

The role of conservators in facilitating the theft and trafficking of cultural objects: the case of a seized Libyan statue

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Abstract

A 2015 court judgment in the United Kingdom ruled that a seized Libyan statue should be returned to the ownership of the State of Libya. The judgment prompts a critical discussion of the involvement of professional conservators in the trafficking of cultural objects. Higher standards of due diligence are recommended for conservators and other professional experts engaging with cultural objects that might have been stolen and trafficked. Stronger professional due diligence is but one component of a broader policy of demand reduction that will be necessary to control the theft and trafficking of cultural objects, and to offer protection to cultural sites around the world.

في العام 2015، حكمت محكمة في المملكة المتحدة أن التمثال الليبي الذي تمت مصادرته يجب أن يتم إرجاعه لمملكة ليبيا. إن هذا القرار يحث على قيام نقاش نقدي لموضوع تورط الأوصياء أو القيمين المهنيين بالإتجار بالأغراض الثقافية. يجب وضع معايير أعلى من الإجراءات للأوصياء والخبراء الآخرين الذين يتعاملون مع الأغراض الثقافية التي قد تكون سرقت وتم الإتجار بها. إن هذه الإجراءات المهنية الأشد هي مجرد أحد عناصر السياسة المطلوبة لتقليل الطلب من أجل السيطرة على السرقة والإتجار بالأغراض الثقافية وتقديم الحماية للمواقع الثقافية حول العالم.

In 2016, illegally excavated and exported artefacts were said to be ‘gushing out of Cyrenaica’. One reason was the ease with which people could dig under their houses or in the desert for saleable material (Cornwell 2016). The news wasn’t surprising. Libyan cultural sites had been considered particularly vulnerable to the threat of theft and trafficking since 2011 (Di Lernia 2015; Kane 2015). In October that year, a UNESCO-convened meeting of experts in Paris recommended safeguarding Libyan cultural sites by preparing object databases and inventories, public awareness raising, professional capacity building, and improving legal and physical regimes of protection (UNESCO 2011). A similar set of recommendations was made in April 2013 by a follow-up workshop in Tripoli (UNESCO 2013). The general thrust of these recommendations was to improve the ability of Libyans themselves to protect the integrity of their country’s cultural heritage. Yet by 2016, with Libya suffering the ongoing violence and disruption of civil war, follow-through on these recommendations had proved impossible and protection was failing.

The Libyan experience is but one example of what has been termed ‘cultural property protection policy failure’ (Brodie 2015a; 2015b). Similar accounts could be offered for Syria, Iraq and Afghanistan, to name only a few other countries. International policy is failing to protect cultural heritage from theft and trafficking because of its focus on tackling the problem at source, in the countries suffering harm, when the root of the problem is to be found elsewhere, in the destination markets of collectors and museums. In simple economic terms, international policy has been attempting to restrict supply without any corresponding measures aimed at reducing demand. For many criminologists taking a comparative perspective, such policy is hopelessly misdirected: ‘Never in history has a black market been defeated from the supply side. Supply side controls act to encourage production and increase profits. As long as demand persists, the market continues’ (Naylor 2002, 11). For cultural sites in countries such as Libya, source-directed initiatives have in any case been rendered inoperable by war and civil disturbance. A further problem arises when scarce resources are directed towards cultural heritage protection in one country only, so that protection in other countries is left wanting. Libya has suffered badly in this respect as during the period in question most international attention and support had been directed towards Syria, so much so that despite the UNESCO meetings in 2011 and 2013, by 2015 one commentator felt forced to ask ‘Why is no one talking about Libya’s cultural destruction?’ (Mallonee 2015).

