

SECURITY AND THE INTERNATIONAL TRAFFIC OF RARE BOOKS AND ARCHIVAL DOCUMENTS.

by Alvan Bregman

Colleagues:

The reason I am here speaking today is no doubt my penance for telling anecdotes at the RBMS Security Committee a few years ago. During a good part of the 5-years I spent as a member of that committee, I compiled the RBMS Incidents of Theft list online. As a result, my name came to the attention of the organizers of a special workshop on security organized by LIBER, the International Association of European Research Libraries [Ligue internationale des bibliothèques européennes de recherches]. The workshop was held in Paris and hosted by the Bibliothèque nationale de France, and attendance was by invitation only. I was invited to represent the Security Committee and talk about its work and about security measures with respect to rare books and special collections from a north American perspective.

Invitations such as this, rare though they may be, provide yet another reason why it is good to get involved in RBMS committees.

As it turned out, I was the only person from the United States at the meeting, and so found myself having to answer questions as if I were personally responsible for all that went on here, which was, to say the least, contrary to fact. A certain disappointment was registered when I was unable to report on the state of well-being of my presumed personal acquaintance, the Librarian of Congress [James Billington], whom I fear I would have been hard pressed to name at the time. The host country's equivalent figure, the head of the Bibliothèque nationale [Jean-Noël Jeanneney], and his senior staff, whom I met at a formal pre-workshop dinner for invited delegates, were all gracious, friendly and diplomatic.

But during the actual meeting I was startled by statements made in passing by other people who gave papers or involved me in conversation. These statements I characterized upon

RBMS Preconference Talk
June 2006

my return as a perception that the United States was a kind of “rogue nation” offering opportunity for profit to those who dealt in stolen rare materials. For example, I was asked by one person at a reception how I could explain the presence of innumerable items undoubtedly purloined from eastern Europe being openly for sale at the New York Antiquarian Book Fair, then taking place. Naturally, I had no idea what this person might be talking about, and said so. Also, during the open session of the workshop, a Commandant of police and Associate Director of the French OCBC (l’Office Central de lutte contre le trafic des Biens Culturels [Central office to combat the traffic in cultural goods]) called for more international cooperation, especially from the United States, which from his perspective was a prime destination for stolen cultural materials to be sent to be sold.

Such were the anecdotes I told that bring me to the podium today, even though I was and remain doubtful that we connive in this country in any organized way in the sale of stolen artifacts. But this begs the question, doesn’t it? And that question is, What do our laws say and what does our professional practice imply about our commitment to eliminate the trade in stolen rare books and manuscripts?

In fact, the United States is one of the few countries that imposes “no control at all over the export of cultural property”, even though the General Agreement on Tariffs and Trade (GATT), while promoting free trade, “allows measures that are ‘imposed for the protection of national treasures of artistic, historic or archaeological value’”.¹ The United States State Department maintains a web-site devoted to International Cultural Property Protection, which provides a summary of US and International laws pertinent to the subject,² and it says that it provides information on “Efforts to protect cultural property worldwide”.³ Unfortunately, the list of “Recent Reports of Looting, Theft, Prosecution and Recovery on the World Wide Web” is neither up-to-date nor complete. The latest entry is for 2004, and some of the sites that are linked by the State Department are not much better. The Art Loss

¹ Robert K. Patterson, “The legal dynamics of cultural property export controls: *Ortiz* revisited”, U.B.C. Law Review, 1995, p. 244 [209].

² <http://exchanges.state.gov/culprop/laws.html>. The list of “Recent Reports of Looting, Theft, Prosecution and Recovery on the World Wide Web” is neither up-to-date nor complete. The latest entry is for 2004.

³ <http://exchanges.state.gov/culprop/efforts.html>

RBMS Preconference Talk
June 2006

Register, for example, has only one entry to represent activity in 2005, and none so far for this year. The FBI does better in providing and linking to this kind of information, and it clearly publicizes the federal legislation that covers cultural objects. As part of its Major Crimes Unit, the FBI set up an Art Theft Program which maintains a National Stolen Art File to list objects, including books and manuscripts, which are uniquely identifiable and have historical or artistic significance, are worth more than \$2000 (unless they are associated with a major crime), and have been submitted after a police report has been filed. To be added to the File, a physical description of the object, and a photograph, if possible, must accompany the police report. A team of 12 special agents has been created to investigate the theft of art objects, so defined, and the FBI website is informative and up-to-date.

In terms of international legislation, the United States, like most countries, is a party to the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. However, the implementation act passed by Congress requires that bilateral agreements be set up between countries, and the United States has established these with a number of Latin American nations, with Cyprus and with Italy. These agreements specifically cover aboriginal and archaeological artifacts and I see no mention of books and archival documents. The United States is not a signatory to the 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Object*, but then neither is Canada or the United Kingdom, among other countries. I won't go into details about these conventions, because I am not an expert in international law, and other sessions at this conference undoubtedly address the issue. My point overall is that the United States seems no more or less remiss in approaching the problem of cultural theft than other countries, despite the perception of some in the international library world. Let me give some further examples.

