

Restorative justice? Questions arising out of the Hobby Lobby return of cuneiform tablets to Iraq

Justiça restaurativa? Perguntas decorrentes do retorno de tabletes cuneiformes do Hobby Lobby ao Iraque

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Neil Brodie¹

Abstract

The aim of this paper is to understand the harms potentially caused to Iraq by the looting and trafficking of cuneiform tablets and their consequent study and publication, showing how these harms are not fully repaired by the return of the tablets to Iraq. The processes and consequences of publications related to these collections are also considered, discussing publication rights and intellectual property and introducing the concept of restorative justice in the context of the Museum of the Bible (MOTB) technical assistance announcement for 2020, for studies and future curation of the collections in question.

Key-words: Iraq; cuneiform tablets; restorative justice.

Resumo

O objetivo deste artigo é compreender os danos potencialmente causados ao Iraque pelos saques e tráfico de tabletes cuneiformes e por seu consequente estudo e publicação, mostrando como esses danos não são totalmente reparados pelo retorno dos tabletes ao Iraque. Considera-se também os processos e as consequências de publicações referentes a esses acervos discutindo direitos de publicação e propriedade intelectual e introduzindo o conceito de justiça restaurativa no contexto do anúncio de assistência técnica do Museu da Bíblia (MOTB) para 2020, para estudos e curadoria futura dos acervos em questão.

Palavras-chave: Iraque; tabletes cuneiformes; justiça restaurativa.

Introduction

On 26 March 2020, the Museum of the Bible (MOTB) in Washington DC issued a press release stating its intention to return 6,500 clay objects to Iraq and 5,000 papyri fragments to Egypt (MOTB 2020), thus concluding a period of investigation commencing late

1 EAMENA. Endangered Archaeology in the Middle East & North Africa. School of Archaeology. University of Oxford. 2 South Parks Road, Oxford OX1 3TG. neil.brodie@arch.ox.ac.uk

2017 into poorly-provenanced antiquities in the MOTB collection². The press release also announced that the MOTB was hoping to reach agreements with Iraq and Egypt over the provision of technical assistance and support for the ongoing study and curation of antiquities. The news was cautiously but generally welcomed as a sign that the MOTB was acting to rid its collection of likely stolen or looted antiquities and establish itself as an ethically-sound collecting institution (Mashberg 2020).

Several months before the MOTB press release, in late 2019, the publisher Eisenbrauns (an imprint of Penn State University Press) had advertised publication of *Tablets from the Iri-sağrig Archive* (Sigrist and Ozaki 2019) as volume 40 of its series Cornell University Studies in Assyriology and Sumerology (CUSAS 40). The accompanying blurb stated that CUSAS 40 would present more than 2,000 newly-identified cuneiform tablets, mostly from the city of Iri-Sağrig and dating to the Ur III period, before concluding “This two-volume publication preserves and makes available to the scholarly community a significant segment of Iraq’s cultural legacy that otherwise might have been ignored or even lost” (Eisenbrauns 2019). Eisenbrauns did not reveal who owned the tablets, though it was not long before an article in *Live Science* identified the owner as the Hobby Lobby company (Jarus 2020). The tablets published were amongst those the MOTB scheduled for return to Iraq in its 2020 statement.

This paper uses these two inter-related announcements as the starting point for an examination of the broader ramifications of the publication and return of the MOTB cuneiform tablets. It continues a line of argumentation developed through a series of previous papers (Brodie 2009; 2011a; 2011b; 2014; 2016; 2019). The intention is to broaden understanding of the harms potentially caused to Iraq by the looting and trafficking of cuneiform tablets and by their consequent study and publication, and particularly to show how those harms are not fully repaired by the return of the tablets to Iraq. The first part of the paper introduces some preliminary factual matter, describing in turn the relationship between the Hobby Lobby and MOTB Collections of cuneiform tablets, the ancient settlement of Iri-Sağrig, where many of the MOTB and CUSAS 40 tablets were found, and the material published in CUSAS 40. The second part goes on to consider the processes and consequences of publication, discussing publication rights and intellectual property, the harmful consequences of scholarly study and publication, ethical justifications, and finally introducing the concept of restorative justice in the context of the MOTB’s 2020 announcement of technical assistance for future study and curation. The MOTB’s offer of

2 The text of the press release is reproduced as an appendix to this paper.

assistance must be viewed as a central and important component of its announcement, not just an afterthought or added extra.

Hobby Lobby/The Museum of the Bible

Before proceeding any further, it is important to recognize that Hobby Lobby and the MOTB are two legally-distinct but materially-interlocked entities, both owned and operated by the Green family and headquartered in Oklahoma City (Moss and Baden 2017: 15, 172-175). Hobby Lobby is a private, for-profit corporation established in 1972 owning a successful chain of craft stores across the United States. The MOTB is a non-profit organisation established in 2010, opening bricks-and-mortar premises in Washington DC in November 2017. It was awarded tax-exempt status in 2011 (St Hilaire 2017b). As its name suggests, the MOTB is concerned to explore and present the impact of the Bible on human history, though there is some controversy about its perspective and intention (Baden and Moss 2017; Hicks-Keeton and Concannon 2019).