The design and implementation of an internationally agreed policy of demand reduction would be a laborious and long drawn out task, requiring a better understanding of the market than is presently available and much better cooperation and collaboration between relevant individuals, organisations and agencies. That is not to say, however, that nothing can be achieved. A more pragmatic approach seems inevitable, with small-scale targeted interventions acting in aggregate to dampen demand on the destination market. The investigation and disruption of trafficking networks by police and customs agencies is important, but more needs to be done. One promising strategy is to characterise and discourage the active involvement of professional experts in facilitating illegal trade (Brodie 2009;

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2011). Their expertise is crucial for identifying, authenticating and valuing objects offered for sale on the market, thereby helping to create a coherent pricing structure and maintain market confidence. Their offered justification is that they are acting in the public interest by ‘rescuing’ cultural objects that might otherwise be lost from view, arguing too that their actions in supporting demand do not cause looting and theft at source. Museum curators, academics and conservators all have opportunities to engage with material of dubious provenance that has in all likelihood been stolen and trafficked, and though many if not most experts decline the opportunity, a small proportion do see fit to work with such material. Unfortunately, the involvement of only a small number of experts can have a disproportionately large commercial effect on the market.

In September 2015, a court judgment in the UK ruled that a Libyan statue seized by HM Revenue and Customs (HMRC) should be forfeited (Ulph 2015). The judgment illuminated the role of expert facilitation in sustaining the market with evidence concerning a conservator working on the statue. This paper takes the court judgment as a starting point to investigate the larger international dimension of the statue seizure before proceeding to consider the ethical and legal contexts of expert facilitation, with special reference to the work of the named conservator.

HM Revenue and Customs v. Riad Issa Mohamed al-Qassas

On 1 November 2013, HMRC seized an ancient marble statue from the premises of Connoisseur International Distribution of West Drayton, London (close to Heathrow Airport) (HMRC 2015). Connoisseur International is a shipping and storage company, with its sister company Connoisseur International Fine Art from its Heathrow premises specialising in the movement of art and antiques. After examination, the British Museum declared the seized object to be a funerary statue of a goddess dating to the fourth or third century BC from Cyrene, in Libya, with a probable market value of up to £2 million. HMRC had acted because of false declarations on customs documents – the statue had been imported into the UK on 1 December 2011 described as a ‘marble stone piece for home decoration’ with Turkey entered as country of manufacture and a declared value of \$110,000. During a search of Connoisseur International in June 2013 HMRC recovered an e-mail from the Hassan Fazeli Trading Company of Dubai thought to be addressed to UK-based dealer Farhan Yaghi of Aequitas Classical Arts Limited. Fazeli claimed in an another e-mail found at Connoisseur that he was the lawful owner, that the statue had been in the possession of the Fazeli

family since 1977, and that it had been made in the seventeenth century. Yaghi himself claimed not to know Fazeli and to have received the statue on consignment from Jordanian citizen Riad al-Qassas, believing al-Qassas to be the lawful owner, a claim supported by al-Qassas himself. Thus the forfeiture case was brought against al-Qassas, and not Yaghi. Al-Qassas claimed to have acquired the statue in Dubai in 2005, in apparent contradiction of Fazeli’s e-mail statement of longstanding family ownership. On 8 May 2012, acting on behalf of Yaghi, Connoisseur sent the statue to Colin Bowles Ltd, a London-based art conservation and restoration company. When interviewed by HMRC, Bowles denied any knowledge of Fazeli or al-Qassas, but stated that Yaghi was an established customer. Bowles returned the statue to Connoisseur on 24 September 2012. On 1 September 2015, Westminster Magistrates Court found against al-Qassas, ruling the statue forfeit and declaring it the property of the State of Libya. Neither al-Qassas nor any legal representative appeared in court to contest the decision.

The Hassan Fazeli Trading Company

The HMRC court case was not the first time that Hassan Fazeli’s name had appeared in connection with trafficked cultural objects. Evidence is accumulating that between 2008 and 2013 he was channelling material from countries throughout the Middle East and North Africa to dealers in the US and the UK. In August 2008, US Immigration and Customs Enforcement (ICE) in New York seized a limestone head of the Assyrian King Sargon II from Iraq that had been sent by Fazeli (ICE 2015). In a 2013 federal complaint claiming forfeiture of the piece, Fazeli was accused of falsely declaring the value of the head as \$6,500 when its appraised value was \$1.2 million, and of listing Turkey as the country of origin, despite knowing it was from Iraq. The complaint alleged that Fazeli named Turkey because he had Turkish papers he could use. He was also accused on ‘at least two prior occasions’ of incorrectly listing Turkey as the county of origin for Egyptian antiquities (St Hilaire 2013a). The head was returned to Iraq in March 2015. The ICE press release announcing the return stated the seizure had been made as part of an investigation (code-named ‘Operation Lost Treasure’) that had

identified a broad transnational criminal organization dealing in illicit cultural property. Some of the network’s shipments were directly linked to major museums, galleries and art houses in New York. The investigation has resulted in one arrest, multiple seizures of antiquities ranging from Libya, Egypt, and Afghanistan, and the return of many of artifacts. A repatriation ceremony with Afghanistan was held

two years ago and future repatriations are anticipated (ICE 2015).