Regarding cultural theft, Europeans seem to divide up the nations of the world into two categories, source countries and target countries. Based on what I heard at the LIBER workshop, the two countries most affected by the illicit trade in rare books and archival documents were France and Italy, and this position is repeated by Interpol with respect to

RBMS Preconference Talk
June 2006

cultural objects in general. While these two countries may have registered the most concern about their own cultural heritage, many other countries are greatly affected. Clearly, however, the French now take this issue very seriously, as regards their own cultural heritage, or “Patrimoine”, and it has been made illegal to sell material from French public archives. Nevertheless, the head of the French organization of antiquarian book dealers, whose acronym is SLAM, made it clear at the workshop that his members hated this provision. A few weeks ago, an article in the Korea Times complained that France possessed almost 300 royal documents which were taken by military force in 1866. The last sentence of the report is telling:

France has been refusing to accept South Korea’s request for immediate return of the ancient documents, saying that it would have to conduct a comprehensive overhaul of its policies in connection with other cultural assets it seized from foreign countries. (MSN June 11, 2006)

We can appreciate that the situation is very complicated when looking at the removal of cultural objects in previous generations. The problems are not really more simple when looking at recent incidents. The French, for example, make significant efforts to prevent the transportation of items of cultural heritage across borders. Yet, to all intents and purposes, European borders are open, and goods flow quite freely across them, from source to intermediary or target countries. Once they do exit the source country, cultural goods tend to be hard to repatriate. This is a result of the different legal frameworks that pertain in different jurisdictions. For example, common law and civil law systems treat stolen property quite differently after it has been purchased in good faith by a third party, and regardless of the legal framework, it is never easy to retrieve material once it is gone. A case in point is the Vesalius volume stolen from Christ Church College, Oxford, and purchased in supposed good faith by the Nippon Dental University in Japan. Despite the irrefutable evidence of the book’s true provenance, the Dental University has indicated it intends to keep it, and is under no legal compulsion to return it, since according to Japanese law, a two-year statute of limitations has been exceeded.

RBMS Preconference Talk
June 2006

Another issue about stolen property came up at the LIBER workshop. A legal expert spoke in detail about two cases of theft involving BNF manuscripts. The first case involved the loss of a medieval manuscript in 1994; this was seized by Swiss customs officers. The Czech perpetrators, who apparently were connected to security staff or were themselves security staff at the Library, were insolvent and so could not be fined to pay for restoration work. Judges castigated the BNF for not lodging a formal complaint as soon as the loss was discovered.

This is important. If you know an item is missing and do nothing based on this knowledge for a length of time, you may be giving up your claim to ownership of that item, as if you had left it on the curb on garbage day. The second case involved a 15th-century document stolen by a reader in 1997. A missing item report was immediately filed and Christie's reported they had the document for sale. Nevertheless, it still took a year to get the item returned. A civil suit had to be instituted against the thief to pay for damages to the manuscript.

During the closed afternoon session, a third case was mentioned *sotto voce*, which had to do with the probable theft of Hebrew manuscripts from the BNF. Many people here will now be familiar with this case, which led to the conviction of the longtime curator of Hebrew manuscripts, Michel Garel, who was suspected of playing a part in the disappearance of 25 manuscripts, and 121 leaves torn from volumes of the 14th, 15th and 16th centuries. One of these manuscripts was sold at auction by Christie's New York in 2000 for \$358,000, which brings us back to our theme. This month, the BN filed a law-suit against the Brooklyn dealer who bought the manuscript in order to secure its return. However, the dealer has said that the manuscript has already been sold to an unnamed collector, and that because Christie's will not refund his original payment, there's nothing that can be done.

All this proves, however, is that stolen manuscripts can be sold at auction in the United States in the same way that they can be sold at auction in any European capitol; that is, the United States is no exception to the rule. That it is extremely difficult to get material back

RBMS Preconference Talk
June 2006

if it is stolen on the continent and is sold in auction in England, is shown in the dramatic case of the systematic theft of rare books from the Royal Library of Denmark by one its long-time curators. Those who attended the IFLA Rare Book and Manuscript Section preconference in Copenhagen last year were shown a wall of books which had been stolen by a curator over an extended period of time, probably ending in 1975, when an inventory discovered that more than 3200 books were missing and new procedures were put in place at the library. When the curator died in the mid-1990s, family members started to sell the books through auction houses. The international aspect of the trade is noteworthy in this case. According to the indictments, 44 of these books were sold at Swann's auction house in New York between 1997 and 2002, for 4.7 million DK; 33 books were sold at Christie's London between 1998 and 2002, for 4.5 million DK; 15 to 20 prints were sold at Christie's Hong Kong, after having been sent to an agent in New York: these yielded more than 185 thousand HK dollars; It should also be noted that the family tried to sell the books first through a Toronto auction house, whose agent refused the business because of doubts about the provenance of the books. 1591 more books, worth about 90 million DK were recovered in 2003, after 16 of them were sent for pre-sale appraisal to Christie's London. In this case, agents at Christie's took the trouble to notice the library shelf marks on the books and contacted the Royal Danish Library. Other Christie's offices, in Germany and Switzerland were also contacted by the family.