The Green family started collecting antiquities and other objects relating to Biblical history and archaeology in November 2009. By 2013, the family is believed to have assembled more than 40,000 objects (Baden and Moss 2017: 25). At first, the antiquities in its possession were referred to collectively as the Green Collection (though actually belonging to Hobby Lobby), but since 2016 they have been known simply as the Hobby Lobby Collection (Baden and Moss 2017: 25, 58). One of the incentives for starting the collection was the possibility of tax avoidance. The for-profit Hobby Lobby corporation could buy antiquities and donate them to the non-profit MOTB for an appraised value much higher than the purchase price, thus allowing Hobby Lobby (and the Green family) to claim significant tax deductions that would more than cover the original cost of purchase (Baden and Moss 2017: 24-27). While passing between legal entities, however, the antiquities would never leave the control of the Green family and could be stored in Oklahoma City.

In July 2010, Hobby Lobby president Steve Green together with consultant Scott Carroll visited the United Arab Emirates (UAE) where they met with one Emirati and two Israeli dealers to negotiate the purchase of a quantity of Iraqi antiquities (USA 2017a: 8)³. On 8 December 2010, Hobby Lobby went on to purchase 5,548 antiquities, comprising 1,500 cuneiform tablets, 500 cuneiform bricks, 35 clay envelope seals, 13 extra-large cuneiform tablets and 500 stone cylinder seals (USA 2017a: 8-11). The purchase price was

³ More information about this acquisition and the customs seizures that followed can be found in St Hilaire (2017a; 2017b), Brodie (2017a; 2017b), and Gerstenblith (in press).

\$1,600,000, though Carroll suggested the material might have an appraised value of \$11,820,000 (USA 2017a: 10-11). From November 2010 to September 2011, the purchased antiquities were dispatched in 16 packages from Israel and the UAE (USA 2017a: 13-18). In January 2011, US Customs and Border Protection (CBP) seized five of the packages for customs violations at the Memphis, Tennessee FedEx facility, which were found to contain approximately 223 cuneiform tablets and 300 clay bullae (USA 2017a: 18)⁴. On 5 July 2017, the US Attorney's Office for the Eastern District of New York announced a settlement agreement concluding a CBP investigation into the Hobby Lobby purchase (USA 2017b). In the agreement, Hobby Lobby assented to the forfeiture of 450 cuneiform tablets and 3,000 clay bullae, and additional assets comprising 144 cylinder seals and \$3 million. The antiquities were returned to the possession of Iraq in May 2018 (USA 2018). The settlement agreement was negotiated between the United States and the Hobby Lobby corporation, not the MOTB, and the antiquities returned to Iraq in 2018 had been owned by Hobby Lobby since the 2010 purchase. The settlement agreement did not apply to any material bought by Hobby Lobby in 2010 but sometime before 2017 donated to the MOTB.

The 2010 Hobby Lobby purchase of 5,548 antiquities included approximately 2,048 cuneiform-inscribed clay objects, numbering 1,513 cuneiform tablets, 500 cuneiform bricks and 35 clay envelope seals, though how many "bricks" or "envelope seals" would fit a strict definition of "tablet" is not clear. Thus the 2010 purchase would have included somewhere between 1,513 and 2,048 cuneiform tablets, depending upon the definition of "tablet". In 2011, CBP seized 223 tablets, which means that between 1,290 and 1,825 tablets would have successfully entered the United States into the possession of Hobby Lobby. The 223 seized tablets were presumably included among the 450 tablets forfeited by Hobby Lobby and returned to the ownership of Iraq in 2018; Hobby Lobby must have handed over 227 tablets not seized by CBP agents in 2011. It looks likely, therefore, that somewhere between 1,063 and 1,598 tablets from the 2010 purchase were excluded from the settlement agreement because they had already been donated to the MOTB Collection. They would have been among the 6,500 clay objects announced for return in March 2020.

It was widely assumed at the time of the 2017 settlement agreement that the \$3 million forfeiture was a fine, but the settlement agreement explicitly stated "forfeiture", which is something different – a recovery of money wrongfully received, not a punishment for wrongdoing (St Hilaire 2017b). Something else was going on, and the 2019 publication of CUSAS 40 and the March 2020 MOTB press release clarify the situation. Only 450

⁴ Gerstenblith (in press) provides an overview of all laws applicable in the United States, and detailed discussion of the case more generally.

cuneiform tablets were recovered and returned to Iraq in 2018, yet it is known that in 2010 Hobby Lobby had purchased at least 1,513 tablets. Furthermore, the 2017 settlement agreement was enacted with Hobby Lobby only, the MOTB was not mentioned. It now seems likely that the \$3 million forfeiture was redress for earlier tax exemption allowed by Hobby Lobby's charitable donation to the MOTB of antiquities purchased in 2010 (Gerstenblith in press). This donation (or donations) would have comprised at least in part some of the tablets itemised in CUSAS 40 and included among the 6,500 objects announced for return in March 2020.