A further comment on ‘Operation Lost Treasure’ talked of an ‘organization out of Dubai’ selling artefacts stolen from ‘Iraq, Egypt, Libya, Turkey and elsewhere in the region’, and also ‘dealing in artifacts stolen from museums in western Europe’ (Bruer and Rosen 2016). Nothing more was revealed about the material seized, or the identities of any traders involved. ICE did claim that Fazeli was ‘selling looted Iraqi antiquities to dealers all around the world’ (Northam 2015).

In August 2010, US Customs stopped a package containing five ancient Egyptian objects entering Newark International Airport that had been sent via FedEx from Dubai by Fazeli for receipt by Salem Alshdaifat of Holyland Numismatics. The material was seized because of inconsistent and false statements made at import. Although the objects were accurately described as Ancient Egyptian, the country of manufacture was stated on the FedEx label as Turkey, and on the associated documentation as ‘multi’ (St Hilaire 2013b). Alshdaifat had paid \$17,500 for the material, which had an appraised value of \$57,000. He produced documentation from Fazeli claiming that he (Fazeli) had bought the material in 2008 from a Turkish private collection (St Hilaire 2013b).

Throughout 2012 and 2013, HMRC conducted an investigation into material arriving into the UK from Fazeli (HMRC 2015). The investigation seems to have started with the seizure in March 2012 of a *kudurru* (boundary stone) suspected of having been taken illegally from Iraq. Customs documents declared a value of \$330 with Turkey listed as country of origin. The stone’s appraised value was in the range £100,000 to £200,000 (\$150,000 to \$300,000). In June 2013, customs officers searched the premises of Connoisseur International, seizing seven packages dispatched by Fazeli together with the Libyan statue. Five of the packages contained genuine objects, while the contents of the remaining two packages were judged to be fake. A full description of the material in the packages has not been made public.

The trade being channelled through Fazeli shows clearly how cultural objects from many different countries are trafficked to destinations in Europe and the United States for onward sale to collectors and museums. It is important too to remember that the account produced here reports only material intercepted over the five-year period 2008 to 2013, which in itself must have comprised only a fraction of Fazeli’s total trading volume. Fazeli was never

arrested or charged with a criminal offence, and there is nothing to suggest that the financial loss he suffered through seizures was enough to deter him or drive him out of business. It is entirely possible if not likely that he continued in business after 2013, perhaps – if he was sensible – rerouting material through other ports or countries. The geographical reach and likely volume of Fazeli’s business enterprise highlight the difficulties faced by customs and law enforcement agencies in tackling the trade alone. It emphasises how more is needed in the form of demand reduction initiatives to reduce the trading volume, thereby protecting cultural sites in all countries where theft and trafficking is a threat.

The role of conservators in facilitating the theft and trafficking of cultural objects

The work conducted on the Libyan statue by conservator Colin Bowles soon after its import highlights the support offered by conservators to illegal trade. (Even inadvertently. It is important to note that Bowles was not suspected of or charged with any criminal activity or offence). The role of conservators is well known, though the extent and importance of their involvement is not always recognised, particularly not outside the professional world of the conservators themselves (Tubb 1995; 1997; 2013). Conservators clean and restore objects in such a way as to improve their appearance, longevity and ultimately desirability, removing surface dirt or other accretions to expose original appearance and detail, but also uncovering any evidence of past repairs or forged modifications. Such work has the unintended consequence (for the conservator at least) of establishing the identity, condition, authenticity and quality of a piece, all important factors for price formation. It is no accident that dealers have conservators work on objects before sale. But conservation also has a destructive aspect. The removal of surface material might destroy evidence of previous ambient conditions, thereby eradicating any (perhaps inconvenient) evidence of earlier object placements. Such evidence was contributory to a 1991 court judgment in London, for example, which decided ownership of a bronze Shiva Nataraja in favour of India and against the Bumper Development Corporation (O’Keefe 1995, 74). Returning to the present case, it is not known exactly why the Libyan statue was deposited with Bowles, except for ‘restoration’. The British Museum’s examination of the statue after it had been seized reported that the surface retained root marks and soil deposits, prompting the conclusion that it had only recently been excavated. Clearly, then, Bowles had not removed that evidence. By way of contrast, however, in court, Bowles himself reported signs

of previous repair, which he believed to be at least 10 years old (and thus arguing against recent excavation).

