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Taryn Chubb

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## LEARNING FROM HOBBY LOBBY'S MISDEEDS: CRAFTING NEW INTERNATIONAL DUE DILIGENCE STANDARDS FOR HUMAN RIGHTS AND CULTURAL HERITAGE

Taryn Chubb\*

*“Along the Road . . . he journeyed –  
one league he traveled . . . ,  
dense was the darkness, light there was none.  
Neither what lies ahead nor behind does it allow him to see.”<sup>1</sup>*

### *Introduction*

On September 24, 2019, agents with the Homeland Security Investigations Unit of the U.S. Department of Homeland Security entered the Museum of the Bible (MOTB) in Washington, D.C. They were there to seize a small clay tablet that the government believed had been stolen from Iraq.<sup>2</sup> This six-by-five-inch tablet is nearly 3,500 years old and is densely covered in cuneiform, an early system of writing developed by indigenous groups living in ancient Mesopotamia.<sup>3</sup> The tablet was purchased in 2014 from Christie's auction house by the Green family, owners of the Oklahoma City-based craft retailer Hobby Lobby and the primary donors to the

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\* Third-year student, University of Oklahoma College of Law and Ph.D. in art history, Cornell University. The author would like to thank Professor Evelyn M. Aswad, Herman G. Kaiser Chair in International Law and Director of the Center for International Business & Human Rights at the University of Oklahoma College of Law for generously suggesting sources and ideas for the development of this Comment, especially in its early stages.

1. THE EPIC OF GILGAMESH tablet IX (Maureen Gallery Kovacs trans., Wolf Carnahan ed., 1998) (c. 2100 BC), <http://www.ancienttexts.org/library/mesopotamian/gilgamesh/tab9.htm>.

2. Verified Complaint at 2, *United States v. One Cuneiform Tablet Known as the “Gilgamesh Dream Tablet,”* No. 20-2222 (E.D.N.Y. May 18, 2020), <https://www.justice.gov/usao-edny/press-release/file/1277316/download> [<https://perma.cc/4VUD-5ADJ>] [hereinafter Verified Complaint, *One Cuneiform Tablet*].

3. *Id.*; Jane Arraf, *U.S. Authorities Say Hobby Lobby's Gilgamesh Tablet Is 'Stolen,' Must Go Back to Iraq*, NPR (May 19, 2020), <https://www.npr.org/2020/05/19/858605788/u-s-authorities-say-hobby-lobbys-gilgamesh-tablet-is-stolen-must-go-back-to-iraq>.

MOTB, who paid over \$1.6 million to add the object to their collection of antiquities.<sup>4</sup>

This small piece of clay is known as the Gilgamesh Dream Tablet because the cuneiform tells the story of the Mesopotamian hero Gilgamesh, and specifically includes a passage in which his mother interprets one of his dreams.<sup>5</sup> The Gilgamesh Dream Tablet also has another story to tell, a story beyond that which is pressed into the surface of the clay. The tablet's journey from Iraq to the United States tells the story of the international market for illegal antiquities in the twenty-first century, the international and domestic laws that protect and repatriate such objects, and the deficient due diligence standards for auction houses, museums, and collectors that allow objects like this to be illegally removed from their places of origin.

The Gilgamesh Dream Tablet was not the first indigenous Iraqi object to be taken from the MOTB by the U.S. government. Just two years earlier, mere months before the MOTB was scheduled to open to the public in November 2017, the U.S. government filed a civil action for the forfeiture of 3,450 cuneiform tablets and clay bullae<sup>6</sup> (including cylinder seals) from the MOTB.<sup>7</sup> Like the Gilgamesh Dream Tablet, these clay objects were illegally removed from Iraq and purchased by the Green family for \$1.6 million from dealers in Israel and the United Arab Emirates (UAE).<sup>8</sup> Hobby Lobby eventually settled that case with the government, which resulted in the company surrendering hundreds of additional cuneiform objects and agreeing to pay a \$3 million fine.<sup>9</sup>

The Green family started their collection in 2010, purchasing biblical manuscripts, Torah scrolls, fragments of the Dead Sea Scrolls (which were

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4. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 8.

5. *Id.*; Andrew R. George, *The Civilizing of Ea-Enkidu: An Unusual Tablet of the Babylonian Gilgamesh Epic*, 101 REVUE D'ASSYRIOLOGIE ET D'ARCHÉOLOGIE ORIENTALE 59, 59–60 (2007).

6. Bullae were used to seal or mark documents as belonging to a particular individual or government official.

7. Verified Complaint at 2, *United States v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets*, No. 17-3980 (E.D.N.Y. July 5, 2017), <https://www.justice.gov/usao-edny/press-release/file/978096/download> [<https://perma.cc/93CN-ZXV9>] [hereinafter Verified Complaint, *Approximately 450 Cuneiform Tablets*]; *About Museum of the Bible*, MUSEUM OF THE BIBLE, <https://www.museumofthebible.org/museum/about-us> (last visited Dec. 1, 2021).

8. Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 11–12, 20.

9. Default Judgment and Decree of Forfeiture and Order for Delivery at 1, *United States v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets*, No. 17-3980 (E.D.N.Y. July 5, 2017).

later found to be forgeries), and the indigenous cuneiform objects from ancient Mesopotamia that are the subject of this Comment.<sup>10</sup> Within six years, the collection included 40,000 objects that were intended to become part of the collection of the MOTB.<sup>11</sup> This rapid rate of acquisition, along with an intense focus on acquiring objects from the Middle East—where looting and trafficking in illegal antiquities is common—raised the suspicions of those familiar with the international antiquities trade.<sup>12</sup> When the United States government began to scrutinize shipments to Hobby Lobby and its subsidiaries, it became clear that the Green family and Hobby Lobby had illegally acquired thousands of objects, many of them from Iraq, which is particularly vulnerable to looting and illegal export due to the destabilization of the government since the 1990s and the ongoing destruction of numerous sites of historic cultural significance.<sup>13</sup>

This was the perfect intersection of enthusiastic collectors with both personal wealth and funds from their privately held corporation to spend in a thriving international market replete with illicit Iraqi objects. Both the Green family and the dealers from whom they acquired the indigenous objects attempted to evade the complex system of international and domestic laws intended to stop such trade. Furthermore, collectors, dealers, and auction houses like those involved in the Hobby Lobby acquisitions routinely hide the sale of these objects behind the veil of “private sales,” effectively exempting them from any standard of due diligence in researching the provenance of objects they are selling or purchasing.<sup>14</sup> Hobby Lobby’s recent and high-profile illegal acquisition of indigenous Iraqi cultural objects has tested the international and domestic laws developed over the last several decades to prohibit such activities and protect such objects. Thus far, legal efforts to repatriate these indigenous

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10. Joel Baden & Candida Moss, *Can Hobby Lobby Buy the Bible?*, ATLANTIC (Jan./Feb. 2016), <https://www.theatlantic.com/magazine/archive/2016/01/can-hobby-lobby-buy-the-bible/419088/>; Michael Greshko, *‘Dead Sea Scrolls’ at the Museum of the Bible Are All Forgeries*, NAT’L GEOGRAPHIC (Mar. 13, 2020), <https://www.nationalgeographic.com/history/2020/03/museum-of-the-bible-dead-sea-scrolls-forgeries/>.

11. Baden & Moss, *supra* note 10.

12. *Id.*

13. *Id.*; Press Release, U.S. Attorney’s Off., E. Dist. of N.Y., U.S. Dep’t of Justice, United States Files Civil Action to Forfeit Thousands of Ancient Iraqi Artifacts Imported by Hobby Lobby (July 5, 2017), <https://www.justice.gov/usao-edny/pr/united-states-files-civil-action-forfeit-thousands-ancient-iraqi-artifacts-imported>.

14. Provenance refers to the history of ownership of an artifact or work of art, particularly the history that is documented.

objects to Iraq have been successful, but only *after* the objects were removed from Iraq.

It is important to shift the legal approach to protecting cultural heritage to an emphasis on *preventing* illicit trafficking, placing more responsibility on those engaged in the international antiquities market to ensure that the objects they purchase are not stolen. When cultural objects are removed from their places of origin, they are also removed from the context that gives them meaning.<sup>15</sup> In addition, these objects can be damaged in transit or even destroyed. Illegal removal of cultural heritage has significant human rights implications as well. In the introduction to their book, *Cultural Heritage and Human Rights*, Helaine Silverman and D. Fairchild Ruggles explain that material culture is linked to “personal and community identities, [which] are formed through . . . tangible objects.”<sup>16</sup> They point out that article 27 of the 1948 U.N. Universal Declaration of Human Rights acknowledges that “[e]veryone has the right freely to participate in the cultural life of the community . . . [and] to enjoy the arts . . . .”<sup>17</sup> Silverman and Ruggles argue that cultural heritage should be considered “an essential component of human rights because the very concept of heritage demands that individual and group identities be respected and protected.”<sup>18</sup> The illegal removal of objects from their original contexts results in a loss of cultural memory and tradition, adversely impacting the human rights of those who trace their heritage and culture back to those stolen objects. Such unlawful acts also adversely impact the human rights of those who trace their heritage and culture back to those stolen objects.

This Comment examines the Green family/Hobby Lobby’s illegal acquisitions of indigenous Iraqi cultural objects, the laws that helped to reclaim and repatriate them, and proposes a new approach to preventative measures to protect cultural heritage from the dangers of the illegal antiquities trade. Part I provides context for the indigenous Iraqi objects that were acquired by Hobby Lobby and addresses the history of illicit trafficking of Iraqi cultural property that has led to both a robust international market for these objects and numerous domestic and international laws intended to control that market. Part II explores the two

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15. Helaine Silverman & D. Fairchild Ruggles, *Cultural Heritage and Human Rights in CULTURAL HERITAGE AND HUMAN RIGHTS* 3, 16 (Helaine Silverman & D. Fairchild Ruggles eds., 2007).

16. *Id.* at 3.

17. *Id.* at 4; G.A. Res. 217 (III)A, Universal Declaration of Human Rights (Dec. 10, 1948).

18. Silverman & Ruggles, *supra* note 15, at 5.

cases brought by the U.S. government against Hobby Lobby for the forfeiture of thousands of cuneiform objects, including discussion of the international and domestic laws that aim to protect cultural heritage. Part III proposes “Guiding Principles for Human Rights and the International Trade in Indigenous Cultural Heritage” that place responsibility for respecting human rights and cultural heritage on businesses and individual collectors in order to prevent illicit trafficking and adverse human rights impacts.

### *I. Context and Terminology*

#### *A. The Cultural Significance of Cuneiform Objects*

It is important for this Comment to begin by centering the indigenous objects that were illegally removed from Iraq and purchased by the Green family/Hobby Lobby. What is so important about these objects that international and domestic laws protect them from illegal sale and export? As Karen Radner and Eleanor Robson write in the introduction to their book, *The Oxford Handbook of Cuneiform Culture*, cuneiform was the writing system of the ancient Middle East and, for over three thousand years, it was a form of communication used “from Iran to the Mediterranean, Anatolia to Egypt.”<sup>19</sup> Typically, cuneiform was written by professional scribes, who impressed everything from records of daily activities to scientific knowledge to literature upon the clay surfaces of tablets and bullae.<sup>20</sup> These cuneiform objects “survive in [the] hundreds of thousands, often excavated from the buildings in which they were created, used, or disposed of.”<sup>21</sup> Additionally, numerous tablets used for educational purposes have survived from scribal schools, recording that both male and female students were trained in cuneiform, accounting, and tablet-making, among other things.<sup>22</sup>

While there is no complete public record detailing the subject matter of the thousands of cuneiform objects that were forfeited by Hobby Lobby and returned to Iraq in the 2017 case, it is likely that they contained a variety of social, economic, and intellectual records.<sup>23</sup> The Complaint filed for the forfeiture of 3,450 objects in 2017 noted that the cuneiform tablets

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19. Karen Radner & Eleanor Robson, *Introduction to THE OXFORD HANDBOOK OF CUNEIFORM CULTURE* xxvii, xxvii (Karen Radner & Eleanor Robson eds., 2011).

20. *Id.*

21. *Id.*

22. Brigitte Lion, *Literacy and Gender in THE OXFORD HANDBOOK OF CUNEIFORM CULTURE*, *supra* note 19, at 90, 99–101.

23. Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 2.

contained the names of people, places, and dates that proved they had come from Iraq.<sup>24</sup> The subject of the 2020 case, the Gilgamesh Dream Tablet, has more obvious cultural significance as a fragment of one of the world's earliest epic poems about the Mesopotamian cultural hero Gilgamesh.

These cuneiform objects are part of what remains of the material culture of the indigenous people of ancient Mesopotamia. Not only do they record important information about people's daily lives, but they also sometimes bear the very personal marks of individuals. Among the bullae returned to Iraq from the Hobby Lobby collection in 2017 were seals uniquely marked with cuneiform and used by individuals as a kind of signature.<sup>25</sup> Additionally, cuneiform objects sometimes bear the fingerprints of scribes along the edges, an impression completely unique to a single individual who lived thousands of years ago.<sup>26</sup> These individuals are the ancestors of those living today and cuneiform objects bearing a piece of those individual ancient lives have deep significance for their descendants. Illegally removing such objects from Iraq interferes with human rights by depriving the Iraqi people of the tangible objects of their cultural heritage—the heritage that informs their individual and community identities.

#### *B. The International Market for Stolen Iraqi Cultural Objects*

Despoliation of culturally significant sites is not a new phenomenon in Iraq. Ancient Mesopotamia was home to some of the earliest sites of permanent human settlements along the Tigris and Euphrates rivers.<sup>27</sup> Beginning around 3100 B.C.E., the people who settled in the area that is now Iraq built cities and towns, developed agricultural and economic systems, and established the cuneiform writing system, among other accomplishments.<sup>28</sup> Throughout their existence in the fertile lands between the rivers, ancient humans left material evidence of their daily lives in the remains of buildings, pottery, and cuneiform objects.<sup>29</sup> Consequently, collectors and museums have long sought to possess pieces of ancient Mesopotamian material culture as artifacts of the early history of human

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24. *Id.*

25. *Id.*; Jonathan Taylor, *Tablets as Artefacts, Scribes as Artisans* in THE OXFORD HANDBOOK OF CUNEIFORM CULTURE, *supra* note 19, at 14, 15.