Iri-Sağrig

Preliminary study of the tablets seized by CBP in 2011 showed that many of them came from the ancient city of Iri-Sağrig, and from the uniform patterning of salt incrustations likely from a cohesive archive (Connolly 2018; Jarus 2018). The existence of Iri-Sağrig had been known from references in cuneiform texts from other sites since at least the 1950s, but it was not until 2003 that large numbers of tablets originating in Iri-Sağrig itself began to circulate on the international market (Molina 2013: 60-72; Owen 2013a: 101-102; Gerstenblith in press). They are generally believed to have been looted in 2003 or soon thereafter (Molina 2013; British Museum 2019; Owen 2015). By 2013, 1,157 cuneiform texts from Iri-Sağrig were known (Owen 2013b; 2013c), including at least 90 in the possession of Hobby Lobby/MOTB (Owen 2013c: 3). More have appeared since then. The overwhelming majority date to the Ur III period (ca. 2100-2000 BC), when a Sumerian dynasty based at the then coastal city of Ur ruled much of southern Mesopotamia. The actual location of Iri-Sağrig is uncertain. Contender sites include Adams⁵ 1032, 1056 or 1188 (Molina 2013: 73-76; Owen 2013a: 103; Owen 2015) or further to the north-east at Tell al-Wilaya (Viano 2019). The location will only be determined by future archaeological fieldwork (Molina 2013: 76).

Known cuneiform texts from Iri-Sağrig are listed on two on-line databases: the Cuneiform Digital Library Initiative (CDLI)⁶ and the Database of Neo-Sumerian Texts (BDTNS)⁷. The CDLI makes available for scholarship cuneiform inscriptions recorded through transcription, transliteration and ideally photographic and handcopy reproduction. The ultimate goal of the CDLI is to present all known cuneiform texts of all time periods. The BDTNS serves a similar function and purpose, though is restricted to Neo-Sumerian texts of

5 The "Adams" numbers identify ancient sites located though not named in Robert McC. Adams' archaeological survey of the central floodplain of the Euphrates in what is now Iraq (Adams 1981).

6 <https://cdli.ucla.edu/>

7 <http://bdts.filol.csic.es/>

the Ur III period. On 29 April 2020, a keyword search “Irisagrig” produced 3,082 entries on the CDLI website and the smaller number of 1,170 entries on the BDTNS website. There are several straightforward categorical or operational reasons for the large discrepancy between the two respective entry counts. First, the CDLI lists 20 texts dating to periods other than Ur III, which would not be recorded in the BDTNS. Second, the CDLI lists 278 seal stones, which are not recorded in the BDTNS. Finally, the CDLI lists 103 recently-entered texts from the Iraq National Museum and 1,371 texts from CUSAS 40 that are not in the BDTNS, but which presumably will be entered when time allows. Similarly, the BDTNS records 69 texts that are not in the CDLI database, largely comprising records of texts seen on the market and that might be added to the CDLI in the future.

But these reasons alone do not account for the totality of the discrepancy between entry counts. More worrying is the inclusion in the CDLI database of texts that are excluded from the BDTNS because of disagreement over likely find spots. There are two known archives of tablets documenting the activities of merchants named Tūram-ilī (van der Mieroop 1986) and SI.A-a (Garkinkle 2003). All these tablets have been out of Iraq for several decades though none has a documented archaeological find spot. Textual and calendrical similarities suggest the two archives were found close to one another, and since the appearance of the Iri-Sağrig tablets some scholars believe the find spot to have been Iri-Sağrig (Owen 2013d: 91, note 5), but not everyone agrees (Molina 2013: 72, note 27). Thus there are at least 130 Tūram-ilī and SI.A-a tablets entered on the CDLI database with an Iri-Sağrig provenience, but not recorded on the BDTNS as originating in Iri-Sağrig. Again, the true relationship of these different groups might be established through future archaeological fieldwork. Putting everything together, and excluding the Tūram-ilī and SI.A-a tablets, in April 2020 the CDLI and BDTNS between them recorded 3,021 cuneiform-inscribed objects from Iri-Sağrig, all likely looted in 2003 or soon thereafter.

CUSAS 40

The CDLI records 2,078 texts published in CUSAS 40, mainly Ur III in date but including 209 Old Babylonian (2000–1600 BC) texts, all registered as being in the ownership of the Iraq National Museum. Site-wise, the 2,078 texts are attributed as follows: Adab (6), Garšana (101), Girsu (3), Iri-Sağrig (1,420), Nippur (7), Puzriš-Dagan (13), Umma (255), and unknown (273). The CDLI lists 46 texts as previously published in 2013 (Owen 2013b; 2013c), though the publication itself claims to be presenting 90 texts from a collection (now known to have belonged to Hobby Lobby/MOTB) under parallel study for publication in what

is now known to be CUSAS 40 (Owen 2013c: 3). THE CDLI entries make no mention of Hobby Lobby/MOTB as previous holders of the tablets.

