

Chapter 3

Overview of Crimes and Antiquities

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Preface

In 1987, grave robbers in Peru stole the largest gold object ever found from an ancient royal tomb in the archeological site of Sipàn (Atwood 2004). Weighing in at just under 3 pounds, the piece was a backflap, ripped off the skeletal remains from the tomb of an important warrior–priest. Ten years later, the backflap was recovered in the parking lot of a hotel in Philadelphia as part of sting operation conducted on the part of the Federal Bureau of Investigation (FBI) (FBI 2009). The undercover agents had offered \$1.6 million for it (Brodie et al. 2000: 15). In 1998, the backflap was finally returned to Peru and is now on display in the Museo de la Nación in Lima (Rose 1998).

In a world beset by political unrest, corruption, poverty, crime, violence, threats to international security, environmental crimes, discrimination, and social injustice, why would anyone, much less the FBI, care about what happened to that Peruvian backflap? Why should anyone, for that matter, care about the cultural heritage of distant times and far off places?

Introduction: The Changing Scope of Transnational Crime

The complex web of sociocultural, economic, political, and technological changes characterizing the twenty-first century has yielded disparate effects on countries around the world (Woods 2000; Williamson 1996), and shifts in the patterns of transnational crime are but one result of the ever-increasing interconnectedness and global character of life. Despite scholarly discord regarding the extent to which globalization has in fact accentuated transnational organized criminal activity, one fact upon which there is substantial agreement is that transnational crime today is

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51

not what it was even a few years ago (Bowman 2008). Crime now traverses both time and space at such an alarming pace that, while transnational crime itself may be nothing new, there is still something unprecedented and particularly ominous about the contemporary threat of transnational crime (Berdal and Serrano 2002).

While transnational crime itself is old news, the contemporary threat of transnational crime differs in two important respects. First, processes of globalization and changes in international political relations have meant a marked increase in integrated markets and the transnational movement of people, capital, goods, and services. Like legitimate businesses, criminal enterprises have had to adjust to the complexities of this nascent globalized economy, and as such have expanded their geographic sphere of influence beyond national borders (Naylor 2002; Passas 2002; Joyce 1999). In many respects, then, physical distance has become a nonissue for crime problems (Robinson 2000), and the menace of transnational crime – crime that affects more than one country either directly or indirectly – has wormed its way into each and every corner of the globe. Crime is, in other words, less constrained by national boundaries than ever. Transnational crime is a moving target – where it is today is not where it may be tomorrow.

Second, in addition to exerting a broader geographic influence, the scope of transnational criminal activities has also steadily diversified (Robinson 2000). Intensified international enforcement efforts mean that new forms of transnational criminal activity are springing up on a regular basis (Passas 1998). While traditional transnational criminal activities remain the same (i.e., drug and human trafficking, corruption, money laundering, extortion, etc.), criminals have learned to increase their profits exponentially by broadening their spheres of illicit activity to include cybercrime, trade in human body parts, trafficking in flora and fauna, and theft of art and antiquities, just to name a few (Mueller 2001; Williams 1999). Diversified activities, coupled with broader geographic capabilities have further turned the black and white line between the licit *upperworld* and illicit *underworld* (van Duyne et al. 2002) a decidedly murky shade of gray (Ruggiero 1998, 2000).

In this paper, we explore but one dynamic of contemporary transnational crime: crimes involving art and antiquities. We begin with a discussion of the significance of cultural heritage, followed by an overview of art and antiquities crimes. After an exploration of criminogenic asymmetries and the role they play in producing transnational criminal activity, we conclude with a discussion of policy implications of the legal–illegal interface in terms of crimes involving art and antiquities.

Why Crimes Against Cultural Heritage Matter

Art crime, which can be defined as *criminally punishable acts that involve works of art*, generally entails damage, theft, deceit, or a combination of these (Conklin 1994: 2). Subsumed under the rubric of *art crime* are such activities as diverse as art thefts and confiscations, vandalism, faked and forged art, illicit excavation and export of antiquities and other archeological materials. While the men involved in the Peruvian backflap were eventually convicted of smuggling, conspiracy, and

interstate transportation of stolen property (FBI 2009), it is essential to note that crimes involving culturally relevant material are crimes that embody a unique spectrum of harm beyond what can be legally construed as simple tangible loss. Since art, antiquities, and other culturally significant resources represent the physical vestiges of cultural heritage and the human experience, crimes against art and antiquities instead result in two types of broader, interrelated consequences: the material and the intellectual (Gill and Chippindale 1993). Antiquities and archeological resources, for example, are finite and irreplaceable; once they are gone, they are gone forever. Gone too is valuable information about the human past: objects ripped from archeological sites to be traded as commercial commodities cannot contribute much to existing knowledge about human adaptation and the development of human civilization. We are left with random objects that might be valuable or esthetically pleasing, but tell us nothing about the people or culture that produced them (Atwood 2004).