Thus the conservation or restoration of a poorly-provenanced cultural object can be problematical in that it might promote its saleability while at the same time remove evidence of theft or illegal trade. For Ricardo Elia, conservation can be the ‘final stage in the laundering process which transforms looted antiquities into art objects’ (Elia 1995, 249). With that outcome in mind, professional associations of conservators have developed ethical guidelines for working with poorly-provenanced material. In the UK, for example, the Institute of Conservation (ICON) requires that all members adhere to its Code of Conduct (adopted October 2014), which demands that:

Article 4(14). You must establish to the best of your ability that you are not agreeing to work on stolen or illicitly traded cultural objects, unprovenanced archaeological material or any items wrongfully taken, unless to establish wrong-doing or exceptionally to save the object from rapid ongoing deterioration.

Article 4(15). You must contact authorities and the current custodian or owner if you uncover in the course of your work evidence that items could have been disguised, stolen or illicitly traded. If you hold a reasonable suspicion that the current possessor is not the rightful owner, relevant authorities must be informed.

Bowles is a Royal Warrant holder though does not advertise ICON membership, so there is no reason to expect that the ICON ethical stipulations would apply to him. Nevertheless, having said that, it is not certain that his actions concerning the Libyan statue would be construed as unethical in light of the ICON Code. Considering Article 4(15) first, Bowles does not appear to have ‘contacted the authorities’, but presumably because he did not suspect anything untoward about the provenance or ownership of the statue. It would have been useful for the court to have asked more closely why Bowles’ opinion that the statue had been out of the ground for more than ten years diverged from the British Museum’s that it had only been recently excavated, but subjective disagreement is not evidence of unethical practice. Bowles could no doubt defend his decision not to inform the authorities by recourse to Article 4(14), with its requirement for conservators to investigate provenance to the ‘best of their ability’. Remember that Yaghi claimed in court to be acting on behalf of al-Qassas, but Bowles denied any knowledge of al-Qassas (or Fazeli). Did Bowles ask Yaghi for any documentary proof of ownership, or did he simply accept what Yaghi told him (whatever that was)? They had after all previously conducted business together and Bowles might have regarded Yaghi as a

trusted client. These are hypothetical questions, asked simply to highlight that what might constitute ‘best of their ability’ for the purpose of Article 4(14) remains an uncertain quantity. Thus from what is known of the Libyan statue case, there is nothing to suggest that Bowles was acting in an unethical manner, though the feeling persists that a more rigorous enquiry on his part might have uncovered evidence of wrongdoing, or at least engendered ‘reasonable suspicion’ that something was amiss.

So what is the best of a person’s ability, and what should constitute reasonable suspicion? The problem is really one of due diligence – how diligent must a conservator be when investigating the provenance of a piece? Recent developments in the understanding of what might comprise appropriate due diligence owe much to Article 4(4) of the 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects, which was formulated with the need to assess financial compensation in mind, but which has since come to be considered more generally as the ‘benchmark’ statement on due diligence and to be more broadly applicable. It reads:

Article 4(4). In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.