26. Taylor, *supra* note 25, at 13.

27. "Artefact Detectives" in Iraq Aim to End the Theft of Their History, EURONEWS (Oct. 1, 2020), <https://www.euronews.com/2020/01/10/artefact-detectives-in-iraq-aim-to-end-the-theft-of-their-history> [hereinafter "Artefact Detectives"].

28. *Id.*

29. *Id.*

civilization. Such artifacts are abundant at archaeological sites throughout Iraq. According to Iraq Culture Minister Abdulameer Al Dafar, Iraq “is one of the richest archaeological [areas] in the world” where anywhere you dig “you will find antiquities.”<sup>30</sup>

In 2020, Iraqi government officials identified around 30,000 archaeological sites that require the protection of “archaeological police.”<sup>31</sup> However, there are only 4,800 archaeological police officers, which is not nearly enough to protect all of the sites from looting and destruction.<sup>32</sup> Hosham Dawood, an advisor to the Iraqi Prime Minister, reported that previously undisturbed archaeological sites in Southern Iraq are now being plundered by looters exploiting the economic and political instability of the country.<sup>33</sup> The cultural artifacts that looters discover are then sold outside of Iraq through private sales or auctions.<sup>34</sup> In fact, Dawood specifically stated that “the items appear in *Christie’s* and other places—they go through *Dubai*, Beirut, or Asia.”<sup>35</sup> This is of particular importance for this Comment because Hobby Lobby purchased indigenous Iraqi objects from both Christie’s and dealers based in the UAE, as will be discussed further in Part II.

Iraq enacted laws protecting its cultural patrimony at least as early as 1926 and those laws have been updated and amended in subsequent decades.<sup>36</sup> The early laws were enacted in response to cultural objects being removed by European explorers to become part of private collections or exhibits in European museums.<sup>37</sup> Following the Gulf War in 1991, the United Nations placed substantial sanctions on Iraq that further destabilized its economy, resulting in the development of a market for illegally-obtained cultural objects to be sold outside of the country.<sup>38</sup>

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30. *Id.*

31. Jane Arraf, *In Iraq, Authorities Continue to Fight Uphill Battle Against Antiquities Plunder*, NPR (Aug. 20, 2020), <https://www.npr.org/2020/08/20/886540260/in-iraq-authorities-continue-to-fight-uphill-battle-against-antiquities-plunder>.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* (emphasis added).

36. Law for the Antiquities & Heritage of Iraq No. 55 of 2002 (Iraq); *Laws and Policies*, IRAQ HERITAGE, <https://iraqheritage.org/lawsandpolicies.php> (last visited Jan. 2, 2021); *National Cultural Heritage Laws—Iraq*, UNESCO DATABASE OF NAT’L CULTURAL HERITAGE L., <https://whc.unesco.org/en/statesparties/iq/laws/> (last visited Jan. 2, 2021).

37. “*Artefact Detectives*”, *supra* note 27.

38. *Id.*



A few decades later, the market for illicit Iraqi antiquities was bolstered by the 2003 U.S. invasion of Iraq.<sup>39</sup> During the war, the archaeologists who lead teams of local excavators had to abandon their worksites, which left the local excavators unemployed.<sup>40</sup> Considering the circumstances, it is not surprising that the local excavators continued to excavate, but instead of turning their finds over to the government, they sold the objects they discovered to generate income.<sup>41</sup> There were also false rumors that a newly-issued religious fatwa allowed stealing and selling antiquities that were not Islamic (especially if proceeds from the sales helped to fund rebel forces fighting against the United States).<sup>42</sup> Although there was no fatwa, the rumor was enough to incite the excavators to pursue this illegal enterprise.<sup>43</sup> Once again, Iraq found itself in political and economic peril, unable to protect cultural sites, including the National Museum in Baghdad, from plunder.<sup>44</sup>

Thousands of cultural objects were stolen from the National Museum and from other sites throughout the country, and although some were returned to the museum, most were not.<sup>45</sup> The museum offered amnesty to anyone returning an item that had been taken in 2003.<sup>46</sup> Many of the larger-scale and iconic objects were returned to the museum through this program because they were more difficult to sell in the international market.<sup>47</sup> The majority of the objects that were not returned were smaller scale items similar to the cuneiform tablets and bullae purchased for the Hobby Lobby collection.<sup>48</sup>

The stolen items that were not returned are nearly impossible to trace because the National Museum never completed an inventory of all objects in its collections, which would have included assigning a unique object number to each item.<sup>49</sup> In addition, most of the smaller regional museums from which objects were taken had incomplete inventories and the

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39. *Id.*

40. Sigal Samuel, *It's Disturbingly Easy to Buy Iraq's Archaeological Treasures*, ATLANTIC (Mar. 19, 2018), <https://www.theatlantic.com/international/archive/2018/03/iraq-war-archeology-invasion/555200/>.

41. *Id.*

42. *Id.*

43. *Id.*

44. “*Artefact Detectives*”, *supra* note 27.

45. *Id.*; Samuel, *supra* note 40.

46. Samuel, *supra* note 40.

47. *Id.*

48. *Id.*

49. *Id.*

archaeological sites that were plundered were mostly unexcavated.<sup>50</sup> With so little information about the specific items that were stolen, it is difficult to link them to objects offered for sale online or through auction houses, although National Museum personnel, archaeologists, scholars, and lawyers continue to try to do so.<sup>51</sup>

Today, looting at Iraqi archaeological sites continues, as does the sale of thousands of illegally obtained indigenous Iraqi cultural objects through auction houses and websites. In fact, travel restrictions due to the COVID-19 pandemic have resulted in increased online sales of illegal antiquities through platforms such as eBay and Facebook.<sup>52</sup> Even more disturbing, however, is that over the last decade, the sales of stolen Iraqi artifacts have become a funding source for terrorist organizations in the region, including the Islamic State.<sup>53</sup> There is no evidence that any of Hobby Lobby's purchases of the Iraqi cultural objects in the 2017 case helped to fund terrorist organizations.<sup>54</sup> In addition, nothing in the publicly available records regarding the subject of the 2020 case, the Gilgamesh Dream Tablet, indicates that its sale has been tied to terrorist organizations. Nevertheless, the ever-increasing links between the international market for stolen Iraqi artifacts and funding for terrorist organizations is all the more reason for stronger measures to prevent these artifacts from being sold in the first place.

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50. *Id.*

51. "Artefact Detectives", *supra* note 27; Samuel, *supra* note 40.

52. Arraf, *supra* note 31.

53. See Sam Pineda, *Tackling Illicit Trafficking of Antiquities and Its Ties to Terrorist Financing*, U.S. DEP'T OF STATE (June 20, 2018), <https://2017-2021.state.gov/tackling-illicit-trafficking-of-antiquities-and-its-ties-to-terrorist-financing/index.html>; NEIL BRODIE ET AL., TERRORISM, TRANSNATIONAL CRIME AND CORRUPTION CTR., GEORGE MASON U. SCHAR SCH. OF POL'Y & GOV'T, COUNTERING LOOTING OF ANTIQUITIES IN SYRIA AND IRAQ: FINAL REPORT (2019), <https://tracc.schar.gmu.edu/wp-content/uploads/2020/10/Final-TraCCC-CTP-CTAQM-17-006-Report-Jan-7-2019.pdf>; Matthew Bogdanos, *The Terrorist in the Art Gallery*, N.Y. TIMES (Dec. 10, 2005), <https://www.nytimes.com/2005/12/10/opinion/the-terrorist-in-the-art-gallery.html>; Karen Zraick, *Now for Sale on Facebook: Looted Middle Eastern Antiquities*, N.Y. TIMES (May 9, 2019), <https://www.nytimes.com/2019/05/09/arts/facebook-antiquities-syria-iraq.html>; "Artefact Detectives", *supra* note 27; see also Cara Libman, Note, *Preserving Culture During War: How to Prevent Terrorist Groups from Profiting from the Sale of Antiquities*, 42 SUFFOLK TRANSNAT'L L. REV. 365 (2019).

54. Emma Green, *Hobby Lobby Purchased Thousands of Ancient Artifacts Smuggled Out of Iraq*, ATLANTIC (July 5, 2017), <https://www.theatlantic.com/politics/archive/2017/07/hobby-lobby-smuggled-thousands-of-ancient-artifacts-out-of-iraq/532743/>.

### C. Terminology

Throughout this Comment, Iraq is identified as the place of origin of the cuneiform objects, but it is important to acknowledge that Iraq did not exist as a country when these objects were produced over three thousand years ago. They are more properly identified by the names of the specific cultural groups who made them: Assyrian, Babylonian, Sumerian, and so on, or as “Mesopotamian,” a Greek term that encompasses several cultural groups living in the area that is now known as Iraq. However, the terms “Iraq” and “Iraqi” are used here for two reasons: first, these cases involve thousands of objects and some of the specific details of their origins are unknown. Second, they were removed from present-day Iraq, a more broadly recognizable place name in today’s society, and Iraqi laws apply to their illegal removal and sale in the twentieth and twenty-first centuries.

An additional complication with regard to terminology comes from the entanglement of the Green family, Hobby Lobby, the National Christian Foundation (NCF), and the MOTB. The Green family started the collection, which is funded by both the family and their privately held corporation, Hobby Lobby. The museum’s online database regarding the provenance of individual objects in the collection indicates that the Hobby Lobby collection was donated to the MOTB by the Green family.<sup>55</sup> There are additional objects on loan to the MOTB from the NCF, but those objects were donated to the NCF by the Green family.<sup>56</sup> For ease of reading, the Green family/Hobby Lobby collection is referred to as the “Hobby Lobby collection” throughout the remainder of this Comment.

Finally, it is important to distinguish between three terms commonly used to refer to antiquities taken from their places of origin: “looted,” “undocumented,” and “illegal.”<sup>57</sup> According to art and cultural heritage law expert Patty Gerstenblith, “looted” objects are “recovered from the ground

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55. See Peggy McGlone, *Will Money from Conservative Christians Sway Bible Museum’s Professed Mission?*, WASH. POST (Nov. 2, 2017), [https://www.washingtonpost.com/entertainment/museums/will-money-from-conservative-christians-sway-bible-museums-professed-mission/2017/11/02/5d8b7a18-ba86-11e7-9e58-e6288544af98\\_story.html](https://www.washingtonpost.com/entertainment/museums/will-money-from-conservative-christians-sway-bible-museums-professed-mission/2017/11/02/5d8b7a18-ba86-11e7-9e58-e6288544af98_story.html); *Torah Codex by Benaya ben Sa’adyah*, MUSEUM OF THE BIBLE, <https://collections.museumofthebible.org/artifacts/34295-torah-codex-by-benayah-ben-saadyah?&tab=provenance> (last visited Oct. 3, 2020).

56. *Amber Glass Bowl*, MUSEUM OF THE BIBLE, <https://collections.museumofthebible.org/artifacts/32894-amber-glass-bowl?&tab=provenance#/> (last visited Nov. 3, 2020).

57. Patty Gerstenblith, *The Legal Framework for the Prosecution of Crimes Involving Archaeological Objects*, U.S. ATT’YS BULL., Mar. 2016, at 5, <https://www.justice.gov/usao/file/834826/download>.

in an unscientific manner,” decontextualizing them such that “what [they] can tell us about the past is limited to the information intrinsic within the object itself, rather than what might have been learned from the object’s full associated context.”<sup>58</sup> “Illegal” objects, on the other hand, have a history that includes a violation of law.<sup>59</sup> Finally, “undocumented” objects are those that do not have a clear provenance, or record of ownership.<sup>60</sup> Gerstenblith cautions against using these terms interchangeably; therefore, this Comment follows her definitions in its use of these terms except where source documents may use them differently.

## *II. The Current Legal Regime for the Protection of Cultural Property and the Forfeiture Actions Against Hobby Lobby*

### *A. Overview of the Current Legal Regime for the Protection of Cultural Property*

As Gerstenblith explains in her 2016 article, “The Legal Framework for the Prosecution of Crimes Involving Archaeological Objects,” there are three legal bases the U.S. government can use to recover illegally imported cultural objects.<sup>61</sup> First are the customs laws discussed in both the 2017 and 2020 forfeiture cases against Hobby Lobby, which prohibit importation of items based on inaccurate or incorrect declarations as well as importation of stolen goods.<sup>62</sup> Next, objects that are considered stolen may also violate the National Stolen Property Act or the Archaeological Resources Protection Act.<sup>63</sup> Notably, the National Stolen Property Act was one of the laws cited in the 2017 forfeiture case. Finally, the United States has agreements with other countries to recognize their export controls.<sup>64</sup> Gerstenblith also emphasizes “that mere illegal export from a foreign country does not make the object illegal in the United States unless there is a violation that makes the object illegal under U.S. law.”<sup>65</sup>

Internationally, there are two bodies of law of particular importance to the subject of this Comment: international laws governing the import and export of cultural objects and the specific laws enacted by foreign countries

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58. *Id.*

59. *Id.*

60. *Id.* at 6.

61. *Id.*

62. *Id.* at 6, 8.

63. *Id.*

64. *Id.* at 6.

