

DAVID E. WELSH

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August 22, 2005

Cultural Property Advisory Committee
United States Department of State
301 4th St., SW, Room 334
Washington, DC 20547
Fax: (202) 260-4893

Attn: Jay I. Kislak, Chairman

Dear Mr. Kislak:

I am writing regarding forthcoming hearings on renewal of the Memorandum of Understanding with the Republic of Italy, particularly the possibility that ancient coins may be included in the list of restricted items.

I am founder and listowner of Unidroit-L, a discussion group dedicated to study and discussion of cultural property law and the impact of such laws on collectors. Next to the 1995 Unidroit Convention, the 1970 UNESCO Convention and its implementation have been our most active topic. Members of this list include archaeologists, curators, educators, legal experts and researchers, as well as collectors and dealers.

Unidroit-L has critically examined the effects of cultural property law on antiquities collecting, including specific conventions and legislation. Early in this study, it became apparent that cultural property laws have been drafted without consideration of methods by which the antiquities market actually functions, or of practices normally followed by collectors and dealers in buying and selling antiquities. Certain provisions of these laws would in practice be quite unrealistic and unreasonable, for example those requiring documentation of provenance for artifacts of small value such as coins, for which provenance records have never been kept..

In our discussions it soon became evident that divergences between perception and reality severely hamper development of realistic, effective cultural property laws. Misconceptions and stereotypes exist on both sides. Archaeologists tend to think of collectors as wealthy bankers, seeking rare and important antiquities to adorn their villas, without regard for laws violated or damage done when archaeological sites are plundered to satisfy their lust for the beautiful and rare. Collectors tend to think of archaeologists as arrogant and unrealistic academics, demanding total control of all excavations and everything ever dug up, without regard for economic practicality or damage to innocent, beneficial avocations such as collecting coins.

When real archaeologists and real collectors meet in circumstances allowing rational discussion, they find that such preconceptions are wrong. Real collectors are not bankers jealously hoarding ancient treasures in their vaults, and real archaeologists tend to be quite reasonable people once you get to know them. When preconceptions and ideology are set aside, genuine progress toward preserving cultural heritage can be made while preserving and encouraging responsible, ethical collecting. Such free intellectual interchange does not often happen, because ideology rather than practical reality is presently driving developments.

It has become an article of faith among preservationists that the antiquities market and antiquities collecting are the source of all ills threatening preservation of cultural heritage. If private collecting of antiquities could only be eliminated, so preservationists believe, there would be no market for stolen, smuggled or illegally exported artifacts, and according to this point of view, plundering of archaeological and cultural heritage sites would cease.

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This is a naïve and unrealistic perspective. Anticollecting ideology has isolated preservationists from the antiquities market for so many years that they do not understand how it functions. Those in the trade know that no government or international organization will ever have the power to abolish the antiquities market. It will continue in one form or another, whatever laws or conventions may be enacted. Declaring the antiquities trade to be illegal would only ensure that instead of being openly conducted by responsible dealers bound by codes of ethics and laws, it would become a black market activity conducted by criminals. In the 1920s a similarly mistaken policy, when sale of alcoholic beverages was made illegal by the Volstead Act, did major social damage in the United States. It is recognized today that these negative consequences far outweighed any good that could possibly have been achieved. That unwise repressive law did not even reduce consumption of alcohol, which actually increased.

Nations whose cultural heritage is threatened by looting and smuggling of antiquities and other cultural objects do not lack repressive laws. Every such state has laws prohibiting clandestine excavation or export of such items. The people of these nations do not respect these laws, instead viewing them as measures designed to ensure that corrupt officials can extort bribes, so proceeds from discoveries will go to them rather than the finders. Repressive antiquities legislation has failed everywhere it has been enacted, even in democratic European states such as Italy. Imposing this ineffective approach within the USA cannot accomplish anything positive, but would instead bring with it the contempt for law that prevails in antiquities source countries.

One nation has effectively solved the problem of managing the desires of its people to discover antiquities and to profit from these discoveries. The United Kingdom has set a standard for the world to emulate in the Portable Antiquities Scheme. This well thought out measure has gained strong cooperation from the British public, who between April 2003 and March 2004 reported discovery of more than 47,000 artifacts. Every year reporting of finds improves, and where Finds Liaison Officers have been appointed, large increases in finds reports result. Local volunteer archaeologists, regional archaeologists, and detectorist clubs have joined in training those interested in searching for antiquities, defining approved processes of responsible discovery and reporting. In addition to ensuring that finds will be reported, this cooperation has developed a valuable “scouting” system locating many new excavation opportunities. Although the Portable Antiquities Scheme is not yet ten years old and is still developing, it has already become far more effective in controlling public behavior than repressive laws in any other nation. It has conclusively proven that developing cooperation is a much better approach than repression.