In addition to their importance as sources of cultural information, the tangible remains of human cultural heritage are also a critical component of national identity. For the Greeks, for example, the Acropolis at Athens represents central themes in modern Greek national identity: democracy, exemplary classical art, philosophy, humanism, architectural purity, the ancient *polis* at its height, and refinement of the dramatic arts (Athanasopoulos 2002). It is a cultural treasure upon which much of the modern Greek sense of national identity and cultural heritage is based. For Americans, something similar is captured in the symbolism of the Statue of Liberty, and what that represents for American cultural heritage. If the Statue of Liberty were carted off to grace some wealthy art collector's backyard, it would likely strike a chord deep in the hearts of most American citizens.

Art, antiquities, and cultural heritage thus play an integral role in the formation and perpetuation of national identity and self-image, and the destruction of such resources inevitably contributes to the destruction of a people's identity. In 2001, for example, the Taliban ordered the destruction of the Buddhas of Bamiyan in Afghanistan. These monumental sculptures, carved into sandstone cliffs during the third through fifth centuries AD, were among the most significant treasures in Afghan cultural heritage (Francioni and Lenzerini 2003). Despite public outcry over the cultural and historical value of the sculptures, the Taliban deemed them insulting to Islam. In an act that some have labeled *cultural terrorism*, the statues were blown up following the orders of the Taliban's supreme leader (Francioni and Lenzerini 2006: 31). Subsequent to the destruction of the Buddhas, Afghanistan's ruling Taliban sacrificed dozens of cows as an act of atonement for not acting sooner in destroying these statues and others (Salahuddin 2001), and Buddhist art and antiquities from Afghanistan began appearing on the international market in vast quantities (Bohlen 1996).

The loss of historical memory is not a modern problem,¹ but the recent processes of globalization, colonization, exploration, and advances in technology have meant

¹With the advent of farming, for example, empires and cities largely replaced hunter-gatherer, pastoral, and nomadic ways of life (Stille 2002: xiv).

that Western culture and its acquisitive nature have descended on every corner of the globe in an unprecedented manner. We are now faced with a troubling paradox: these modern technologies and global processes are as central in the destruction of global cultural heritage as they are in its preservation (Stille 2002). Ultimately, archeological resources, as part of universal cultural heritage, play a critical role in collective cultural identity and a sense of human history.² Clearly, then, there is much more at stake than the welfare of art, antiquities, and other culturally relevant resources.

Overview of Crimes Involving Art and Antiquities

As noted above, art crime can be construed to refer to thefts, fakes and forgeries, confiscations, vandalism, illicit excavation and export of antiquities, and other archeological resources. Many such art crimes avoid criminal punishment, however. Like other types of crime, art crime is not always reported to police, offenders are not always apprehended, and frequently cases are instead handled as civil actions (Conklin 1994). The following provides a brief overview of various criminally punishable acts involving art and antiquities, as well as some examples.

Art Theft

Of all crimes involving art and antiquities, art theft is perhaps most well-known. Dozens of articles have been published, for example, that chronicle the high-profile 1990 theft of a number of paintings from the Isabella Stewart Gardner Museum in Boston. Having entered the museum dressed as police officers, the thieves removed 13 artworks valued at over \$300 million (FBI 2009).³ While there has been much speculation on the whereabouts of the artworks,⁴ they have yet to resurface.

Many other high-profile art thefts have achieved similar legendary status. In 1969, for example, Caravaggio's *Nativity with Saints Lorenzo and Francesco*, reportedly worth over \$20 million, was stolen off the wall of a Sicilian church (FBI 2009). Its theft is rumored to have been part of a Mafia vendetta (Conklin 1994). Indeed, the fate of the painting is subject to speculation that has taken on the air of urban legend. In addition to stories of its outright destruction, it is also rumored to

²Moreover, the tangible remains of the past as they relate to collective cultural heritage are also essential elements in the perpetuation of a thriving tourist economy. Greece, for example, is a relatively poor country that relies heavily on tourism as a source of national income.