65. *Id.*

to govern their own cultural property. With regard to the latter, Iraq has had laws in place to protect its cultural property from illegal export since at least 1926, as discussed in Section I.B. In 1970, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“1970 Convention”) became “the preeminent legal instrument that addresses the international movement of cultural objects.”<sup>66</sup> Both the United States and Iraq are parties to this treaty, along with 128 other States.<sup>67</sup> The United States passed the Convention on Cultural Property Implementation Act (CPIA) in 1982 to give domestic legal effect to the 1970 Convention in the United States.<sup>68</sup>

Although neither of the forfeiture actions against Hobby Lobby specifically cite the 1970 Convention or the CPIA, both have implicit effect on any legal action involving stolen cultural property in the United States. Article 3 of the 1970 Convention makes it illegal for States Parties to “import, export or transfer . . . ownership of cultural property effected contrary to the provisions . . . [of the] Convention.”<sup>69</sup> Under article 5, States Parties are required to take action to protect cultural property from illegal import and export through a variety of means, including enacting domestic laws and establishing systems and institutions to protect cultural property.<sup>70</sup>

Article 7 compels States Parties to prevent the acquisition of stolen cultural property by museums and other institutions within the State and to notify the State of origin if stolen cultural property is being offered to such

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66. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14 1970, 823 U.N.T.S. 231, <https://unesdoc.unesco.org/ark:/48223/pf0000133378> [hereinafter 1970 Convention]; Gerstenblith, *supra* note 57, at 8. An additional treaty, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, entered into force in 1998. However, neither Iraq nor the United States are parties to the treaty, which “underpins the provisions of the 1970 UNESCO Convention, supplementing them by formulating minimal legal rules on the restitution and return of cultural objects.” *Overview - UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)*, UNIDROIT, <https://www.unidroit.org/instruments/cultural-property/1995-convention/overview/> (last visited Jan. 9, 2022); see UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322. Because neither Iraq nor the United States are parties to the treaty, the UNIDROIT Convention is not discussed at length in this Comment.

67. Rep. of the Director-General on UNESCO’s Standard-Setting Instruments, U.N. Doc. 212 EX/23.I.INF, annex II (Aug. 16, 2021), <https://pax.unesco.org/la/convention.asp?order=alpha&language=E&KO=13039#1>.

68. Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601–2613; Gerstenblith, *supra* note 57, at 8–9.

69. 1970 Convention, *supra* note 66, at 6.

70. *Id.* at 8.

institutions.<sup>71</sup> States Parties are also required under article 7 to prohibit importation of stolen cultural property and to take action to return stolen cultural property that is imported.<sup>72</sup> Article 8 directs States Parties to levy “penalties or administrative sanctions” on anyone who violates articles 6 or 7.<sup>73</sup> States Parties are further required to work to prevent illegally obtained cultural property from importation in the first place and to ensure that appropriate resources are in place to recover and return such property expeditiously.<sup>74</sup>

In addition to the specific actions required by States Parties to the 1970 Convention, the treaty also made an important public statement recognizing the immense value of cultural patrimony and the damage done when it is illegally removed. Articles 4, 10, 11, 12, 13, and 17 all specifically address some of the underlying principles of the treaty, but articles 1 and 2 provide a comprehensive summary:

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country’s cultural property against all the dangers resulting therefrom.
2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.<sup>75</sup>

The forfeiture cases brought by the U.S. government against Hobby Lobby reflect not only the underlying principles of the 1970 Convention, but also the actions it requires.

Through the CPIA, the United States has given the 1970 Convention domestic legal effect.<sup>76</sup> Specifically, section 2607 of the CPIA prohibits

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71. *Id.* at 10.

72. *Id.*

73. *Id.* at 12.

74. *Id.* at 14.

75. *Id.* at 6.

76. Gerstenblith, *supra* note 57, at 10.

importation of cultural property into the United States if that property is “documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution.”<sup>77</sup> The CPIA adopts the definition of “cultural property” set forth in article 1(a)–(k) of the 1970 Convention, including “archaeological discoveries” and “antiquities more than one hundred years old, such as inscriptions, coins, and engraved seals.”<sup>78</sup> Through the CPIA, the Department of Homeland Security has the authority to confiscate and forfeit cultural property at the border or once it has entered the United States.<sup>79</sup>

In addition, section 303 of the CPIA allows the United States to “enter into bilateral agreements or memoranda of understanding (MOU) with other States Parties for the imposition of import restrictions on certain categories of designated archaeological or ethnological materials.”<sup>80</sup> Notably, this provision of the CPIA does not apply to all cultural property as defined in the 1970 Convention, but only to specific kinds of materials defined in this section of the CPIA itself.<sup>81</sup> Although the United States has concluded such bilateral agreements with several countries, Iraq is not among them.<sup>82</sup> This is because, under the Emergency Protection for Iraqi Cultural Antiquities Act of 2004, the United States has placed permanent restrictions on illegally imported cultural objects from Iraq.<sup>83</sup> The Act specifies that Iraq need not request a bilateral agreement under the CPIA and makes the term for import restrictions indefinite.<sup>84</sup>

The CPIA also established the Cultural Property Advisory Committee (CPAC), which is part of the State Department’s Bureau of Educational and Cultural Affairs.<sup>85</sup> CPAC is charged with providing advice to the executive branch regarding requests from States Parties to the 1970 Convention to the

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77. Convention on Cultural Property Implementation Act, 19 U.S.C. § 2607; Gerstenblith, *supra* note 57, at 9.

78. Convention on Cultural Property Implementation Act, 19 U.S.C. § 2601; 1970 Convention, *supra* note 66, at 4; Gerstenblith, *supra* note 57, at 9.

79. Gerstenblith, *supra* note 57, at 9.

80. *Id.* at 10; Convention on Cultural Property Implementation Act, 19 U.S.C. § 2602.

81. Gerstenblith, *supra* note 57, at 10.

82. *Id.* at 11.

83. Emergency Protection for Iraqi Cultural Antiquities Act, 19 C.F.R. § 12.104 (2018); Gerstenblith, *supra* note 57, at 11.

84. Gerstenblith, *supra* note 57, at 11.

85. Bureau of Educ. & Cultural Affs., U.S. Dep’t of State, Charter of the Cultural Property Advisory Committee 1 (Mar. 23, 2018), [https://gsa-geo.my.salesforce.com/sfc/p/#0000000Gyj0/a/t0000005mC5/G7ut1C40mRHRzkXWREO2GPfGzH\\_YCRbOzR4iWuZdqwg](https://gsa-geo.my.salesforce.com/sfc/p/#0000000Gyj0/a/t0000005mC5/G7ut1C40mRHRzkXWREO2GPfGzH_YCRbOzR4iWuZdqwg) [hereinafter CPAC Charter].

United States for help protecting their cultural patrimony.<sup>86</sup> The President appoints eleven committee members for staggered three-year terms.<sup>87</sup> These committee members have expertise and experience in museums, fields such as archaeology and anthropology, and the international cultural property trade.<sup>88</sup>

Internationally, the United Nations has established an “open-ended intergovernmental expert group” to propose guidelines related to the protection of cultural property.<sup>89</sup> Following several meetings of this group between 2009 and 2014, the experts submitted guidelines to the U.N. Commission on Crime Prevention and Criminal Justice, which were adopted by the General Assembly.<sup>90</sup> The United Nations considers the resulting International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences to be a “useful framework to guide Member States in the development and strengthening of their criminal justice policies, strategies, legislation and cooperation mechanisms in the area of protection against trafficking in cultural property and other related offences.”<sup>91</sup> Although these guidelines are non-binding, the United States already follows most of them, as will become evident in the discussion of the two cases involving Hobby Lobby in Sections II.B and II.C.

*B. The First Forfeiture Action: United States v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets, No. 20-CV-3980 (E.D.N.Y. 2017).*

*1. Facts of the Case*

In 2017, the U.S. Attorney for the Eastern District of New York filed an action for the forfeiture of 3,450 cuneiform objects that the Customs and Border Protection (CBP) officers detained upon arrival in the United States.<sup>92</sup> According to a statement of facts stipulated to by both the government and Hobby Lobby, the corporation’s president, Steve Green,

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86. *Id.*

87. *Id.* at 2–3.

88. *Id.* at 3.

89. *Open-Ended Intergovernmental Expert Group on Protection Against Trafficking in Cultural Property*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/organized-crime/trafficking-in-cultural-property-expert-groups.html> (last visited Jan. 7, 2021).

90. *Id.*

91. G.A. Res. 69/196, at 3 (Dec. 18, 2014).

92. Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 1–2.



was first offered the objects for sale at a private meeting with antiquities dealers in the UAE in July 2010.<sup>93</sup> Several antiquities dealers attended the meeting, including two from Israel and one from the UAE.<sup>94</sup> They offered to sell Green 5,548 indigenous clay objects of Iraqi origin.<sup>95</sup>

The following month, in August 2010, a curator hired by Hobby Lobby to acquire objects for the collection reported to Green that the objects Green had examined in the UAE were from a third Israeli dealer's family collection.<sup>96</sup> The third Israeli dealer had not attended the July meeting in the UAE.<sup>97</sup> A few weeks later, one of the Israeli dealers who *had* attended the meeting provided Hobby Lobby with provenance information for 5,513 of the artifacts Green had seen, which stated that the objects had been "legally acquired in the late 1960s by [Israeli Dealer #3's] father, from local markets."<sup>98</sup> This documentation also stated that the objects had been stored in Mississippi in the 1970s, indicating that the collection had already been in the United States.<sup>99</sup>

Shortly thereafter, Hobby Lobby hired an expert in cultural property law who advised Hobby Lobby of the risks of acquiring Iraqi objects.<sup>100</sup> The expert urged Hobby Lobby to verify the provenance of objects with connections to Iraq and to follow the appropriate importation procedures, warning them that a failure to do so could result in the objects being seized by CBP and potentially subject to forfeiture.<sup>101</sup> By December 2010, Green signed a purchase agreement with the second Israeli dealer, who had been present for the meeting in the UAE.<sup>102</sup> The second Israeli dealer sold the cuneiform objects to Green for \$1.6 million on behalf of the third Israeli

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93. *Id.* at 8.

94. *Id.*

95. *Id.*

96. *Id.* at 9.

97. *Id.*

98. *Id.* at 10.

99. *Id.*

100. *Id.* at 10–11. Reportedly, the expert referred to in the court filings in this case is Patty Gerstenblith, whose scholarship is cited throughout this Comment. See Katy Moynihan, *Bad Hobby: Collecting Unprovenanced Antiquities*, CTR. FOR ART L. (Mar. 1, 2018), <https://itsartlaw.org/2018/03/01/bad-hobby-collecting-unprovenanced-antiquities/>.

101. Stipulation of Settlement at 29–30, *United States v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets*, No. 17-CV-3980 (E.D.N.Y. July 5, 2017).

102. *Id.* at 30.

dealer, whom Green had never met.<sup>103</sup> The invoice for that order incorrectly identified the objects as being “originally from Israel.”<sup>104</sup>

Hobby Lobby split the \$1.6 million total payment among seven bank accounts belonging to five different people, none of whom were the third Israeli dealer who was supposedly the previous owner of the objects.<sup>105</sup> A few days after the payments had been made, the first Israeli dealer requested that Hobby Lobby change the purchase agreement to show that the third Israeli dealer, rather than the second, was selling the objects.<sup>106</sup> Hobby Lobby changed the purchase agreement and the objects were prepared for shipment to the United States.<sup>107</sup> In November 2010, several Hobby Lobby employees, including the curator and the International Department, discussed the importation of the objects with a customs broker.<sup>108</sup> The broker advised them that the items might be detained by CBP, so the curator and Green’s executive assistant decided to avoid involving Hobby Lobby’s International Department and customs broker further and instead asked the sellers to make all of the shipping arrangements.<sup>109</sup>

The UAE dealer shipped the objects in multiple packages on different dates, labeling the contents as “tiles.”<sup>110</sup> Green’s executive assistant told the UAE dealer to keep the value of each package below \$2,000 so that they would not have to clear Customs.<sup>111</sup> The dealer included falsified invoices and shipping declarations to support the undervaluing of the objects.<sup>112</sup> Some packages were addressed to Green, while others were addressed to his executive assistant.<sup>113</sup> They were shipped to three different addresses, which corresponded to three business entities owned by Green: Hobby Lobby, Mardel, and Crafts Etc!.<sup>114</sup> Although some of the packages were successfully delivered, several were detained by CBP.<sup>115</sup> Upon further examination of the contents of the packages, the government found that the

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103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 31.

109. *Id.*

110. *Id.* at 31–32.

111. *Id.* at 33.

112. *Id.*

113. *Id.* at 32.

114. *Id.*

115. *Id.* at 33–37.

items were actually cultural objects rather than tiles, and that the total value of each package was far greater than \$2,000.<sup>116</sup> One package, for example, should have had a total declared value of \$84,120, but the enclosed invoice was for \$300.<sup>117</sup>

In March 2011, CBP notified Green and his executive assistant about the packages that had been seized.<sup>118</sup> Hobby Lobby then sought custody of the objects, providing CBP with two sets of provenance information that had been sent to them by the Israeli and UAE dealers.<sup>119</sup> Hobby Lobby did not explain why they submitted two separate sets of provenance documents, but did note that they tried to purchase the objects with a single purchase order corresponding to the invoice from the third Israeli dealer.<sup>120</sup> In September 2011, Hobby Lobby provided additional information to CBP, explaining that the reason they paid for the order through wire transfers to different bank accounts was so that they could pay the original owners directly.<sup>121</sup> This further raised the government's suspicions about the entire transaction because Hobby Lobby previously represented to them that the majority of the objects had come from the family collection of the third Israeli dealer, but that dealer was not one of the payees.<sup>122</sup> The U.S. government investigated the matter further and, after communications with counsel for Hobby Lobby, the matter was referred to the U.S. Attorney's Office to proceed with forfeiture of the objects in 2015.<sup>123</sup>

## 2. *The Government's Legal Theory of the Case*

The Complaint filed in this case cited numerous violations of U.S. Customs laws upon which the government based its claim of relief for the forfeiture of the cuneiform objects. Specifically, the government cited violations of the Tariff Act of 1930, which states that “[m]erchandise which is introduced or attempted to be introduced into the United States contrary to law . . . shall be seized and forfeited if it . . . is stolen, smuggled, or clandestinely imported or introduced.”<sup>124</sup> The government noted that merchandise is considered “smuggled, or clandestinely imported or

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116. *Id.* at 33–36.

