whole, however, the British government has been very reluctant to commit funds to cultural heritage projects, in contrast to the Italian, Polish, Japanese and German governments who have all been very generous and recognise the benefits of funding cultural initiatives. While Southern Iraq was under British occupation there was a great opportunity to invest in cultural heritage, but this was neglected until General Barney White-Spunner initiated the Basra Museum project in 2007. Even here, however, the UK government is not covering any of the costs and the funds are being sought privately. The British Council has been active in arranging for Iraqi academics and students to come to the UK, but has not concerned itself with protecting archaeological sites or refurbishing museums. One body that might have been active in this area was BISI, but since 2006 they have been hampered by a lack of funds.

Government needs to recognise that while the cost of cultural investment is modest, the potential returns in terms of cultural diplomacy are very great, and the damage caused by its neglect is greater still.

RECOMMENDATIONS

From the case studies and conclusions above, three themes for action present themselves clearly:
1. *Protection of cultural heritage in war zones*. The UK should ratify the Hague Convention.
2. *Professional advice*. Governments and military authorities should take heed of the advice of cultural heritage experts before, during and after military conflicts, working through appropriate national bodies.

3. *International coordination*. Efforts to salvage cultural heritage in war zones should be coordinated through a single international body such as UNESCO.

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Endnotes

1   For a summary of this matter see Stone, P. G. (ed.) (forthcoming 2011), *Cultural Heritage, Ethics and the Military* (Woodbridge, The Boydell Press).
2   For an introduction to the subject of cultural violence, see Galtung 1990.
3   See also Rush, L. (ed.) (2010) A*rchaeology, Cultural Property, and the Military* (Woodbridge, The Boydell Press).
4   The ICBS has been largely replaced by the Association of National committees of the Blue Shield (ANCBS) created in 2008.
5   These were [1] the Iraq (UN Sanctions) Order in June 2003, enacting the UN Security Council Resolution 1483, with a maximum penalty of seven years' imprisonment for dealing in Iraq cultural property illegally removed after August 1990 and [2] Dealing in Cultural Objects (Offences) Act in October 2003.

5 THE PROBLEM OF ILLICIT ANTIQUITIES: AN ETHICAL DILEMMA FOR SCHOLARS

Anthony Harding

SUMMARY

- Looting and the illegal trading of historic artefacts is agreed to be wrong. It is the collection, authentication and study of such artefacts that creates controversy.
- The so-called "1970 rule" prohibits museums from acquiring an object if it cannot be documented to have been out of its country of origin by 1971, or exported legally after that date.
- This has no application to private collectors and while many dealers will not purchase from criminals, there do still exist collections of artefacts that cannot be fully provenanced.
- The legal framework surrounding cultural heritage in general, and illicit antiquities in particular, is complex, but even if it is not illegal, is it *ethical* to study and publish such objects?
- Two opposing views:
    - Anything which contributes to the interest or importance of an object enhances its value, and thus encourages those who illegally excavate and illegally trade the objects to carry on with their activities.
    - Or, important objects that are in the public domain (or at least, out of the ground) deserve study for their inherent knowledge value.
- Academic policy may be as important as public policy in influencing trends in looting and illegal trading.

RECOMMENDATIONS

1. Government should continue to uphold the various international conventions to which it is a signatory, maintain the Art and Antiques Squad of Scotland Yard, and sign and ratify the

UNESCO Convention for the Protection of the Underwater Cultural Heritage 2001.

2. The British Academy must recognise that there are valid arguments on both sides of the academic debate, but assert the overriding principle that scholars must obey national and international laws.

3. The British Academy should adopt a formal policy on illicit antiquities, both in its public face and in the ethical policy applied to research proposals.

INTRODUCTION

On 28 January 2011, during the disturbances surrounding the mass demonstrations in Cairo and elsewhere in Egypt, a break-in occurred at the Egyptian Museum on Tahrir Square in Cairo. After some confusion as to exactly what damage was done, it emerged that a number of cases had been smashed and artefacts – including some from the cases holding the contents of the tomb of Tutankhamen – removed. While some were recovered in the museum grounds, others have disappeared. Likewise, reports from Saqqara in early February provided first-hand evidence that looting was occurring at various spots on and around the site.[1] Fortunately in all these instances law and order was restored quite quickly, and at Saqqara at least it seems the looters found little of interest (though damage was done to tombs that they entered). Nevertheless, it is feared that any stolen artefacts will find their way onto the market, as has happened in the past – most notably in Iraq, following the downfall of Saddam Hussein, the looting of the Iraqi National Museum in Baghdad, and the large-scale plundering of archaeological sites across the country.

These are the most recent and most high-profile events in what has been a long and sorry story of looting and illegal

digging on archaeological sites in many countries of the world, of the removal of objects perceived by the diggers to have monetary value, and the onward sale – through various intermediaries – to the art and antiquities market, where wealthy collectors can buy them from dealers – usually for their aesthetic value, since their original archaeological context is never admitted even if it is known (and for reasons I will discuss below, intentionally so, since to give the real provenance would be to admit the illegality of the original removal and the onward trade).

A related problematic area is that of the recovery of historic artefacts from wrecks and other underwater sites; some of the same problems apply as with sites on dry land, though the world has been slower to tackle the problem and the relevant conventions and legislation are, if anything, more complex.[2]

The story has been told and retold many times; a number of publications in the last fifteen years have chronicled a melancholy litany of destruction and looting, mostly in what are described as "source" countries such as those round the Mediterranean, the Near East, India, South-East Asia, South America and more recently, China. One should not forget, however, that looting on archaeological sites occurs in "destination" countries as well, as with the well-attested phenomenon of "night-hawking" on scheduled archaeological sites in Britain, usually by metal-detectorists.[3] I do not propose to retell these stories here; they are well-known and can easily be found in the literature (e.g. Brodie *et al.* 2001; Brodie and Tubb 2002).

We may usefully distinguish between looting, and illegal export. All right-minded people will surely condemn the illegal plundering of sites and monuments, wherever it may occur. Indeed, all serious commentators on the issue, from whatever side of the argument they come, agree that looting is wrong; that activities which contravene the laws of a country cannot be condoned; and that those who engage in illegal activities

should be prosecuted and, where found guilty, punished. There is common ground here. Where opinions diverge drastically is in considering the aftermath of the looting or illegal trading, by which I mean the collecting of objects (by public institutions or private individuals) that were looted or have no provenance, the validation or authentication of such objects acquired by dealers or auction houses, and most contentiously, their study and publication by academics.

A number of different considerations apply here. First, it is usually difficult to establish with certainty sufficient to convince a court of law that an object was looted and illegally traded – though in some notorious cases this has been possible, particularly in Italy, where the police have been highly active (Watson and Todeschini 2007). Dealers and auction houses are wise to the relevant laws and almost never give a detailed provenance unless they have the paperwork to back it up (there are time factors here which I consider below, i.e. a date, 1970, before which it is generally reckoned to be pointless to pursue the question of illegal activity). In any case, reputable dealers would usually have purchased items, or put them on sale, not direct from looters but from middlemen or from owners who disclaimed detailed knowledge of provenance. Second, it is argued that many objects are too important to ignore, even if their pedigree is unknown or suspect: this applies not only to art objects like sculpture or fine painted pottery but also to documents like cuneiform tablets or manuscripts.[4] Third, it is argued that important antiquities that are on the market should not simply be left to pass to an unknown owner, and thus out of circulation for the foreseeable future: the damage to their archaeological context has already been done, so the argument goes, and it is better to save them than to lose them.