³<http://www.fbi.gov/hq/cid/arttheft/northamerica/us/isabella/isabella.htm>.

⁴At one point, for example, there was speculation that the heist had been perpetrated by individuals with ties to local organized crime groups and even the Irish Republican Army (Boston Globe 2004). See the full article online at http://www.boston.com/news/local/articles/2004/03/11/new_theory_airs_on_gardner_museum_theft/.

have been given as an Italian Mafioso wedding gift and even buried in a Sicilian treasure chest (Clarke 2005). Despite numerous appeals by local Palermo residents for its return, the painting has yet to resurface, and to this day the painting is reported to remain in Mafia hands (McMahon 2005; Isman 2001). It is high-profile cases such as these that have captured scholarly attention, the public's imagination, and carved out a unique niche within the entertainment industry. Based on cases such as these, there is no shortage of popular film and fiction devoted to the portrayal of sophisticated art heists and the debonair, sexy, *Thomas Crown* sorts who mastermind them.

It is clear that when art theft makes news, the focus is on high-value thefts from museums or private collections. As entertaining and sensational as these multimillion-dollar art crimes may be, however, most art thefts do not take place in museums, and many objects are in fact stolen alongside other objects in run-of-the-mill burglaries (Tijhuis 2006). Other common loci of art theft include places of worship, galleries, castles, and art dealers' collections, auction houses, and libraries.⁵

Art Vandalism

Art vandalism refers to the intentional damage or destruction of an artwork (Conklin 1994).⁶ In its most conventional, deliberate sense, art vandalism can best be seen as an "intermediate form between an attack on a thing and an attack on a person in so far as it entails an attack on a particular image... or on an idea or concept depicted by an image" (Cordess and Turcan 1993: 95). Many motivations for art vandalism are often construed manifestations of mental illness. No crime was charged, for example, when in 1972 Hungarian-born geologist Laszlo Toth attacked Michelangelo's Vatican *Pietà* with a hammer shouting, "I am Jesus Christ risen from the dead;" he was instead committed to a psychiatric hospital for 2 years (Cowell 1991). Other typical motivations for vandalism include: attention-seeking; self-expression; social or political protest; an expression of personal morality or standards of taste; religious motives; or purely for entertainment purposes (Conklin 1994).

In other cases, art vandalism tends toward the pragmatic; that is, damage to artwork is done for a practical purpose. In moving antiquities transnationally, for example, smugglers are clever. In Peru, ancient pottery was regularly doctored to look like modern ceramics so that they could be legally exported. The ancient pots

⁵Many libraries have fallen victim to theft of rare books and manuscripts. See, for example, Sandra Laville's recent article in *The Guardian* on William Jacques, a thief who stole £1 million worth of rare and ancient texts from the British Library. (See at <http://www.guardian.co.uk/uk/2009/feb/02/antiquarian-book-theft-library-crime>.)

⁶A more expansive definition of art vandalism could also include unintentional damage caused by thieves in the course of a theft; damage to an artwork caused by a neglectful caretaker; restorative efforts that instead mutilate an artwork; and damage to artworks caused during war or civil unrest (Conklin 1994: 227–228).

were given false bottoms made of mud and latex and stamped with *Hecho en Bolivia* (Atwood 2004: 83). Once the Peruvian antiquities had been shipped to Bolivia, where customs procedures were less stringent, objects were shipped by plane to the USA by way of Canada (ibidem).

Hamblin (1970) recounts a similar method of destructive transnational transport: "Pots, statues, and vases are much more difficult to conceal, and yet they are smuggled out regularly in false-bottomed car trunks or suitcases, in packing crates, and in small boats. In Basel, Switzerland, art lovers with good connections may be shown Etruscan vases that have been cut into two or three pieces to make them fit more easily into suitcases. A whole generation of Italian experts now makes a tidy living in Switzerland putting these pieces back together again, on order..." (ivi: 108).

In addition to facilitating their transnational movement, the damage to art and antiquities is pragmatic in that it may also help thieves and smugglers minimize the chance that they will be arrested and punished. Whether the damage is intentional or occurs through ignorance or neglect, vandalism of art, antiquities, and other cultural objects represents a substantial loss of cultural heritage (Conklin 1994).

