

# *Psychosocial Balance Sheets: Illicit Purchase Decisions in the Antiquities Market*

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## **Introduction**

The idea of a psychosocial criminology (Jefferson 2002) provides the point of departure for the argument in this article. It is also designed to contribute to the white-collar crime literature generally — including the white-collar crimes and unethical decisions which appear to play a central part in analyses in the emerging field of crimes ‘against the environment’, alongside which the desecration of temples and gravesites may be considered — through charting the mechanism of the (sometimes criminal) decision-making processes of antiquities dealers. These decisions are psychological insofar as they involve the implementation of personal thought processes resulting in individual choice; they are social in that these thought processes are influenced by definitions and arguments provided by a group discourse; and they are environmental, cultural and historical in that they provide a demand for objects recovered by looters, and therefore an incentive for the continuing destruction of the world’s precious reserves of cultural material. They are transnational, insofar as they often affect the preservation and retention of cultural heritage of and by nation states foreign to the buyer; and in addition to being psychosocial, environmental, cultural, historical and transnational, they are many other things too: not least economic.

The classic literature of sociological criminology charts correlations between social structural factors such as inequality, or poor child-rearing practices, and crime (eg in respect of the former, Cohen 1955; Merton 1968; Blau & Blau 1982; Hagan & Peterson 1994; and in respect of the latter, Loeber & Stouthamer-Loeber 1986). The fact that not all people in poverty or reared in unconstructive ways commit crime is sometimes noted and then dismissed as an inherent and inevitable facet of the social sciences; significant correlations are the best that can be produced, it is thought. It appears likely, to me at least, that the answer to the classic criminological dilemma of accounting for individual differences within social trends lies in the presence of psychosocial mediating factors. Among these mediating factors is morality; a topic which has attracted much philosophical thought, and has lately been the subject of a resurgence of interest in critical social theory, catalysed by Bauman’s interpretation and expansion of Levinas’s work (Levinas 1969, 1981; and, primarily, Bauman 1993).

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Actors make choices, and these choices are influenced by contextual experiences and perceptions of social structure. Pawson and Tilley (1997:xv) have proposed Mechanism + Context = Outcome; an equation improved, if not redeemed, by Bottoms who suggests Mechanism x Context = Outcome, since if there is no criminogenic 'mechanism' the outcome will not be crime whatever the context (Bottoms 2000:45). This criminological mathematics is attractive in its simplicity, but suggests that mechanism and context are somehow capable of separation. They are, if, with the opportunity theorists, we take an actor without a history in a context without metaphysical presence. A better view seems to be that context can be thought to create mechanism over time, and the presence of motivation can mutilate context as individually experienced, through psychological manoeuvring some of which is obvious and some less so.

Here, we shall examine the relationship between mechanism and context in respect of purchasing decisions made by dealers in the antiques market. In its traditional focus on structure, and now post-structure, much of criminology has developed without an adequate focus on the question of how and why certain criminal choices are made by given individuals. The new administrative criminology has at times purported to do this, with its neo-classical view of rational units weighing pleasure against pain (Cornish & Clarke 1986; Clarke 1995; Cornish & Clarke 2003). On closer examination, however, we see that theories of rational choice and routine activities are actually much more 'social' than psychological, involving as they do accounts of the thought processes of choice-making subjects which, although sometimes complex in their formulaic interpretations of the economy of situation, at root are only confident in their discussion of one rather basic element of an individual's decision making: the weighting of opportunity, effort and risk. Increasingly, we see the actor's choice lost in ecological patterns.

The questions of why and how individual actors make some harmfully deviant choices rather than other more conventional ones remains opaque. How are social 'inputs' actually processed by agents, to produce individual outputs, and what place does morality play in this process?

This article is based on the results of a research project undertaken between 2001–2004. A core sample of 29 interviewees in the antiques market, a subset of the wider art market, generated the main data, supplemented by a further sample of 12 interviewees from the larger sample population of the art market generally. One of the core interviews was conducted with two respondents simultaneously. Thus, a total of 40 interviews were conducted in Melbourne, Sydney, New York, London, Geneva, Bangkok, Chiang Mai and Hong Kong between September 2001 and January 2003. Many of those interviewed fall into the category of 'key informants'; they included some of the world's most important and successful dealers. My focus was on Southeast Asian antiques: the literature had suggested that these were being systematically looted and smuggled into western markets (Thosarat 2001b).

The article explores dealers' perceptions of the ethics of their trade. The data suggests the presence of mediating 'choice-influencing' factors providing a link between matters structural and individual acts of wrongdoing. The mediating factors identified are 'empathy' — a form of care for the Other central to the Levinas/Bauman construction of morality — and 'entitlement'. They are seen, as will become clear from my argument, as linked. I shall examine the place of these mediators in the decision-making process. The data support the assertions that: (a) in many of its proclamations the law wholly fails to engage with the population it purports to govern; and (b) in part this failure is due to psychological mechanisms which employ techniques of neutralisation in a systematic way, to found an entitlement to participate in harmful activity.

## Looted antiquities

Antiquities — items of cultural heritage — are ‘looted’ when they are taken illicitly from the ground, or from their place as an integral part of, or attachment to, a temple or other ancient structure (Meyer 1973; Bator 1983; Renfrew 1999). This looting happens routinely (Conklin 1994; Thosarat 2001a; Pastore 2001). The main category of relevant damage looting causes, aside from the incidental destruction of objects deemed subsidiary to the gold, silver and jewels that attract looters, is the loss of stratified context (Burnham 1975; Renfrew 1993, 1999). The association between artefacts *inter se*, and the earth in which they are found, can add greatly to our knowledge about the human past. The collection of such knowledge and its publication is the essence of archaeology (Coggins 1969, 1970).