THE 1970 RULE

Museums and museum organisations started to become concerned in the late 1960s that the acquisition of unprovenanced artefacts was causing the looting of archaeological sites, and in 1970 the International Council of Museums issued an influential statement on the ethics of museum acquisitions. The Museum of the University of Pennsylvania announced, in what has come to be known as the Philadelphia declaration, that it would no longer acquire an antiquity without convincing documentation of its legitimate pedigree. Other museums and museum organisations followed suit, promoting and adopting ethical acquisitions policies that prohibit the acquisition of unprovenanced objects. In 1971, the Harvard University Museums introduced the idea of a date threshold, requiring that an object should not be acquired unless it could be documented to have been out of its country of origin by 1971, or exported legally after that date. Soon after, the Archaeological Institute of America recommended a 1970 date, and since then the so-called "1970 rule" has become the norm (Brodie and Renfrew 2005: 351–3). In 2008, the Association of Art Museum Directors, representing the major US art museums, also adopted this position after several major museums had been forced to return objects to Italy that were shown to have been illegally traded (notably the Metropolitan and the Getty). Most importantly, in a UK context, it was adopted by the British Museum in its 1998 acquisitions policy.[5]

Such rules do not, of course, apply to private collectors. Some of these have assembled very large collections of antiquities, in the process of which it would have been almost impossible to avoid purchasing unprovenanced material. For some of this material, looting can be the only realistic source. Collectors vary in their response to this situation. For some, the artistic value of objects is pre-eminent (see below

for the views of George Ortiz); for others it is the historical information contained in them that is crucial. Martin Schøyen, for instance, has made a point of engaging respected scholars to publish his manuscripts and cuneiform tablets – with impressive speed, a fact that weighs heavily with the scholarly community. Some scholars purchase unprovenanced cuneiform tablets and see nothing wrong in it (Westenholz 2010: 264). Other commentators prefer to stress the loss of archaeological knowledge involved in the collecting of looted material, and the way in which it stimulates illegal activity in source countries; for them the problem of looting is to be laid directly at the door of collectors (e.g. Elia 2007).

THE PROBLEM OF PROVENANCE

Several studies of the sources and ownership histories of artefacts in private and public collections have shown that many do not have a clear provenance, in that their ownership histories since discovery are not known *in toto*. Thus it is not possible to tell whether they were acquired originally through legal or illegal excavation, or whether at some stage they were the object of an illegal transaction. A few examples may suffice:

- A study of Aramaic incantation bowls from Iraq showed that by 1990 less than 1000 were known in collections and museums worldwide. After 1990, 650 previously unknown bowls appeared in one private collection, and many more appeared in other collections and on the market (Brodie 2008).
- Of 18,398 Greek painted vases offered for sale in the auction catalogues of the major US and UK auction houses during the period 1954 to 1998, 80-90% of the vessels had no provenance, but the incidence of provenance began to increase in the 1990s, until 1996-98, at the end of the study

period, by which time the proportion of unprovenanced vases had fallen to 50-60% (Nørskov 2002a; 2002b: 256-270).

- A survey of 769 lots offered for sale at London auction houses in October 2005 showed that 31% had a pre-1970 provenance, 23% had a post-1970 provenance, and 46% had no provenance (Brodie 2006).
- Recent accounts have documented open dealing with metal-detected objects in the Republic of Moldova, with the police watching but not intervening (Musteaţă 2010).

I pass over some of the most notorious cases, such as the Sevso Treasure (Mango & Bennett 1994), almost certainly looted and probably emanating from Hungary, or in recent times the Nebra sky-disc, illegally excavated in Sachsen-Anhalt and eventually recovered after a police sting (Meller 2002). The two cases, both the subject of meticulous academic studies, are different, however. The find circumstances of the first remain undocumented and highly contentious, while the second has been intensively investigated and (almost certainly) resolved. But the Sevso example illustrates nicely the conundrum that the academic world faces: what should one do about looted material: ignore it in spite of its importance, or study it?

DOCUMENTATION OF SITE LOOTING

Only a few archaeological surveys have recorded evidence of site damage or destruction caused by looting. The results of those that have are revealing:

- Mali: Between 1989 and 1991 a survey of the Djenné area of Mali discovered 830 archaeological sites, but by the time of discovery 375 sites (45%) had already been damaged by illegal digging, 142 badly. Two sites had been completely destroyed. In 1996, 83 sites were revisited and

the number looted had increased from 16 to 49 (Bedaux and Rowlands 2001).

- Turkey: A survey of burial tumuli in the area of western Turkey that comprised the ancient kingdom of Lydia recorded 397 tumuli. 357 (90%) showed signs of looting and 52 had been completely destroyed. To this figure of 52 could be added a further 20 previously known tumuli that had disappeared (Roosevelt and Luke 2006a). A follow-up survey of 116 tumuli in the area of Bin Tepe, probably the royal burial ground of Sardis, the capital of Lydia, confirmed the earlier findings, with 111 tumuli (96%) showing signs of illegal excavation, and 11 badly scarred by bulldozers or other heavy earth-moving equipment (Roosevelt and Luke 2006b).
- Honduras: Between 1979 and 1988 a survey of the Lower Ulúa Valley found that 60% of 507 sites identified had been damaged by looting; 15% had been completely destroyed (Luke and Henderson 2006: 155).

A further line of enquiry comes from police files on seized antiquities. In most cases the seizure took place because of suspicious circumstances, and subsequent investigation revealed either the looted origin of the objects, or the lack of title to them on the part of the person holding them, or both.

- Turkey: Between 1993 and 1995, there were over 17,500 official police investigations into stolen antiquities. In the Archaeological Museum at the border town of Edirne there is a special room devoted to objects seized by officials at the Turkish–Bulgarian border.
- Afghanistan: In 2005, Scotland Yard announced that between three to four tons of artefacts from Afghanistan had been seized by British customs (Lamb 2006).
- In 2008, US customs and police agencies returned 1,046 artefacts to Iraq, 168 artefacts to Ecuador, 79 artefacts to Egypt, 1,029 artefacts to Mexico, 66 artefacts to Colombia

and one artefact to Algeria. All artefacts had been seized during investigations in the 2000s.

- Recent investigations by law enforcement agencies in the Republic of Moldova, in conjunction with officials from the Netherlands and Germany, have recovered large quantities of illegally exported goods at Schiphol airport and in Frankfurt am Main (pers. comm., Gheorghe Postică, Deputy Minister of Culture, Republic of Moldova, 27 January 2011).

- The Central Criminal Police of Estonia, in conjunction with the German authorities in Dortmund, recovered a haul of twelfth century coins illegally metal-detected and exported (pers. comm., Ants Kraut, Chief Inspector of Archaeological Monuments, National Heritage Board, Tallinn).

ROGUE DEALERS

Inevitably, some of the material that has been illegally excavated or illegally exported passes through the hands of certain dealers whose approach is most politely described as "careless". In the UK a couple of high-profile cases ended in conviction and imprisonment for the offenders, the most notorious being Jonathan Tokeley-Parry in 1999[6] and Robin Symes in 2005 (Watson 2004). In the US, the lengthy court proceedings surrounding Tokeley-Parry's co-conspirator Frederick Schultz in 2002 also ended in imprisonment, as well as the formulation of a new "doctrine" that the US courts have since applied in disputed cases of antiquities ownership and provenance (Gerstenblith 2003).

