

## Chapter 4

# The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organised Crime in the International Antiquities Market

Simon Mackenzie

### Introduction: The Market as Criminal and Criminals in the Market

What is the relationship between organised crime and the antiquities market? There are two senses in which we can use the term “organised crime” here. In the first sense, we can see the international market in illicit antiquities as a criminal market (Polk 2000), organised into a structure of relations between thieves, smugglers, facilitators, sellers, and buyers of illicit commodities. We might therefore suggest that this illicit part of the trade is an example of “organised” crime. That argument could proceed without reference to the presence of conventionally stereotyped organised criminals in the market, in the sense of groups or networks of professional criminals who use violence and corruption in the pursuit of illegal financial gain. This view of the antiquities market proceeds with reference to the “spectrum of enterprise” approach to defining organised crime that sees global trade as always more or less legitimate or illegitimate, moral or immoral (Smith Jr. 1980; Edwards and Gill 2002, 2003). However, there are also of course many reports of antiquities being used as laundering mechanisms for drug money, as being linked to other international illicit markets, and as being colonised at the source end of the chain of supply and in transit to some extent by local political and bureaucratic corruption, the state military, other militias in conflict states, and organised crime groups, such as mafia-type organisations in Russia, Italy, and China. So we have, on the one hand, the argument that the international illicit market in antiquities is, even without reference to this type of organised criminality, an example of organised crime simply by dint of its organised market nature and the fact that many of its transactions are illegal according to the criminal laws of the jurisdictions where they take place. But we also have, on the other hand, the question whether various types of more conventionally conceived “organised criminals” are operating within the market, and if so at which points and in what form.

---

S. Mackenzie (✉)

Scottish Centre for Crime and Justice Research, University of Glasgow, Glasgow, UK  
e-mail: Simon.Mackenzie@glasgow.ac.uk

I will attempt to address both of these questions here – of the “market as criminal”, and of “criminals in the market” – while pressing the argument that one of the key points of crime reductive intervention “market” (i.e., buyer) countries such as the UK have is through controlling demand for illicit antiquities within our jurisdiction. The major problem in the UK, as with other market countries such as the USA, remains that illicit trading in antiquities subsists in the global and local trade relations which are part of the most basic architecture of formal and informal markets that continue to function in relatively plain view, and therefore have become normalised to the point that their organised ties to underlying wrongdoing or immorality have become effectively invisible.

In this chapter, I therefore want to address the problem of the presence of looted antiquities in the market as well as consider the question of opportunities for the entry of organised crime groups or networks into the market chain of supply. Rather than undertaking a review of all international criminal policy responses, I want to focus on one particular policy response – market-end criminalisation – outline its problems as it has been recently manifested in the UK, and work towards a framework that sees such criminalisation as one tool in a suite of market reduction measures which can usefully engage with the problematic culture and activities of the antiquities market. The outline for what is to follow is therefore:

1. To briefly review the UK’s recent introduction of criminal legislation which purports to ban dealing in illicit antiquities within its jurisdiction.
2. To introduce the idea of sector vulnerability studies in relation to organised crime, and to apply this method as a framework for analysing the international market in antiquities.
3. To consider the market-oriented crime prevention issues raised by the sector vulnerability approach.
4. To note that the sort of criminal policy responses to which such a sector vulnerability analysis gives recommendation in relation to reducing opportunities for organised crime in the market, are broadly the same as the responses thought to be needed to sanitise the market of looted antiquities more generally.

## **Criminalising the Market in Looted Antiquities in the UK**

In interviews with dealers around the world, I found them to be using various among the classic criminological techniques of neutralisation (Sykes and Matza 1957) to justify and excuse their participation in a market in which they knew illicit objects circulated (Mackenzie 2005b). I refer to this work in this chapter as “the 2005 study”. Towards the end of that project, in December 2003, the UK passed into law the *Dealing in Cultural Objects (Offences) Act 2003*, a piece of legislation with one main operative provision, creating a new criminal offence in the UK. The Act in Section 1 provides for a sentence on conviction on indictment of up to 7 years imprisonment and/or a fine, where a person:

dishonestly deals in a cultural object that is tainted, knowing or believing that the object is tainted.

Under Section 2 of the Act, a cultural object is “tainted” if it is excavated, or removed from a monument or other building or structure of historical, architectural, or archaeological interest, and such excavation or removal constitutes an offence. It is stated to be immaterial whether the excavation or removal took place in the UK or elsewhere. The intended effect of this legislation is therefore to criminalise (and by implication deter) the knowing possession or trade in the UK of antiquities looted either there or abroad.

With colleagues, I was funded by the UK’s Economic and Social Research Council to conduct a qualitative investigation of the London market’s reaction to the introduction of this legislation, focussing again on interviews with significant dealers and other buyers such as museums (“the 2007 study”). Throughout these studies the methodological approach I have taken has been to try to bring a social scientific interpretivism to the study of the trade in illicit antiquities, with a focus on documenting the business processes and worldviews of dealers and collectors in market countries, who provide the demand for the objects the looters are stealing.