The loss by a country of the cultural assets themselves as they travel to overseas markets is of course also a detrimental effect caused by looting. However, this loss is remediable (in theory and occasionally in practice) when a looted and smuggled object is returned to its country of origin. The loss caused to the archaeological record by looting is on the other hand an irremediable form of environmental damage — once context is destroyed, the knowledge it can offer can never be reclaimed (Chippindale & Gill 2000; Gill & Chippindale 1993).

A useful structure within which to examine the global trade is that of source and market states. The two largest market centres, in terms of volume of trade, for the sale of antiquities are New York and London (Gerstenblith 1995; Polk 2000). Antiquities looted from source countries routinely travel to these centres to be sold by international dealers and auction houses to other dealers, private collectors and museums (Elia 1994; Alder & Polk 2002). Provenance details — in other words documentary evidence of a past chain of ownership — are notable in their absence from most such transactions, and therefore it is in many cases impossible for purchasers to tell whether the object they buy has been recently looted or not.

Most source countries have passed statutes vesting undiscovered antiquities in the state, making their looting a theft from the state (Prott & O’Keefe 1984). The export of cultural property without a licence is also usually the subject of some restriction (Prott & O’Keefe 1989; O’Keefe 1997). Thus, looted antiquities are ‘illicit’, carrying with them into the market some breach of a legal provision. Despite this, due to deficiencies of law and enforcement, they are readily bought in market nations (Palmer et al 2000; O’Keefe 2000; Polk 2002; Mackenzie 2005b).

The legal regulation of the movement of antiquities is complex and problematic. In order to avoid the temptation either on the one hand to devote much time to setting out the system of international and national regulation governing the market (which can be found in Mackenzie 2005b), or on the other hand to produce an offhand reductionist statement of the legal position, it would seem appropriate here to take the line of the critical criminologists and define our subject action as criminal due to its harmful nature (eg Schwendinger & Schwendinger 1970). On this scale of definition, antiquities dealers can appropriately be labelled white-collar criminals due to the link between their purchase decisions and damage to context at source. The purchase of illicit antiquities can be described as a wrongful, and harmful, act performed in the course of trade, often by dealers of relatively high socio-economic status. An abuse of trust might be perceived between dealers and the public who invest in them faith that they will be socially, culturally and environmentally responsible in their practices. These activities, even in the absence of a legal analysis of the situation, might be argued to bring them within the acceptable limits of a definition of white-collar criminality (for the birth and refinement of this definition, see Sutherland 1949:9; Wheeler et al 1982:642; Shapiro 1990; Freiberg 1992).

If further justification for the application of the label is needed, we can briefly note that the law in fact now largely agrees with this categorisation of the purchase of illicit goods in the market. This agreement is rather abstract, however, as the chances of a conviction in practice remain slim. Arguments are made by the market lobby that they lack the necessary *mens rea* to constitute an offence (Pearlstein 2002). In the United States and the United Kingdom, the act of purchase of an unprovenanced antiquity might not amount to a criminal offence for want of knowledge or belief that the object has been looted, or if such knowledge or belief does exist, for want of the prosecutor's ability to prove it (see the *Dealing in Cultural Objects (Offences) Act 2003* (UK) s 1 and the *National Stolen Property Act* (USA) 18 USC s2314). In a market which routinely obscures provenance information, and in which objects are sold with little or no indication of prior ownership, there is ample opportunity to claim ignorance of the illicit origins of an artefact purchased.

The recent history of the antiquities market has therefore been of increasing legal attention catalysed by a shift in the socio-cultural context of the issue, beginning around 1970 when the first writings emerged drawing attention to the detrimental effect of looting on the environment and the archaeological data it holds (Coggins 1969, 1970, 1971; Meyer 1973; Burnham 1975). Prior to this time antiquities were taken, often quite openly, from source countries and traded in the international market. There was little moral commentary directed at the trade. This has changed rather dramatically in the last thirty years: through media attention and archaeological lobbying, public and government sentiment in market nations has become increasingly electric. Market sentiment, and consequently market practice, has resolutely failed to match this progression towards a moral and legal condemnation of looting and the purchase of looted objects. Operating in this climate of increased public disapproval and legal regulation, dealers have had to find ways to camouflage the illicit side of the market, and to present only its acceptable face for public scrutiny. The substance of their trade has not changed, but its formal rhetoric has had to adapt to its new status as *bête noir*: justifications for illicit practices abound.

### **The use of neutralisations by white-collar criminals**

Originating in the work of Gresham Sykes and David Matza (1957), the concept of 'techniques of neutralisation' as cognitive and discursive elements of personal accounts of action has become widely accepted. Sykes and Matza noticed that delinquent youths often justified some illegal behaviour in ways which allowed them to avoid guilt (Sykes & Matza 1957; Matza 1964). Scott and Lyman (1968) further studied these neutralisations, labelling them 'accounts' for their analysis and dividing these accounts into 'excuses' (where wrongdoing is admitted but responsibility denied) and 'justifications' (where the action is admitted, but it is denied that it was wrong).