Art Confiscation

Art confiscation generally refers to the plunder and widespread confiscation of art across Europe that was conducted under the auspices of the Nazi Party during the reign of the Third Reich (Nicholas 1995). Beginning even before World War II, the Nazis systematically looted thousands of cultural objects across Western Europe and elsewhere, gathering the most prominent public and private art collections and keeping some works for the *super museum* that Hitler intended to build in Austria and reselling others through the international art market (Gerstenblith 2004). The Nazis' goal, in other words, was to "preserve art objects either for their value abroad or for the enrichment of the Nazi leadership" (Gerstenblith 2004: 480). Thousands of items of cultural significance were stolen from Holocaust victims, including but not limited to paintings, religious treasures, books, silver, crystal, sculpture, jewelry, china, and ceramics (Nicholas 1995). While many objects were returned to their owners by the Western Allies subsequent to the war, restitution is far from complete. Countless works both sold abroad and retained by the Nazis remain unaccounted for, heirs of the original owners remain difficult to locate, survivors and their heirs are not always able to identify missing works accurately, and countries in which looted works appeared have not always been cooperative in restitution efforts (Gerstenblith 2004). Moreover, the restitution of confiscated art presents a number of complex legal issues, and many artworks looted during the Nazi regime are currently the subject of intense legal battles.⁷ In the meantime,

⁷For example, a lawsuit involving the seizure of Egon Schiele's *Portrait of Wally*, was initially commenced by the U.S. Government in 1999, claiming that the current holding institution knew that the painting had been stolen in 1938 from a Jewish owner's private collection (Hoffman 2006). To this day, the painting is still tied up in litigation (Artinfo 2008).

claims continue to be brought seeking restitution, and it is unknown how many cultural treasures looted during wartime have yet to resurface. As Gerstenblith (2004) notes, “conflicts in the former Yugoslavia, Afghanistan, and Iraq serve as continuing reminders that war often brings destruction to cultural objects and monuments” (ivi: 470).

Art Fraud⁸

The sale of counterfeit art is a globally pervasive problem with annual profits estimated in the millions (Conklin 1994). The difference between faked and forged art is that the former is an object made to resemble the style of an original artwork, while the latter is an exact copy of an original artwork which is sold as the original.⁹ While the faking or forgery of an artwork is not a criminal act per se, the attempt to disguise a work of art as someone else’s certainly constitutes forgery, which is without doubt a type of fraud (Conklin 1994).

Faked and forged art, antiquities, and other objects of cultural significance are an unfortunate but well-known element of the international art market. Forgeries are, as Radnoti (1999) notes, the *steady companion of art* (ivi: 6) which inevitably find their way into collections because art collecting increases demand for that art, and such demand fosters more forgery (ibidem). As Tjihuis observes, faked or forged art has a transnational dynamic in two respects: first, that faked artworks and forged antiquities are moved internationally in order to be sold; second, that forged antiquities that are illegally exported may initially be considered looted or smuggled, but upon discovery that they are in fact fake, it may be determined that no crime in fact was committed (2006).

It is unknown just how many fraudulent pieces are on the market or in any established collection (Conklin 1994). Regardless of its esthetic value, the commercial value of an artwork is lost when it has been shown to be counterfeit. In spite of such issues, some experts have suggested that the parallel trade in faked and forged art, antiquities, and cultural objects may in fact be a blessing of sorts in that the prevalence of fakes throughout the international art market can make theft and illicit export of original pieces less profitable (Tjihuis 2006). Charles Stanish, an archeologist who has been tracking the sale of antiquities on eBay, suggests that many

⁸While the art fraud discussed here is, for the sake of space, limited to a cursory discussion of fakes and forgeries, a broader examination of art fraud should include fraudulent activities committed on the part of dealers, collectors, auction houses, and museums. Such examples of art fraud include but are not limited to: insurance fraud, tax fraud, and investment fraud committed on the part of collectors; fraud committed on the part of dealers against artists, other dealers, collectors, auctions houses, museums; fraud committed on the part of auction houses (e.g., insider trading, the sale of stolen or counterfeit art); fraud committed on the part of museums (e.g., purchasing stolen or looted art for a collection; customs violations). For an excellent, in-depth discussion of such fraudulent activities, we refer the reader to John Conklin’s *Art Crime* (Praeger Press 1994).

⁹<http://www.spurlock.uiuc.edu/explorations/research/collecting.pdf>.

original *producers* of antiquities have shifted from looting sites for the purpose of locating saleable items to faking antiquities: “People who used to make a few dollars selling a looted artifact to a middleman in their village can now produce their own *almost-as-good-as-old* objects and go directly to a person in a nearby town who has an eBay vendor account. They will receive the same amount or even more than they could have received for actual antiquities. I have visited a number of these workshops in Peru and Bolivia. Using local materials and drawing on their cultural knowledge, small manufacturers can produce pieces that are, in some cases, remarkably accurate reproductions of actual artifacts. The really smart ones do not reproduce pieces at all but create an ever-so-slightly modified version of real artifacts that have the look and feel of an authentic ancient object...” (Stanish 2006: paragraph 5).