These cases are only part of a series, especially involving Italy, that have been in the public eye in recent years. This is not the place to rehearse the detail of these sometimes extraordinary affairs; not every day does a senior curator of a major world museum stand accused in the courts of crimes involving antiquities — even if half the story is true, there

were shortcomings of the most serious kind in the dealings undertaken by staff of the Getty Museum in the 1990s.[7]

One might think that the lesson would have been learnt. On 28 August 2010, however, *The Daily Telegraph* carried a story entitled "Antique [sic] dealer attacks 'scandalous' European extradition laws".[8] It concerned the case of Mr Malcolm Hay, an antiquities dealer from Kensington, who was the subject of a European Arrest Warrant relating to the sale of ancient pottery and other items to a Greek dealer in 1999. After being arrested at London City Airport in 2007 he was eventually discharged because of technical flaws in the Warrant, but subsequently tried in Greece in his absence and sentenced to four years in jail. He faces a second extradition request in the event that he loses the appeal.[9] The exact nature and circumstances of the transactions which the Greek authorities claim are unlawful are unclear, but apparently there is sufficient evidence to convince the Greek courts that the items had been illegally removed from Greece, and subsequently traded illegally.[10]

Another case involving illegal excavation in Greece was that involving the London branch of the Classical Numismatic Group firm, which in 2005 purchased for €18,000 in cash a rare Roman coin from two Greek nationals. Following a tip-off to Customs at Stansted Airport, the cash was seized under the Proceeds of Crime Act as they returned home, and the coin returned to Greece following an action under the European Council Directive on the return of cultural objects unlawfully removed from the territory of a Member State. Interestingly, Mr Eric McFadden, the Group's senior director for Europe, was reported as saying "One doesn't refuse to deal with someone because he has a slightly shady background…. One looks at the deal on the table. We're business people…" (Alberge 2006).[11]

This is not to suggest that all dealers are involved in such unwise purchases from criminals. It does, however, indicate that there is a problem, and that some of those in the trade do not

enquire as diligently as they might into the history of the objects they buy. Even such a respected firm as Sotheby's was exposed as having ethical standards far below what was expected when a number of highly dubious sales went through as late as the 1990s (Watson 1997). Following unwelcome publicity, they stopped holding antiquities sales in London (though they are still held in New York). Especially since the 2003 Act (see below), dealers are now wary of giving any detailed provenance for objects; certainly not one that might suggest they were illegally excavated or illegally exported.

A rather different problem is represented by online auction houses, of which the biggest and best-known is eBay. Here the company conducting the auction has no direct dealing with either buyer or seller, and has never seen the objects being sold. A considerable amount of work has been done on the problem of eBay as a marketing means for antiquities (Bland 2009). As a result of representations made to them, eBay now post an "Antiquities Buying Guide" on their website, drawing attention to the provisions of the Treasure Act (see below) and the duty to report objects falling within its provisions to the coroner.[12] It is not yet clear to what extent this has helped stem the flow of objects being sold – and in any case it is very difficult to determine whether an object on eBay might have been illegally acquired.[13]

THE LEGAL FRAMEWORK

The legal framework surrounding cultural heritage in general, and illicit antiquities in particular, is complex, and involves international conventions, national laws, the interpretation of one country's laws by another, supranational (EU) laws, and UN Sanctions. Here I merely highlight the most important (see Appendix 1 for more details).

International conventions

Countries may sign up to international conventions, but they have no legal effect until they are ratified and implemented – usually by the introduction of national legislation.

- *The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, with two protocols: 1954 (the "First Protocol") and 1999 (the "Second Protocol")*
  While the US ratified the Convention in 2009, the UK has still not done so – although both the previous Labour administration and the new coalition government have announced their intention to do so "when parliamentary time permits".[14]

- *The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*
  The UK belatedly ratified this convention in 2002, but did not introduce any implementing legislation other than the 2003 Dealing in Cultural Objects (Offences) Act (see below), which supposedly serves the purpose.

- *The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*
  The convention has been signed and ratified by many countries, but not by the UK.

- *The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage*
  Entered into force in January 2009; ratified by 37 countries at that time, not including the UK or US.

EU directives

- *European Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State*
  The UK implemented this directive in 1994 as the Return of Cultural Objects Regulations. The return of the Roman

coin bought by Classical Numismatics Group in 2006 was returned under this provision (see above).

• *European Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods*

• *Export of Objects of Cultural Interest (Control) Order 2003*
  The operation of these two pieces of legislation in tandem appears complex, and do not appear to have had any significant effect on the market.

UN sanctions

• *2003 UN Security Council Resolution 1483*
  The UK implemented this resolution as the 2003 Iraq (United Nations Sanctions) Order (SI 2003/1519). It bans the import and export of any Iraqi cultural objects not outside Iraq before August 1990.

National laws

Most countries have laws which regulate archaeological activity on their territory, and most vest ownership of antiquities in the State. Export of antiquities without a licence is illegal.

The UK's laws are much more limited in this respect. Archaeological sites and the objects within them belong to the landowner unless other provisions have been made. Only on designated ("scheduled") sites is excavation illegal without a permit. Elsewhere it may be undertaken freely with the landowner's permission.

The laws that govern archaeological finds are as follows (see also Appendix 1)[15]:

• *Treasure Act 1996 (revised 2003)*
  This Act concerns "treasure" finds within England and Wales (Scotland and Northern Ireland have their own legislation), and is mainly directed at the finding and reporting of archaeological material, particularly by metal-detectorists.

- *Dealing in Cultural Objects (Offences) Act 2003*
  This act started life as a private members bill, and was
  taken up by the government and passed into law in 2003.
  Following the looting of the Iraqi National Museum, it was
  felt that there was an additional urgency to implement the
  legislation.[16]

THE ETHICAL DILEMMA

Given the legal situation outlined above, an obvious dilemma
arises for those whose concern is primarily academic, and who
wish to study objects that enter collections (public or private),
or the art and antiquities market, but which have no recorded
provenance or ownership history. Assuming that it is *legal* to do
so (and, given the legal framework that exists at the moment,
at least in the UK and US it is not illegal), is it *ethical* to study
and publish objects that may have been looted and were almost
certainly exported in recent times, in contravention of the
laws of a given source country? Does such study encourage
such illegal activity, or drive up the value of objects that can
be shown to be of great scholarly significance? There are two
diametrically opposed answers to that question.

The first is that anything which contributes to the interest or
importance of an object enhances its value, and thus encourages
those who illegally excavate and illegally trade the objects to
carry on with their activities. The second is that important
objects that are in the public domain (or at least, out of the
ground) deserve study for their inherent knowledge value.

These arguments have been rehearsed in print on a number
of occasions, both by academics (whose concern is primarily
with knowledge *per se*, though also with the personal prestige
of publishing important material) and by collectors (who claim
they are solely concerned with the aesthetic value of an object).

To take the two arguments in turn: One of the most eloquent proponents of the first is Colin Renfrew, whose book *Loot, Legitimacy and Ownership* (Renfrew 2000) sets out what one might think was a compelling case for restriction on the activities of dealers, of collectors (including museums) and of scholars. That the illegal export of antiquities should be condemned is hardly news; but Renfrew argues that it is the activities of major museums and collectors that have contributed to the problem of looting in a major way. The supply of valuable antiquities to the market needs to be maintained if collectors are to collect; and that supply can only occur if looting takes place, since most countries have strict laws restricting excavation and the export of antiquities.