Benson took the idea further, with a particular focus on white-collar criminals (Benson 1985). He noted that desire to maintain a non-criminal self-concept led white-collar subjects to neutralise their labelling as moral and legal deviants by employing accounts which were directly tied in social psychological terms both to their impression management (Goffman 1959) — loosely, what others might think of them — and individual cognitive event interpretation — again loosely, what they construct as their personal interpretation of events, for their own use. There is much research from various disciplines which supports the use of such neutralising accounts by individuals, not least from the field of discursive social psychology (Potter & Wetherell 1987; Billig et al 1988). The construction of identity through linguistic devices such as these is not necessarily a 'front', employed knowingly by a wrongdoer to deceive an inquirer as to the true nature of the act, but rather it often seems

to be implicit in the very carrying out of the act itself. Such techniques are not always used to rationalise the behaviour after it has occurred, but are often used in advance of deviant conduct in order to neutralise the values which forbid it. And because of the constructive effects such excuses and justifications have on individual psychology, in Benson's terms impression-management and self-persuasion often slide into each other, so that the employment of techniques of neutralisation leaves the wrongdoer believing the interpretation of events which he or she has constructed.

The antiquity dealers interviewed for this study displayed varying degrees of cognitive distortion: some were strongly attached to the idea that they were entitled to proceed with their purchase of objects known to be illicit. Others showed more reticence in this regard, but still found themselves able to use neutralisations to free themselves from 'the moral bind to law' (Matza 1964:181) and make purchases whose status as licit or illicit could not be readily determined. All of the five traditional techniques of neutralisation are present in the interview data. The market interviewees deny that they are responsible for looting. They deny the victims of their actions by devaluing the worth of archaeology, and the rights of source countries to the objects in their soil. They deny injury by opining that much looting is of graves containing duplicate items where no new archaeological knowledge rests. They condemn in various ways the archaeologists and source countries who condemn them, and they appeal to the higher loyalties of artistic appreciation and object preservation over a loyalty to archaeologists, source countries or the law.

In the following section, a framework for systematising the manner in which these techniques of neutralisation were employed by the interview sample is developed.

### **The balance sheet approach to decision making in the antiquities market**

The interviews with the dealers suggest a market discourse characterised in large part by neutralising lines of argument, which are used by purchasers to enable them to arrive at the conclusion that they are *entitled* to make purchases which may well be illicit (that is, for which the provenance is unknown). Further, many of the interviewees used the mental mathematics described below to manoeuvre themselves into psychological positions where they saw themselves as entitled to make purchases even of objects which they knew (rather than suspected) to be illicit, and which therefore carried with them the certain history of theft.

Through the use of discursive strategies, which appear in the form of techniques of neutralisation, the discourse of the market is a mechanism in the production of action on the part of the individual market members, and through their use of that discourse the mechanism is reproduced. The power of the patterned forms of neutralisation which the discourse of the antiquities market makes available to its members, is in their ability to subsist through repetition and use without any need to be incontrovertibly true. The discourse itself constitutes them as real for the purposes of influencing the buying decisions made by our choice-making subjects.

A short list of some of the neutralisations used by the interviewees to justify their purchasing decisions can be provided here. Amongst other things, dealers consistently report that most antiquities are 'chance finds' rather than the products of organised looting. As such, they perceive it as their cultural duty to 'save' these discoveries from future loss or destruction, by buying them. Given the general rule of the market that information as to origin and excavation will not be given to a buyer, there is of course no way to distinguish

a 'chance find' from a deliberately looted object. Thus, all unprovenanced antiquities can be deemed 'probably chance finds' by prospective buyers, who therefore will buy almost anything they are offered.

Other neutralisations include the argument that looting is the result of natural human curiosity and would persist whether they bought the objects or not; and that in this case it is best that they do buy the objects so that they are preserved. Preservative conditions in source countries, it is said, are less than optimal and objects are better off in the west. Source countries are perceived to hoard their artefacts, and pass restrictive laws which invite breach. Further, the dealers see themselves as protectors of culture, and argue that objects should travel internationally so that they can educate the world on foreign cultures and history. Dealers also claim that archaeologists as well as looters cause damage to sites, and that in many cases looting does not destroy any valuable knowledge. Some of these neutralisations may be valid, whereas many are of dubious foundation in reality.

It is worth revisiting here Cohen's impressively straightforward analysis of the three layers of official response to alleged government wrongdoing (Cohen 1993). Using the currently salient example of torture as a breach of human rights, he sees the three phases of response as:

- 'It doesn't happen here.
- If it does, 'it' is something else.
- Even if it is what you say it is, it is justified.'

Thus, in what Cohen calls a 'spiral of denial', the wrongful act is, in contradictory and incompatible stages, refuted. After the media exposition in 2004 of the torture of captured Iraqis by US and British troops, we might add a fourth limb to this spiral of denial:

- It happens, it can't be justified, but it is only the work of a few bad apples in the ranks.

All four of these elements of the spiral are methods of arguing for the proposition that the act in question does not represent a governmental breach of any moral rule. Each of these four elements can be identified in the discourse of the antiquities dealers interviewed.

Bauman's postmodern critique of modern morality denies the definition of morality as something that can be reasoned, or argued over (Bauman 1989, 1991, 1993). A conception of morality as 'rules' he sees as too narrow: rules are of limited use, in that they have boundaries beyond which the moral being need not venture, and in these zones immorality may be practised simply because no rule has been devised to apply. Unlike an unbounded ethic of responsibility to others (which would include responsible interaction with the environment), Bauman recognises that modern rationality has created a morality which is conceptualised as rule-based, and therefore bounded. It might be further noted that rules are manipulable, and it is this manipulation of morality which is central to the criminal choices made by the dealers in the sample. Cohen's techniques can be ranked alongside Sykes and Matza's as psychosocial tools for the internal and external (and thoroughly modern and instrumental) argument over the moral quality of an act.