The court had to deal with the statute of limitations for theft in Denmark, which is ten years, and ruled that the clock should start when the family first learned that the books were stolen, which was after the curator's death. The books that were sold have not, so far as I know, been recovered, and may be irrecoverable.⁴

It is also possible to recite cases of thefts from American institutions. Indeed, some of the most significant instances have been suffered by Texas libraries and archives. For example, W. Thomas Taylor's book *Texfake: An account of the theft and forgery of early Texas printed documents*, published in 1991, describes in detail how Texas record offices and archives were pillaged of important items by or on behalf of Dorman David. Many

⁴ http://www.kb.dk/kb/missingbooks/Baggrund/Byretsdommen_3jun04-en.PDF

RBMS Preconference Talk
June 2006

will have read recently of the thefts discovered to have been committed against the host institution of this conference, and the prosecution of an ex-volunteer worker for the crime. It seems to me that the United States should rightly be considered as much a source country for stolen books and documents as it is a target country, in which they are sold. The international nature of the antiquarian book trade precludes the idea of single responsibility for this traffic.

The issue, then, is not whether the United States is a “rogue nation”, but what responsibility librarians, archivists, auction houses and antiquarian dealers bear in aiding or preventing the trade in stolen material. In the case of the Texas thefts and forgeries, Taylor wrote,

“What is surprising, and ultimately tragic, is that the very libraries that were being plundered by thieves and defrauded by forgers were so pitifully acquiescent in the destruction and pollution of the heritage it was their duty to protect. Ranging from deliberate concealment of theft, to looking the other way when gifts of dubious provenance or authenticity were received, to simple unwillingness to pursue matters that might prove difficult when problems were exposed, Texas libraries set an example of avoidance that has had, and will continue to have destructive consequences both tangible and intangible. ... Dealers and collectors were only too willing to cooperate. In the case of both the thefts and the forgeries, there existed a powerful need not to know what had happened, to avoid asking where all the documents were coming from.” (p.69)

It is good to note that the Texas State Library and Archives Commission has since made great strides in attempting to recover and protect the material, setting up a Missing List and clearly publishing a description of the “Evidence of Ownership Markings”.

In conclusion:

The first responsibility of librarians and archivists, then, is to take seriously how we guard our collections. Our goal to provide “access” to material need not be compromised if we

RBMS Preconference Talk
June 2006

set up secure conditions by which this access takes place. We should also realize that a significant number of serious thefts against institutions—and all the cases I have cited today—took place by or with the collusion of insiders.

Secondly, we must do our utmost to catalog, describe, and above all, mark, our books and documents, so that our material is readily identifiable in case it is stolen. In response to the thefts it experienced, The Royal Library of Denmark has created a model web-site showing all the identification marks that have been used on its materials over time, as well as binding styles typical of Royal collections and private owners marks from major purchased or donated collections.⁵ All institutions should have such a public record for the reference of colleagues, dealers and collectors. Our institutions should also be conversant with and adapt the ACRL Guidelines on Marking. Our catalog records should indicate copy-specific details about our books.

We need to act quickly when items cannot be located and we need to publicize our losses as quickly as possible. During the LIBER workshop, the Director of Security of the Louvre, pointed to changes made as a result of high-profile thefts from the museum. Where once it made no assumptions when items were not in place; now, the Louvre immediately recognizes the possibility of theft. Sure, we misplace material from time to time, and material gets mis-shelved, but our default reaction should be measured alarm, not complacency.

When making acquisitions, we should check and record the provenance of the material we buy. Are there suspicious erasures or defacements? Are there marks in the book that are not described in the sales description? Is the dealer a member of an association that has adapted a code of ethics?

On the national level, perhaps it is now time to develop professional guidelines about our responsibilities regarding material of dubious provenance, a course of action that I believe

⁵ <http://www.kb.dk/kb/missingbooks/marks/>

RBMS Preconference Talk
June 2006

the RBMS Security Committee currently supports and could on which it could take the lead.

Finally, though the issues of international law and policy are not simple, and I will let experts deal with them, perhaps we should consider becoming signatories to the UNIDROIT Convention of 1995, and expanding the number of bilateral agreements under the 1970 UNESCO Convention. In any case we should let our national organizations and political representatives know that we want these issues to be seriously considered.