The way in which collecting – by museums and by private individuals – contributes in a major way to the problem of looting can hardly be denied, particularly in the case of Italy where extensive documentation is available for the activities of Giacomo Medici and Gianfranco Becchina, and their associates in the world of dealership (Watson and Todeschini 2007). It is less easy to assess the situation with, for instance, manuscripts, but if detective work by TV and print journalists is to be believed the problem is of significant proportions.[17]

Renfrew would go further, and argue that the activities of scholars conducting research on looted antiquities also contributes to the problem, since they are given a legitimacy that they might not otherwise have:

> Ultimately it is *we* the academic community and *we* the informed public, who must bear the main responsibility…. It should become widely understood and agreed among academics, which is not the case at present, that it is unethical and immoral to aid and abet the sale of illicit antiquities by offering authentication and expertise…. I share the view that it is inappropriate for a scholar to authenticate *or* document

an unprovenanced antiquity in such a way as may facilitate its subsequent sale….The scholars who offered expertise in some of the foregoing 'causes célèbres' have been criticised….

As a first objective we should seek to question the process of legitimation of the collection of questionably-licit antiquities which is accorded by those institutions which display private collections of unprovenanced antiquities, and do so with all the social éclat of a private view or a vernissage in an art gallery. There is nothing to celebrate when unprovenanced antiquities are placed on public view. (Renfrew 2000: 74-77)

Museums of course also have a legacy problem: what to do with existing objects in their collections that do not have a proper history. One striking example is that of the Museum of Fine Arts, Budapest, which over the last fifteen years has made serious efforts to settle the status of archaeological items found outside Hungary. These items either derive from clandestine excavations or their ownership was transferred illegally, or both, and were thus intercepted in the course of illegal trading. As a result, in 2006 the Department of Classical Antiquities – by means of a call for tender published by the National Crime Prevention Board (Ministry of Justice and Law Enforcement) – set up a database ("Calypso"). This database contains all antiquities of foreign origin which have been seized at the Hungarian border and consigned to the custody of the Museum of Fine Arts. Following the provisions of the 1970 UNESCO and 1975 UNIDROIT conventions, and the 1993 EU Directive, the goal is to reintegrate these items, now deprived of their original archaeological context, into scientific circulation, focusing always on the ultimate goal of restitution to the country of origin, from where they were illegally removed.[18]

A completely different approach has been taken by James Cuno, Director of the Art Institute of Chicago (most recently Cuno 2008). Cuno has argued in passionate terms against the

"nationalist-retentionist" view of antiquities, the idea that only the country where an object was made has the right to keep it; and instead favours the old system of "partage", by which an excavator came to an agreement with the host country about a division of the finds, so that both could have a fair share of the spoils. This seems unrealistic in today's world, even if it were desirable.[19]

The collector's view has not often been expressed in print in the academic literature, though there are some examples.[20] George Ortiz, for example, has gone into print on a number of occasions, usually to bemoan restrictions placed on the antiquities trade. His website expresses his views nicely, describing the humanistic beliefs behind his passion for collecting.[21] Ortiz has elaborated his views on art and collecting in a paper given at a meeting in Oxford in 2004:

> I believe that artefacts and art are the universal heritage of mankind; that collecting is both ethical and fundamental to saving the past; that Art is a world language which constitutes one of the essences of being *homo sapiens*. I am not in favour of the UNESCO Convention, which attacks collecting, because it is flawed, ideological and simplistic, and it fails to consider historical and current realities. It disregards the vital role played by dissemination in the sharing and safeguarding of the past, by holding that each nation is the best depository of objects originating in its territory, despite the fact that we have witnessed vast destruction by nations of their own patrimony (Ortiz 2006: 15).[22]

Elsewhere Ortiz refers to "politically correct and fundamentalist archaeologists" who are stifling the antiquities market. "Collecting is becoming illegal, if it is not already; but surely it is this recently enforced illegality that is itself wholly unethical" (Ortiz 2006, 31). This is strong stuff, but at least one can see

where it is coming from.[23] A not dissimilar position is taken by James Ede (Ede 2006).

Not many scholars have gone on the offensive about the rights and wrongs of working with unprovenanced antiquities, but one who has is Sir John Boardman. A paper published in the same volume, and billed as a response to Renfrew's position, sets out the position carefully:

> It is easy to be moved by pictures of robbed sites, monuments and museums; they represent a tragic loss (if often only temporary), the result of deliberate plundering. It hardly needs arguing that theft from sites and museums, and the promotion of such theft, are criminal activities; and unlike most theft, since they deal in objects which have a greater relevance to our understanding of the heritage of man than a diamond necklace or gold bullion, so there is more of lasting value at stake. But probably a major proportion of the 'suspect' antiquities on the market was not acquired specifically for the market at all or is of relatively low monetary value. To go to the other extreme and believe that the only material for human history that we should handle or regard must be from controlled excavations by professionals, or known before 1970, puts us all in the hands of archaeologists whose own agenda may sometimes be suspect (Boardman 2006).[24]

Boardman's position is clear: illegal excavation is criminal and must be prosecuted by law; but objects that are in the public domain are too important to be ignored, since their information value is (in many cases) more important than their place and context of origin; preventing museums from collecting such objects, or scholars from working on them, is censorship.[25] At the same time, a 1991 statement in from the Beazley Archive in Oxford and signed by Boardman stressed that the study of such

objects is not to be seen as in any way a means of enhancing their commercial value.[26]

Another academic who has written about the importance of studying unprovenanced artefacts is Pat Getz-Preziosi (now Getz-Gentle), an authority on Cycladic figurines. In response to critical remarks about her contribution to the catalogue of an exhibition of Cycladic sculpture in Karlsruhe in 1977, many of the pieces in which were unprovenanced and almost certainly looted, she responded as follows:

> If I do not have full information on the history of every piece, this is because some collectors cannot recall when they acquired their objects or do not know their prior history, or because I neglected to ask for specific information. To me, an orphaned Cycladic figure is just as much an orphan whether it surfaced in 1874 or 1974, whether it is in a Greek collection or an American one. However destructive illicit digging may be for the archaeological record, I believe the objects found in this way deserve full scholarly attention. Although the circumstances of their recovery may be illegitimate, the objects themselves are not. They should not be ignored because their discovery context is lost or because they were unearthed in an unethical fashion, or because they lack the credentials conferred by authorized excavation to assure their authenticity. I regard it as my responsibility to learn as much from the illicitly found material as possible and to share the objects and my ideas about them through publication. This does not mean that I condone the looting of sites. I do not (in litt., cited in Gill & Chippindale 1993: 612).

These are important and influential views, to which many serious scholars subscribe (see also Westenholz 2010). It lies diametrically opposite to the view that unprovenanced antiquities often result from illegal activity,

and that study of them enhances their value and therefore encourages that illegal activity in source countries.

POSSIBLE COURSES OF ACTION FOR THE BRITISH ACADEMY

The British Academy thus finds itself in a difficult position, caught between two polar opposites. But that is not to say nothing should be done. There is common ground on a number of points, particularly on the question of criminal activity in illegal excavation and trading, and on collecting purely for financial gain. Thus there should be no disagreement that recommending the purchase of antiquities simply as a way of making money is to be deplored (for a particularly unpleasant example see Baugh 2007).