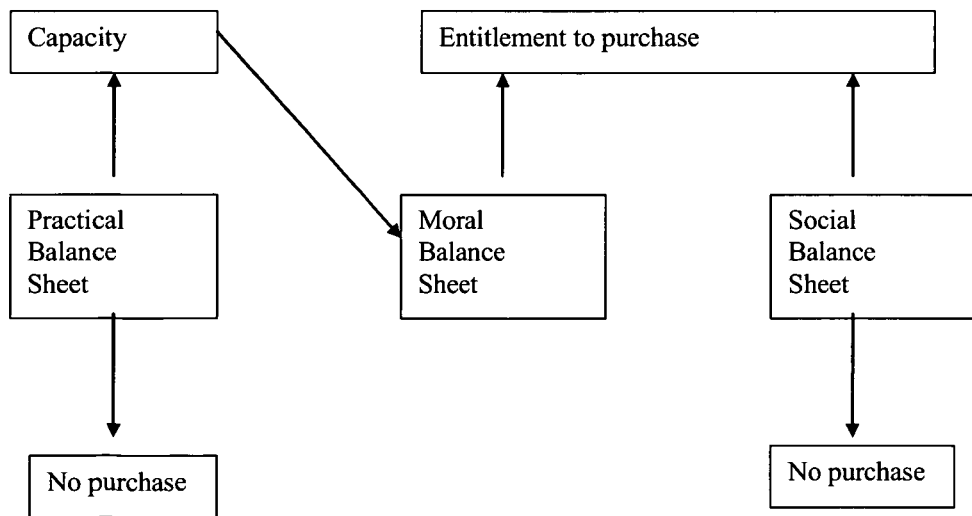
The antiquities market, therefore, is comprised of white-collar criminals using techniques of neutralisation to maintain their non-criminal self-concept. How this is done deserves deeper consideration.

I wish here to build on a metaphor used by Klockars in his 1970s case study of ‘Vincent’, a professional fence (Klockars 1974). In his conversations with Klockars, Vincent sometimes sought to excuse his illegal behaviour by showing it to be outweighed by the good things that he did:

Sure I’ve done some bad things in my life. Who hasn’t? Everybody’s got a skeleton in his closet somewhere. But you gotta take into account all the good things I done too... (Klockars 1974:151).

Klockars referred to this process by way of the metaphor of the ledger; a metaphor I will revive and expand upon here. The decision-making processes of antiquities dealers can be summarised quite accurately in terms of profit and loss accounting. They appear to employ three ‘Balance Sheets’ in making their illicit choices. I have called these the Practical Balance Sheet, the Moral Balance Sheet and the Social Balance Sheet. These imaginary Balance Sheets provide us with an heuristic tool for studying the decision-making process in this subset of white-collar criminals. Central to each of these Balance Sheets is an internal process of accounting; a listing and weighing up of goods and bads, or pluses and minuses, or as I shall call them here, in keeping with the balance sheet metaphor, ‘assets’ and ‘liabilities’. What is to follow can be represented, albeit in reductionist fashion, diagrammatically (see Figure 1). Upward arrows indicate positive balance sheet outcomes (ie a preponderance of assets over liabilities) and downward arrows indicate negative balance sheet outcomes.

**Figure 1: An heuristic model of psychosocial balance sheets in illicit purchase decisions**



In what follows, it will be helpful if the reader retains in their mind an image of an accounting balance sheet, divided into two columns: assets and liabilities.

### ***The Practical Balance Sheet***

The essence of the Practical Balance Sheet is the Benthamite weighing of pleasures and pains which has typified the crime policy approaches of classicists right up to the situational crime prevention measures devised by modern-day rational choice theorists. A positive outcome on an individual's Practical Balance Sheet is an entry requirement to this scheme of criminal action. If the outcome is in the negative, the subject is unlikely to proceed with the contemplated criminal act. A negative balance will occur when liabilities outweigh assets, that is when the perceived punishment — including all social ramifications such as loss of employment and the informal sanctions levied by family and peers — and its likelihood outweigh the desire of the subject to commit the act.

The market interview sample displayed a high level of desire to buy unprovenanced antiquities and a perception of adverse consequences (penal and other) at or approaching nil.

If a positive balance is obtained on the subject's Practical Balance Sheet, s/he<sup>1</sup> has the 'capacity' to commit the offence. S/he has decided that s/he is unlikely to suffer any evil practical consequences from the performance of the act, or that his or her desire to perform the act outweighs any considered adverse consequences. S/he may proceed to step two: the Moral Balance Sheet.

Note that a finding of capacity on the Practical Balance Sheet does not in this scheme mean that the criminal act will be committed. Rather, it means that the criminal act *may* be committed, if either the Moral or the Social Balance Sheets yield a positive result. A positive result on the Practical Balance Sheet is a requirement for entry into the Moral and Social stages of this process, rather than being sufficient to constitute grounds for criminal action in itself.

### ***The Moral Balance Sheet***

If the Practical Balance Sheet can be subtitled 'perceptions of punishment', then the Moral Balance Sheet can in turn be subtitled 'perceptions of the inherent quality of the act'. The overriding question for the subject here is: 'can I classify this act which I contemplate as morally acceptable?'