At least five texts published in CUSAS 40 are noted in the BDTNS (174692, 174693, 173413, 173415) and CDLI (P499901) as having been in the private AvA Collection of Jerusalem, presumably before being acquired by Hobby Lobby. The AvA Collection was known to cuneiformists by at least 2010 (Vukosavović 2010: 183, note 1). One of the authors of CUSAS 40 had previously noted that since 2012 a large number of Iri-Sağrig tablets had been reported in the Baidun and Barakat Munir Collections in Jerusalem before being “passed to other hands all over the world”, including to Hobby Lobby/MOTB at Oklahoma City (Ozaki 2016: 127, note 2). Perhaps one of these Jerusalem collections is the mysterious AvA Collection, though to call it a “collection” might be misrepresenting its true nature. The Baidun and Barakat families are long-established Jerusalem antiquities dealerships⁸.

Study of the Hobby Lobby/MOTB tablets for CUSAS 40 commenced in 2012 and seems to have ended sometime in 2016 (Ozaki 2016: 127; Jarus 2020). In other words, study proceeded during the CBP investigation into the five packages of antiquities seized in 2011 that ended in 2017. Similarly, study of the tablets for the earlier 2013 publication must have been ongoing after the 2011 seizures and during the CBP investigation. News of the seizures and investigation was only made public in October 2015 (Moss and Baden 2015), however, so it is conceivable that the scholars engaged in studying material were unaware of them.

CUSAS 40 published 2,078 texts, which is more than the number of tablets from the 2010 purchase hypothesized previously as being donated to the MOTB (between 1,063 and 1,598), or indeed from the entirety of the purchase (2,048 tablets at most). This might imply that CUSAS 40 published the 227 tablets Hobby Lobby handed over as part of the 2017 settlement agreement and plausibly studied before then. But the number of tablets published in CUSAS 40 (2,078) still exceeds the number known to have been purchased in 2010 and actually received in 2011 (between 1,290 and 1,825). Hobby Lobby must have acquired cuneiform tablets in excess of those purchased in Abu Dhabi in 2010. At least one is known about. Among the 6,500 clay objects announced for return in 2020 was the so-called Gilgamesh Dream tablet (Crow 2020), though seemingly already seized from Hobby Lobby in September 2019 by Homeland Security Investigations agents (USA 2020a). Hobby Lobby

⁸ In July 2017, law enforcement agents in Jerusalem arrested five members of the Baidun, Hroub and Barakat families on charges relating to the sale of material to Hobby Lobby (Estrin 2017).

had bought the tablet in 2014 for \$1,694,000 through a private sale arranged by Christie's auction house in London (USA 2020a)⁹.

Publication rights and intellectual property

A cuneiform tablet is an amalgam of tablet and text – a material object and the information it carries. The physical tablet itself may be of scholarly interest. Chemical analysis of clay can establish associations between tablets and identify likely places of production (Goren *et al.* 2011). A tablet with text might possess associative or spiritual value because of its connections to Biblical history, particularly if the tablet carries a text that can be directly related to a Biblical event. Such tablets function as relics, offering authentic experiences of the past (Brodie and Kersel 2012: 111-113). But it is probably true to say that almost overwhelmingly scholarly interest focuses not upon the tablets themselves, but upon their texts – what they can reveal about ancient history and society.

Study and publication of a cuneiform text is a lengthy process. First, the tablet as received needs to be cleaned, perhaps reassembled, and consolidated. Second, the text is extracted from the tablet by transcription (utilising photographic and/or written reproduction) and perhaps transliteration. Finally, the text is translated and interpreted, and published with commentary. More than one scholar might be involved in the complete process, though credit is usually reserved only for the scholar (or scholars) achieving the final publication. Generally speaking, with some differences according to jurisdiction and circumstance, intellectual property is created by the original and creative work of translation and interpretive commentary, so that the final publication will be copyright protected and the author's right to attribution will be recognised (Carson 1995; Lim *et al.* 2001)¹⁰. Transcriptions are more often considered as copies requiring no original work and are less likely to be awarded copyright protection.

Informal though normative scholarly conventions have grown up to govern the study and publication process. The CDLI website presents guidance for scholars wishing to work with CDLI entries, which might also be taken as a useful overview of what is currently accepted scholarly practice. The CDLI makes text reproductions publicly-available, either by photograph, hand-copy, and/or transliteration. It also records whether or not a text has been

⁹ In May 2020, Hobby Lobby took legal action against Christie's and the tablets consignor (John Doe #1), alleging fraudulent provenance statements made in relation to the transaction and seeking to recover the purchase price together with interest and costs (USA 2020b).

¹⁰ Carson seems to suggest that the right to attribution is no big thing, when she says that "the only thing given in exchange for the use of information is attribution" (Carson 1995: 318). But as anyone who is familiar with citation indices and quality audits knows, attribution is the very foundation of academic life, fundamental to professional recognition and career advancement.

published. If a text has not been published, the CDLI indicates whether it is “assigned” or “unassigned”. This distinction instantiates the convention that scholars can be assigned “publication rights” that ensure them exclusive access to a text for study and final publication (Sax 1999: 165-178). Publication rights are thought to be a good thing because they prevent duplication of effort and guard against the work of an individual scholar going uncredited (and unrewarded) because of the untimely publication of a competing scholar. Thus a scholar in possession of publication rights is allowed to proceed to publication in a measured manner without needing to rush through the necessary research. Against that, it can be argued that by preventing scholarly competition, publication rights are likely to diminish research quality. In any event, obtaining the right to publish is the first step towards final publication, the intellectual property it creates, and the professional advancement that follows.