A significant development in how to approach the question of unprovenanced antiquities occurred when the Archaeological Institute of America – which deals exclusively with Old World archaeology, and specifically the archaeology of the Classical lands – passed a series of resolutions in the 1970s that resulted in a Code of Ethics[27] and a Code of Professional Standards.[28] The latter includes as Article IV.1 this statement: "In their research and publications professional archaeologists should adhere to the guidelines of the AIA Code of Ethics concerning illegal antiquities", a reference to Articles 2 and 3 in the Code of Ethics: Members of the AIA should:

> 2. Refuse to participate in the trade in undocumented antiquities and refrain from activities that enhance the commercial value of such objects. Undocumented antiquities are those which are not documented as belonging to a public or private collection before December 30, 1970, when the AIA Council endorsed the UNESCO Convention on Cultural Property, or which have

not been excavated and exported from the country of origin
in accordance with the laws of that country;
3. Inform appropriate authorities of threats to, or plunder
of archaeological sites, and illegal import or export of
archaeological material.

But the AIA has gone further. As well as insisting that museums
should respect the 1970 UNESCO Convention, in 1973 it
passed a resolution on the importation of antiquities and in
1973 (revised 2004) a further resolution:

> All presentations made at the Annual Meeting must conform
> with the AIA Resolutions on the Importation of Antiquities.
> The PAMC will reject any submission that it determines to
> be in violation of any of these documents.
>
> Submitters/presenters should note, specifically, that in
> accordance with the AIA's Resolution Concerning the
> Acquisition of Cultural Properties Originating in Foreign
> Countries (1973), "the Annual Meeting may not serve for the
> announcement or initial scholarly publication of any object
> in a public or private collection acquired after December 30,
> 1973, unless its existence can be documented prior to that
> date, or it was legally exported from the country of origin."
> An exception may be made by the Program for the Annual
> Meeting Committee if the presentation emphasizes the loss
> of archaeological context.

There is more yet. The major international journal, *American
Journal of Archaeology*, published by the AIA, has since 1973 had
a policy about the publication of unprovenanced antiquities,
most recently revised in 2005:

> As the official journal of the Archaeological Institute of America,
> *AJA* will not serve for the announcement or initial scholarly

presentation of any object in a private or public collection acquired after 30 December 1973, unless its existence was documented before that date or it was legally exported from the country of origin (instructions to contributors, and Norman 2005).

Similar codes have been adopted by the American Schools of Oriental Research,[29] with specifically a policy on cuneiform tablets.[30] This latter is of particular interest, as it bears on the vexed question of working with tablets from Near Eastern cities, often of enormous historical significance, but in most cases "unprovenanced" (which in this instance can only mean looted, since such tablets are almost invariably found in the archive rooms or other locations in the great cities, not as surface finds). Prior to the Iraq war, the policy on publication was similar to that of the AIA. The policy was amended in 2004, as follows:

Publication and presentation [of cuneiform tablets] at ASOR meetings would be allowed if the following two criteria are both met before the study and publication occur:

1. The State Board of Antiquities and Heritage of Iraq [SBAH] gives its consent.

2. Materials to be published are returned to Iraq and are in the ownership and custody of the SBAH.

Note: Because of current conditions in Iraq, "return to Iraq" would include temporary placement of the material on loan with an academic research institution in the United States which is approved by the SBAH, does not acquire undocumented antiquities, and commits in writing to transfer such material to Iraq at any time upon request from the SBAH. Such material will be numbered and photographed and this information shall be transmitted to the SBAH before publication or presentation. Under no circumstances could such material be sold or title transferred to any institution outside of Iraq. The ASOR Baghdad Committee can make a determination as to when

conditions in Iraq permit the immediate return of materials to Iraq and this provision for temporary placement in a US institution would then no longer be applicable.

3. In addition, the ASOR-sponsored publication and any future ASOR-sponsored publication of this material must include a reference to the fact that the published texts are unprovenanced. Additional facts that are known concerning the acquisition or appearance of the texts in the United States should also be included.

These two organisations, the AIA and the ASOR, it should be remembered, are between them responsible for all official US archaeological activity in the Classical lands and the Near East. Evidently, whatever individual scholars working on material from these lands may personally believe, the official policy is clear: do not assist in any way the trade in antiquities, including valuation, validation, or initial publication, if there is any doubt about how an object was acquired.

There has of course been a response to these decisions, notably from cuneiform scholars, many of whom signed a "Statement of Concern" penned by Lawrence E. Stager, Dorot Professor of the Archaeology of Israel at Harvard University.[31] This statement reiterates the knowledge value of cuneiform tablets, while admitting that many have no provenance. The AIA's President issued a rebuttal of the claims in the statement.[32]

To what extent could such policies be adopted in the UK? As far as I know, no mainstream archaeological journal in Britain has adopted a comparable policy on publication; even *Antiquity*, which serves a very wide archaeological public, has no published policy of this kind (though in practice the editor, in the light of referees' reports, would be unlikely to publish such articles).[33] Nevertheless, it is a matter worth exploring, and in particular, it could be something the British Academy could consider for its own publications.

The legal position, as explained above, is quite clear on the matter of illicit export (and therefore receipt) of antiquities: the UK is unusual in having limited (some would say weak) laws regarding its own archaeological heritage, but it is certainly aware that other countries have much stronger laws, usually vesting the entire heritage in the state, and is obliged to respect those laws as far as export is concerned. Matters are not helped by the fact that Scotland Yard has severely reduced the size of its Art and Antiques Squad. The 2003 Act attempts to place the onus on those conducting such trade, though as we have seen, dealers usually find it easy to circumvent and the police are not impressed by it, because it is so difficult to prove that a crime was committed knowingly.[34] Nevertheless, just because a matter is difficult to prove does not mean that an ethical position cannot be adopted; at the least the British Academy should demonstrate that it recognises that criminal acts involving the cultural heritage take place, and should place on record its opposition to anything that facilitates those acts.

In 1998 the Council of the British Academy passed a resolution which states a number of things (Appendix 2). Among its provisions is this:

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

In the "Ethics policy", to be found on the British Academy's website under the Code of Practice for Consideration of Research Proposals, the following is included:

> The Academy requires the research it funds to be conducted
> in an ethical manner….. proposals may raise one or more
> of the following considerations: the involvement of human
> participants; the involvement of human remains (e.g. traceable
> to living descendants); the use of non-human animals;
> destructive analysis of historic artefacts; research that may result
> in damage to the natural or historic environment; and the use
> of sensitive social, economic or political data…

It is notable that nothing relating to illicit antiquities appears
in this published policy, although "research that may result in
damage to the… historic environment" could be said to touch
on cultural heritage in a broad sense.

RECOMMENDATIONS

Clearly the British Academy cannot condemn all work on
antiquities of doubtful provenance, but it can and should take
a stand against criminal activity, and discourage anything that
contributes to that activity. Authenticating and valuing looted
objects with a view to increasing their sale value may not be
"dealing" and therefore an offence under the 2003 Act, but it is
not far off. Merely describing and publishing them is of course
not illegal. The argument centres around the extent to which it
is ethical, in the sense that it might contribute to the problem
of looting.