There is a range of data which is available from these projects, and I only summarise some of the more interesting findings here. More full expositions of the whole dataset of interviews can be found in the books which have resulted from the set of interviews in the 2005 study (Mackenzie 2005b) and the socio-legal evaluation in the 2007 study (Mackenzie and Green 2009), and further analysis is available in a number of papers (Mackenzie 2002a, b, 2005a, 2006, 2007; Mackenzie and Green 2008).

In the 2007 study, we conducted a survey and a number of in-depth interviews with respondents in and around the London antiquities market to determine the market’s reaction to the introduction of the 2003 Act, and our findings can be broadly summarised as follows:

- Despite most respondents being aware of the 2003 Act, only a very small number of the trade respondents thought that they had noticed any change in trade routines which could be seen as a productive response to the Act.
- Likewise, only a very small proportion of trade respondents said that the Act would result in them changing *their own* business routines, and in many of these cases, the change planned was only formal rather than substantive.
- It was acknowledged that where changes to business routines did ensue, they were likely to be purely cosmetic.
- There was a general feeling that the antiquities market was “under fire” from regulators, journalists, and public opinion.
- Dealers, (some) museums, collectors, and officials, such as the UK’s Department for Culture, Media and Sport, all tend to work on the assumption that the market is composed of “legitimate” and “illegitimate” dealers and that therefore if the “bad apples” can be excised the “legitimate” market can function without hindrance and will not be in danger of contravening any national criminal laws. This is wrong.

The reason the ideology of the legitimate market is wrong is that the antiquities market is best seen as a grey market (Polk 2000; Bowman 2008). Illegitimate objects pass through the “legitimate” trade and therefore any regulatory attention

paid to such objects will directly affect the business of the trade generally, rather than support “legitimate” dealers by eliminating their “illegitimate” peers.<sup>1</sup>

The issue of formal (rather than substantive) responses to formal regulatory requirements is a problem that has been observed by Max Weber, and has persisted as an issue in criminology, finding its most recent place in Doreen McBarnet’s observations on “active reception” and “creative compliance” in corporate and white-collar responses to regulation (McBarnet 2003, 2006). Where business ethics do not involve a strong connection with the spirit of the law, formal responses are likely to ensue which simply use documentation and other routine activities to obscure rather than eliminate wrongdoing. This is evident in the antiquities market:

I’m in the trade, I’ve seen how things have changed. Even when I’m dealing with friends of mine, I’ll say to them ‘that’s nice’, you know, ‘how about provenance?’ Everybody says that now. ‘Got your provenance?’ Because if it has a demonstrable good provenance, that helps. It helps with the selling of it. And very often they’ll say to me, ‘well, not really’, you know, ‘I bought it from a dealer’ and that to me is okay. Because I trust them to buy in the way that I buy. And I’ll say the same thing to them (London Dealer 2005 study).

Dealers are apparently out of touch with the reality of the problem of illicit antiquities. As has been argued elsewhere (Mackenzie 2005b), while cases of high-level smuggling are given high profile in the media and therefore provide the most readily-available graphic case-studies of the illicit transit of looted antiquities, these cases must be seen in the context of a market which operates in a routine manner to circulate illicit antiquities in much less remarkable ways. As well as being averse to accepting offers of goods which are clearly illicit, the 2003 Act to be successful in sanitising the market must require of dealers that they take serious steps to investigate the provenance of the objects they routinely purchase from sources they might historically have assumed to be “trustworthy”. I will mention at more length in due course the Market Reduction Approach (MRA) to unwinding markets in stolen goods (Sutton 1998; Sutton, Schneider and Hetherington 2001), but here it is worth noting that it predicts that it is the disruption of this routine lack of reflexivity in seeing oneself *qua* buyer as a generative part of the chain of supply of illicit commodities that can have a significant effect on the supply chain, and we might add that in the antiquities market this routine lack of reflexivity manifests itself as an assumption that open market dealing equates to lawful dealing in objects which are not tainted. In light of the evidence we have from sellers on the open market as to the depth of their investigation (or general lack thereof) into object provenance, this faith in the open market appears to be misplaced.

The model of the antiquities market as a grey market captures the reality that flows of licit and illicit objects are intermixed and therefore that rather than being a market characterised by a “clean” public trade and a “dirty” private or “underground” trade, the supposedly clean public trade in antiquities is tainted “grey” by the circulation therein of illicit antiquities. Characteristic of a grey market, dealers

---

<sup>1</sup>There are of course some dealers who are more pure in their legitimate intent than others, but our interviews found that even these apparently well-intentioned dealers could not always be sure they were not dealing in some looted objects.

who would describe themselves as “legitimate”, while at times expressing concern about looted artefacts in the market, are at other more private moments surprisingly complacent about the issue of dealing in stolen goods. In a market which functions without the serious transmission of provenance, such dealing is seen as a standard risk, and remains so in the UK despite the creation of the offence in the 2003 Act:

So, stolen goods, yes, they must be here. Possibly over the course of time 10% of my stock has probably been stolen at one time or another... I don't know, but it would not surprise me if it was that high... either stolen in China, or wherever, you just don't know (London Dealer 2007 study).