117. *Id.* at 34.

118. *Id.* at 36.

119. *Id.* at 37.

120. *Id.*

121. *Id.*

122. *Id.*

123. Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 19–20.

124. *Id.* at 3 (quoting 19 U.S.C. § 1595a(c)(1)(A)).

introduced” if it is brought into the country in violation of 18 U.S.C. § 542 or 18 U.S.C. § 545.<sup>125</sup> Section 542 states that:

Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of any lawful duties [is in violation of the law] . . . .<sup>126</sup>

Under § 545:

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law [is in violation of the law] . . . .<sup>127</sup>

The Complaint also cited U.S. Customs laws that were applicable in 2010 and 2011, which allowed imported goods valued at \$2,000 or less to utilize an “informal” process to enter the country.<sup>128</sup> Goods with a value over \$2,000 had to enter the country through a formal process, which required “truthful declaration of the goods’ country of origin, description and value, among other information.”<sup>129</sup> Regardless of the total value, all international mail shipments must include a customs declaration with a

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125. *Id.*

126. *Id.* at 4 (quoting 18 U.S.C. § 542).

127. *Id.* (quoting 18 U.S.C. § 545).

128. 19 C.F.R. § 143.21(a) (2011); Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 5.

129. 19 C.F.R. § 143.21(a); Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 5.

truthful description of the contents and value of the package along with a bill of sale or invoice verifying the purchase price.<sup>130</sup>

Under U.S. law, Customs agents can clear certain shipments without inspection, and they do so frequently due to the volume of shipments that arrive at U.S. ports each day.<sup>131</sup> However, Customs officers do inspect shipments at random, including those utilizing both the formal and informal entry processes.<sup>132</sup> Furthermore, Customs may “target certain shipments for review.”<sup>133</sup> In this case, Customs officers detained five separate packages shipped from the UAE dealer to different addresses associated with Hobby Lobby and its affiliates, each of them with falsified documentation. The declarations also grossly undervalued the contents of the packages so that they were all valued under \$2,000.

Additionally, the Complaint asserts that Hobby Lobby violated the National Stolen Property Act, which applies to any cultural property imported into the United States in violation of another country’s patrimony laws.<sup>134</sup> Under this law, U.S. Customs agents have the authority to seize objects that do not have valid provenance predating the foreign country’s patrimony laws and those objects are subject to forfeiture.<sup>135</sup> Iraqi patrimony laws have been in place since 1926 and are discussed further in Section I.B of this Comment.

Since 1990, the United States has restricted importation of Iraqi cultural property through several federal regulations that are applicable to this case. From 1990 to 2004, the United States placed a general ban on importing Iraqi goods under the Iraqi Sanctions Regulations.<sup>136</sup> Those regulations were amended in 2004 to eliminate the general ban after Saddam Hussein was removed from power, but restrictions on importing cultural property remained in place and applied to “Iraqi cultural property or other items of archeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library,

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130. 19 C.F.R. § 145.11 (2011); Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 5.

131. Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 5.

132. *Id.*

133. *Id.*

134. National Stolen Property Act, 18 U.S.C. § 2314; Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 5.

135. National Stolen Property Act, 18 U.S.C. § 2314; Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 5.

136. Iraqi Sanctions Regulations, 31 C.F.R. § 575.212 (2004); Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 6.

and other locations in Iraq since August 6, 1990.”<sup>137</sup> The same section of the regulations further states, “Any trade in or transfer of such items, including items with respect to which reasonable suspicion exists that they have been illegally removed, remains prohibited . . . .”<sup>138</sup>

In 2010, the year Hobby Lobby purchased the cuneiform objects from the Israeli and UAE dealers, the Iraqi Sanctions Regulations were repealed. On September 13, 2010, the Department of the Treasury Office of Foreign Assets Control issued the Iraq Stabilization and Insurgency Sanctions Regulations (ISISR), which would have governed the objects at the time they were purchased and shipped to the United States.<sup>139</sup> The ISISR bar “the trade in or transfer of ownership or possession of Iraqi cultural property or other items of archaeological, historical, cultural, rare scientific, and religious importance that were illegally removed, or for which a reasonable suspicion exists that they were illegally removed, from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990.”<sup>140</sup> In addition, the ISISR incorporate civil and criminal penalties in the International Emergency Economic Powers Act.<sup>141</sup>

The Complaint in this case also cites Iraq’s law against the unauthorized removal of cultural property from the country.<sup>142</sup> Iraq has had numerous versions of this law since 1936, but the most recent version, Law No. 55 for the Antiquities and Heritage of Iraq, was enacted in 2002.<sup>143</sup> Of course, U.S. federal courts do not apply Iraqi law, but the existence of a long-established, clear statement that Iraqi antiquities are considered the property of the state is critical to a court deciding a forfeiture action. As was discussed in Section II.A, both the CPIA and Emergency Protection for Iraqi Cultural Antiquities Act restrict the importation of cultural property. Under the CPIA, cultural property that belonged to a cultural institution or that was part of a public monument cannot be imported into the United States.<sup>144</sup> The Emergency Protection for Iraqi Cultural Antiquities Act

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137. Iraqi Sanctions Regulations § 575.533; Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 6–7.

138. Iraqi Sanctions Regulations, 31 C.F.R. § 575.533(b)(4); Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 6–7.

139. Iraqi Stabilization and Insurgency Sanctions Regulations, 31 C.F.R. § 576 (2015).

140. *Id.* § 576.208; Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 7.

141. International Emergency Economic Powers, 50 U.S.C. § 1705; Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 7.

142. Verified Complaint, *Approximately 450 Cuneiform Tablets*, *supra* note 7, at 7.

143. Law for the Antiquities & Heritage of Iraq No. 55 (2002).

144. Convention on Cultural Property Implementation Act, 19 U.S.C. § 2603.

specifically restricts illegal importation of *Iraqi* cultural objects into the United States.<sup>145</sup> Finally, Iraq's cultural patrimony laws are central to the application of the National Stolen Property Act. Under the National Stolen Property Act, cultural objects that do not have verifiable provenance records that predate a foreign country's cultural patrimony laws can be seized and forfeited if they are imported into the United States.<sup>146</sup> In this case, Iraq's cultural patrimony laws date to the 1920s and 1930s and none of the cuneiform objects in question were removed from Iraq until much later.

### 3. Analysis

Despite importation restrictions on Iraqi cultural property that had been in place since the 1990s, Hobby Lobby entered into a purchase agreement for over five thousand cuneiform objects from Iraq in 2010. Although Hobby Lobby had been told that the objects came from the third Israeli dealer's family collection, the circumstances of the initial meeting to view the objects in the UAE in July 2010, without the alleged primary seller present, should have raised Hobby Lobby's suspicions.

Following Green's return from the UAE, Hobby Lobby's own expert in cultural property law raised concerns about the potential purchase and warned them of the risks. There is no evidence in court records that Hobby Lobby did anything more than ask for provenance documentation prior to entering into the purchase agreement. They did not conduct any independent provenance research or question a proposed sale involving a seller no one from Hobby Lobby had ever met in person. Then, when the first Israeli dealer made the unusual request that the payment for the objects (most of which supposedly came from the third Israeli dealer's family collection) be wired to seven different bank accounts belonging to five different people (none of whom were the third Israeli dealer), Hobby Lobby complied. Finally, when the first Israeli dealer asked Hobby Lobby to change the name on the purchase agreement post hoc to that of the third Israeli dealer, Hobby Lobby again complied with the request. At every turn, Hobby Lobby disregarded the advice of legal experts and complied with the requests of foreign antiquities dealers, even when those requests were highly unusual and should have raised suspicions.

Additionally, Hobby Lobby employees instructed the UAE dealer to ship over five thousand cuneiform objects in separate packages. They told the

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145. Emergency Protection for Iraqi Cultural Antiquities, 19 C.F.R. § 12.104j (2008).

146. See National Stolen Property Act, 18 U.S.C. § 2314.

dealer to falsify the information included with the shipments to avoid alerting CBP to the true contents and monetary value of the packages. For some of the shipments, this strategy worked—at first. Some of the packages were delivered to Hobby Lobby at the addresses of various Green family businesses in Oklahoma City, but others were detained by CBP and several years of investigation into those suspicious shipments ultimately proved that the objects were illegally imported by Hobby Lobby. When Hobby Lobby found that they had no defense against the government’s impending forfeiture action, they negotiated a settlement. Under the settlement agreement, Hobby Lobby forfeited ownership of the objects, paid a \$3 million fine, and agreed to a set of compliance measures.<sup>147</sup>

#### 4. Government-Imposed Compliance Measures

The compliance measures required Hobby Lobby to develop policies to guide future purchases and importation of cultural objects and to provide copies of those policies to the government.<sup>148</sup> Furthermore, Hobby Lobby agreed not to “sell, gift, assign or otherwise transfer Cultural Property to another individual or institution” without complying with standards put forth by the Association of Art Museum Directors.<sup>149</sup> Any employees of Hobby Lobby who were involved with the purchase or importation of cultural objects were required under the settlement agreement to receive annual training on applicable customs laws and procedures as well as on provenance and due diligence requirements.<sup>150</sup>

Hobby Lobby was ordered to provide the first round of this training within six months of the conclusion of the settlement agreement.<sup>151</sup> Additionally, the government required Hobby Lobby to hire qualified experts to conduct the training, advise the company about its acquisitions policies, and oversee any purchases involving cultural objects to ensure that they were properly imported and appropriate provenance records developed prior to purchase.<sup>152</sup> Finally, the government imposed a reporting

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147. Stipulation of Settlement, *supra* note 101, at 3–4.

148. *Id.* at 8.

149. *Id.* at 8–9. See, e.g., *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, ASS’N ART MUSEUM DIRS. (Jan. 29, 2013), <https://aamd.org/sites/default/files/document/AAMD%20Guidelines%202013.pdf>; *Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis*, ASS’N ART MUSEUM DIRS. (Oct. 1, 2015), <https://aamd.org/document/aamd-protocols-for-safe-havens-for-works-of-cultural-significance-from-countries-in-crisis>.

150. Stipulation of Settlement, *supra* note 101, at 9.

151. *Id.*

152. *Id.* at 9–10.



requirement on Hobby Lobby.<sup>153</sup> The company's quarterly reports to the U.S. Attorney's Office for the Eastern District of New York had to include detailed documentation of any cultural objects acquired or imported by Hobby Lobby during the preceding quarter as well as any changes to the company's acquisitions policies and information about trainings that occurred during that quarter.<sup>154</sup>

The settlement agreement also required Hobby Lobby to notify the government if it found any additional objects in its collection that were illegally imported.<sup>155</sup> The term of the settlement agreement was eighteen months, beginning on July 5, 2017.<sup>156</sup> By January 2018, Hobby Lobby forfeited an additional 245 cuneiform cylinder seals that were part of the December 2010 purchase.<sup>157</sup> Eighteen of those seals were later identified by an expert as Egyptian scarabs.<sup>158</sup> In the summer and fall of 2017, as the first forfeiture action was pending and with the MOTB's November opening fast approaching, MOTB staff were frantically conducting provenance research on the Gilgamesh Dream Tablet.

*C. The Second Forfeiture Action: United States v. One Cuneiform Tablet Known as the "Gilgamesh Dream Tablet," No. 20-CV-2222 (E.D.N.Y. May 18, 2020)*

### *1. Background*

Only three years after forfeiting thousands of illegally acquired indigenous Mesopotamian cuneiform objects and paying a \$3 million fine, Hobby Lobby once again found itself facing a forfeiture action for a cuneiform tablet. On May 18, 2020, the U.S. government filed a complaint for the forfeiture of the Gilgamesh Dream Tablet, which Hobby Lobby acquired in 2014.<sup>159</sup> The Gilgamesh Dream Tablet has a complicated provenance that involves fabricated documentation and, because Hobby

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153. *Id.* at 10.

154. *Id.* at 10–11.

155. *Id.* at 11.

156. *Id.* at 11.

157. Declaration of Assistant United States Attorney Karin Orenstein at 2–3, *United States v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets*, No. 17-CV-3980 (E.D.N.Y. July 5, 2017).

158. Default Judgement and Decree of Forfeiture at 2–3, *United States v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets*, No. 17-CV-3980 (E.D.N.Y. July 5, 2017).

159. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 11.

Lobby was ordered to forfeit the tablet<sup>160</sup> and the Stipulation of Settlement was not made publicly available, there is not a single set of facts on which the U.S. government and Hobby Lobby publicly agreed. In addition, Hobby Lobby initiated separate legal action against Christie's auction house for fraud and breach of warranty regarding the sale of the tablet.<sup>161</sup> The following account of the history of the sale and importation of the Gilgamesh Dream Tablet is compiled from information from numerous court filings, noting which information is alleged and which information Hobby Lobby and/or Christie's have admitted as true.

According to the U.S. government, an antiquities dealer from the United States first viewed the Gilgamesh Dream Tablet at the London apartment of Jordanian antiquities dealer Ghassan Rihani around 2001.<sup>162</sup> Rihani was known to obtain objects directly from the Middle East for sale in the international antiquities market.<sup>163</sup> By March or April of 2003, the U.S. antiquities dealer returned to Rihani's apartment along with a cuneiform expert to examine several items, including the Gilgamesh Dream Tablet.<sup>164</sup> The dealer agreed to purchase the objects for a total of \$50,350 and asked that they be shipped to the expert's address in the United States.<sup>165</sup> The Complaint alleges that the cuneiform expert eventually determined that one of the objects was a fragment of a tablet inscribed with the text of the Gilgamesh epic.<sup>166</sup> By March 2005, the cuneiform expert had shipped the tablet across state lines to Princeton, New Jersey, to be studied by a professor.<sup>167</sup>

About two years later, according to the Complaint, the U.S. antiquities dealer who purchased the tablet sold it for \$50,000.<sup>168</sup> When one of the

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160. Decree of Forfeiture, *United States v. One Cuneiform Tablet Known as the "Gilgamesh Dream Tablet,"* No. 20-2222 (E.D.N.Y. July 26, 2021), <https://www.justice.gov/usao-edny/press-release/file/1416726/download> [<https://perma.cc/V8KD-CL6K>].