Observing how ineffective repression has always been in protecting antiquities, even in days when no one collected them and those caught disturbing monuments died instantly and unpleasantly, I have come to understand that the only workable way to suppress illicit antiquities trafficking is for preservationists, cultural authorities, collectors and dealers to cooperate in establishing a regulated trade in provenanced antiquities. There are some laws everyone obeys, whether or not they realize it, among which are the laws of economics. If a regulated trade in provenanced antiquities is established, economic effects will devalue unprovenanced antiquities and illicit trade will cease, just as abruptly as rumrunning and speakeasies disappeared when a regulated legal trade in alcohol was established.

The technology and systems required to implement such a regulated trade presently exist, and are well proven in other applications. The only genuine obstacle to a cooperative licit trade is the negative, confrontational attitude of preservationists who advocate abolishing all collecting of antiquities. Cherishing illusions that legal prohibition of collecting is possible and would eliminate the illicit antiquities trade, they regard cooperation with collectors or the trade as unethical. All discoveries must be retained by institutions and cultural authorities, whether or not they have any prospect of ever being displayed to the public or being needed for research. Such

vast numbers of antiquities have been amassed by official hoarding that there is no room to store them properly, no staff to inventory them, let alone organize them into collections or provide conservation. They rot unconserved on warehouse shelves where no one will ever benefit from their discovery. There have even been reports that archaeologists have broken intact ceramics not wanted by their institutions, to prevent them from falling into the hands of collectors.

The millions of surplus artifacts presently warehoused in facilities without proper staff or climate control, sometimes vermin infested, also lack proper security. For the most part these facilities are not guarded, and are in constant danger of being broken into by thieves and vandals. The loss of millions of unpublished artifacts when the [Beit She'an warehouse was set afire by vandals in March 2004](#) stands out among many reports of such destructive incidents. [Only a week ago, the antiquities warehouse in Sidon was broken into, and thieves](#) vandalized the premises before smashing two sarcophagi and stealing the head of one with a rare Byzantine inscription.

Still more unpleasant to relate, the huge numbers of antiquities amassed in official hoards have proven an irresistible temptation to all too many charged with their care and protection. A week ago, the former director of Egypt's Supreme Council of Antiquities department for inspecting private collections received a life sentence for taking bribes, forgery and profiteering by supplying smugglers with certificates that genuine antiquities were fakes (which can legally be exported). Many other reports of official complicity in illegal trading and smuggling (even cases of outright insider theft) can be found in the archive of Unidroit-L . The dirty secret of museums and cultural institutions is that the incidence of custodial theft and other staff misconduct is distressingly high. Many cases of this never come to light, and others are only detected after many years have passed. It is an open secret in the antiquities trade that most of those who staff museums and cultural institutions in Third World countries are poorly paid, poorly qualified and in far too many cases, inclined to steal whatever they think they can get away with.

Finally, official hoarding of antiquities has simply created an artificial scarcity of licit provenanced artifacts, which sustains and makes possible the illicit antiquities market. There are plenty of antiquities to fill every museum to overflowing, satisfy all needs of science, and still release a large surplus of redundant unneeded artifacts as provenanced, licit collectibles. The unreasonable, uncooperative ideology of preservationists who deny provenanced artifacts to collectors and influence others to do so, is the real root cause of archaeological site looting and illicit antiquities smuggling. The day official hoarding is abandoned and a regulated licit market is established will be the day looting of archaeological sites and smuggling of artifacts ends.

By any rational standard, the policy of confiscating finds and hoarding antiquities in official and governmental custody has proven to be a disastrous failure. Stored antiquities are not properly cared for, often being destroyed by rot, corrosion or vermin before anyone even examines them. They are not properly secured, becoming targets for vandalism and theft. They are temptations which many charged with their custody cannot resist, resulting in insider theft and other corrupt behavior. The public in nations imposing such policies do not believe that any of this maladministration is really for their benefit, so they violate these repressive laws without any moral compunctions whenever they think they can get away with it.

When the United States ratified the 1970 UNESCO Convention in 1983, hearings were held bringing out the evils and futility of repressive laws in antiquities source countries. Ratification was enacted with significant reservations. The CPIA became law only after a long, difficult struggle in which all sides — museums, collectors, archaeologists, dealers, and anthropologists — advanced legitimate but conflicting positions. Congress did not attempt to choose sides but instead established a consultative process, with clear statutory guidelines, to determine when U.S. borders should be closed to cultural objects from abroad. Debate was intense because the U.S. has

always favored free trade in allowing cultural objects to enter the United States. U.S. courts have repeatedly determined that the government should not deviate from free trade just because a cultural object enters this country in violation of another nation's export laws. The United States does not have any obligation to enforce export control laws of other nations.