We have documented various problems with the design and implementation of the 2003 Act. Many of these relate to perhaps the most well-known problem in the international regulation of the trade in illicit antiquities; that of proving the origin and transit history of a clandestinely excavated and probably illegally exported artefact. Despite these issues of proof being routine stumbling-blocks to legal action, known to all commentators on the market (e.g., Palmer 1994; Kaye and Main 1995; O'Keefe 1997; Gerstenblith 2007: 179–180), they remain as problems built into the 2003 Act through provisions such as its non-retroactivity, which demands that UK prosecutors have proof of the date an object was “stolen” (i.e., in many cases, illegally excavated or removed from its place as an integral part of a monument or other protected structure). The Act also does not include illegally exported objects within its definition of “tainted”. This is problematic since stolen objects are also often illegally exported, and it tends to be easier to prove their illegal export than it does the original theft – or at least a court would be more likely to find fault in a buyer if “taint” were to include unlawful export, the source country had a prohibition on unlicensed export of that type of artefact, and the object had no export documentation. Increased attention to illegal export would therefore be a mechanism for catching some looted objects which might otherwise be evidentially out of reach for a UK court.

The main problem with the 2003 Act, however, is in the requirement for *knowledge of or belief* in the tainted status of the object in question. This wording serves to undermine the basic message that unites all critics of the market: that effective due diligence in relation to object provenance needs to become an essential component of any purchase of antiquities. As the DCMS guidelines state:

The burden of proving knowledge or belief that an object is tainted rests with the prosecution and such proof must be beyond all reasonable doubt. *This means that a failure by the accused to carry out adequate checks on the provenance of an object will not constitute knowledge or belief* (Department for Culture Media and Sport 2004: 8, my italics).

This major failing of the 2003 Act is well-known to market participants. The problem of proof even acts as a kind of ‘pre-emptive’ neutralisation of the MRA approach of the 2003 Act, in that ‘capable guardians’ (Cohen and Felson 1979; Felson 1994) in the chain of supply remain unlikely to report suspicious behaviour. Our research has found the most common reaction of conscientious trade figures to offers suspected of being illicit to be simply to decline to purchase the object rather than report suspicions to the police. Even among the most conscientious dealers, then,

there is a culture of self-protection rather than a sense that they might individually contribute to cleaning up the market more generally.

We have accumulated considerable evidence of the “don’t ask, don’t tell” culture in relation to provenance in the antiquities market. This culture of ignorance in relation to the origin of objects is no longer a fresh revelation, having been raised in almost all of the literature on the illicit market. Not asking provenance-related questions is now enshrined by the 2003 Act and the associated DCMS guidelines as a rational strategy for a dealer who wants to buy antiquities but does not want to risk being prosecuted for the criminal offence of dealing in tainted cultural objects. What is relatively under-researched, and pertinent to the present volume, however, is the further suggestion that the presence of organised crime in the market is itself something that dealers do not want to probe to uncover, for reasons of fear. Whether these stories of organised crime are true or not, they still add to the problem of reluctance among dealers to ask the important, and culturally gauche, questions about provenance. Consider this, from a prominent London Dealer:

The people in Hong Kong don’t tell you [about provenance] because the people who smuggle the goods out of China are not the sort of people you want to talk about. When I’ve asked about odd pieces, you know, ‘Are there any excavation notes? Can you find where something like this came from? It would be fascinating to know.’ They just say, ‘You don’t ask those questions; you don’t want to get a reputation for asking questions.’ It wasn’t me saying that; that’s what they say. That’s the way presumably, if you’re a Hong Kong dealer, to end up in the harbour (London Dealer 2007 study).

## **The Antiquities Market, Sector Vulnerability, and Organised Crime**

In my empirical studies of the antiquities market I have come across only tangential and limited evidence of the presence of organised crime in the market. This may well be an artefact of the particular research methods I have used, and the constituency I have used them on: dealers at the market end of the chain of supply are perhaps the least likely participants in the market to know anything about organised crime if it is present at more distant points further up the chain, and if they do have such knowledge it is likely to be unpalatable and therefore precisely the sort of “fact” that they would tend to ignore or neutralise given their general desire to think of the market as a legitimate trading forum.