161. Complaint, *Hobby Lobby Stores, Inc. v. Christie's Inc.*, No. 20-CV-2239 (E.D.N.Y. May 19, 2020) [hereinafter Complaint, *Hobby Lobby v. Christie's*].

162. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 5.

163. *Id.*

164. *Id.*

165. *Id.* at 6.

166. *Id.*

167. *Id.*; see Professor Andrew R. George, SOAS UNIV. LONDON, <https://www.soas.ac.uk/staff/staff30983.php> (last visited Jan. 4, 2021) (the professor referred to in the Complaint appears to be Prof. Andrew R. George, who was a member of the Institute for Advanced Study at Princeton University from 2004 to 2005 and who published an article about the Gilgamesh Dream Tablet in 2007); see also George, *supra* note 5, at 59.

168. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 6.

buyers requested provenance records, the U.S. government alleges that the dealer fabricated a letter stating that the Gilgamesh Dream Tablet had been purchased in 1981 at a Butterfield & Butterfield auction in San Francisco.<sup>169</sup> The fabricated letter made no reference to Rihani or to the fact that the dealer had purchased the tablet in London.<sup>170</sup> Instead, the fabricated letter went so far as to identify the tablet as “part of lot 1503” of the Butterfield auction, which contained “miscellaneous objects including several other antiquities, none of them completely described” that had supposedly been deaccessioned from a small, unnamed, museum.<sup>171</sup> The Complaint notes that the actual Butterfield & Butterfield auction catalog from 1981 states that lot 1503 was a “box of miscellaneous ancient bronze fragments.”<sup>172</sup>

Following this sale, the Complaint states that the Gilgamesh Dream Tablet was published in two catalogs, one of which expressly affirmed that the tablet had “clean” provenance and had been in the possession of an individual in the United States for twenty-five years.<sup>173</sup> The second catalog listed the tablet for sale and stated that it would be accompanied by analysis from the Princeton professor, authentication from the cuneiform expert, and “a clear provenance.”<sup>174</sup>

The U.S. government alleges that around December 2013, the tablet’s owner consigned it to Christie’s auction house for private sale.<sup>175</sup> Throughout the month of December, the owner and various Christie’s employees communicated about provenance records for the Gilgamesh Dream Tablet.<sup>176</sup> The owner could not provide verifiable provenance records to Christie’s and the parties made the decision to offer the tablet only for private sale, knowing that its provenance would be scrutinized if it were offered for sale in a public auction.<sup>177</sup>

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169. *Id.* at 6–7.

170. *Id.*

171. *Id.* at 7.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 8. While the government’s forfeiture action does not identify Christie’s as the “international auction house” involved in the sale of the tablet to Hobby Lobby, Hobby Lobby filed a Complaint regarding the Gilgamesh Dream Tablet against Christie’s, Inc. the day after the forfeiture action was filed, making it clear which auction house was being referenced in the forfeiture action. *See* Complaint, *Hobby Lobby v. Christie’s*, *supra* note 161.

176. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 8.

177. *Id.*

A representative from the Green Collection/MOTB examined the Gilgamesh Dream Tablet at Christie's in London in March 2014.<sup>178</sup> Hobby Lobby entered into an agreement to purchase the tablet for \$1.6 million in July 2014, intending for it to be placed on view at the MOTB.<sup>179</sup> Christie's shipped the tablet to their New York offices and from there, a Christie's employee personally transported it to Hobby Lobby's Oklahoma City headquarters.<sup>180</sup> The government further alleges that Hobby Lobby was trying to avoid paying New York sales tax by having the tablet delivered to them via personal courier from New York.<sup>181</sup>

Around July 22, 2014, the MOTB registrar, who was responsible for maintaining records on the tablet, requested that Christie's revise its invoice to include both "the date and country of origin for the Gilgamesh Dream Tablet," along with a copy of the "auction listing" for the museum's files.<sup>182</sup> The U.S. government alleges that Christie's revised the invoice, identifying the object as "A Mesopotamian Cuneiform Tablet, bearing part of the Epic of Gilgamesh," noting that it was from Iraq and dating it to 1600 B.C.E.<sup>183</sup> In addition, the government alleges that internal communications between Christie's employees documented the vague provenance the auction house had been provided.<sup>184</sup> Christie's former Antiquities Department Head wrote to the business manager:

Here is the provenance for the tablet. The person who bought it in the Butterfield[']s sale told us it was part of lot 1503 and that it was heavily encrusted with salts and unreadable. [He or she] also mentioned that at the time, it was said to have been

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178. *Id.* ¶ 27; see Answer of Claimant Hobby Lobby Stores, Inc. ¶ 27, *United States v. One Cuneiform Tablet Known as the "Gilgamesh Dream Tablet,"* No. 20-2222 (E.D.N.Y. July 10, 2020) (admitting this specific allegation).

179. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 28; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 28 (admitting this specific allegation).

180. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 28; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 28 (denying knowledge of how Christie's shipped the tablet from London to the United States, but admitting that the tablet was hand-delivered by a Christie's representative to Oklahoma City).

181. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 9. (Personal couriers are often used by museums and collectors to ensure safe and secure delivery of valuable and fragile objects, and the Gilgamesh Dream Tablet is both valuable and fragile, so that method of transportation is not necessarily indicative of an attempt to avoid paying sales tax.)

182. *Id.* ¶ 29; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 29 (admitting this specific allegation).

183. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 10.

184. *Id.* at 9.

deaccessioned from a small museum. Unfortunately Bonham and Butterfield no longer have their consignor records so we could not corroborate this further. It was subsequently with Michael Sharp[e] – catalogue entry attached.

(Emphases added [in Complaint])<sup>185</sup>

The Christie's employee provided a revised invoice to Hobby Lobby/MOTB representatives that included the following details about the provenance of the Gilgamesh Dream Tablet:

We can safely say it left Iraq before 1981 as that is the date it was sold in a Butterfield's auction in San Francisco. The person who bought it in the Butterfields sale told us it was part of lot 1503 and that it was heavily encrusted with salts and unreadable. [He or She] also mentioned that at the time, it was said to have been de-accessioned from a small museum, and so in all likelihood it was in the US well before 1981. Unfortunately, Butterfields no longer have their consignor records so we could not corroborate this further. It was subsequently with Michael Sharp[e].

(Emphases added [in Complaint])<sup>186</sup>

The Christie's employee also provided copies of the Butterfield and Michael Sharpe catalog entries to the MOTB registrar.<sup>187</sup>

This was apparently enough documentation for Hobby Lobby to go forward with the purchase because the company wired the \$1.6 million payment to Christie's on July 30, 2014.<sup>188</sup> Hobby Lobby never received a copy of the fabricated provenance letter created by the antiquities dealer who first brought the tablet to the United States, which was the document that linked the tablet to the 1981 Butterfield auction.<sup>189</sup> That antiquities

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185. *Id.* (alterations in original).

186. *Id.* ¶ 34 (alterations in original); see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 34 (admitting this specific allegation).

187. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 35; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 35 (admitting this specific allegation).

188. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 37; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 37 (admitting this specific allegation).

189. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 38; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 38 (admitting this specific allegation).

dealer was also not listed as a former owner of the tablet in documents provided to Hobby Lobby/MOTB.<sup>190</sup>

In October 2017, at the same time the government's first forfeiture action against Hobby Lobby was closed in the Eastern District of New York, a MOTB curator initiated additional provenance research on the Gilgamesh Dream Tablet.<sup>191</sup> Under the settlement agreement Hobby Lobby made with the government in the first forfeiture action, Hobby Lobby and, by extension, the MOTB, had to implement a policy for importing and purchasing cultural property.<sup>192</sup> The government required that this policy comply with standards for acquisitions of cultural property set forth by the 2013 Association of Art Museum Directors Guidelines on the Acquisition of Archaeological Material and Ancient Art or the Association of Art Museum Directors Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis.<sup>193</sup> Both sets of standards require thorough provenance documentation, which Hobby Lobby did not have for the Gilgamesh Dream Tablet in 2017.<sup>194</sup>

The Complaint states that the curator requested a copy of the provenance records from the antiquities dealer who purchased the tablet in 2003 and also contacted Christie's to inform them of the renewed inquiry.<sup>195</sup> Hobby Lobby specifically states in its Answer that the MOTB curator did not know that the dealer ever owned the tablet, but does admit that the curator contacted the dealer.<sup>196</sup> Specifically, the curator was trying to obtain copies of the cuneiform expert's authentication, the provenance information referenced in the Michael Sharpe catalog, and details about the tablet's

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190. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 38; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 38 (admitting this specific allegation).

191. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 11.

192. Stipulation of Settlement, *supra* note 101, at 8–9; see *Acquisition Policy*, MUSEUM OF THE BIBLE (Jan. 7, 2018), <https://web.archive.org/web/20180107054856/https://www.museumofthebible.org/acquisitions-policy> (showing the policy that was not made publicly available on the MOTB website until January 2018).

193. Stipulation of Settlement, *supra* note 101, at 9.

194. See *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, *supra* note 149; *Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis*, *supra* note 149.

195. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 11.

196. Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, at 5.

ownership before it was in the Sharpe catalog.<sup>197</sup> Christie's referred the curator to their new head of antiquities in London.<sup>198</sup>

Upon receiving the MOTB curator's inquiry, the new head of antiquities in London wrote to the International Head of Christie's antiquities department on October 25, 2017, "I was surprised the [Antiquities Dealer's] name does not appear in the provenance although [the Antiquities Dealer] did buy it in the 1981 auction."<sup>199</sup> The head of antiquities in London further noted that the provenance letter from the antiquities dealer had never been provided to the MOTB.<sup>200</sup> The following day, the London head of antiquities wrote the following in an email to the International Head of the department:

The prov 'should' read

[1] Butterfield auction . . . 1981

[2] [Antiquities Dealer and Cuneiform Expert] acquired from the above.

[3] Michael Sharpe, acq from the above in 2007.

[4] Private collection (the vendor), acq from the above (but I don't know when).

Instead there was only line 1 and 3.

I think I should ask [the Former Antiquities Department Head], but wanted to make sure with you that it was appropriate.<sup>201</sup>

On October 27, 2017, the MOTB curator received an email from the antiquities dealer stating that they did not have any records regarding the tablet.<sup>202</sup> The curator then contacted the professor who had examined the tablet in Princeton in 2005 with the following message:

I am writing to ask if you could provide any more information on [the Gilgamesh Dream Tablet's] history, as my institution recently purchased it at auction and are trying to work out some provenance issues. Unfortunately, there are some inaccuracies in

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197. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 40; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 40 (admitting this specific allegation).

198. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 41; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 41 (admitting this specific allegation).

199. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 12.

200. *Id.*

201. *Id.* (alterations in original).

202. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 44; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 44 (admitting this specific allegation).

the [Auction House] material and I am trying to get to the bottom of it all.<sup>203</sup>

The Complaint notes that Hobby Lobby did not purchase the tablet at auction, but through a private sale.<sup>204</sup> Hobby Lobby does not deny this in its Answer.<sup>205</sup>

Christie's antiquities department head in London emailed the antiquities dealer on October 30, 2017, writing:

We have recently been contacted by the present owner with a question in regards to the tablet. As you know, an identification and statement of provenance are mentioned by Michael Sharpe in his Catalog No. 1 (dated to 2007 I believe) and the present owner is asking if a copy can be sent to him. I therefore wanted to ask you if you would agree for us to forward these two documents on.<sup>206</sup>

The antiquities dealer failed to respond to this inquiry.<sup>207</sup>

On October 31, 2017, the MOTB collections director requested urgent assistance with these questions about the tablet's provenance from Christie's, stating:

We are, however, in a difficult situation. As we reviewed again our provenance documentation on this item, we discovered that we could not confirm that it was in the US in 1981. The earliest that we are able to document is 2005. This puts us in a very difficult situation, with the museum opening on November 18 and installations taking place at this moment.<sup>208</sup>

Christie's employees provided the MOTB with copies of the cuneiform expert's certificate of authenticity, the Butterfield catalog from 1981, and an invoice showing payment for Butterfield's lot 1503 with the name of the antiquities dealer as buyer redacted.<sup>209</sup> In its Answer, Hobby Lobby

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203. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 45 (alterations in original); see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 45 (admitting this specific allegation).

204. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 13.

205. Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, at 5.

206. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 13.

207. *Id.*

208. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 48; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 48 (admitting this specific allegation).

209. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 14.



confirms that this documentation was forwarded to them and that the name of the buyer was redacted.<sup>210</sup> According to the government, the MOTB collections director responded to the Christie's employee that "[t]he identification in the catalog is clearly a mistake. This is not a bronze fragment and could not be mistaken for one. . . . What do we do in such a case? We have no history of ownership beyond the [Christie's] sale."<sup>211</sup> The London antiquities department head sent the following message to the Christie's employees who had provided the documentation to MOTB, presumably in response to the collections director's concerns:

The lot is vaguely described, but it is not unusual for this [sic] type of objects. It was a box of miscellan[e]ous, mainly of bronze, and contained the tablet as well. The [Antiquities Dealer and Cuneiform Expert] bought the lot because of the presence of the tablet in it and confirmed it to us.

This had been cleared by Legal at the time.