In her commentary on the Unidroit Convention, Lyndel Prott (1997, 46–51) considers and provides explication of Article 4(4). First, there are the ‘circumstances of the acquisition’. Prott suggests that for objects originating in countries with cultural sites in danger of theft or illegal excavation, increased scrutiny is required. The fact that Turkey was listed as country of origin for the Libyan statue should have been questioned more closely. Even if the statue’s Libyan origin went unrecognised, Turkey itself has restrictive laws governing the export of cultural objects, and it seems unlikely that permission would be forthcoming for the export of such an important piece. Then there is the ‘character of the parties’. What is the ‘character’ of Yaghi? Prott emphasises the importance of working with reputable dealers, yet neither Yaghi nor Aequitas Classical Arts Limited is listed as a member of the Antiquities Dealers’ Association or of the International Association of Dealers in Ancient Art, which are considered in the UK at least to be the foremost professional associations of antiquities dealers. But Prott also implies that an assessment of the ‘character of

the parties' would include the character of the conservator undertaking conservation. An experienced professional conservator such as Bowles should be held to a higher standard of diligence than, for example, a casual purchaser. Then there is the issue of 'price paid'. The declared value of \$110,000 was a clear red flag for HMRC, and should have been for Bowles, if he had asked. Perhaps he didn't. Perhaps he didn't ask about price because he didn't feel it was his business to enquire about Yaghi's business. Thus due diligence conducted in accordance with Prott's explication of the Unidroit guidelines would have raised several questions about the likely provenance of the statue, and perhaps prompted Bowles to have contacted the appropriate authorities. But presumably – and this remains speculation – that didn't happen. At least, neither Bowles nor HMRC made any statement to that effect. Thus Bowles might claim fairly to have acted within the ethical guidelines of ICON, and yet still have allowed a trafficked piece to have slipped through his fingers. There is a clear argument here for a stiffening of ethical guidelines. Conservators are professional experts and should be held to a high standard of due diligence. At the very least, the Unidroit recommendations could be adopted and modified to meet the needs and professional circumstances of conservators likely to come into contact with trafficked objects.

But the perils facing conservators do not end with ethical transgressions. Working with poorly-provenanced objects that might subsequently be shown to have been stolen or illegally traded poses potential civil and criminal law risks. In December 1974, for example, the Indian government initiated legal proceedings to claim damages from the Norton Simon Foundation together with a dealer and conservator because of what it claimed to be a conspiracy to steal a Shiva Nataraja. The case was subsequently settled out of court (Muchnic 1998, 228–29). In December 2016, a criminal complaint against a New York-based dealer in Asian art listed two conservators (one based in the UK) as co-conspirators alongside traffickers and a museum researcher (New York 2016). Conservators might also be vulnerable to criminal charges associated with conspiracy under UK law. It has been opined that Article 328(1) of the 2002 Proceeds of Crime Act might apply to conservators and other professional experts engaging with illegally-traded material (Ulph and Smith 2012, 109–11). It states:

A person commits an offence if he enters into or becomes concerned in an arrangement which he

knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

It is important to note here the *mens rea* requirement of suspicion, which is weaker than the more usual criminal requirement of knowledge or belief. It emphasises once again the importance of due diligence, which in this case would need to be sufficiently robust for a defendant to deny allegations of suspicion of theft or trafficking when working on poorly-provenanced cultural objects, particularly bearing in mind Prott's advisement that a professional expert should be held to a higher standard of diligence than a non-professional person.

Conclusion

This paper has used a court judgment on the disposition of a seized Libyan statue to explore the role of professional experts, in this case conservators, in supporting the illegal trade in cultural objects, and recommended that a strong standard of due diligence based on Article 4(4) of the Unidroit Convention should be adopted when working on poorly-provenanced material. The conservator was not the only professional service provider to figure in the judgment. The business practice of the shipping company calls for similar scrutiny, and perhaps that of any insurer that was involved. The point is that 'the trade' is not just a series of transactions between buyers and sellers, but relies for its persistence and profit on the support of a wide range of professional expertise. If professional experts could be constrained ethically or legally to be more vigilant and demanding about the provenance of cultural objects they handle as part of their craft, it would be harder for criminal traders to market stolen material. In Elia's words (1995: 249), the 'laundering process' would become increasingly frustrated and the passage of trafficked objects onto the destination market would suffer accordingly. The illegal trade in cultural objects is driven by demand, not supply, and adequate measures of demand reduction will be necessary to control it. Improving the due diligence of professional experts such as conservators is only one step in that direction. More measures need to be devised and implemented.

Acknowledgements

The writing of this paper was made possible by the support of Arcadia through the Endangered Archaeology in the Middle East and North Africa project of the University of Oxford's School of Archaeology.

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