It is acknowledged that the use of the word 'moral' as describing this balance sheet raises some difficult questions, particularly in relation to the transferability of this mechanism to white-collar criminals more generally. White-collar workers, it may be suspected, would fall among those social groups least affected by issues of morality. They may be perceived as focussing on business priorities in a practical manner, rather than devoting much energy to the ethical dilemmas of the — sometimes distant or otherwise obscure — impacts of their part in the trading structure. This 'adiaphorization' through which zones of action are defined as inappropriate for moral scrutiny is an interesting diversion, but one which will not be pursued here (see further: Bauman 1989, 1991; Mackenzie 2005a, 2006).

In matters of cultural heritage protection, it is perhaps less surprising that a strong moral element was present in the representations of the interviewees. The emotive effect of arguments over the preservation or destruction of beautiful and historically vital artefacts, along with the issue of human effects on the environment, is one which lends itself to the creation of a moralistic view. Rather than any sort of moral relativism, or an express

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1 Although the language used here is gender neutral, antiquities dealers are predominantly male. This gender bias was reflected in the interview sample.



attachment to the ethic of care for the Other identified by Levinas, the dealers interviewed appealed to a rather strict brand of utilitarian morality. This utilitarian approach was used by the trade sample to claim the moral high ground: collectors of antiquities often lend their pieces to museums for public display. The cultural edification of the public in this way makes the objections of archaeologists — a small group in comparison to the general public — an anti-utilitarian and therefore immoral stance. However, this utilitarian approach (as indeed has always been its major failing) cannot completely justify the morality of disregarding the objections of the ‘minority’ archaeological community and of source countries to the destruction looting causes, and the loss of the artefacts to market forces, respectively. More is needed to arrive at the conclusion that the act of purchase is morally just, or at least morally neutral. Levinas’s ethic of care twists the soul after all, and must be reasoned away: here we turn to the Moral Balance Sheet.

The assets column of this metaphorical balance sheet contains those outputs or effects of the act of purchase of an unprovenanced artefact which can be perceived as morally good or righteous. In the case of the antiquities trade, moral assets are those results of the trade which the dealers can classify as being artistically or culturally beneficial. The liabilities column contains those outputs or effects of the criminal act which are in some way seen as detrimental to the moral framework of the actor. The neutralising discourse identified enables buyers to manipulate their Moral Balance Sheets through the discounting of perceived damage to culture and history and the prioritising of the good outputs of the trade. Morality is a negotiated outcome rather than an eternal truth.

Two examples can be provided of such manipulation of the Moral Balance Sheet. The first is the discounting of liabilities. Liabilities can be discounted by condemning the condemners. Where the condemners are also the victims of the wrongful act, this discounting of liabilities can additionally be seen as denial of the victim. This is the case for two major categories of condemners of the antiquities market; archaeologists and source countries. Archaeologists are victims when they suffer loss of data through looting, and source countries suffer loss of the objects themselves (Bator 1983) and damage to a landscape which is sometimes of some sacred value to the local population — religious burial grounds harbour rich pickings for looters. Here we find put to use by the interviewees accusations of corruption and improper preservative conditions in source countries. Condemnations of archaeologists revolve around accusations that they, as well as looters, cause destruction, and that they are insufficiently funded to be able to carry out a full and expeditious programme of excavation. The moral platform of condemners and victims of the market to criticise is removed in this process of discounting liabilities. Dealers are able to dislocate themselves in this manner from the harm their actions may be causing, and minimise the ‘liability value’ of the moral objections to the trade.

The second example of the purposeful alteration of entries in the balance sheet is the turning of liabilities into assets. Liabilities are turned into assets in the Moral Balance Sheets of antiquity traders through the manipulation of deficient provenance information in respect of an antiquity to be purchased. This usually involves an exploitation of the concept of the chance find. In this way the liability element of the purchase (the damage to context caused by looting) is transferred to the assets column (‘it is favourable to buy a chance find because in the absence of a market for such accidental discoveries, they would in some cases be destroyed’). The uncertain provenance of the artefact, instead of constituting a reason not to buy it, is turned into a reason why it should be bought. For the possible funding of the destruction of the past is substituted its certain preservation. A positive moral outcome is achieved.

In these ways, the moral balance sheet is the site of production of 'performative fronts' (Goffman 1959) by the interviewees, designed to present acceptable reasons for their conduct to outsiders, and what we might call 'psychological fronts' designed to support their actions in the dealers' own minds. In this, internal, sense I depart from Goffman in his focus on fronts as external presentations. He followed Sartre in asserting that the fronts employed by people become of such overwhelming importance to the individual that in the maintenance of a flawless visible front the interior workings of the actor are sometimes neglected. The example he used was Sartre's (1956:60) — the seemingly attentive pupil who is diverting such energy into appearing attentive that he in fact takes on board nothing that he hears (Goffman 1959:33).

The interviews are consistent with the presence of such fronts, but they go further. The dealers seem genuinely convinced of the righteousness of their actions. In other words, in addition to performative fronts designed to present acceptable reasons for their conduct to outsiders, the dealers employ psychological fronts to convince themselves. Far from being overlooked in the maintenance of the external performative fronts, the interior workings of the actor are themselves massaged in a similar fashion. In the internal dialogue the dealers have with themselves, they use psychological fronts to secure their own approval. This interpretation of the interview data is consistent with Benson's findings in his study of white-collar criminals, mentioned earlier.<sup>2</sup> The Moral Balance Sheet is a mode of both internal and external performativity.