By convention, publication rights are within the gift of an object’s owner, excavator or curator. Thus if a text is marked as “unassigned”, the CDLI recommends that a scholar wishing to secure publication rights contact the relevant “collection official”. The convention in place for granting and securing publication rights also allows the free circulation of and open access to photographic or hand-copy reproductions, which are not generally subject to copyright, while controlling final publication, which will be intellectual property. One anomaly of this convention seems to be that texts can be copied without the permission or approval of the owner, and once a copy has entered the public domain, it can then be translated and published without the owner’s permission. Thus the CDLI states openly that it contains “texts harvested from auction websites”, where scholars have simply copied texts from images of tablets appearing for sale on trade websites, sometimes at least without obtaining permission from the erstwhile owner – the dealer or auction company. These facsimile texts are then considered available for publication without the original owner’s permission, which can proceed from study of what is by then an open-access text. By way of contrast, final publications of texts in private collections usually include a statement of gratitude to the owner for allowing access and permitting study. This reflects the ordinary property right of a private owner to govern access, which is seemingly lost or considered to be relinquished if the owner posts an image on-line. It does seem to raise the question, however, that if a text is copied without the owner’s permission, if that owner is a dealer perhaps, and subsequently published without the owner’s permission, creating intellectual property in the process, does the owner have any claim on the intellectual property created? Probably not, but that is a problem for lawyers to work on.

Moving back to CUSAS 40, by their own admission the authors worked on the tablets in Oklahoma City between 2012 and 2016, presumably with the Green family allowing access and consenting to publication. The lead author of CUSAS 40 has been quoted as saying, however, that after 2016 he received no communication from Hobby Lobby but that he decided nevertheless to proceed with publication (Jarus 2020). According to Steve Green in the 2020 MOTB press release, by late 2017, two years before publication of CUSAS 40, he had entered into negotiation with Iraqi officials about returning material. Would Green have been able to rescind publication permission at that time if he had so desired? Or would it have been too late? Once permission is obtained, and texts have been copied, is final approval necessary before publication, or is it a done deal? But there is more. The 2017 settlement agreement established that Hobby Lobby was not the lawful owner of at least 227 tablets that were in its possession between 2012 and 2016 and subsequently returned to Iraq in 2018, and the 2010 MOTB announcement cedes ownership of more. This raises more questions about the validity of the Greens' permission in the first place. If Iraq was in fact the lawful owner of the tablets, does that invalidate the Green's permission? Might Iraq have wanted to withdraw permission and choose its own scholars? Could Iraq have blocked publication? Or is it the case that once the permission genie is out of the bottle it cannot be put back in? Once texts have been transcribed, does the owner lose control over further publication in the same way that a dealer posting on the Internet does? The publication of CUSAS 40 suggests the latter – that a tablet's lawful owner has very little control over its text once the text has been lifted from the tablet and entered the public domain. Whatever the answers to these questions, however, one thing is clear: the convention governing the award of publication rights benefits scholars more than it benefits owners. Whether or not it benefits the public is an open question.

Assaying harmful scholarship

The looting and trafficking of antiquities is generally considered harmful because of the damage it causes to the integrity of archaeological sites. The usefulness of antiquities as historical documents is much reduced without the contextual evidence of their natural and cultural associations, and their scholarly worth is compromised. These are what Christopher Chippindale and David Gill (1993) termed the material and intellectual consequences of collecting looted antiquities. Against that, it can be and has been argued that for text-bearing objects such as cuneiform tablets contextual associations are less important as the crucial information lode is integral to the object itself (Owen 2009: 127-128). There is some truth to

that argument, though as the discussion of the Iri-Sağrig tablets has shown, it is not absolute. But there are other, socio-cultural, reasons why the illicit trade of antiquities is considered harmful to a victim country. It instantiates a flagrant international disregard for that country's laws and institutions – for its sovereignty and cultural self-determination (Barkan 2002). This disregard is felt particularly badly by countries, such as Iraq, with a long history of colonial subordination (Shyllon 1998; Vrdojlik 2006).

Inasmuch as the actors and agencies comprising the antiquities trade function synergistically as a system, the harms caused by the antiquities trade can be considered systemically as the collective work of traders, collectors, and facilitators such as restorers and other professional – including scholarly – experts. Not surprisingly, scholars are unwilling to accept any such characterisation of collective guilt and deny any accusations of harmful practice. The usual justification for engaging with cuneiform tablets of undisclosed but likely illicit provenance is that the harms are caused by the initial looting and trafficking and by the time material is outside Iraq in private hands it is the duty of scholars to “rescue” what they can:

Given the current deplorable conditions in Iraq, it is incumbent upon scholars to rescue, conserve, record, and publish any and all artifacts that have been torn from their original contexts (Owen 2013b: 337).