(Emphasis added [in Complaint])<sup>212</sup>

According to the Complaint, the antiquities dealer stated that he did not confirm provenance details or any other information with Christie's employees.<sup>213</sup>

*2. Related Case: Hobby Lobby Stores, Inc. v. Christie's, Inc. & John Doe #1, No. 20-CV-2239 (E.D.N.Y. filed May 19, 2020)*

One day after the United States filed its forfeiture action against Hobby Lobby seeking the return of the Gilgamesh Dream Tablet, Hobby Lobby filed a Complaint against Christie's and an initially unnamed co-defendant (later identified as Joseph David Hackmey) alleging fraud and breach of express and implied warranty.<sup>214</sup> In its Complaint, Hobby Lobby acknowledges the history of illegal sale and export of Mesopotamian

210. Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, at 6.

211. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, ¶ 50; see Answer of Claimant Hobby Lobby Stores, Inc., *supra* note 178, ¶ 50 (admitting this specific allegation).

212. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 14 (alterations in original).

213. *Id.*

214. Complaint, *Hobby Lobby v. Christie's*, *supra* note 161, at 1–2; see also Amended Complaint ¶ 6, *Hobby Lobby v. Christie's*, No. 20-CV-2239 (E.D.N.Y. Feb. 1, 2021) [hereinafter Amended Complaint, *Hobby Lobby v. Christie's*]. Hobby Lobby filed the Amended Complaint naming Hackmey as the co-defendant. Hackmey is identified in the Amended Complaint as an Israeli private collector. *Id.* ¶ 6.

cuneiform objects.<sup>215</sup> Hobby Lobby also asserts that Christie's made public claims about the thoroughness of their provenance research, stating "[t]he sale by Christie's of an antiquity represents a 'gold standard' of certification that an object is legally owned and may be offered for sale on the international market."<sup>216</sup>

The history of the Gilgamesh Dream Tablet's ownership that is detailed in Hobby Lobby's Complaint against Christie's parallels the history provided by the government in the forfeiture action. Hobby Lobby asserts that the tablet first appeared on the international market in 2001 while it was in the possession of a London-based Jordanian antiquities dealer.<sup>217</sup> The Complaint states that an American dealer bought the tablet and shipped it to the United States in 2003.<sup>218</sup> In 2007, Hobby Lobby states that the tablet was sold again, this time to two buyers for \$50,000.<sup>219</sup> Hobby Lobby notes that those buyers were not provided with provenance information when they purchased the tablet, but when they requested it at a later date, they were given "a fictitious provenance" stating that the tablet had been sold in 1981 by Butterfield and Butterfield as part of lot 1503.<sup>220</sup>

Those buyers then "consigned the tablet to Michael Sharpe Rare and Antiquarian Books in Pasadena, California," in 2007.<sup>221</sup> They provided the Butterfield and Butterfield provenance information to Sharpe, who sold the tablet to an unknown owner.<sup>222</sup> Sometime before fall 2013, Hobby Lobby alleges that Hackmey bought the tablet from an unknown "intermediate owner."<sup>223</sup> By fall 2013, "Hackmey consigned the tablet to Christie's" London location.<sup>224</sup>

According to the Complaint, a Hobby Lobby representative examined the Gilgamesh Dream Tablet at Christie's in March 2014.<sup>225</sup> Hobby Lobby makes a point to emphasize in the Complaint that Christie's knew they were actively acquiring biblical antiquities for the planned MOTB.<sup>226</sup> Christie's

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215. Complaint, *Hobby Lobby v. Christie's*, *supra* note 161, at 3–4.

216. *Id.* at 4–5.

217. *Id.* at 5.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.* at 6.

222. *Id.*

223. Amended Complaint, *Hobby Lobby v. Christie's*, *supra* note 214, at 6.

224. *Id.*

225. Complaint, *Hobby Lobby v. Christie's*, *supra* note 161, at 6.

226. *Id.*

offered the tablet to Hobby Lobby through a “specially prepared private sale catalogue,” which represented the object’s provenance as:

Butterfield and Butterfield, San Francisco, 20 August 1981, lot 1503.

With Michael Sharpe Rare and Antiquarian Books, Pasadena, California.<sup>227</sup>

Hobby Lobby notes that there was no reference in any of the materials they were provided by Christie’s to the dealer who imported the tablet from London in 2003 or any of the other subsequent owners.<sup>228</sup> Thus, Hobby Lobby asserts that they believed the tablet was imported long before import restrictions were imposed on Iraqi cultural objects and they had no cause to question the provenance information Christie’s provided.<sup>229</sup>

Furthermore, Hobby Lobby’s complaint states that they requested copies of all provenance documentation for the tablet from Christie’s prior to finalizing the purchase.<sup>230</sup> In an email from Christie’s to Hobby Lobby, a Christie’s representative stated that the Gilgamesh Dream Tablet had been exported from Iraq before 1981, that the buyer from Butterfield’s confirmed it as part of lot 1503 in the 1981 auction, and that Butterfield’s had been told that the tablet was de-accessioned from a museum.<sup>231</sup> Christie’s did not give Hobby Lobby any provenance documentation beyond the Butterfield’s and Michael Sharpe catalogs.<sup>232</sup>

In preparation for the opening of the MOTB in 2017, Hobby Lobby transferred the Gilgamesh Dream Tablet to the MOTB in Washington, D.C. and museum staff attempted to gather additional provenance information to complete their records.<sup>233</sup> Specifically, MOTB employees requested confirmation of the Butterfield’s provenance and the names of those who owned the tablet before it was sold by Michael Sharpe.<sup>234</sup> Hobby Lobby alleges that the MOTB received “incomplete documentation” for the tablet

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227. *Id.*

228. *Id.*

229. *Id.* at 7.

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.* at 9.

234. *Id.*

from Christies.<sup>235</sup> MOTB staff also tried to contact the antiquities dealer who bought the tablet in 2003, but they received no response.<sup>236</sup>

Despite revelations in the legal filings that MOTB staff were not entirely satisfied with the provenance information provided by Christie's, MOTB representatives made public statements to the contrary as the new museum opened in 2017 with the Gilgamesh Dream Tablet featured in one of the exhibitions. In an October 2017 article for *Science Magazine*, Lizzie Wade chronicled her preview tour of the museum's exhibitions, including specific discussions with MOTB representatives about the provenance issues that had plagued the institution.<sup>237</sup> During the tour, Seth Pollinger, who was the director of museum content in 2017, showed Wade where the Gilgamesh Dream Tablet would be exhibited on the history floor.<sup>238</sup> Wade noted in her article that Pollinger was "quick to mention that the dream tablet has a 'clear provenance.'"<sup>239</sup> He was unable to provide further details about the tablet's provenance and when Wade requested additional information from the MOTB the day after her tour, the museum "declined" to provide that information.<sup>240</sup> However, Wade also wrote that "[d]uring [the] tour, Pollinger acknowledged that the museum has not adequately tackled the issue of provenance in its exhibits."<sup>241</sup> As it turns out, the provenance questions raised in Wade's article about the Gilgamesh Dream Tablet, in particular, were well founded, and museum staff had been working for months to answer them.

The Gilgamesh Dream Tablet was seized from the MOTB on September 24, 2019, by Immigration and Customs Enforcement agents.<sup>242</sup> Hobby Lobby claims that they did not know the tablet had been illegally imported in either 2003 or 2014 until they met with ICE personnel on January 23, 2020.<sup>243</sup> In their Complaint, Hobby Lobby states that the government informed them that:

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235. *Id.*

236. *Id.*

237. Lizzie Wade, *Can the Museum of the Bible Overcome the Sins of the Past?*, *SCI. MAG.* (Oct. 16, 2017), <https://www.sciencemag.org/news/2017/10/can-museum-bible-overcome-sins-past>.

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. Complaint, *Hobby Lobby v. Christie's*, *supra* note 161, at 9.

243. *Id.* at 10.

(i) Christie's had sold the Tablet to Hobby Lobby knowing that the provenance it had provided was false, in that the Tablet had not been sold at Butterfield's in 1981, but, rather, imported in 2003 by the American Dealer from London to the United States, (ii) the Tablet was stolen property belonging to the Republic of Iraq, and (iii) the Tablet was imported illegally by the American Dealer in 2003 and by Christie's in 2014 in violation of the National Stolen Property Act.<sup>244</sup>

Upon learning this, Hobby Lobby contacted Christie's requesting a refund for the purchase price of the Gilgamesh Dream Tablet, which they believed would have to be forfeited.<sup>245</sup> Christie's refused to refund the \$1.6 million.<sup>246</sup> Hobby Lobby asserts that because Christie's would not refund the purchase price of the tablet, they were "forced to decline to stipulate voluntarily to the Government's forfeiture of the tablet."<sup>247</sup>

On November 29, 2021, the parties filed a joint notice of settlement with the court<sup>248</sup> and the case was voluntarily dismissed with prejudice on December 2, 2021.<sup>249</sup> No details regarding the settlement have been made available to the public nor has there been any reporting on the matter by journalists. The Gilgamesh Dream Tablet was returned to Iraq in December 2021.<sup>250</sup>

### 3. *The Government's Legal Theory of the Case*

As in the 2017 case, the government relied on 19 U.S.C. § 1595a(c)(1)(A) to assert its forfeiture claim against Hobby Lobby.<sup>251</sup> Under § 1595a(c)(1)(A), "[m]erchandise which is introduced or attempted to be introduced into the United States contrary to law . . . shall be seized and forfeited if it . . . is stolen, smuggled, or clandestinely imported or introduced."<sup>252</sup> Unlike the 2017 case, which focused more on the smuggling

244. *Id.*

245. *Id.*

246. *Id.* at 10–11.

247. *Id.* at 11.

248. Joint Notice of Settlement and Motion to Retain Jurisdiction, Hobby Lobby Stores, Inc. v. Christie's Inc., No. 20-CV-2239 (E.D.N.Y. Nov. 29, 2021).

249. Joint Stipulation of Dismissal with Prejudice, Hobby Lobby Stores, Inc. v. Christie's, Inc., No. 20-CV-2239 (E.D.N.Y. Dec. 2, 2021).

250. *Iraq Marks Return of Looted Gilgamesh Tablet from the U.S.*, ALJAZEERA (Dec. 7, 2021), <https://www.aljazeera.com/news/2021/12/7/iraq-marks-return-of-looted-gilgamesh-tablet-from-the-us>.

251. Verified Complaint, *One Cuneiform Tablet*, *supra* note 2, at 3.

252. *Id.* (quoting 19 U.S.C. § 1595a(c)(1)(A)).

and illegal import of the clay objects, in the Gilgamesh Dream Tablet case, the government focuses on the importation of stolen cultural property. The Complaint cites 18 U.S.C. § 2314, which states:

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise . . . of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud [violates the law].<sup>253</sup>

Finally, the Complaint states that under both of the aforementioned provisions of the United States Code, cultural property removed “without official authorization from a foreign country whose laws establish state ownership of such cultural property” is viewed as “stolen” property.<sup>254</sup>

Unlike the 2017 forfeiture action, the Complaint in the 2020 action does not address violations of U.S. Customs laws in significant detail because the circumstances of the two cases are different in that regard. In the 2017 case, Hobby Lobby imported thousands of cuneiform objects directly from sellers in the UAE using commercial shipping carriers. Additionally, in that case, Hobby Lobby quite clearly attempted to circumvent customs laws by shipping the objects in multiple packages with false documentation and declared values under \$2,000. In the 2020 case, Hobby Lobby purchased a single object from a well-known international auction house and the tablet was shipped directly from Christie’s London location to their New York offices and thus did not pass through U.S. Customs in the same way.

The Complaint in the 2020 forfeiture action for the Gilgamesh Dream Tablet cites exactly the same international laws as were cited in the 2017 action. In fact, the 2020 Complaint repeats, verbatim, the international law framework laid out in the 2017 Complaint.

### *C. The Current State of Affairs*

As the legal bases for these two cases demonstrate, there are numerous domestic and international laws in place to protect cultural objects from illegal trade. However, in the United States, these laws are really only applicable *after* such objects have been imported into the country. By then, culturally significant artifacts have already been removed from their places of origin without the knowledge of government or cultural protection officials, they may have been damaged in transit, and some are so small that they may even be lost. Increasingly, as was discussed in Section I.B,

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253. *Id.* (quoting 18 U.S.C. § 2314).

254. *Id.* at 4.

proceeds from the sale of cultural artifacts stolen from places like Iraq and Syria are being used to fund terrorist organizations. Furthermore, importation of stolen artifacts can strain relationships between countries. Laws that are intended to protect these objects and discourage the illegal antiquities trade are only effective if the illegally obtained objects are discovered by authorities. While the current legal regime may be successful in repatriating some stolen cultural objects from the United States to their countries of origin, it is not particularly effective as a means of deterring U.S. actors from participating in the international trade in illegal antiquities in the first place.

Despite domestic and international laws in place to protect cultural property and despite the domestic and international committees continuously working to revise these laws and guidelines to respond to current threats, cultural property remains imperiled. The Green family and Hobby Lobby not only illegally imported *thousands* of stolen indigenous cuneiform objects in 2010 and 2014, but they also illegally imported additional cultural artifacts, including thirteen papyrus fragments from Egypt in 2013 and a medieval Greek biblical manuscript in 2014.<sup>255</sup> Hobby Lobby President and Chair of the MOTB board Steve Green has said that when he began the collection in 2009, he did not know much “about the world of collecting.”<sup>256</sup>

Green has consistently fallen back on his naiveté as a collector when he is questioned about illegal acquisitions and has placed blame on others to avoid taking full accountability for his actions.<sup>257</sup> In a March 2020 press release announcing the return of 5,000 Egyptian papyrus fragments and 6,500 Iraqi cuneiform objects, Green said:

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255. Eileen Kinsella, *The Owners of Hobby Lobby Are Returning Biblical Antiquities That Were Allegedly Stolen by an Oxford Professor*, ARTNET (Oct. 15, 2019), <https://news.artnet.com/art-world/hobby-lobby-illicit-antiquities-1679329>; David D’Arcy, *Museum of the Bible Returns Hand-Written Gospels Looted from Greece During the First World War*, ART NEWSPAPER (Nov. 26, 2020), <https://www.theartnewspaper.com/news/museum-of-the-bible-returns-hand-written-gospels-looted-from-greece-during-the-first-world-war>; Press Release, Museum of the Bible, *Museum of the Bible Solves Mystery of Missing Greek Manuscript; Will Return Artifact to Rightful Owners* (Aug. 10, 2018), <https://www.museumofthebible.org/newsroom/museum-of-the-bible-solves-mystery-of-missing-greek-manuscript-will-return-artifact-to-rightful-owners>.