Archeological Site Looting and Export of Antiquities

Inevitably, archeological site looting and subsequent trafficking in antiquities and other archeological materials involve irreversible destruction of cultural resources. As Papa Sokal (2006) notes, for every marketable object that a tomb-raider unearths, many more objects and sites have been despoiled in the process (ivi: 4). In recounting the story of the looted Peruvian backflap, Atwood (2004) confirms this: “[The looters] destroyed hundreds, perhaps thousands, of copper and ceramic objects that they thought they couldn’t sell... Like grave robbers everywhere, they went straight for the best merchandise and trashed everything else along the way” (ivi: 77). In his study of Classical ceramics from southern Italy, Elia (2001) reached a similar conclusion: “It is clear that several thousands, even tens of thousands, of ancient tombs have been plundered to obtain the more than 13,6000 Apulian red-figure vases that exist throughout the world and were recovered in a nonarcheological manner” (ivi: 151).

The illicit antiquities trade is a transnational *gray* market in that it is a market with both licit and illicit elements. While the means by which antiquities are obtained may be illegal (e.g., fed by looting at archeological sites), it should be noted that on the demand end of the market, trading in antiquities is perfectly legal (Alder and Polk 2002). Owning an antiquity thus becomes illegal only when it has been stolen, smuggled, or illicitly exported (Tjihuis 2006). Therefore, in order to be profitable, the illicit means by which antiquities are obtained must be disguised in order to be profitable. This is often done by faked or forged provenance¹⁰ documents or the

¹⁰Provenance refers to the previous ownership history of an object. The term is most frequently used in the art community to refer, in other words, to what has happened to an antiquity since it came out of the ground.

exploitation of differences in the international legal landscape, such as differing statutes of limitation, legal conceptions of *ownership*, and allocation of the burden of proof.¹¹ The result is that licit and illicit antiquities become hopelessly mixed on the international art market, and because illegal excavations yield never-before-seen undocumented antiquities, they cannot easily be identified and therefore legally construed as stolen or illicitly exported (Brodie 2006).

The trade in illicitly obtained antiquities involves local, small-scale thieves, larger groups of looters, and international connections with auction houses, galleries, museums, dealers, and collectors. With the help of middlemen, antiquities looted from archeological sites are generally smuggled transnationally, laundered, and end up in the open, legal antiquities market. While many efforts have been undertaken to curb the looting problem¹² and thus eliminate supply to satisfy international demand, the global situation does not appear to be improving (Bowman 2008). Improvements in the means, ease, and speed of travel and communications, for example, have opened up regions of the world that used to be unreachable (Brodie 2002). Advancements in technology have increased the destructiveness of illegal digging, and archeological sites are scavenged at an increasingly accelerated pace (Bowman 2008). Indeed, the existence of a *gray* antiquities market facilitated by legal loopholes and fed by theft from archeological sites has led a number of scholars to conclude that the looting situation has reached epidemic proportions, and that the world's archeological resources are vanishing at an alarming rate (Hoffman 2006; McCalister 2005; Brodie 2002; Brodie et al. 2000; O'Keefe 1997).

¹¹Since property varies from one legal framework to the next, so too do legal conceptualizations of ownership. Following the Anglo-American *nemo dat* rule, for example, a thief can neither convey good title nor can someone claim good title through a thief even if the property is transferred to a good faith purchaser (Gerstenblith 2004). Unlike common law countries such as the USA, however, good title to a stolen object can be conveyed in the bulk of European continental civil law countries if the object was purchased in good faith. This means that even if an antiquity was looted and illegally exported from its country of origin, if it was subsequently purchased in good faith in a civil country, then the good faith purchase is favored and the object is no longer legally construed as stolen (Brodie 2002). Civil countries, then – most famously, Switzerland – become transit ports in which antiquities change hands and title is obtained. With a good title secured, an antiquity can now obtain legal export documentation, be legally imported elsewhere, and thus begin to circulate freely and legally on the antiquities market (Alder and Polk 2002, 2005).