But some socio-cultural harms can be attributed directly to the scholars themselves, when they ignore or dismiss complaints or descriptions of harm or reflect them back at the country concerned. Scholarly justifications for studying tablets of undisclosed provenance are particularly prone to this form of dismissal. Statements such as this one, taken from a publication of tablets from Iri-Sağrig, are common:

In those countries where funds or facilities are inadequate to care for the enormous volume of antiquities confiscated, brought in by peasants, or excavated by archaeologists less-important artifacts are sometimes destroyed, dumped into rivers, or abandoned at sites, rather than allow them to be exported to universities and museums for preservation, study, and display or sold to dealers and collectors to raise funds for excavation and conservation. To do so would surely diminish the looting of sites and would probably eliminate many unscrupulous dealers in the antiquities trade, while, at the same time, provide substantial funds for protecting sites, maintaining museums, conducting excavations, and facilitating restorations (Owen 2013b: 335-336).

Dealers and collectors (no doubt envisaged as operating in Europe and North America) are portrayed as saving antiquities that would otherwise be lost through Iraqi inadequacies¹¹. The very real market dynamic of demand (conceived systemically as the work of dealers, collectors and facilitators) acting upon supply is ignored, and blame is directed at Iraq. The views and opinions of Iraq about the appropriateness or acceptability of

11 And no mention is made of the fact that any inadequacies that did exist might have been the result of more than 20 years of economic and military violence directed against Iraq by the United States and its allies.

a market-led solution to a problem caused by foreign interests for the benefit of the same foreign interests are not canvassed and are excluded from consideration. Margaret Walker has discussed how this type of discursive exclusion preys upon what she calls the “moral vulnerability” of disempowered actors:

Victims of wrongs are vulnerable to the additional moral insult and injury of being denied the standing of full partners in reciprocal relations of accountability by those they would hold to account (Walker 2014: 129).

Trendier readers will recognise gaslighting when they see it: the denial of wrongdoing and projection of blame upon the victim (Leve 2017).

The ethics or self-interest of scholarly study

Scholars can engage directly or indirectly with trafficked cuneiform tablets; directly through advising dealers and collectors at point of purchase, and indirectly through studying and publishing them after they have entered a collection (Brodie 2019). Scott Carroll advising Steve Green about the 2010 Hobby Lobby acquisition is a good example of direct involvement. CUSAS 40 is an example of indirect involvement. While scholars directly involved in illegal transactions might conceivably face accusations of lawbreaking, those engaged in the study and publication of cuneiform tablets of undisclosed though dubious provenance don't seem to be in any immediate danger of prosecution for criminal wrongdoing. They do not come into possession of stolen material and usually maintain that they were unaware of or had no need to know the provenance of material under study. The lead author of CUSAS 40, for example, was quoted as saying that he had never asked about the circumstances of the Hobby Lobby acquisition, believing “It was not my business” (Jarus 2020). But perhaps such scholars are deluding themselves. Lawyers opine that scholars engaging knowingly or unknowingly with stolen and trafficked objects (such as cuneiform tablets) might be at risk of violating the law (Ulph and Smith 2012: 109-111; Gerstenblith 2014: 218). That being the case, the defence of ignorance, “it was not my business”, could be construed as wilful avoidance of incriminating knowledge (Gerstenblith 2014: 218). Perhaps it would be in their own best interest for scholars to make it their business to establish the facts of provenance before embarking upon study. Instead, scholars sometimes give the impression that they believe themselves to be above the law. They argue that the public interest is better served by publishing cuneiform tablets than by unearthing evidence of wrongdoing. Statements such as the following, justifying the publication of several hundred tablets from Iri-Sağrig, are not unusual:

... cuneiform tablets, which have appeared on various Internet sites and in private and public collections and whose “pedigree” is unclear or suspect,

[should] be recorded and published as quickly as possible, before they disappear (Owen 2013b: 336).

Unclear pedigrees obstruct law enforcement, and it would be more in the public interest for scholars to clarify such pedigrees of part of their study. Their often close association with collectors means that they are well placed to do so, though it hardly ever happens.

Deciding whether or not to publish cuneiform tablets of undisclosed provenance and uncertain origin can be presented as an ethical issue, a decision about which choice is more or less harmful and which is more or less in the public interest. But it is hard not to suspect that often the decision is not in fact an ethical one but more of a self-interested one. There do not appear to be any potential disadvantages or penalties for engaging with what is potentially illicitly-traded material, while professional advancement and personal benefit follow study and publication. With the idea of self-interest in mind, it is interesting to conduct a small thought experiment. Imagine one dark night a public-spirited burglar breaking into a storage location in Oklahoma City and photographing cuneiform texts therein, before making off with a memory card full of digital images. Would the CDLI be willing to make the images publicly-available for scholarship, perhaps marked “publication unassigned”? Would an established scholar be willing to commit the time and effort necessary to bring the material to publication? Perhaps they would, though it seems unlikely. Yet the same scholars would have no qualms about publishing the texts of tablets thought to have been looted and trafficked from Iraq, in direct contravention of national and international laws. The difference between the hypothetical Oklahoma City break-in and the very real looting in Iraq does not seem to be a legal one or even an ethical one, but rather more of a self-interested one relating to the possibility or fear of being implicated in criminal wrongdoing. For a European or North American scholar, the (relatively) nearby commission of the Oklahoma break-in is more likely to be proven in court as a criminal act (even if only trespass) than is the faraway looting in Iraq. The threats of civil action posed by the legal resources of the Green family are more imminent than those of the Iraqi government. But the seeming remoteness of Iraqi jurisdiction and law enforcement should not be an excuse for ignoring it. Physical distance is not an ethical parameter.