### *The Social Balance Sheet*

The Social Balance Sheet can be given a subtitle, like the others. It is 'the social importance of the act'. Unlike the internal accounting of the Moral Balance Sheet — a personal analysis of the nature of the act in the abstract — the Social Balance Sheet is the individual's way of keeping track of where they stand with the world at large. The Social Balance Sheet, rather than being concerned with anything immanent to the contemplated act, is concerned with determining its 'social righteousness'.

In short, there are social factors which can influence actors to choose and perform items of conduct they view as morally wrong. If we found one hundred dollars in the street, some of us might be inclined to turn it in to the police. Our Practical Balance Sheets in this instance do not provide much of a check on keeping the money. We are unlikely to be apprehended for theft. Adverse social repercussions, we might assume for the purposes of this example, are perceived to be minimal: we are not in the company of friends or family who would disapprove. So we have the capacity to take the money — to commit the crime — and we move on to the Moral Balance Sheet. For many of us, the Moral Balance Sheet would be a sticking point. It is morally wrong to take money which belongs to someone else, for Levinasians and Baumanites at least. We know this, and we know that the money in the street is not ours. If, however, we decide that on balance the act is morally wrong, we still have a final chance to find our entitlement to commit the crime through our Social Balance Sheet.

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2 It is, however, in contravention to Sutton's conclusion in respect of his study of second-hand goods dealers who bought stolen goods. He identified very similar strategies of purchase to those employed by antiquity dealers — business buyers of stolen goods wanted to ensure that they appeared clean and so would ask superficial questions of the seller such as 'these all yours then?' or have the sellers sign a book giving their name and address, even though the buyer had every reason to suspect that the goods were stolen. He concluded that buyers had no moral problems with the purchase of stolen goods (Sutton 1998: 45). This is true, it seems, for a number of the core interviewees in the present research, but for many of the other antiquity dealers and collectors interviewed it is not that simple. They are aware of the harm their actions bring and must persuade themselves that overall they are doing good rather than evil to be able to continue with their trade in unprovenanced objects.

One question will suffice to introduce the Social Balance Sheet. Assuming that you are one of the category of money-finders who sees the act of taking and keeping as morally wrong, would your decision to take or not to take be affected by anything outside the immediate imagined situation? What if your bank had informed you two days earlier that an internet hacker had transferred five hundred dollars out of your online account and that (for some reason) they were disinclined to reimburse you for this fraud? Might you feel that you had suffered an injustice? Might you feel that your having lost five hundred dollars through no fault of your own gives you an entitlement to take the hundred you find before you now?

We can imagine here two types of accounting between the individual and society which would leave the individual with a feeling of entitlement to commit an act which they considered morally wrong (and for whom the Practical Balance Sheet stage has been passed with the outcome of ‘capacity’ as opposed to ‘incapacity’).<sup>3</sup> The first might be employed by a white-collar worker, we might imagine, and the second by a generally disempowered youth. They are:

- ‘Society owes me because I have added credit to it. Therefore I am entitled to make some withdrawals without penalty. Overall I will still be in credit.’
- ‘Society owes me because it has credited others but not me. Therefore I am entitled to make some withdrawals to redress the inequity between my position and that of others.’

Buyers of antiquities see their trade as socially useful and therefore place themselves in the first category of actors. The purchase of illicit goods — routine for some of the interviewees and assumed, rather hopefully, by others to be an occasional event of innocent misfortune — can be set off against the social credits they have accumulated through the cultural edification of the masses. Here also we might place the regular references the dealers made to ‘bad apples’ in the trade. Part of the maintenance of a non-criminal self-concept involves reference to the idea that there are others out there much worse than oneself: a superimposition of a social scale of ‘goodness’ on the moral scale of right and wrong, which results in the latter being concealed and losing its claim to governance of action.

## Entitlement and empathy

Figure 1 — used to summarise the balance sheet process of practical, moral and social accounting in the antiquities market — foreshadowed the issue of ‘entitlement’. It is my suggestion that moral and social entitlement provide alternatives to legal entitlement in ‘authorising’ the injurious action the studied sample of white-collar criminals routinely choose to take. Further, if we acknowledge that moral and social entitlement can be reached through a process of balance sheet accounting which has no auditor other than the user, it becomes clear that the law is only one, rather emaciated, site of influence over the decision-making process.

Criminological theory is sometimes roughly divided between those theories that prioritise motivation and those that attend primarily to opportunity. Such a division is in many respects artificial, however. Opportunity theory does not, as is sometimes alleged, ignore the question of motivation. It simply, and sensibly, proposes that where motivation

3 There may be more than two, and I am aware that without a full exploration, which cannot take place here, the second appears glib and thus problematic. However, it serves to contextualise the first example, which is the more important here.

and opportunity are needed as precursors to criminal action, so long as motivation among the populace remains constant, criminal offences can be reduced by a reduction in the number of opportunities available. It doesn't generally consider, however, that the social effects of measures taken to reduce opportunity may themselves increase motivation, and in this respect overlooks the fact that in many ways motivation and opportunity might be thought to be practically linked however keen we are to separate them conceptually. 'Criminal motivation' may at times develop from little more than the presentation of opportunity. An example of this can be found in the 'lost letters' experiments where members of the public found themselves able to keep small sums of money discovered in the street, in letters apparently mislaid by their owners (Farrington & Knight 1980). Opportunity can create motivation to commit a crime; motivation which did not exist in the actor to the extent that they actively sought the opportunity. Likewise, an absence of motivation can change the nature of a social situation from 'criminal opportunity' to 'benign encounter': as the sums of money in the lost letters increased, the proportion of finders willing to keep the envelope and its contents decreased, illustrating that for most of us there is a cut-off point above which the crime is viewed as of such gravity that opportunities for the advancement of self-interest will not be taken. Small changes in the nature of the opportunity can affect motivation, which in turn affects the definition of the situation as an opportunity.