In the absence of much first-hand evidence about the participation of organised crime groups or networks in the market, a useful approach to take to the question of the relationship between organised crime groups and antiquities is to try to integrate the “sector vulnerability” approach with a market-oriented crime prevention approach, to provide an outline of a model that can tell us:

- (a) Whether the antiquities market is particularly vulnerable to organised crime compared to other commodity markets
- (b) What steps can be taken to reduce the attractiveness of the market to organised crime

In terms of sector vulnerability approaches to organised crime, I have found two approaches to be especially helpful: those of Tom Vander Beken in Belgium and Jay Albanese in the USA (Vander Beken and Defruytier 2004; Vander Beken 2004, 2005, 2007a, b; Vander Beken and Van Daele 2008; Albanese 1987, 1995, 2008). Vander Beken's model contains considerably more factors, which makes it an impressively comprehensive tool for considering sector vulnerability. However, its breadth also makes it labour-intensive as a vehicle for regular use by police analysts, and it is rather too extensive for the purposes of a brief review of the vulnerability of the antiquities sector in the space we have here – so I will apply the Albanese model. In terms of preventive approaches to organised crime, I have turned to work by Henk van de Bunt and Cathelijne van der Schoot (van de Bunt and van der Schoot 2003) and considered it alongside the MRA of Mike Sutton and colleagues (Sutton 1998; Sutton et al. 2001).

The risk assessment approach offered by proponents like Vander Beken and Albanese declines to take current knowledge about organised criminals as its focus. Rather than being nominal or group focussed, these authors encourage us to focus on the identification of high-risk products and markets. As Albanese says; “put another way, if you correctly identify the high-risk products and markets, you will know where to look for the offenders” (Albanese 2008: 269). This raises the question whether the antiquities sector can be seen as a high-risk market, or as dealing in high-risk products. A deep knowledge of the opportunity structures of that market allows us to identify the points in the chain of transaction where we should “look for the offenders” and implement measures for the protection of the market against organised crime.

In Albanese's model, four variables contain the essence of prediction of markets which are attractive to organised crime: supply, demand, regulators and competition. Supply factors concern product availability and ease of movement; demand factors include the level of demand and whether it is elastic or inelastic; competition factors include levels of profitability, which are constrained by open competition; and regulation factors include the ease of entry into the market, any special skills needed, law enforcement capacity and levels of corruption among public officials.

Here is the final 10-factor model that Albanese arrives at:

#### *Supply Indicators*

1. Objective availability of product or service
2. Ease of movement/sale

#### *Regulation Indicators*

3. Ease of entry into market by its regulation and the skills needed
4. Law enforcement capability and competence
5. Level of local government corruption

#### *Competition Indicators*

6. History of organised crime in the market
7. Profitability
8. Harm

### *Demand Indicators*

9. Current customer demand for product
10. Nature of the demand – whether elastic or inelastic

I apply this multi-factor approach to the antiquities market here, in order to demonstrate that it is a high-risk market in terms of opportunities presented to organised criminals. It is worth noting that although this analysis takes the form here of a review of the main weaknesses of the market viewed as something of an historical construct, as with any risk analysis the value of the tool increases if it is not seen as a static assessment of organised crime vulnerability, but rather analysis is performed regularly and the level of risk can therefore be subjected to a time series style of analysis. In this way, we can achieve a measure of the effect of the introduction of new initiatives and legislation not in terms of a traditional social scientific outcome evaluation but in terms of effect on market structures and characteristics, and the predicted effects of these changes on opportunities for organised crime.

### *Supply Indicators*

1. *Objective availability of product or service.* Antiquities are a relatively scarce commodity, certainly at the high end, and this contributes to the high prices they can command. Despite this scarcity, they are relatively freely available to anyone interested in looking for them, and low or non-existent levels of security at local sites of archaeological interest mean that very often the only restraint on those who wish to take antiquities is their own conscience or their reluctance to break the law. Demonstrably, these internal psychological controls have not been adequate.
2. *Ease of movement/sale.* Antiquities are sometimes small, and therefore relatively portable. This makes them an attractive commodity in terms of the risk of theft since they embody very high financial values per kilo of weight compared to other commodities. There are of course antiquities which are very large in size, and therefore not especially portable. These can be dismantled, however, to render relatively portable parts which are still independently of very high value, such as where heads are broken from statues or figures, or designs are chiselled from temple walls. In cases where it is desirable to risk moving very large artefacts, contemporary shipping mechanisms combined with corruption among local or regional officials can sometimes accommodate this. Many other factors contribute to the ease of movement and sale of antiquities, including inadequate linking of export controls in source countries with import controls in market countries, and the infamous market culture of not insisting on detailed, explicit and reliable provenance information when purchasing an artefact. Unlike other illicit commodities such as drugs, traffickers in antiquities find an established open and legal structure in market countries for selling these goods, which through chains of dealers and auction houses operates very effectively to maximise the price which can be obtained for art and antiquities.