Preservationists have now begun an initiative to reverse the principle that U.S. courts will not enforce foreign export control laws. Such a reversal would have occurred had the United States ratified the 1995 UNIDROIT convention, but unified and vigorous opposition from the entire U.S. museum, collector, and dealer community convinced the State Department to abandon that initiative. Instead, the 1970 UNESCO Convention is now being exploited in an attempt to achieve that policy reversal as an *administrative* matter under authority of the CPIA, with a goal of administratively changing U.S. law to enforce foreign export control laws, clearly exceeding the originally intended scope of the CPIA.

The CPIA was intended to deal with highly publicized instances of pillage that led to enactment of the 1970 UNESCO Convention — looting of tombs and monuments, and destruction and dismantling of archaeological sites into movable objects. The Act was designed to provide a particular remedy under U.S. import laws to bar entry of important cultural properties which were actively being looted abroad. Congress clearly did not contemplate any wholesale ban on foreign cultural goods coming into the United States.

The CPIA allows the United States to entertain requests from foreign nations to bar import of significant *specific* cultural objects which are currently being pillaged. For such a request to be found justified, there must be specific evidence of pillage of the embargoed goods. Section 2602(a)(2)(A) states that the United States can apply import restrictions “to archeological or ethnological material . . . the pillage of which is creating jeopardy to the cultural patrimony” of the requesting state. The Senate report accompanying the CPIA confirmed that the new law would authorize the President “to apply *specific* import or other controls (upon the request of a State Party) to archaeological or ethnological materials *specifically* identified as comprising part of a state's cultural patrimony that is in danger of being pillaged.”

A second essential feature of the CPIA is that the United States retains discretion to make its own decision under its laws, without accepting a foreign nation's characterization of the articles in question. Clearly, the U.S. government is not justified in imposing import restrictions on the assertion that import of particular objects would violate another nation's export control laws.

There are no grounds for believing that ancient Italian coins are being pillaged today, or have ever been pillaged, on a scale or in a manner that jeopardizes the cultural patrimony of Italy. On June 26, 2005 the Italian government recognized that nearly all ancient coins are of such minor cultural importance that Italy will no longer require that they be declared to authorities when found, or control their export. The few exceptions to this new law are coins and medals of great rarity or exceptional individual cultural significance.

There is no evidence that anyone disturbs archaeological or cultural sites in Italy with a view toward finding ancient coins. Tombs, temples and other monuments are very unrewarding places to prospect for ancient coins in most parts of the world, as are cities and other built up areas. Coins are sometimes found during excavations of such sites, but normally these finds are individual coins inadvertently lost or discarded, rather than intentionally concealed hoards. With rare exceptions, hoards were concealed in out of the way places such as in fields or in the woods. This can be clearly seen in the 2002 UK report of treasure finds, where only three per cent of finds were discovered in the course of archaeological excavations while ninety five per cent were discovered by detectorists.

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Apart from the magnitude of this statistical difference, there is an important quality difference between individual coins found in excavations and hoards discovered by detectorists. Individually buried coins are rarely found in collectible condition. They may be useful for dating strata under favorable conditions where upward migration can be ruled out, but having been exposed to centuries or millennia of corrosion on all surfaces, they are usually worth little or nothing to collectors.

Coins discovered by detectorists were mostly buried in large groups, and are often recovered in intact pots or other containers which protected them against corrosion. Even in cases where the container has perished, it is common to find coins fused together in a lump of corrosion products. When the corrosion products are removed by conservators, large numbers of coins from the interior of the lump are often found to be in relatively pristine condition, retaining a high value to collectors.. These are the treasures, sometimes containing tens of thousands of individual coins, that motivate detectorists to prospect for coins.

Not only are there no valid grounds for classifying coins as significant *specific* cultural objects the pillage of which jeopardizes the cultural patrimony of Italy, there is no reasonable way to distinguish coins originating in Italy from those originating elsewhere. Most types of coins struck in Italy circulated over large parts of the Mediterranean world, and likewise coins from far distant lands circulated widely in ancient Italy. The only way to ensure that no coins that originated in Italy are allowed to enter the U.S. would be to require the importer to prove the provenance of each shipment. Because such provenance information has never been recorded for nearly all ancient coins, in practice very few shipments could be allowed. Preservationists who seek to outlaw collecting might view that as a desirable result, but it would go very far beyond anything Congress ever intended to authorize in passing the CPIA.

I urge the Committee to take a conservative approach in assessing possible inclusion of coins in renewal of the Italian MOU. There is no evidence that inclusion of coins can accomplish anything good. There is considerable reason to think that arguments for including objects such as coins are based on false premises, following a repressive policy that has uniformly failed wherever it has been applied. There are strong grounds for concluding that inclusion of coins would exceed the authority given to the President by the CPIA.

Finally, there is no reasonable way to include coins in these restrictions without imposing an impossible requirement to prove provenance, excluding very large numbers of coins which (if their provenance could somehow be determined) actually originated outside Italy.

Sincerely,

A handwritten signature in black ink, appearing to read "D. E. Welsh", written in a cursive style.

David E. Welsh