It seems sensible then to propose that the answer to 'why people do what they do', in the field of criminality at least, lies in both motivation and opportunity (not a particularly novel proposition: see for example Farrington et al 1993), and that while theories from each camp are not necessarily to be criticised for not explaining everything, there may be worth in pursuing an investigation of concepts which run through both categories. I wish to suggest one such concept — empathy — and its possible place in the theory of psychological accounts outlined above, which views crime as an action that some individuals feel entitled to perform.

The concept of empathy is of major importance to some of the most dominant theories in criminology. Rarely do we hear it called by that name, however. We are told that psychopaths lack a developed sense of guilt (Cleckley 1976); they have an incapacity for emotional connection to the rest of humanity (Hare 1999). We are told that sociopaths as children have lacked stability and depth in their interpersonal relationships — particularly the affection of parents or guardians — leaving them with defective mechanisms of identification (Diamond 1971). Parental conflict and abuse have been noted elsewhere (outside the realm of the pathological offender) as preventing children from internalising normative controls against violent behaviour (Loeber & Stouthamer-Loeber 1986). Might we see this as an interruption of the normal process of empathy-formation which takes place to some extent in the home?

Social bonds can operate as restraints against deviance (Hirschi 1969), partly it seems due to their provision of a 'stake in conformity' (Toby 1957), but also perhaps because of the identification mechanisms they encourage in the individual. Through ties to significant others ('attachments' in Hirschi's theory) we can learn and routinise empathy, with the result that a developed sense of consideration for others can ultimately become transferable from our friends to strangers in society generally, and we develop what we might term a social conscience (Gottfredson & Hirschi 1990).

Delinquent peers provide positive definitions of offending (Sutherland & Cressey 1974) in which anti-establishment subcultural attitudes turn the world into an 'us and them' dichotomy (Cohen 1955) where allegiance to the group necessarily involves the discounting or abandonment of empathy for outsiders. The delinquent language offers up

techniques of neutralisation which enable the offender to justify or excuse his crime (Sykes & Matza 1957). None of Sykes and Matza's five techniques deals explicitly with the discounting of empathy, but in some it is implicit. Denial of injury might take the form: 'the homeowner is insured, therefore she suffers no loss through my burglary'; or perhaps: 'he is so rich he can afford it;' both of which are techniques for divesting the victim of any empathy he or she might otherwise deserve. Likewise, an appeal to higher loyalties involves the same process of empathy-discounting as the prioritising of group values and norms mentioned above: 'my friends needed my protection/some money/some excitement,' the point being that they deserve one's empathy and the victim does not.

Farrington has argued that 'the criminal career is a legally defined subset of a longer-term and more wide-ranging anti-social career,' (Farrington 1997:362). This builds on Robins' idea that there is an anti-social personality that arises in childhood and persists into adulthood (Robins 1979). The DSM-IV diagnosis tests for just this type of anti-social personality disorder. It is my contention here that *serious* anti-social behaviour involves particularly low levels of empathy for those affected, socially, as it were: that is, at the moment of offending, if not in constitutional terms.<sup>4</sup> A body of research measuring the correlation between empathy and offending has been systematically reviewed and meta-analysed by Jolliffe and Farrington (2004), although as I have written elsewhere the sociological contours of the concept are often not acknowledged in a particularly satisfactory or sophisticated way in these studies (Mackenzie 2006).

Another way of talking of anti-social values, or a deficit of empathy, is in terms of individual self-interest. Halpern initiated a quantitative study of the relationship between moral values and crime and discovered at an early stage that his chosen independent variable, 'moral tolerance' was not a concept that could be understood on a single dimension (Halpern 2001). He therefore separated the moral value items into three factors; personal-sexual, self-interest and legal-illegal. He found that being male, being young, and living in a large city, all well-known covariants of crime, were associated with a tolerance of acts of material self-interest. Self-interest might be seen as the converse of empathy. Between 1969 and 1990 levels of self-interest were found to have increased across all of the 16 nations studied, a trend 'which may be able to explain the cross-national experience of rising crime' (Halpern 2001:243). Self-interest was found to be a moderator for inequality in the relationship between that factor and crime:

Hence, inequality *per se* is only modestly associated with higher victimization rates, but when it occurs in societies that are also characterized by high levels of self-interested values then its effects become more pronounced. This latter result may help to explain the familiar puzzle of why periods such as the Great Depression of the 1930s were not associated with soaring crime (Smith 1995)... If self-interested values have changed substantially in the intervening period, and if these moderate the effects of inequality, then the relationship between inequality and crime will itself have changed over the period (2001:247).

What I mean by empathy in relation to criminality is the formation of a psychological bond between the would-be offender and the intended, or imagined, victim. This is the moral bond conceived by Bauman to consist of a responsibility to others (Bauman 1993). The effect of the consideration of this bond by the offender may be to dissuade him from the execution of an act harmful to the victim; he puts himself in the victim's shoes. It seems that empathy is central to explaining elements in the broad scheme of social action, and the more

4 The emphasis is required to distinguish low from high-level antisocial behaviour, the former of which appears in the longitudinal literature but does not meet with a liberal view of the antisocial; see for example some of the behaviours included in Farrington's Cambridge Study in Delinquent Development (Farrington and West 1990; Farrington 1995).

specific scheme of criminal action. Reducing or eliminating empathy for the intended victim is an important precondition to the violation of a legal or social rule which will result in harm to that victim; in other words to defining down moral constraint.