Restorative justice

All too often, the preferred law enforcement option for combatting the illicit trade of antiquities seems to be seizure and forfeiture of stolen and trafficked material followed by return to its lawful owner. In June 2013, for example, in the United Kingdom, Her Majesty's Revenue and Customs seized 156 cuneiform tablets, many from Iri-Sağrig, and in August

2019 returned them to the possession of Iraq (British Museum 2019). But there was no follow-up investigation and those responsible for attempting to smuggle the material were presumably left free to continue offending. In similar fashion, the 2011 CBP seizures of Hobby Lobby material did not generate any indictments within the United States. This policy of seizing and returning material without any accompanying prosecution or punishment of offenders has been criticised as posing no real deterrent to criminal traders (Brodie 2015: 324-326; St Hilaire 2016). The material and financial loss imposed can be factored into pricing regimes and absorbed as a price of doing business. A more robust process of law enforcement, carrying with it a real threat of conviction followed by proportionate and meaningful punishment might prove to be a much stronger deterrent. Unfortunately, it hardly ever happens.

Given that criminals engaging in the antiquities trade seem to be immune to or beyond any kind of “retributive justice” (Walen 2014), attention might profitably shift to the harms suffered by Iraq and how they might be repaired. The concept of restorative justice is particularly relevant here. Restorative justice is an emergent approach to criminal justice, prioritising the rehabilitation of victims over the punishment of wrongdoers (Johnstone 2011; Zehr 2015). Attending to harms suffered by victims is key, recognising that the social and psychological parameters of those harms might extend beyond the obvious impact of the material injury. Thus it is important for a wrongdoer to understand and acknowledge the harms suffered by a victim, to accept responsibility, and for both parties to agree appropriate restitution. The symbolism of material restitution is important, signalling to the outside world that the victim has suffered, accepted what is considered appropriate recompense, and is free of any blame, either for the original offence or punishment of the offender. It helps restore the victim’s dignity and standing in the eyes of others. Restorative justice is a future-facing policy involving actions and practices aimed at acknowledging harm, repairing harm, and ultimately effecting reconciliation between both parties. Importantly in this case, it finds parallels in the Arab-Islamic process of *sulh* (settlement) (Irani 2006).

Clearly the Iraqi polity does not suffer any psychological harms, but the socio-cultural harms caused to sovereignty, cultural self-determination and dignity do extend beyond the immediate material impacts of damaged archaeological sites. Thus, as recognised for the victims of crime, any restorative accounting must take notice of these socio-cultural harms. It has been maintained here that the seizure and return of looted and trafficked antiquities has very little deterrent effect on the activities of criminal traders. Nor can their return restore the integrity of a damaged archaeological site. When looking through the lens of restorative

justice, however, it can be countered that the return of looted antiquities to a country of origin goes some way towards repairing the harms done to the country's sovereignty and dignity. Put simply, the country of origin no longer views itself and is no longer viewed by the international community as a disempowered victim. It has become a sovereign equal. It has recovered agency. But if Iraq has effectively lost control of the texts of the Hobby Lobby/MOTB tablets, can the recovery of the material tablets alone be considered a remedy for the harms caused by their initial looting and trafficking and subsequent study and publication? Will a sense of grievance persist? Is something more needed?

To start with, it could be argued that Iraq has not really benefited from the return of the tablets, sucked dry as they are of their scholarly value and interest, and going forward imposing a financial cost of long-term storage and conservation. Thinking about how this cost could be met, it would be interesting to know how the publication of a tablet collection such as the Hobby Lobby/MOTB one impacts upon its market value. While publication is usually thought to enhance the market value of a tablet, reliable evidence is elusive, and it might not be the case if a large collection of published tablets was to be “dumped” on the market at one time¹². Collectors gain symbolic and cultural capital through working with scholars. Would the incentive to purchase material diminish if that opportunity is gone? The financial impacts of publication are in urgent need of investigation. If, for example, it could be established that publication does in fact reduce the market value of a collection of tablets, would Iraq be entitled to claim compensation for criminal damage, which might go some way towards off-setting the cost of long-term curation?