256. Press Release, Museum of the Bible, *Statement on Past Acquisitions* (Mar. 26, 2020), <https://www.museumofthebible.org/newsroom/statement-on-past-acquisitions>.

257. *Id.*

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.<sup>258</sup>

Green ended his statement by affirming his commitment to only acquiring objects with verifiable provenance and returning any "items in the collection for which another person or entity has a better claim."<sup>259</sup> Are these Green's sincere sentiments, or simply the result of him being caught violating cultural property and customs laws on multiple occasions? More importantly, what can be done to hold collectors like Green more accountable for their participation in the international market for stolen antiquities?

One step the U.S. government took as part of its 2017 settlement with Hobby Lobby was to require the MOTB to develop an acquisition policy that addressed the acquisition of cultural property. That policy first appeared on the MOTB website on January 7, 2018, and was primarily based on the standards articulated in the Association of Art Museum Directors 2008 Report on the Acquisition of Archaeological Materials and Ancient Art.<sup>260</sup> Over the last three years, this policy has been revised and is now referred to on the MOTB website as the "Collections Management Policy" (CMP).<sup>261</sup>

The CMP specifies that acquisitions can only be made by the "Board of Directors" (of which Green is the chair) and the "Chief Curatorial

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258. *Id.*

259. *Id.*

260. *Acquisition Policy*, MUSEUM OF THE BIBLE (Jan. 7, 2018), [https://web.archive.org/web/20180107054856mp\\_/https://www.museumofthebible.org/acquisitions-policy](https://web.archive.org/web/20180107054856mp_/https://www.museumofthebible.org/acquisitions-policy).

261. *Collections Management Policy*, MUSEUM OF THE BIBLE, <https://www.museumofthebible.org/acquisitions-policy> (last visited Jan. 8, 2021).



Officer.”<sup>262</sup> It also states that the “MOTB is committed to the responsible acquisition of Work(s) for the permanent Collection pursuant to” several specific guidelines.<sup>263</sup> The most relevant for the purposes of this Comment are:

4. The Museum must comply with all applicable local, state, and federal U.S. laws, and *should* also comply with foreign laws; governing ownership and title, import, export, and other issues pertinent to acquisition decisions.
5. The Museum must thoroughly research the ownership history of a Work(s) prior to its acquisition and make a rigorous effort to obtain accurate written documentation with respect to its history, including . . . import and export documents as relevant . . . .
6. Where a Work(s) is being imported into the U.S. in connection with its acquisition by the Museum, import documentation must be obtained and compliance with export laws of the country of *immediate past export* to the U.S. must be confirmed.
7. No Work(s) shall be acquired if its record of provenance is *unsatisfactory* or if there is any uncertainty concerning legal transfer of title.<sup>264</sup>

The CMP also contains a “Statement of Principles” and a section on the “Ethics of Collecting.”<sup>265</sup> Both make vague references to the museum’s commitment to responsible collecting and its condemnation of trafficking in stolen artifacts.<sup>266</sup> Finally, the CMP includes a one-sentence repatriation policy, stating that “[i]f the Museum acquires a Work(s) that is part of another country’s cultural patrimony in a manner that is inconsistent with this policy, it will seek to make equitable arrangements for the return to the country of origin if it is legally free to do so.”<sup>267</sup> It is unclear to whom or what the last “it” in the policy refers. Although the current CMP expands the previous acquisitions policy and includes a lot of words, much of the language surrounding the collecting of cultural property, commitments to provenance research, and repatriation is ambiguous. Given Green’s record

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262. *Id.*

263. *Id.*

264. *Id.* (emphasis added).

265. *Id.*

266. *Id.*

267. *Id.*

as a collector, it is difficult to read these “policies” as anything more than lip service and their ambiguity as anything short of leaving the door open for future “mistakes.”

All of this reveals that both Green and, through his leadership, the MOTB, fail to recognize the cultural artifacts in their collections as anything more than generally representative of human history. So much of what they have collected is the heritage of long-lost cultures, all that is left of ancient human beings—literally their fingerprints, signatures, and writing, in the case of the cuneiform objects. For Green, these indigenous Iraqi cuneiform objects merely *represent* human history in service of telling the story of the Bible. For Iraqis and anyone who traces their heritage to ancient Mesopotamia, the clay tablets and seals meticulously created by their ancestors are much more than a representation of history. The descendants of these ancient humans have an internationally recognized human right to possess and engage with what remains of their ancestors and the culture and language they created.

### *III. The Future of Cultural Heritage Protection*

It is clear that the current legal regime is simply not sufficient to protect cultural artifacts from being removed from their places of origin. This is especially true for places like Iraq, which has few resources to protect cultural objects from plunder and where there are economic incentives for people to sell them on the international market. Collectors, art dealers, and auction houses in the United States and Europe are taking advantage of this situation, as they have for decades, because the existing consequences for violating cultural property laws are not enough of a deterrent. Our collective responsibility to respect and protect human rights, including the human rights related to cultural property, demands a collective commitment to preventing the illegal removal of cultural heritage.

Collectors, auction houses, museums, websites, and all other entities engaging in the international antiquities trade must be held accountable for knowing the law and following it. One of the best ways to achieve this is to establish clear due diligence standards that apply to *anyone* engaging in the international antiquities trade. The Green family and Hobby Lobby recklessly scooped up as many antiquities as possible, as quickly as possible, and without engaging in any serious provenance due diligence *despite* being warned against purchasing Iraqi antiquities by an expert. Christie’s, an internationally renowned auction house, appears to have knowingly offered stolen indigenous Iraqi cultural property for sale,

attempting to avoid detection by selling the Gilgamesh Dream Tablet in a private sale. In so doing, the Greens, Hobby Lobby, Christie's, and numerous art dealers willfully interfered with the human rights of others. These two cases against Hobby Lobby make it clear that more responsibility must be placed on the businesses and collectors engaged in the international antiquities trade to conduct human rights and cultural heritage due diligence.

*A. Applying the U.N. Guiding Principles on Business and Human Rights to the Trade in Cultural Heritage*

While various organizations, both domestic and international, have developed due diligence guidelines and standards for provenance research, none of them are specifically linked to a recognition of human rights nor are they binding on collectors or corporations.<sup>268</sup> However, the U.N. Guiding Principles on Business and Human Rights (UNGPs) extend many of the human rights obligations previously only imposed on governments to businesses. As was discussed in the Introduction, cultural heritage is an essential element of human rights because it is inextricably linked with individual and community identity.<sup>269</sup> Culture has been considered a facet of human rights since the 1948 Universal Declaration of Human Rights.<sup>270</sup> Therefore, anyone engaged in the *business* of the trade in cultural heritage must consider the human rights aspect of that business.

The UNGPs were endorsed by the U.N. Human Rights Council on June 16, 2011.<sup>271</sup> Part II of the UNGPs establishes the international standards businesses should use to address human rights issues they encounter.<sup>272</sup> First, the UNGPs establish the “foundational principles” that:

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human

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268. See *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, *supra* note 149; G.A. Res. 69/196, International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences (Dec. 18, 2014).

269. Silverman & Ruggles, *supra* note 15, at 5.

270. *Id.* at 4.

271. OFF. OF THE HIGH COMM’R, U.N. HUM. RTS., GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2011), [http://www.ohchr.org/documents/publications/guidingprinciples/businesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciples/businesshr_en.pdf) at iv [hereinafter UNGPs].

272. Evelyn M. Aswad, *The Future of Freedom of Expression Online*, 17 DUKE L. TECH. REV. 26, 39 (2018).

rights of others and should address adverse human rights impacts with which they are involved.

....

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights of Work.

....

13. The responsibility to respect human rights requires that business enterprises:
  - (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
  - (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

....

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

....

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:
  - (a) A policy commitment to meet their responsibility to respect human rights;

- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.<sup>273</sup>

Applying these principles to businesses such as Hobby Lobby or Christie's would require such businesses to affirm their obligation to "respect human rights," including respect for the cultural heritage aspects of human rights.<sup>274</sup> The commentary to principle 11 further emphasizes that this respect for human rights "exists over and above compliance with national laws and regulations protecting human rights" and "requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation." Under this principle, Hobby Lobby, Christie's, and other entities engaged in the trade in cultural heritage would obligate themselves to international human rights standards. They would also obligate themselves to taking particular actions that include *preventative* measures, such as engaging in provenance due diligence.

Principle 13 as applied to businesses purchasing cultural heritage abroad, prohibits them from engaging in activities (including actions *and* omissions) that adversely affect human rights.<sup>275</sup> Crucially, this principle extends to "business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products, or services," according to the commentary.<sup>276</sup> Therefore, businesses like Hobby Lobby or Christie's would not be able abdicate their human rights responsibilities by blaming a third party. Finally, principle 15 sets out three specific policy and process requirements for businesses, including a policy clearly stating their commitment to recognizing human rights and processes for due diligence and remediation.<sup>277</sup> These lead to "operational principles" that require businesses to articulate precisely how they will identify and remedy human rights violations.<sup>278</sup>

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273. UNGPs, *supra* note 271, at 13–16.

274. *Id.* at 13.

275. *Id.* at 14–15.

276. *Id.* at 15.

277. *Id.* at 15–16.

278. *Id.* at 16–26.

The operational principles begin with principle 16, a policy commitment that becomes the foundation of the business's approach to fulfilling its responsibility to human rights.<sup>279</sup> This principle specifies that such a policy:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.<sup>280</sup>

For companies involved in the international market for cultural heritage, this kind of policy commitment would offer a level of transparency and accountability that does not currently exist. Neither Hobby Lobby nor Christie's has any publicly available policy statement regarding human rights as of this writing.

Through the UNGPs, the international community has affirmed that it expects businesses not only to respect human rights in general, but also to take decisive action to prevent and remediate any adverse human rights impacts they have caused or to which they have contributed. The U.S. government has encouraged businesses to "treat the [UNGP] as a floor rather than a ceiling for implementing responsible business practices."<sup>281</sup> In 2013, the U.S. government published the *U.S. Government Approach on*

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279. *Id.* at 16.

280. *Id.*

281. U.S. DEP'T OF STATE, RESPONSIBLE BUSINESS CONDUCT: FIRST NATIONAL ACTION PLAN FOR THE UNITED STATES OF AMERICA 17 (Dec. 16, 2016), <https://2009-2017.state.gov/documents/organization/265918.pdf>.

*Business and Human Rights* in which it endorsed the operational principles of the UNGPs.<sup>282</sup>

Despite general international and domestic acceptance of the UNGPs by 2013, neither Hobby Lobby nor Christie's has adapted its business practices to align with these principles. Additionally, the UNGPs do not include cultural heritage as a specifically identified human right linked to the *business* of cultural heritage trade. Developing a set of guiding principles for human rights and cultural heritage that establish international expectations for the international trade in indigenous cultural heritage is a necessary next step to better protect cultural heritage from illegal trafficking. In addition, encouraging businesses involved in cultural heritage trade to adopt these principles along with the UNGPs requires them to publicly affirm their respect for human rights generally and their commitment to human rights and cultural heritage due diligence.

*B. Guiding Principles for Human Rights and the International Trade in Indigenous Cultural Heritage—A Proposal*

This proposal for Guiding Principles for Human Rights and the International Trade in Indigenous Cultural Heritage (HRCHGPs) is primarily adapted from the UNGPs, the International Council of Museums (ICOM) due diligence standards, and the Association of Art Museum Directors due diligence guidelines.<sup>283</sup> It is intended as a starting point to establish international expectations for the business of international trade in indigenous cultural heritage to be conducted with respect for human rights. These principles would apply to businesses, cultural institutions, collectors, and any other entity engaging in the international trade in indigenous cultural heritage. For example, they would apply to Hobby Lobby as a business purchasing indigenous cultural heritage, they would apply to Christie's and other art dealers as businesses selling indigenous cultural heritage, and they would apply to the Green family as collectors.

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282. U.S. DEP'T OF STATE, U.S. GOVERNMENT APPROACH ON BUSINESS AND HUMAN RIGHTS 17 (2013), [https://www.law.ou.edu/sites/default/files/tab-ftp-a/image/us\\_approach\\_2013.pdf](https://www.law.ou.edu/sites/default/files/tab-ftp-a/image/us_approach_2013.pdf).

283. UNGPs, *supra* note 271; *Due Diligence / Good Faith*, ICOM INT'L OBSERVATORY ON ILLICIT TRAFFIC IN CULTURAL GOODS, <https://www.obs-traffic.museum/due-diligence-good-faith> (last visited Jan. 10, 2021); *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, *supra* note 149. The form of this proposal is borrowed from that of the UNGPs as a set of principles already endorsed by the United Nations and the U.S. government and language is adapted from all three sources, which are already widely accepted.

*General Principles*

These Guiding Principles are grounded in the recognition of:

- (a) States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
- (b) The fundamental relationship between human rights and cultural heritage;
- (c) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect the human rights aspect of cultural heritage;
- (d) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

I. The duty to protect human rights and cultural heritage

A. Foundational principles

1. States must protect against human rights and cultural heritage abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations, and adjudication.
2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect the human rights aspect of cultural heritage throughout their operations.
3. States have a responsibility to respect the human rights aspect of cultural heritage.
4. Businesses and individuals involved in the international market for the trade in cultural heritage have a responsibility to respect the human rights aspect of cultural heritage.
5. The responsibility to respect human rights and cultural heritage requires that business enterprises and individuals:



- (a) Avoid causing or contributing to adverse human rights and cultural heritage impacts through their own activities and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights and cultural heritage impacts that are directly linked to their operations, products, services, or purchases by their business relationships, even if they have not contributed directly to those impacts.