Empathy might therefore be seen to create a 'liability' in the Moral and Social Balance Sheets of an individual who through an empathetic connection with perceived victims of a contemplated wrongful act generates a reluctance to carry it out. We can take this separation of the moral and the social further, and distinguish 'moral empathy' from 'social empathy'.

Moral empathy would involve the general moral idea that to cause loss or injury to another is wrongful, and can therefore operate as a restraint to action. The interview data in the present project suggest that such empathy for the victim as might exist in the offender can be discounted in the process of psychological accounting described above, with the result that the offender arrives at the conclusion that s/he is entitled to commit the crime. Moral empathy is therefore removed from the liabilities column of the Moral Balance Sheet in the same way that the moral criticisms of the condemners of the market are described as being discounted above. In other words, in addition to the identification of a suitable moral standard by which to judge action, achieved often by a weighing of the various claims to morality made by interested parties (a Kantian process of reasoning where the line of duty may lie (Kant 1964)), there is the further issue of whether anyone is identified as suffering through a breach of that standard (Levinas's ethic of care). Neutralising lines of argument which deny the injury by arguing that the loss caused by looting is overblown by its victims, and further implicate those victims in the making of their own misfortune by attributing to them ineptitude and corruption, dislocate the dealers studied from feelings of moral empathy towards archaeologists and source countries. Moral empathy is, in the accounting terminology used here, discounted.

'Social empathy' may be seen as the ability to discern and identify with individuals affected by one's action, out of the general body of 'society'. Offenders with a deficit of social empathy can maintain the illusion that they are dealing with a vague and shapeless 'society' rather than an individual human being. Society is an amorphous, faceless concept that implies a resilience of scale which belies its constitution by individual fragile bodies. Environmental crimes such as toxic emissions are made more likely by their diffuse and often untraceable effects; we are all poisoning the world, and therefore ourselves, in ways that would be unacceptable if directed against a single, known individual. Low social empathy therefore manifests in the ability to dehumanise unknown others, break bonds of consideration for them, and view individual others merely as the building blocks of a general society, with whom one's relationship is distanced, tenuous, insignificant alongside all other links in the web of social junctions, qualified by the immediate proximate demands of business enterprise and competitive advantage, and therefore characterised by a reluctance to feel accountable.

Halpern, in his study mentioned earlier, concluded that while his 'self-interest' indicators were a robust and significant predictor of victimisation rates in the countries he included in his model, his 'legal-illegal' factors were not. He offers a very plausible explanation for the discrepancy, which we can now read with the concept of social empathy in mind:

Another way of looking at the 'self-interest' and 'legal-illegal' factors may be in terms of how disembodied, impersonal or 'distant' is the act and victim. The legal-illegal items tend to have a relatively clear victim, while the self-interest items tend to be relatively 'victimless' in form. This suggests that in as far as people are able to think of others in distant and impersonal ways, they are more likely to offend. Such a conceptual shift is reminiscent of the 'disembedding' that some theorists have argued characterizes modernity,

and particularly with reference to money (Simmel 1950). This theory is also supported by evidence from the British Social Attitudes surveys showing that people are much happier about cheating a large store out of money, by keeping incorrect change, than a small store (Johnson 1988) ... (Halpern 2001:249).

Empathy therefore, moral and social, may be a key concept linking together theories of motivation. Empathy can affect motivation to perform a harmful act. Can empathy also affect opportunities to commit crime? In the sense that it engenders mechanisms of informal social control, the answer would appear to be yes.

## Conclusion

A view of crime as entitlement is not unprecedented. Champion has postulated that entitling personality structures are associated with sexual aggression — his terminology involves ‘cognitively structured belief systems’ (Champion 2003). Entitlement to engage in negative behaviours was also one of the eight thinking styles found to be common to prison inmates, giving rise to the Psychological Inventory of Criminal Thinking Styles (Walters 1995a, 1995b, 1996; Walters et al 1998). However, entitlement as a *purposively manufactured* mental construct deserves greater recognition in white-collar criminology — and perhaps further exploration in relation to ‘conventional’ crimes — as does its link with empathy.

Empathy itself is a concept with strong roots in the psychological literature. Batson, for example, has developed an ‘altruism-empathy hypothesis’ which posits that absent perceived practical benefits to self, people are more likely to assist another in need if they feel empathy towards that person (Batson 1991). More interpretive research is needed to complement the quantitative literature surveyed and built upon by Jolliffe and Farrington (2004) by further interrogating the various contextual manifestations of empathy. It may be that the emerging ‘criminology of the emotions’ (see for example the collected essays in de Haan & Loader 2002) has much to add to the more established elements of the discipline.

The communicative structure of the antiquities market is of a discourse which supplies neutralising forms of language capable of influencing the choices of buyers through their entry in personal ethical and social balance sheets. Why (and how) do antiquities dealers do things that they often, in common with Matza’s delinquents, objectively declare to be wrong (Matza 1964)? They make use of discursive forms to manage their balance sheets in such a way that on this supposed weighing of assets and liabilities, they are presented with the apparently objective conclusion that they are entitled, morally and/or socially, to proceed with the wrongful action in question. Through this process of mephistophelean accounting, they evade the normative reach of the law. Entitlement is (in this case) an internally manufactured status which feels to the manufacturer as if it were externally given.

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