¹²Legislative attempts to curb antiquities trafficking have in general identified the issue as one of theft or illicit export; that is, the enactment of national laws that vest ownership over antiquities to the State, in which case the removal of such objects constitutes theft; or, laws that attempt to prohibit exportation of such objects from national borders (Alder and Polk 2002). The salient difference between these two legislative efforts concerns its enforceability – market nations who top the list of antiquities importers have been reluctant to enforce other nations' export laws, and source nations are more successful in pursuing legal recourse when such items are legally construed as stolen (ibidem).

Estimating the Extent of Crime Involving Art and Antiquities

As Mackenzie keenly observes, “Before we can talk of how best to regulate the market, we must be sure of the existence and form of the looting problem we wish to address” (2005: 1). Accurate estimations of the global extent of crime involving cultural heritage are problematic. For one thing, estimates of economic losses and commercial gains due to transnational criminal activity in general vary wildly. This is not all that surprising given that no one really knows exactly how much illicit money is actually earned, saved, moved, and laundered around the world precisely because it is earned, saved, moved, and laundered illicitly (Naylor 2002). For another, what official statistics exist is often misleading. INTERPOL, for example, collects annual estimates of cultural property thefts from museums, places of worship, castles, archeological sites, art galleries, antique dealers, and private property. But these numbers are limited in that the majority of art crimes remain undetected and unreported to authorities; second, national statistics are recorder according to the circumstances of theft (i.e., breaking and entering; armed robbery) and not by the type of object stolen; lastly, less than half of all member countries reply annually with art crime information (INTERPOL 2009).

A second reason why it is difficult to estimate the financial extent of the losses caused by art crime is that the monetary value of art and antiquities is never fixed. In December 2007, for example, Sotheby's auction house set a new world record for the highest price for any antiquity with the sale of the Guennol Lioness, which sold for upwards of \$57.1 million²⁵, more than tripling its high presale estimate of \$18 million (Artdaily 2007; New York AFP 2007).

Despite such reservations, the FBI estimates annual losses due to art crimes as high as \$6 billion (FBI 2009).¹³ Art crime does not appear to discriminate; that is, trade in stolen and illicitly exported cultural heritage is globally pervasive. In 2002, for example, Italy reported to INTERPOL the theft of 18,715 art objects; Russia claimed the loss of 4,563 objects; Turkey reported 725 objects stolen (INTERPOL 2005).

Attempts to estimate the extent of archeological site looting and its contribution to the illicit antiquities trade are even more problematic. Firstly, looting is necessarily a clandestine activity, making it difficult to document the scope of looting activity. Secondly, looting involves two types of sites: sites that are known to archeologists and sites that have not yet been discovered (Conklin 1994). In combination with the sheer number of archeological sites (Italy, for example, like many countries with a long history, is teeming with a rich archeological heritage the whole of the

¹³Another figure often attributed to INTERPOL by scholars and journalists alike is that art crime is the third highest-grossing criminal industry, just behind drugs and arms. INTERPOL, on the other hand, has carefully and explicitly stated for years on its Web site that “We do not possess any figures which would enable us to claim that trafficking in cultural property is the third or fourth most common form of trafficking, although this is frequently mentioned at international conferences and in the media” (INTERPOL 2009). We suspect that this figure gets recycled over and over simply because it is sensational, not because it is necessarily based in fact.

country is littered with archeologically significant structures both known and as of yet undiscovered), it is difficult to assess the extent of damage to cultural heritage.

Despite these difficulties, there is a substantial body of research that paints a dismal picture of the scale of on-the-ground damage around the world through archeological field surveys and photographic testimony. In Beijing between 1989 and 1990, for example, Chinese officials estimated that nearly 40,000 tombs had been stripped of their antiquities (Anderson 2002; Murphy 1995; Platthy 1993), and in 2003 it was reported that an additional 220,000 tombs had been pillaged in the preceding 5 years (Beech 2003). In Peru, where there are an estimated 200,000 archeological sites and monuments, “[a]ll of them... including the furthest or most overgrown, have been partially affected by looting” (Alva 2001: 91).