One person's "ethical position" is of course another's
"censorship". The task for the British Academy is to find a
middle way that satisfies both constituencies. It can neither
censor, nor ignore the effects of crime.

The British Academy should therefore:

1. *Press the government* to continue to uphold the various
   international conventions to which it is a signatory, to

maintain the Art and Antiques Squad of Scotland Yard, and urge it to sign and ratify the *UNESCO Convention for the Protection of the Underwater Cultural Heritage 2001*.

2. *Recognise that there are valid arguments on both sides* of the academic debate, but assert the overriding principle that scholars must obey national and international laws.

3. *Adopt a formal policy* on illicit antiquities, both in its public face and in the ethical policy applied to research proposals.

ACKNOWLEDGEMENTS

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Endnotes

1   Email message from the leader of the French mission at Saqqara, Professor Philippe Collombert, University of Geneva, 3 February 2011.

2   To do this problem justice would require a much longer paper. Some of the relevant considerations can be found at http://www.publications.parliament.uk/pa/cm201011/ cmselect/cmcumeds/writev/464/172.htm.

3   Report of a study by Oxford Archaeology available for download at http://www. helm.org.uk/upload/pdf/Nighthawking-survey3.pdf?1297853588 (summary report) and http://www.helm.org.uk/upload/pdf/NIGHTHAWKS2.pdf?1297853588 (final report).

4   It is not my main concern here to consider manuscripts, for instance those in the Schøyen Collection emanating from (and almost certainly looted from) Afghanistan and Pakistan, which have been the subject of much scholarly activity in recent years, but the same considerations apply as to pots or gold.

5   Quoted in Department for Culture, Media and Sport, *Combating Illicit Trade. Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material* (2005), 27 (http://www.culture.gov.uk/images/publications/Combating_Il-licit_Trade05.pdf).

6   http://www.arcl.ed.ac.uk/a1/stoppress/stop179.htm. Tokely-Parry has gone so far as to write a book essentially justifying dealing in looted antiquities (Tokely 2006), though as usual in the name of "rescuing the past". Reviews are listed on his web page (http://www.jonathantokeley.com/default.asp?Category=14). That by Sir John Board-man is particularly favourable.

7   Dr Marion True was indicted in the Italian courts in 2005. In 2010 the charges were dropped because the statute of limitations had expired. It is generally accepted that True carried the can for more senior decision-makers at the Getty. The Getty has now changed its acquisitions policy, in line with the 1970 rule.

8   The same story appeared on 8 February 2011 in *The Guardian* under the headline: "Antiquities dealer may face Greek court", as Mr Hay awaited the result of his appeal

against conviction. A longer version of the article, by Dalya Alberge (until recently art correspondent of *The Times*), can be found at http://www.guardian.co.uk/world/2011/feb/07/antiquities-dealer-jail-greece (accessed 14 February 2011).

9 An article in *Antiques Trade Gazette* (23 March 2009) focused on the alleged shortcomings of the European Arrest Warrant, and gave extensive coverage to Mr Hay's version of events. Other articles on the internet similarly comment on the EAW and its apparent failings, rather than any discussion of potential guilt or innocence on Mr Hay's part. Most of the articles in the British media, written by insiders from the trade or art correspondents, say that Mr Hay is the victim of a miscarriage of justice: he is "Oxford-educated", "has sold antiquities to museums worldwide", "his only previous encounter with the law [was] a parking ticket" (the sub-text being that such a worthy can only have tangled with the law if "unfair" EU laws applied by untrustworthy foreigners are involved). The Greek version of events is ignored.

10 "The Athens court argued that since the recovered consignment contained artefacts that had been illegally excavated, the Greek state had been deprived of them and their value, giving Greek courts jurisdiction under their own criminal code, where Greek criminal provisions apply 'to a foreign national for an act committed abroad which is defined by them as a felony or misdemeanour, where such act is directed against a Greek citizen…'" (*Antiques Trade Gazette*, 22 November 2010; http://www.antiques-tradegazette.com/news/7743.aspx).

11 A version of the story from within the trade is at http://www.scvhistory.com/scvhistory/signal/coins/worden-coinage1106b.htm.

12 http://pages.ebay.co.uk/buy/guides/antiquities/

13 Ironically, on the same page as this guide is displayed, one can download another guide: How To Earn A Second Income Selling Ancient Coins! Compare Baugh 2007 for another egregious example of the use of antiquities for profit.

14 http://www.culture.gov.uk/what_we_do/cultural_property/6630.aspx. Following the public outcry at the 2003 looting of the Iraq National Museum, in 2005 the government undertook a public consultation, and in 2008 issued draft implementing legislation (Draft Cultural Property (Armed Conflicts) Bill, 2008). To date, this draft has still not passed into law.

15 In this section only the laws applying to England and Wales are considered, for the sake of simplicity and brevity. The situation in Scotland and Northern Ireland is different.

16 One interesting comment in the Hay case (above) comes from the article in the Daily Telegraph, quoted above: "The apparent crime, 'illicit appropriation of an antique object', is not even an offence under British law". That, as the authors of the article (Richard Edwards and Jackie Williams) should have known, is incorrect: the Dealing in Cultural Objects (Offences) Act 2003 plainly states that trading in illegal artefacts, knowing or suspecting them to be "tainted", is an offence (though of course the trades that Mr Hay engaged in took place in 1999, before the Act came in).

17 The film "Stealing History" by the Norwegian Broadcasting Corporation NRK (English language version 2005) graphically exposed some of the dealings surrounding Buddhist manuscripts from Afghanistan and Pakistan, many fragments of which came onto the market in the 1990s. The Schøyen Collection holds a large number of such pieces, including – by their own admission – at least some emanating from the National Museum in Kabul.

18 Statement of 20 July, 2009 from Mária Mihály, Deputy Director responsible for restitution affairs, and Árpád M. Nagy, Collection of Classical Antiquities, in the Szépművészeti Múzeum (Museum of Fine Arts) (http://www2.szepmuveszeti.hu/pegasos/lexikon.php?id=229).

19 See the reviews of Cuno (2008) by Roger Bland, *London Review of Books* 30 November 2008, 39, and by Colin Renfrew, *The Burlington Magazine* November 2008, 150/1268: 768.

20 More usually these contributions appear in the pages of journals and magazines ema-
nating from the art market, such as *The Art Newspaper*, *Minerva*, or *Art and Auction*.

21 http://www.georgeortiz.com/WELCOME/index.html

22 On the website of the Ortiz Collection the following appears: "In 1970, Unesco is-
sued a Convention concerning "the measures to be adopted to forbid and prevent the
importation and the transfer of the illicit property of cultural goods." In 1984, Unesco
gave rise to Unidroit, which issued the final draft of its Convention in June 1995.
These Conventions aim to define the norms by which works of art that are considered
to be cultural patrimony may move – or rather not move – from one nation to another.
Clear and qualified definitions of "illicit" and "cultural patrimony," which are crucial
to the interpretation and implementation of the Conventions, are left in abeyance.
The lawyers and government officials who conceived of the Conventions did so, by
most accounts, without taking into consideration the realities surrounding art and the
experience of those involved in its preservation, circulation and study.