### ***Regulation Indicators***

3. *Ease of entry into market by its regulation and the skills needed.* There are no requirements to obtain an antiquities dealing licence in most countries. The closest most countries get to that is to require application for a generic second-hand dealers' licence, which does not have especially exclusive entry requirements. The private nature of many transactions means that even requirements to hold this kind of licence can be easily evaded, and the high value/low volume of the objects combined with the fact that they do not need any particularly special storage conditions means that people can set themselves up as dealers from home. The overheads are therefore low, contributing to a low barrier to entry into the market. The one most pertinent skill that is needed to function profitably in the antiquities market is to know enough about the objects in question to be able to detect fakes, and to pass objects into the market without raising suspicions (i.e., looking too much like a criminal). While there are therefore some obstacles to be negotiated by way of entry into the market, none of these is burdensome.
4. *Law enforcement capability and competence.* Law enforcement capability is generally low in both source and market countries, where policing and other resources are stretched and antiquities theft and trafficking is likely to be overshadowed by other criminal threats which are perceived to be graver. Law enforcement competence varies from country to country: at best countries have a national art and antiquities enforcement unit, and dedicated specialists within borders agencies. Even where this is the case, issues of competence tend to be overshadowed by issues of capacity, and the culture of secrecy in the trade combined with the relatively high status of dealers, plus the small percentage of shipments which can actually physically be checked by customs, combine to mean that most antiquities in transit and in the market are not subject to extensive law enforcement scrutiny.
5. *Level of local government corruption.* The international market in antiquities tends to operate by taking objects from poor countries and delivering them to rich countries. Problems of corruption can be present at all levels, but are observed to be more widespread in poor countries where economic factors support cultures of bribery which may have become relatively ingrained.

### ***Competition Indicators***

6. *History of organised crime in the market.* Recent concern has been expressed at the international level about organised crime in the antiquities market, although it seems to be the case – as is not unusual – that more research is needed to accurately identify the extent to which organised crime operates in the market.
7. *Profitability.* As mentioned above under “portability”, antiquities can be a highly profitable commodity, particularly where they can be acquired at source for low or no cost. By way of example as to the high prices provenanced antiquities can command on the open market, in 2007 Sotheby's sold the Guennol

Lioness for US\$ 57.2 million – the highest price ever recorded for a sculpture, and especially interesting for criminologists as the statue is a mere 3¼ in. in height, and therefore a very good example of a highly valuable and highly portable commodity.

8. *Harm*. It is clear from the archaeological discourse on looting that these activities cause substantial harm to sites, to objects, and to our historical knowledge base (Brodie et al. 2000, 2001).

### *Demand Indicators*

9. *Current customer demand for product*. In my interviews with antiquities dealers, they have suggested several things about customer demand. They have suggested that the market is not as big or as active as it once was, although this seems to have been an attempt to deflect attention from their activities as I found it to be contradicted by official trade figures (Mackenzie 2005b). As well as arguing that the market is shrinking, they have suggested that the nature of consumer demand is changing. Dealers report that connoisseur collectors, interested in art history and in learning about the objects they buy, are being increasingly replaced by wealthy types who buy objects for speculative investment purposes, or as cultural signifiers (in the sense of mantelpiece status symbols) or both. These buyers, it is said, do not care so much about the history of the object or its place in the overall history of art. Rather than dealers educating their clients over time and cultivating a thirst for knowledge as well as for acquisitions, here as elsewhere the dealing role has become more functionally consumer-oriented, simply delivering attractive objects to rich but under-informed purchasers. So demand remains healthy, albeit changing in demographic in line with the changing times (and we shall consider the implications of this for regulation below).
10. *Nature of the demand – whether elastic or inelastic*. High elasticity signifies a market where when the price of the commodity goes up, demand drops off disproportionately. Low elasticity would be present if price rises did not suppress levels of demand. Demand is inelastic if despite price rises, demand remains the same. A market is taken to be more vulnerable, or attractive to organised crime, if its elasticity is low. We can see that this is most likely to be the case in markets characterised by addiction, where consumers are not in a good position to make rational decisions to suppress their demand. It is also likely to be a feature of markets where there is high finance at the demand end: in drug markets, price rises might be associated with increases in thefts by users to finance the uplift, but in markets with clients who have more money at their disposal, they may simply be prepared to pay more. One would have to conduct an economic analysis of the history of the evolution in prices in the antiquities market in order to determine the level of elasticity in demand. But even without doing so, we can observe that the collection of antiquities is

performed by affluent individuals, and that it involves a certain kind of object fascination or fetish which can approach addiction. It is in fact a generally accurate diagnosis of the current state of the antiquities market to say that it has been, and still is, driven by buyers who want its objects no matter what, and who therefore find themselves turning a blind eye to suspicions of looting which if investigated with any real energy would probably reveal illegality in a planned purchase. It is, in other words, a market characterised by a knowing reluctance to know, or in a word which accurately captures that state of affairs, denial (Cohen 2001; Mackenzie 2007).

On every measure of a sector vulnerability scale, the antiquities market therefore emerges as presenting opportunities for profit-making through crime. What can we do to reduce some of these opportunities? Where criminal markets involve an interface between legitimate and illegitimate, as is the case in the antiquities market, it is often thought to be productive to focus on that interface, as a means of activating legitimate actors towards taking measures to insulate the market and reducing opportunities for organised crime.