That the damage to archeological resources is as devastating as it is pervasive is recently reiterated in a recent study by Bowman (2008). In her survey of over 2,350 archeologists working throughout the world, she found that 98% of the study participants reported that looting was happening in some capacity in the area where they conducted archeological research. The majority (68%) of respondents also reported having personally encountered evidence of looting activity on site (holes, pits, stolen excavation equipment, stashes of artifacts hidden elsewhere for later removal), and 24% reported having encountered looting in progress (Bowman 2008). When asked to estimate whether they perceived looting to be getting worse, better, or remaining constant where they work, the majority (34%) of respondents felt that it was fluctuating; that is, some years were worse than others. Only 7% of responding archeologists felt that the site looting where they work was decreasing. Indeed, if archeologists’ assessments of the presence and magnitude of looting is any indication of the true scope of the problem, then the damage is as pervasive as it is devastating. The scope of the looting problem is a reflection of the size of demand for antiquities, and it is likely that, as Bator (1982) remarks, “so long as there is a world market for beautiful objects, a substantial amount of looting will persist no matter what regulatory system is installed” (ivi: 49).

Theoretical Framework: Global Anomie, Criminogenic Asymmetries, and Trafficking in Art and Antiquities

The theoretical framework we propose as appropriate for the study of markets and networks involved in the illicit trade art and antiquities is that of “global anomie theory” (Passas 2000, 2005) and criminogenic asymmetries (Passas 1999). In a nutshell, the premises of this framework are as follows.

People act most frequently purposefully and seek to attain their goals. Some of these goals are basic – such as food, health, education, security. Other goals can be loftier, such as economic success, job promotion, etc. When these goals are blocked and people in a given society or region are unable to reach them through legitimate avenues, this causes stress. In this context, people may consider also deviant

options. Many people remain law-abiding, but some actually turn to deviance in pursuit of their goals: they may take risks, migrate illegally, turn to crime, join a gang or other criminal group, turn a blind eye and seek rents or bribes, etc.

Some social systems are unable to meet these basic needs and thus this sort of crime and deviance are expected to be high. Other societies that are wealthy confront very (analytically) similar problems because they raise expectations and promote ever higher goals for the population at large without providing at the same time legal opportunities for everyone to accomplish these higher goals. The USA, Europe, and other countries fall into this category.

The inability to meet legitimate goals (more money, better clothes, fancy cars, higher profits, etc.) through legal means causes the same sort of stress because the point of comparison (reference groups) is different for each class, stratum, or peer group – everyone compares themselves with their peers, so the rich are not immune to such pressures. But the more a social system promotes goals that unrealistic for most of the population and the more it systematically frustrates members of society, the stronger the strain, the higher the likelihood to produce deviance. Antiquity rich countries also have people who turn to crime, corruption and illegal exploitation or violence for such reasons. Similar motives underlie white-collar professionals who may allow and facilitate art destruction or smuggling, engage in purchases they know or suspect to be illegal and participate in “art laundering” to hide the true origin and circumstances through which an artifact is produced or discovered. In short, this analytical framework lends itself for the study of all nodes and contributors to illicit art networks and markets.

This process is reinforced by the globalization process and forces. Just as the American Dream keeps producing successful people as well as high levels of stress and thus deviance too in the USA, so does globalization encourage people to want and “need” things they cannot achieve or get. All this increases the likelihood that a minority of people turn to crime. If these deviant acts end up solving the problem at hand (the source of the stress or suffering), this becomes a model/example for yet others to follow, and the deviance spreads. The more it spreads, the less people feel committed to the particular rules that are so often broken and unenforced, the more people imitate it or follow peers. The extreme (which occurs extremely rarely) is anomie, where a significant normative breakdown occurs and everything goes. All this accelerates and continues, unless policies and measures intervene to stop and reverse the process.

So the essence of global anomie theory is that the rates of deviance and crime rise when societal conditions and processes undermine the guiding power of norms, when legitimacy suffers. This can happen not only when socially induced expectations are systematically frustrated, but also as a result of ill-conceived or misapplied control measures. In this sense, global anomie theory does not take effective social control for granted but treats it as potentially problematic, too.

An important set of crime-producing conditions is what has been termed *criminogenic asymmetries*. These are structural discrepancies and inequalities in economy, law, politics, technology, and culture, which emerge when unequal actors or systems with dissimilar features interact. The criminogenic potential grows when the

asymmetries fuel the demand for illegal goods and services, increase motives to participate and weaken controls. This is conducive to corruption and illegal markets, opportunities for illicit profit, reduced transparency, impunity, and lack of accountability. For example, one country has strict tax laws while another has no taxation system: this means no international cooperation is offered by the latter in fiscal matters, so controls are weak. A substance is classified as toxic in one country but not in another, thus generating a market for toxic waste. Different prioritization and handling of art theft, theft of cultural property, corruption, smuggling, and other related crimes as serious problems in some countries constitute control weaknesses. Economic asymmetries provide motives for people to turn to crime or vulnerabilities for people to take the time for better employment elsewhere and then get exploited as victims of trafficking.