B. Operational Principles

*General State regulatory and policy functions*

6. In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises and individuals to respect the human rights aspect of cultural heritage, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for the human rights aspects of cultural heritage;
- (c) Provide effective guidance to business enterprises and individual collectors on how to respect the human rights aspects of cultural heritage throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises and individual collectors to communicate how they address their human rights impacts with regard to cultural heritage.

*The State-business-individual collector nexus*

7. States should take additional steps to protect against human rights and cultural heritage abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, requiring human rights and cultural heritage due diligence.

8. States should exercise adequate oversight in order to meet their international human rights obligations as they pertain to cultural heritage when they contract with, or legislate for, business enterprises or individual collectors to provide services that may impact the enjoyment of human rights and cultural heritage.

*Supporting business respect for human rights and cultural heritage in conflict-affected areas*

9. Because the risk of gross human rights abuses is heightened in conflict-afflicted areas, including those associated with cultural heritage, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:
  - (a) Engaging at the earliest stage possible with business enterprises and individual collectors to help them identify, prevent and mitigate the human rights and cultural heritage-related risks of their activities and business relationships;
  - (b) Denying access to public support and services for a business enterprise that is involved with gross human rights and cultural heritage abuses and refuses to cooperate in addressing the situation;
  - (c) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business and individual involvement in gross human rights and cultural heritage abuses.

*Policy commitment for businesses*

10. As the basis for embedding their responsibility to respect the human rights aspects of cultural heritage, business enterprises should express their commitment to meet this responsibility through a statement of policy that:
  - (a) Is approved at the most senior level of the business enterprise;
  - (b) Is informed by relevant internal and/or external expertise;
  - (c) Stipulates the enterprises human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services as they relate to cultural heritage;

- (d) Is publicly available and communicated internally and externally to all personnel, business partners, and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

*Human rights and cultural heritage due diligence*

11. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises and individual collectors should carry out human rights due diligence for any cultural heritage they currently possess or plan to acquire. This process should include assessing actual and potential human rights and cultural heritage impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights and cultural heritage due diligence:
  - (a) Should cover adverse human rights and cultural heritage impacts that the business enterprise or individual collector may cause or contribute to through its own activities, or which may be directly linked to its operations, products, or services by its business relationships or to its collecting;
  - (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights and cultural heritage impacts, and the nature and context of its operations or collecting activity;
  - (c) Should be ongoing, recognizing that the human rights and cultural heritage risks may change over time as the business enterprise's operations and operating context or the collector's activities evolve.
12. In order to gauge human rights and cultural heritage risks, business enterprises and individual collectors should identify and assess any actual or potential adverse human rights and cultural heritage impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:
  - (a) Draw on internal and/or independent external human rights and cultural heritage expertise;

- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.
13. In order to prevent and mitigate adverse human rights impacts, business enterprises and individual collectors should carry out provenance due diligence for any cultural heritage object they currently possess or plan to acquire. Effective provenance due diligence must include:
- (a) Thorough, written documentation of the object's ownership history demonstrating that the object was not illegally removed from its place of origin;
  - (b) Complete import documentation that demonstrates compliance with the export laws of the country of immediate past export;
  - (c) Complete documentation from sellers, donors, and their representatives of all information they possess about the object.
14. To ensure consistency in provenance due diligence for cultural heritage objects, business enterprises and individual collectors should undertake the following steps in this order:
- (a) First, verify the market price, identity of the seller/donor, their qualifications, and the reliability of the organization using documents such as export licenses from the country of origin, publication in a reputable source (annotated catalog, exhibit or auction catalog, etc.), will or inventory, certificate of authenticity, export documents, photographic evidence, family correspondence, and excavation field notes, taking care that such documents are not falsified (falsified documents should be refused), and consulting as necessary with relevant authorities in the country of transaction and/or the country of origin in the case of concerns.
  - (b) Second, if such documentation is not sufficient, further verifications and considerations should be undertaken including examining cultural objects first hand to determine if it comes from an area subjected to illicit trafficking (use ICOM Red Lists, INTERPOL and other databases of stolen

cultural objects, and other resources to make this determination) and, if the object does come from an “at risk” area, extreme due diligence must be undertaken including seeking assistance from specialists and experts, ICOM, UNESCO, national authorities, and legal advisors;

- (c) Third, enhanced due diligence can be initiated if the provenance or authenticity of the object itself raises serious doubts including obtaining additional independent expertise, consulting expert committees and gathering further opinions, checking additional databases, registers, and listings, and executing a complete background check on the seller (including previous art trade activities, information requests to law enforcement authorities, etc.);
  - (d) Finally, conflicts of interest must be considered and expert opinions deemed invalid if there is any doubt regarding their professional independence (for example, the terms of financial remuneration should not prevent the full disclosure of information and the mandated expert should also agree to disclose commercial or financial relationships with all the parties involved in the transaction.
15. In keeping with their responsibility to respect human rights and cultural heritage, businesses and individual collectors who determine that cultural heritage objects already in their collections or that are being offered for purchase have provably false or questionable provenance must report that information immediately to the appropriate government authorities.
16. However, it may be acceptable to retain or acquire a cultural heritage object if:
- (a) There is a plausible account of the item’s history by the seller or donor and other evidence that the object has been legally exported, and an accurate examination of the object has been completed;
  - (b) The ethical status is clear, but without any documentation; in such a case, should the national legislation allow, the purchaser or donee should ask for a sworn statement (affidavit) prepared by a lawyer.

17. In all cases of acquisition, a file on the object should be created and maintained in a safe location, including precise details on the means by which due diligence has been exercised along with all the related documents.

## II. Access to Remedy

### A. Foundational principle

18. As part of their duty to protect against business-related human rights and cultural heritage abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy.

### B. Operational principles

#### *State-based judicial mechanisms*

19. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights and cultural heritage abuses, including considering ways to reduce legal, practical, and other relevant barriers that could lead to a denial of access to remedy.

#### *State-based non-judicial grievance mechanisms*

20. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights and cultural heritage abuse.

#### *Non-State-based grievance mechanisms*

21. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights and cultural heritage harms.
22. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

23. Industry, multi-stakeholder, and other collaborative initiatives that are based on respect for human rights and cultural heritage-related standards should ensure that effective grievance mechanisms are available.

*Effectiveness criteria for non-judicial grievance mechanisms*

24. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of processes and outcomes available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

*Operational-level mechanisms should also be:*

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Bringing together the separate existing and internationally accepted due diligence standards for human rights and cultural heritage, this proposal for HRCHGPs serves as a foundation for discussions within the international community about how to better protect human rights and cultural heritage. It shifts the responsibility from being entirely on states to protect cultural property to the business entities that are the primary participants in the international market for trade in indigenous cultural heritage.

Although the proposed HRCHGPs, like the UNGPs, would likely not be binding on businesses, there are several reasons to believe that business entities would adopt them.<sup>284</sup> First, businesses around the world have already adopted human rights policies based on the UNGPs. Within five years of the publication of the UNGPs in 2011, a 2016 survey of 275 attorneys serving as general or senior counsel revealed that 46% of businesses had articulated human rights policies.<sup>285</sup> The same survey showed that 84% of businesses with over \$10 billion in revenue had adopted human rights policies.<sup>286</sup> In addition, 46% of the attorneys surveyed reported that they had seen commercial contracts with “specific human rights clauses.”<sup>287</sup> By adopting human rights policies, businesses receive numerous benefits including:

- Fewer legal challenges to their international activities;
- Improved relationships with other countries;
- More dependable supply chains;
- An improved global public image;
- Less risk of trade sanctions being imposed;

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284. There are valid criticisms of the non-binding nature of the UNGPs that would also apply to the HRCHGPs, but the fact remains that if there was no international consensus to make the UNGPs binding, the HRCHGPs are not likely to garner sufficient support to be made binding either. See PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS 1489–90 (2013).

285. James Wood, *The New Risk Front for GCs—Nearly Half of Contracts Have Human Rights Clauses*, *LB Research Finds*, LEGAL BUS.: BLOG (Sept. 8, 2016), <https://www.legalbusiness.co.uk/blogs/the-new-risk-front-for-gcs-nearly-half-of-contracts-have-human-rights-clauses-lb-research-finds/>.

286. *Id.*

287. *Id.*



- Improved productivity and retention of labor;
- Better relationships with shareholders, consumers, and the community.<sup>288</sup>

Businesses that extend their human rights policies to include respect for cultural heritage are likely to find that these benefits only increase because of the close connection between cultural heritage and individual and community identity.

With so many businesses already adopting human rights policies around the world, it is not unreasonable to think that the smaller subset of businesses engaged in the trade in cultural heritage would also be willing to adopt policies regarding human rights and cultural heritage. Particularly because the international market for cultural heritage has now been publicly linked to funding terrorist organizations, such businesses are likely to seek to mitigate potential public relations and legal issues related to their participation in the market. The cases discussed in this Comment reveal the complex network of auction houses, dealers, and collectors that are engaged in the business of the illegal antiquities trade. Because of these recent high-profile cases, that network of businesses and collectors will find themselves under increased scrutiny. For businesses such as Hobby Lobby and Christie's that want to continue to participate in the trade in cultural heritage, it will be necessary to take voluntary, affirmative steps to demonstrate their commitment to legal participation in that market.

For Hobby Lobby, Christie's, and the collectors and dealers involved in the cases discussed in this Comment, implementing human rights and cultural heritage policies based on the HRCHGPs would have significant beneficial impacts. Implementing such policies would demonstrate their commitment to recognizing and acting upon their obligation to respect human rights and cultural heritage. Making an intentional public commitment to respecting human rights and cultural heritage would also help to repair relationships between these businesses and other countries, especially Iraq. Such actions would demonstrate genuine contrition for the adverse impacts these business enterprises have already had on human rights and cultural heritage. Thus far, the only action taken to remedy the adverse impacts caused by Hobby Lobby, Christie's, and the collectors involved in these cases has been for the U.S. government to seize the

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288. *Global Business Responsibility Resource Center: Human Rights: Business Importance*, UNIV. OF MINN. HUMAN RIGHTS LIBR., <http://hrlibrary.umn.edu/links/gbrhumanrts.html#64357056> (last visited Jan. 17, 2021).

objects, force Hobby Lobby to forfeit them, and return them to Iraq. None of the businesses that profited off of the sale of these stolen indigenous cultural objects or the collectors who purchased them have taken direct action to repair the adverse impacts they caused. It is time for those businesses to be accountable for their participation in the illegal antiquities market and to make an affirmative commitment to human rights and cultural heritage.

### *Conclusion*

The U.S. government's forfeiture actions against Hobby Lobby to repatriate thousands of stolen indigenous cuneiform objects to Iraq has exposed the insidious involvement of businesses in the international market for illicit cultural heritage. Conducting the business of purchasing illegal antiquities in the shadows of the Internet and hidden behind the curtain of private sales, Hobby Lobby, Christie's, anonymous art dealers, and individual collectors knowingly and willfully attempted to evade domestic and international laws that protect cultural property. In so doing, they put cultural heritage at risk of damage and loss, and they robbed Iraqis and those who trace their heritage to ancient Mesopotamia of the tangible evidence of their ancestors' daily lives, language, and culture.

Current international and domestic cultural heritage protections in the form of laws, treaties, and guidelines are not sufficient to prevent cultural objects from being illegally removed from their places of origin and sold internationally. Furthermore, existing international treaties and guidelines to protect cultural heritage only apply to governments, not to businesses or private collectors. Auction houses like Christie's sell cultural objects with questionable provenance in private sales, as they did in the case of the Gilgamesh Dream Tablet, to avoid government scrutiny. Independent art dealers either falsify or conveniently "lose" provenance documentation to avoid detection, as they did in both cases involving the Hobby Lobby collection. Collectors such as the Green family plead ignorance of cultural heritage protection laws, purchasing whatever objects they wish to acquire without completing provenance due diligence.

Our collective responsibility to respect human rights certainly extends to protecting the cultural heritage that is central to individual and community identity. This is best achieved by preventing cultural heritage from illegal removal in the first place. The last two tablets of the Gilgamesh epic recount the end of the hero's travels:

*Eleven leagues he traveled and came out before the sun(rise).  
Twelve leagues he traveled and it grew brilliant.*<sup>289</sup>

*. . . Gilgamesh was roving about . . .  
wearing a skin, . . .  
having the flesh of the gods in his body,  
but sadness deep within him,  
looking like one who has been traveling a long distance.*<sup>290</sup>

The cuneiform objects that were once part of the Hobby Lobby collection have been on a similar journey, traveling great distances over many years, uncertain if they would ever return to Iraq. Although these objects have now been returned to their homeland, they will always bear the deeply sad marks of their journey, from the cracks and chips on their surfaces to being severed from their original contexts.

Just as Gilgamesh's journey ended in the light of the dawn of a new day, so too should there be light as this story comes to a close. This story should not only be about Hobby Lobby's misdeeds. It should also be about recognizing a significant failure of our collective responsibility to human rights and cultural heritage. Perhaps the light at the end of this journey can be international collaboration on a new set of Guiding Principles for Human Rights and the International Trade in Indigenous Cultural Heritage based on the proposal in this Comment. Perhaps this could be the dawn of a new era in which businesses and collectors take responsibility for protecting human rights and cultural heritage instead of only profiting from it.

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289. THE EPIC OF GILGAMESH, *supra* note 1, at tablet IX.

290. *Id.* at tablet X, <http://www.ancienttexts.org/library/mesopotamian/gilgamesh/tab10.htm>.