Van de Bunt and van der Schoot identify three categories of “interfaces” between OCGs and the legitimate environment:

1. The demand from the licit environment for illegal products and services
2. The abuse of facilitators in the licit environment
3. The availability of “tools” in the licit environment (van de Bunt and van der Schoot 2003: 9)

These three categories of what van de Bunt and van der Schoot call “red flags” therefore give rise to three associated types of crime prevention response:

1. Reducing the demand for illegal products and services: for example, through social and economic measures.
2. An increase in awareness of abuse of facilitators and measures to increase their defensibility: for example, codes of conduct, screening of personnel and licence requirements that exclude criminals from certain trades or from tendering for public contracts.
3. Diminish the availability of tools in the licit environment which can be used by organised criminals: for example, by strong money laundering regulations combined with the regulation of alternative money transfer mechanisms which might otherwise be used to circumvent regulations.

A study of the antiquities market reveals the interface between illegitimate and legitimate as paramount in allowing crime to profit in the market. The grey market nature of the antiquities trade, where illicitly obtained objects become effectively laundered by insertion into legitimate streams of supply, allows them then to be sold at the high prices they would not command were it indisputable they were illicit. The obfuscation of provenance in the chains of supply of antiquities is relevant to all three of the “red flag” categories: it allows demand for illicit objects to persist even among those who do not know, or do not want to know, that objects are looted. It involves a range of facilitators and complicit actors, including dealers themselves

(Kersel 2006). In studies of other organised criminal activities, professionals who act as facilitators have routinely been found: often lawyers and accountants who can set up front companies or assist in money laundering. The facilitators in the antiquities trade are a range of actors who offer various services, such as customs officials, appraisers, dealers and museums, and even academics (Brodie 2009) who in extreme cases may be bribed but many of whom routinely facilitate the illicit market simply by being reluctant to exercise what power they have to stop it. And the process is constituted by various “tools” of legitimation available to criminals, including fake documents (cf. the Sevso treasure litigation and the Schultz case), auction mechanisms (Watson 1997), movement through numerous jurisdictions (Polk 2000), and so on.

### **The Market Reduction Approach to Tackling Theft**

The three types of crime reductive and preventive measures proposed by van de Bunt and van der Schoot are a useful way to think about approaches to preventing organised crime in the antiquities market. In this market, each of these crime reduction measures requires that purchasers of antiquities be made to care about the origin of their purchases, and not only to reject looted antiquities, but also to report suspicions to the police when they have them. There is some way to go in changing attitudes and routines in this market.

In this regard, the observations made by the dealers on the new class of buyer mentioned above – the art-for-status rather than the art-for-collection purchaser – could be read in an optimistic as well as a pessimistic light. It might be thought that the new brand of purchasers, being apparently little concerned with issues such as object history, prove difficult subjects in whom to inculcate the importance of provenance. In truth though, the sorts of erstwhile art-historian style collectors that dealers say they regret losing did not present great evidence of reluctance to acquire looted pieces (Renfrew 1993; Elia 1994). There may in fact be an opportunity to engage with the modern face of the antiquities trade through public education campaigns geared towards the uncommitted buyer, who might easily be persuaded to turn his or her attentions to other less problematic luxury goods as the antiquities market becomes increasingly tarred with the looting brush, as is now certainly the trend.

In our recent exposition of the 2003 Act in the UK, Penny Green and I have argued that a productive way for criminology to engage with the antiquities market is through the conceptual framework of the MRA (Mackenzie and Green 2009). This is a framework that has proved useful in the practical business of tackling other stolen goods markets. The MRA recommends both general initiatives to reduce demand combined with practical advice for law enforcement measures aimed at key points in the chain of supply, to maximise their potential. We also point out that the MRA contains a philosophy of harm reduction as well as its better-known penal intervention measures. Jacqueline Schneider, an early

proponent of the MRA, has recently highlighted the potential of the MRA to apply to commodity markets that are more exotic than domestic stolen goods markets, focussing on the international market in illicit wildlife. She notes that she has previously suggested at the UN Crime Congress 2003 that the MRA might be useful in tackling the property markets which are the concern of the UN Convention on Transnational and Organized Crime, including (as well as wild-life) weapons and ammunition, humans and body parts, and cultural heritage (Schneider 2008).

The MRA is a “strategic, systematic and routine problem solving framework for action against the roots of theft” that provides guidance for “interagency partnerships wishing to tackle stolen goods markets” (Sutton et al. 2001: iii). The general theory of the MRA is that demand affects supply, in other words that “reducing dealing in stolen goods will reduce motivation to steal”. The way the MRA attempts to reduce dealing is to:

- instil an appreciation among thieves that transporting, storing, and selling stolen goods has become at least as risky as it is to steal goods in the first place
- make buying, dealing and consuming stolen goods appreciably more risky for all those involved (Sutton et al. 2001: vii)