Globalization renders cultural asymmetries criminogenic and brings about another sort of more questionable and criminal type of disembeddedness. The increased contact between countries with art-rich past and countries with art-collecting present results to illicit transfers of national treasures from their original sites to artificial contexts. There is a huge global market of art items which are removed or stolen from primarily economically underdeveloped countries and channeled to Western private collections, museums, or galleries. In the process of rooting paintings or frescoes out of their original context, many pieces of art are destroyed or damaged (Margules 1992).

Economic problems in some developing and art-rich countries motivate counterfeiters to sell fake art to rich foreigners, as noted above. As Brooke has remarked, this “activity is looked on favorably as a source of income that can improve the standard of living in the villages where the counterfeiters work” (1988).

Legal and cultural asymmetries allow the cleansing of stolen art through jurisdictions, where laws conveniently legitimate the ultimate possessors. Just as crime proceeds and dirty money are laundered, stolen art is purified, so we could speak of “art laundering,” as briefly mentioned earlier. In addition, there is a market for counterfeit art, given that supply is insufficient to satisfy the thirst of art collectors around the world (primarily in developed countries).

The profits in these markets are substantial while the risks of detection and sanction rather low. Asymmetric law enforcement and capacity to control are clearly taken advantage of. For example, we pointed out earlier how Peruvian antiquities get shipped to Bolivia, where customs controls are weaker, and then sent to Canada with final destination the USA. We also pointed out that the illegal origin of antiquities is disguised through fake or forged provenance documents. Moreover, we noted how legal asymmetries are indeed exploited by art traffickers: differences in statutes of limitation, legal conceptions of *ownership* and burden of proof.

As the planet is increasingly interconnected and asymmetries are multiplied, illegal markets can be expected to grow unless effective control systems are put in place. However, controls get weakened by processes conducive to *dysnomie*. Passas has described this concept as follows: “Dysnomie literally means *difficulty to govern* and obtains when the following three conditions are present: a lack of a global norm-making mechanism, inconsistent enforcement of existing international rules,

and the existence of a regulatory patchwork of diverse and conflicting legal traditions and practices” (Passas 2000: 37).

Indeed, the illicit market in art and antiquities comes close to a dynomic context, where we do have an absence of a universally accepted normative framework to regulate cross-border art-related activities and we have at the same time diverse, inconsistent and conflicting legal frameworks. So the illicit art market operates in the midst of an ineffective regulatory patchwork and fragmented controls, which make possible the commission of serious offences without breaking the laws of particular countries where some of the transactions and activities occur. Illicit art marketers, in other words often commit *crimes without lawbreaking* (Passas 1999).

Conclusion

A comprehensive examination of all the national, international, and domestic responses to art and antiquities crime is beyond the scope of our paper. What can be said with certainty, however, is that art and antiquities crime represents a complex transnational market fuelled and facilitated by several types of criminogenic asymmetries, and that the spectrum of solutions is similarly complex. Globalization presents as many opportunities for crime control policy as it does for transnational crime, and there is an urgent need for more systematic research that elicits a clearer picture of the licit-illicit interfacing in the international market of art and antiquities. In the meantime, the world’s cultural heritage continues to disappear at an alarming rate unless action is taken.

In broad terms, we need to work towards a reduction of legal asymmetries through harmonization of substantive provisions, procedures, and sanctions. Fewer regulatory asymmetries lower both criminogenesis and compliance costs to the private sector and legitimate concerns.

Nation states may complain about gradually ceding independence and power to act and shape their environment, but it is largely the exercise of their power that generates global crime opportunities for illicit markets and crime facilitation. It is national policies and measures, the use of asymmetric state powers, overemphasis of sovereignty issues, and nationalist resistances against international regulation that breed criminogenic asymmetries.

The kinds of asymmetries that contribute to illicit art markets are to a large extent the making of governments. For instance, their economic policies produce relative or objective deprivation, their subsidization of domestic industries undercuts efforts of less developed countries to narrow the gaps, their initiatives undermine efforts to prevent theft of natural and cultural property from other countries, their inability or unwillingness to reduce the demand for stolen art perpetuates these illegal markets.

In other words, the optimistic message that emerges from this analysis is that, if there is political will to combat the international crime of cultural theft and destruction, it is within the control and power of national authorities to make a significant and positive impact.

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