　　"As a humanist and collector, I passionately oppose the Conventions as drafted, be-
lieve that their creators are misled by the Utopian idea that every created object has its
perfect or natural location and must remain in situ, overlooking the fact that art is cross
cultural and, in many aspects, timeless. If disseminated widely, as in the past, art is a ma-
jor contributor to progress, to our intellectual development, and to mutual understand-
ing among peoples. Art must be preserved. All those involved must work together to
forge a Convention to stop art theft in the classical sense – the pilfering of architectural
complexes, the destruction of ancient sites, and the circulation of forgeries" (http://
www.georgeortiz.com/WELCOME/index.html, accessed 11 February 2011).

23 It is worth pointing out that Ortiz figures in the "organigram" discovered by police in
the apartment of the dealer Danilo Zicchi and written by Pasquale Camera, described
as a *capo zona* (head of a tomb-robbers' organisation) in the Casal di Principe region of
Calabria (Watson & Todeschini 2007: 16–18 and 362.).

24 For an equally pithy response, see Brodie 2007.

25 These views are shared by a significant number of scholars, it would appear, though it
is hard to find out just how many. Boardman refers on several occasions to the archae-
ologists pressing for legislation as "a minority" or "untypical", and this probably reflects
the fact that his own constituency lies in classical archaeology. This position is probably
shared by a significant number of those who work in Near, Middle or Far Eastern
archaeology, particularly those who work with written documents; by numismatists; by
those who work with manuscripts; and those whose primary interest is art-historical.

26 "The Beazley Archive has been increasingly concerned about protecting its reputation
in the scholarly world against appearing to condone the trade in illegally exported
antiquities, by allowing the use of its resources for the enhancement of the value of
Greek vases of no clear origin. Accordingly, the Archive has resolved: Our intention is
to ensure that the Archive is not, and is not seen to be, used in any way which might
lead to the commercial enhancement of objects which may be suspected of having
been removed illegally from the country in which they were found" (1991).

27 http://www.archaeological.org/news/advocacy/130

28 http://www.archaeological.org/news/advocacy/132

29 http://www.asor.org/excavations/policy.html

30 http://www.asor.org/excavations/textpolicy.html

31 This can be found at various places on the web, e.g. http://groups.yahoo.com/group/
ANE-2/message/1289 (accessed 3 March 2011). It is not clear whether any group has
adopted it as official policy.

32 Issued originally on the Agade List (discussion forum); see http://paleojudaica.blogs-
pot.com/2006_04_16_archive.html.

33 Although the details of the case are not made clear, an article by a proponent of "free
speech" was indeed rejected by *Antiquity*: Westenholz 2010, 260, 265 ("Anon 2001").

34   Not one prosecution has resulted from the Act. For an evaluation of the first few years
     of the operation of the Act, see Mackenzie & Green 2009.

APPENDIX 1: THE LEGAL FRAMEWORK IN ENGLAND AND WALES

Two general and several specific laws are mainly applicable to illicit antiquities.

1. *Theft Act 1968.* This general law can be used by the police on suspicion that objects have been stolen; it applies both to the theft itself and also to the handling of stolen goods (and can thus apply to antiquities dealers).

2. *Proceeds of Crime Act 2002.* This was the Act under which two Greek nationals were arrested in 2006 in connection with the sale of a rare Roman coin, illegally excavated in and exported from Greece (see main text).

3. *Treasure Act 1996* (revised 2003) (England and Wales only; Scotland and Northern Ireland have a separate legal framework). Treasure is defined as:

   • any object other than a coin provided that at least 10 per cent by weight of metal is precious metal (that is, gold or silver) and that it is at least 300 years old when found. In the case of metallic objects, other than coins, of prehistoric date containing less than 10 per cent of precious metal by weight of metal (they may be entirely composed of base metal, for example) there must be at least two such metallic objects from the 'same find'… Also an object, other than a coin, of prehistoric date is treasure if any part of it is precious metal…

   • all coins that contain at least 10 per cent of gold or silver by weight of metal and that come from the same find, provided a find consists of at least two coins with a gold or silver content of at least 10 per cent. The coins must be at least 300 years old at the time of discovery…

   • any object, of whatever composition, that is found in the same place as, or that had previously been together

with, another object that is treasure. The object may have been found at the same time as, or later than, the item of treasure…

- The Act states that a person who finds an object which he believes or has reasonable grounds for believing is treasure must notify the coroner for the district in which the object was found before the end of the notice period, which is 14 days…

- It is a criminal offence, punishable by a maximum term of imprisonment of three months or a fine not exceeding level 5 (currently £5,000), or both, not to report a find of treasure to the coroner.[1]

This Act concerns "treasure" finds within England and Wales, and is mainly directed at the finding and reporting of archaeological material, particularly by metal-detectorists. The provisions of this Act have to be seen in conjunction with the success of the Portable Antiquities Scheme, coordinated from the British Museum, which set up a network of regional advisers to whom all finds (and not only those classed as treasure) could be reported on a voluntary basis.

4. *Dealing in Cultural Objects (Offences) Act 2003.* This act started life as a private members bill, and was taken up by the government and passed into law in 2003. Following the looting of the Iraqi National Museum, additional urgency was felt to implement the legislation. The main provisions of the Act are as follows:
   - The offence is designed to combat traffic in unlawfully removed cultural objects and, thereby, to assist in maintaining the integrity of buildings, structures and monuments (including wrecks) worldwide by removing the commercial incentive to those involved in the looting of such sites. As such it will go further than

the protection of proprietary interests under the Theft Act 1968 (c.60) and will cover objects, which, although not stolen, have been illicitly excavated or removed from a monument. The offence will apply irrespective of the place where the cultural object was illicitly excavated or removed and thus will apply equally to objects illegally excavated or removed in the UK and objects illegally excavated or removed outside the UK.

- A person will be guilty of the offence if he deals in a cultural object that is tainted knowing or believing it to be tainted. For these purposes, a person deals in a tainted cultural object if he-
  (a) acquires or disposes of it,
  (b) imports or exports it,
  (c) agrees with another to do (a) or (b),
  (d) makes arrangements to do (a) or (b).
- A cultural object is an object of historical, architectural or archaeological interest and it is tainted if it is removed from a building, structure or monument of historical, architectural or archaeological interest or it is excavated, provided the removal or excavation constituted a criminal offence at the time it was done.[2]

A paper evaluating the Act has recently been published (Mackenzie & Green 2009). To date there have been no prosecutions. It is said that the police find it difficult to assess whether a suspect might have contravened its provisions, and prefer to work within more cut-and-dried parts of the criminal law (such as 1 and 2 above). The dealers mostly expect the Act to make no difference to them.

5. *The 2002 Export Control Act, and the 2003 Export of Objects of Cultural Interest (Control) Order*, are concerned to regulate the export of cultural objects.

6. *Coroners and Justice Act 2009.* The Coroners and Justice Act 2009 includes measures to reform the Treasure investigation system by removing the jurisdiction from local coroners and passing cases to a national Coroner for Treasure. The Act also amends the Treasure Act 1996 by introducing a duty on a person who acquires (buys, inherits or is given) an object which they believe to be treasure to report it to the Coroner for Treasure. This will only come into effect once the Act has been implemented.

Although the previous administration published a timetable for implementation by 2012, the new government has not done anything to further this and it is unlikely that any change will occur in the short term, particularly as there is a cost involved in setting up a new national Coroner's office.