This approach, which the MRA calls “risk projection”, seems to encapsulate quite well many commentators’ hopes for the effect of the 2003 Act in the UK, although as we have found, in practice it did not live up to these hopes. The MRA approach of raising the risks faced by those in the chain of supply is particularly apposite to our present discussion because it expressly seeks to engage with “crime facilitators such as business people who buy stolen goods” (Sutton et al. 2001: vii). Among the ways it recommends addressing facilitators is to “seek to implement local legislation requiring traders to require proof of identity, and to keep records of the name and address, of anyone who sells them second-hand goods; to use test-selling to see if businesses are complying with new codes of practice; and to utilise interagency support to crack down on any irregularities committed by businesses known to deal in stolen goods” as well as the use of media campaigns to aid clear delineation between what is and is not acceptable trading, arresting fences and raising awareness of the consequences of being caught dealing in stolen goods, and telephone hotlines for people to report illicit dealing (Sutton et al. 2001: vii).

One of the key findings of the studies that underpinned the development of the MRA was that thieves and fences had very little fear of being caught when selling stolen goods, since their (generally quite accurate) perception was that nobody in the chain of supply was likely to inform on them, even strangers to whom they made offers. They also did not know many people who had been arrested for selling stolen goods, which supported their feelings of safety. There are close parallels here to the antiquities market, and there appear transferable benefits to the MRA model of periodic law enforcement crackdowns followed by periods of consolidation, where progress is reviewed and alternative educative and other market reduction strategies are employed.

These other market reduction strategies relate to the harm–reduction component of the MRA, which tries to create a context in which the deterrent effects of the crackdown phases can bed in. This context involves supporting legitimate markets and encouraging consumers and facilitators to operate in those, removing the base of consumers and dealers who are willing to take up illicit offers by enhancing for them the attractiveness of legitimate offers. In translating this to the antiquities market, we would need to focus on ways to support the legitimate market in recirculating (as opposed to looted) goods, to make dealing in these objects more attractive. Currently, it is the fresh find which thrills the market, with recirculating objects being portrayed by the dealers in my research samples as something of a dull, second-rate choice. This is a deeply ingrained market attitude, but we might consider ways to attempt to engage with dealer attitudes similar to the ways we might engage with public attitudes. Serious sanctions attached to dealing in looted objects would provide some reinforcement here, but as well as fear of arrest there needs to be a commitment from dealers to attempt to eradicate looted antiquities from the market, and currently that commitment is not present. Most of the dealers in the 2005 study (Mackenzie 2005b) said that they disapproved of looting in the abstract (some did not disapprove), but they remained willing to buy the objects since they attributed them with various possible but unproven histories such as being accidental finds or objects that, were it not for the market, would otherwise have been destroyed. It is these sorts of stories that we need to engage with if we want to really begin changing market attitudes, and this kind of discourse and culture based approach can support MRA-style deterrence in addressing the problem of “facilitation” which currently characterises the market.

## **Cleaning Up the Antiquities Trade and Preventing Opportunities for Organised Crime: Towards Productive Policy Responses**

Our research into the 2003 Act found that in the view of some of the most prominent and successful traders in the market, trafficking in looted artefacts is central to its activity (Mackenzie and Green 2009). These market actors equate the cleaning up of the market’s activities with its inevitable demise. Dealers and museum respondents reported to us that in relation to dealing in antiquities “it is now almost impossible to do it legitimately if you start asking all of the questions I think” and that restricting oneself only to dealing in recirculating objects as opposed to new looted objects was “professional suicide”.

The antiquities market is therefore caught in a serious bind. In its more reflexive moments it accepts that it is, to a not inconsiderable extent, reliant on looting to feed it, yet while it tends to try to construct a picture of that looting as benign acts of “chance finding” by local farmers, and saving artefacts from being destroyed by

infrastructure projects like road-building in source countries, it also subsists with some level of knowledge, or at least rumour-based fear, of the notion that the purchase of antiquities in the market is fuelling organised crime activity.

Somewhat ironically, it may be that this relatively new focus on the activities of organised crime groups in the antiquities market provides the catalyst for encouraging national governments in market countries, such as the UK, to take the issue of looted antiquities more seriously. In that regard, it seems that the sorts of measures that have been identified by the cumulative work of a number of commentators as requiring to be put in place if the antiquities market is to be able to seriously argue that it is not complicit in the looting problem, are also the sorts of measures that are likely to lend themselves to achieving a general crime reductive effect, including on organised crime in this market (see for example Bator 1983; Murphy 1995; Renfrew 1999; Brodie et al. 2001; Polk 2002; Gerstenblith 2007). Protecting antiquities at source has always been a difficult proposition, in any country but especially in those with serious resource issues in relation to policing provision, and the problems associated with the policing of rural sites are compounded when the spectre is raised of organised crime gangs doing the looting. Even countries where politics are heavily crime-focussed and where a comparatively large amount of resource is allocated to policing and security, such as the UK, still suffer reports of violent organised gangs looting archaeological sites and intimidating locals (Stead 1998). It is important, of course, to make efforts to apprehend these criminals, but in the long run the antiquities trade is inherently problematic as it currently exists, and the arrest of the key nominals in an organised criminal group will not resolve the tensions in the market which make it vulnerable.