More pertinently though, Iraq is back in possession of its physical property, but it is property that has been permanently devalued for scholarship by the detachment and separation of its associated information. It is no longer whole. Does that mean there is a concomitant failure to restore Iraqi sovereignty, dignity and cultural self-determination? Has Iraq's international standing and Iraqi cultural and intellectual life more generally suffered harms that cannot be rectified by the return of the tablets, which in informational terms are little more than husks of their former selves? In its defence, the MOTB does seem to have recognised the injustice of the situation, and in its response goes far beyond what was required by the 2017 settlement agreement. The 2017 agreement was negotiated by Hobby

12 The Christie's (London) sale of the Erlenmeyer Collection of cuneiform tablets in December 1988 was generally regarded to be a “success” in that individual lots achieved unexpectedly high prices. Many of the tablets had been previously published (Gibson 2009: 190). But the Erlenmeyer Collection contained singular, individually important tablets, very much different in character to the hundreds of mundane administrative tablets comprising the Hobby Lobby/MOTB Collection, for example. The performance at auction of the Erlenmeyer tablets should not be taken as an infallible guide for the sale of other collections.

Lobby and the United States and was concerned primarily with Hobby Lobby's wrongdoing in relation to US tax and customs laws. Although Iraq did recover some material, there is a sense that it was a "collateral beneficiary", the main beneficiary being the United States. Iraq recovered only a small part of Hobby Lobby's 2010 acquisition, there was no financial apportionment from the \$3 million forfeiture, and its grievances were not otherwise acknowledged or addressed. The 2020 MOTB statement, however, is different. First, the decision to return material and offer technical assistance was voluntary. The MOTB does not appear to have been subject to any judicial compulsion. Second, while falling short of an overt apology, the statement offers clear and public acknowledgement of wrongdoing on the part of Hobby Lobby and it does not seek to exploit the "moral vulnerability" of Iraq. There is no suggestion or insinuation of Iraqi inadequacies – the inadequacies addressed are entirely those of Hobby Lobby. Third, the statement recognises through the offer of technical assistance that the act of restitution needs to include more than simple material return. If it goes ahead as planned, the support of ongoing scholarship inside Iraq would offer some recompense for harms caused by foreign misappropriation and scholarship. Finally, the statement refers to a "dialog" between Hobby Lobby and Iraq. It would be nice to know more about this dialog, to what extent Iraqi concerns and opinions were solicited, and to what extent Iraq approves of the agreement.

Final word

Recognising the fact that cuneiform tablets (and indeed all antiquities and cultural objects) comprise more than their physical manifestation alone, the MOTB offer of technical assistance should set a precedent for any future repatriation agreements, whether involving objects recently looted and trafficked or those taken in colonial times. Time will tell.

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Appendix. Statement on Past Acquisitions. (Museum of the Bible press release, 26 March 2020)

Washington, March 26, 2020 – Museum of the Bible’s Chairman of the Board, Steve Green, makes the following statement on past acquisitions:

In 2009, when I began acquiring biblical manuscripts and artifacts for what would ultimately form the collection at Museum of the Bible, I knew little about the world of collecting. It is well known that I trusted the wrong people to guide me, and unwittingly dealt with unscrupulous dealers in those early years. One area where I fell short was not appreciating the importance of the provenance of the items I purchased.

When I purchased items in those early years, dealers would make representations about an item’s provenance, which the consultants I employed would say was sufficient. As I came to understand taking a dealer at his or her word was not good enough, I cut ties with those consultants. When I engaged with new advisors, I acquired a better understanding of

the importance of verifying provenance and we developed a rigorous acquisitions policy that would help avoid repeating those early mistakes.

For the past several years, the many dedicated curators at Museum of the Bible have quietly and painstakingly researched the provenance of the many thousands of items in the collection. That work continues.

While this research was proceeding, beginning in late 2017, we also engaged with officials in several countries, including Egypt and Iraq, to open a dialog regarding items that likely originated from those countries at some point, but for which there was insufficient reliable provenance information. Those discussions have been fruitful, and continue to this day.

I long ago made the decision that when our research revealed another party had a better claim to an item, I would do the right thing and deliver such items to that party. We have already proactively made several such returns.

Today, I am announcing that we have identified approximately 5,000 papyri fragments and 6,500 clay objects with insufficient provenance that we are working to deliver to officials in Egypt and Iraq respectively. As discussions with officials in Egypt and Iraq continued, we also engaged with officials in the U.S. government to determine the best way procedurally and logistically to make the deliveries, and are appreciative of their assistance. We are working to finalize the deliveries in the near future. We also hope to finalize agreements with organizations in Egypt and Iraq that will allow for us to provide technical assistance, and support the ongoing study and preservation of their important cultural property.

These early mistakes resulted in Museum of the Bible receiving a great deal of criticism over the years. The criticism resulting from my mistakes was justified. My goal was always to protect, preserve, study, and share cultural property with the world. That goal has not changed, but after some early missteps, I made the decision many years ago that, moving forward, I would only acquire items with reliable, documented provenance. Furthermore, if I learn of other items in the collection for which another person or entity has a better claim, I will continue to do the right thing with those items.

I understand established museums, universities, and other institutions have evolved over the years and developed sound protocols for dealing with cultural property with insufficient provenance. I intend to continue to learn from the collective efforts and wisdom of those institutions, and support every person and organization possessing such items to continue their research into the provenance of their items.

Steve Green
Chairman of the Board
Museum of the Bible