ENDNOTES

1   http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/publications/TreasureAct1996CodeofPractice2ndRevision.pdf
2   http://www.culture.gov.uk/images/publications/ExNotesDealinginCulturalObjects-Actdraft.pdf

APPENDIX 2: RESOLUTION ADOPTED BY THE COUNCIL OF THE BRITISH ACADEMY (1998)

1. It is an established fact that the volume and value of the international trade in antiquities has increased greatly during the last twenty years. In some cases this trade is licit, in others it is not. The British Academy believes that the scholarly importance of archaeological and art historical objects obliges it to formulate a stance on the illicit trade in such items.

2. London is one of the principal international markets through which antiquities, licitly or illicitly obtained, pass. The movement of such items may be illicit in one or all of three senses: they may have been excavated illegally or clandestinely, they may have been stolen from their rightful owners before export, and they may have been exported from their countries of origin in contravention of that country's laws.

3. Laws governing the sale of cultural property vary from country to country, and differ even within the United Kingdom. There are various reasons why English law has made it difficult to stem illicit dealing in antiquities. The British Academy is not able to intervene in such matters directly. It can, however, formulate principles for the guidance of members of the scholarly community.

4. The existence of a market for illicitly-obtained antiquities encourages the inexpert, uncontrolled, unrecorded and illegal excavation of archaeological sites, the despoliation of standing monuments, and wholesale looting of museums and other depositories and cultural sites. Regardless of the strict illegality or legality of any transaction, this entails not only physical damage to and loss of artefacts, but also

an irreparable loss of scholarly information on the context from which they are wrenched. The Academy wishes therefore to express its unequivocal Opposition to the trade in such illicitly-obtained antiquities.

5. The British Academy notes that the Government of the United Kingdom was not one of the initial signatories of the Unidroit convention drawn up by the Diplomatic Conference held at Rome from 7 to 24 June 1995. The Academy expresses the urgent wish that Her Majesty's Government should continue to participate in all international moves to curb the illicit antiquities trade, and should wherever possible announce their adherence to the spirit of such conventions, whether or not a signatory to them.

6. A Code of Professional Ethics was adopted by ICOM (the International Council of Museums) in 1986 and published in 1990. By virtue of the membership of the Museums and Galleries Commission's Museum Registration Scheme almost all museums in the United Kingdom are obliged formally to adopt a strict code of practice in this area. The British Museum has a policy to "refuse to acquire objects which have been illegally excavated and / or exported from their countries of origin." Antiquities dealers, as represented by the International Antiquities Dealers Association, have drawn up a code of ethics which in part covers these issues, and to which members of the Association are committed to adhere.

7. For its part, the British Academy, as a professional association of academics, hereby affirms its adherence to certain principles:

    a. It is inappropriate for an individual to acquire, whether by purchase, gift, bequest or exchange, any object unless satisfied that it has not since 1970 been acquired in, or exported from, its country of origin and / or any intermediate country in which it may have been legally

owned (including the United Kingdom), in violation
of that country's laws.

b. So far as excavated material is concerned, it is not
appropriate that objects should be purchased or
otherwise acquired by individuals where there is
reasonable cause to believe that their recovery included
the recent unscientific or intentional destruction or
damage of ancient monuments or archaeological sites,
or involved a failure to disclose finds to the owner
or occupier of the land, or to the proper legal or
governmental authorities.

c. No scholar should be party to the acquisition by his
or her institution of the categories of object mentioned
in paragraphs a) and b) above, nor to their public display
if on loan (except where a national or regional museum
properly acts as the repository for items originating
within their geographical region, even when deriving
from illicit excavation).

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

e. No scholar should be involved directly or indirectly with
excavations in contravention of the laws of the country
in question, or act as an advisor to such excavations.

ABOUT THE CONTRIBUTORS

Professor Sir Barry Cunliffe CBE, FBA

Barry Cunliffe is Emeritus Professor of European Archaeology at the University of Oxford and a Commissioner of English Heritage. He has also served as a Trustee of the British Museum, Governor of the Museum of London and Interim Chairman of English Heritage. Barry's recent publications include *Facing the Ocean: The Atlantic and Its Peoples, 8000 BC to AD 1500* (Oxford University Press, 2001), and *Europe Between the Oceans: 9000 BC-AD 1000* (Yale University Press, 2008).

Dr John Curtis OBE, FBA

John Curtis is Keeper of the Middle East Collections at the British Museum. His work analyses cultural heritage in conflict zones, including the damage of cultural heritage in Iraq since 2003. He recently coedited *The Achaemenid Persia: History, Art and Society in Iran and the Ancient Near East* (I.B. Taurus, 2010) and co-authored *Forgotten Empire: the World of Ancient Persia* (British Museum Press, 2005). John was awarded the Iran Heritage Foundation Award in 2005 for "outstanding contributions to the promotion and preservation of the heritage and culture of Iran".

Professor Michael Fulford CBE, FBA

Michael Fulford is Professor of Archaeology at the University of Reading. He currently chairs the Committee for the Museum of English Rural Life and the Roman Research Trust. Mike's research concentrates on Ancient Roman landscapes, economy and trade and his latest writings include *Silchester: City in Transition. The Mid-Roman Occupation of Insula IX c. AD125-250/300. A Report on Excavations undertaken since 1997* (Society for the Promotion of Roman Studies, Britannia Monograph 2011), and contributions to *The New Antiquarians: 50 years of archaeological innovation in Wessex* (CBA Research Report, 2011).

Professor Anthony Harding FBA

Anthony Harding is Professor of Archaeology at the University of Exeter. His current work focuses on the European Bronze Age and fieldwork projects in Poland and Romania. He is a Trustee of *Antiquity* and was also President of the European Association of Archaeologists until 2009. Most recently, he contributed to *Velim, Violence and Death in Bronze Age Bohemia* (Czech Academy of Sciences, 2007) and wrote *Warriors and Weapons in Bronze Age Europe* (Budapest, Archaeolingua, 2007).

Dame Fiona Reynolds DBE

Fiona Reynolds has been Director-General of the National Trust since 2001. Prior to this, she was Director of the Women's Unit of the Cabinet Office, Director of the Council for the Protection of Rural England and Secretary to the Council for National Parks. In 1998, Fiona was awarded a CBE for services to the environment and conservation, and in 2008, appointed a DBE for her services to heritage and conservation.

BRITISH ACADEMY POLICY PUBLICATIONS

Language matters more and more, a Position Statement by the British Academy, February 2011

Stress at Work, a British Academy Report, October 2010

Happy Families? History and Family Policy, a British Academy Report, October 2010

Drawing a New Constituency Map for the United Kingdom: The Parliamentary Voting System and Constituencies Bill 2010, a British Academy Report, September 2010

Choosing an Electoral System, a British Academy Report, March 2010

Social Science and Family Policies, a British Academy Report, February 2010

Language Matters, a Position Paper by the British Academy, June 2009

Punching Our Weight: The humanities and social sciences in public policy making, a British Academy Report, September 2008

In the current climate, heritage is at risk of slipping further away from the mainstream agenda, despite its significance to the society, economy and culture of present and future generations. *History for the taking?* brings together four essays on various problems threatening archaeology and built heritage in particular, and explains why each poses a danger. Cultural tourism, redevelopment, war and the trade in illicit antiquities: in all four, current human activities have the potential to damage or destroy material heritage. It is the task of government to ensure its preservation for future generations, to introduce mitigation strategies where erosion of heritage assets is unavoidable, and to have in place robust legislation to curtail exploitation. Each essay makes recommendations to policymakers and academics on how to take steps to better protect material legacies of the past.