Any measures which actually manage to achieve a reduction in the uptake of purchase opportunities in the market where there is a suspicion of looting involved would decrease the financial incentive for looting and smuggling, and therefore diminish the attractions of the market to organised crime. It is unlikely that this complementarity in approach works the other way round, however – it is by no means clear that measures targeted against organised criminals in the market would substantially impact the key mechanisms and drivers of the market. While there may be organised crime groups operating in the antiquities market, they are not a necessary component of that market, and even if they were removed we would still see the looting of objects and their transit to the market. It therefore appears reasonable to argue that in this case, as in many other cases of systems of enterprise which attract organised crime groups and networks due to their inherent profitability and the ease with which their regulations are circumvented, the central focus in approach should be on addressing those market forces and mechanisms which create and sustain the possibility of a global trade in illicit antiquities. In other words, to return to where this chapter began, it seems productive to see the global trade in illicit antiquities as in key respects an organised criminal enterprise involving transnational traffic flows which require regulation and control, rather than looking first to the presence of serious, violent, organised criminals who may form part of this profitable chain but who do not define the essence of the system.

## References

- Albanese, J. S. (1987). Predicting the Incidence of Organized Crime: A Preliminary Model. In Bynum, T. (ed.), *Organized Crime in America: Concepts and Controversies*. New York: Criminal Justice Press.
- Albanese, J. S. (1995). Where Organized and White-Collar Crime Meet: Predicting the Infiltration of Legitimate Business. In Albanese, J. S. (ed.), *Contemporary Issues in Organized Crime*. New York: Criminal Justice Press.
- Albanese, J. S. (2008). Risk Assessment in Organized Crime: Developing a Market and Product-Based Model to Determine Threat Levels. *Journal of Contemporary Criminal Justice*, 24(3), 263–273.
- Bator, P. M. (1983). *The International Trade in Art*. Chicago: University of Chicago Press.
- Bowman, B. A. (2008). Transnational Crimes Against Culture: Looting at Archaeological Sites and the “Grey” Market in Antiquities. *Journal of Contemporary Criminal Justice*, 24(3), 225–242.
- Brodie, N. (2009). Consensual Relations? Academic Involvement in the Illegal Trade in Ancient Manuscripts. In Mackenzie, S., Green, P. (eds.), *Criminology and Archaeology: Studies in Looted Antiquities*. Oxford: Hart.
- Brodie, N., Doole, J., Watson, P. (2000). *Stealing History: The Illicit Trade in Cultural Material*. Cambridge: The McDonald Institute for Archaeological Research.
- Brodie, N., Doole, J., Renfrew, C. (eds.) (2001). *Trade in Illicit Antiquities: The Destruction of the World’s Archaeological Heritage*. Cambridge: McDonald Institute for Archaeological Research.
- Cohen, S. (2001). *States of Denial: Knowing About Atrocities and Suffering*. Cambridge: Polity.
- Cohen, L. E., Felson, M. (1979). Social Change and Crime Rate Trends: A Routine Activity Approach. *American Sociological Review*, 44, 588–608.
- Department for Culture Media and Sport (2004). *Dealing in Tainted Cultural Objects: Guidance on the Dealing in Cultural Objects (Offences) Act 2003* (DCMS Cultural Property Unit Publication PP639). London: DCMS.
- Edwards, A., Gill, P. (2002). Crime as Enterprise? The Case of Transnational Organised Crime. *Crime, Law and Social Change*, 37(3), 203–223.
- Edwards, A., Gill, P. (2003). Introduction. In Edwards, A., Gill, P. (eds.), *Transnational Organised Crime: Perspectives on Global Security*. London: Routledge.
- Elia, R. J. (1994). The World Cannot Afford Many More Collectors with a Passion for Antiquities. *The Art Newspaper*, 41(October), 19.
- Felson, M. (1994). *Crime and Everyday Life*. Thousand Oaks, CA: Pine Forge Press.
- Gerstenblith, P. (2007). Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past. *Chicago Journal of International Law*, 8(1), 167–195.
- Kaye, L. M., Main, C. T. (1995). The Saga of the Lydian Hoard: From Ushak to New York and Back Again. In Tubb, K. W. (ed.), *Antiquities Trade or Betrayed: Legal, Ethical and Conservation Issues* (150–161). London: Archetype.
- Kersel, M. M. (2006). From the Ground to the Buyer: A Market Analysis of the Trade in Illegal Antiquities. In Brodie, N., Kersel, M. M., Luke, C., Walker Tubb, K. (eds.), *Archaeology, Cultural Heritage and the Antiquities Trade* (188–205). Gainesville, FL: University Press of Florida.
- Mackenzie, S. (2002a). Illicit Antiquities, Criminological Theory and the Deterrent Power of Criminal Sanctions for Targeted Populations. *Art Antiquity and Law*, 7(2), 125–162.
- Mackenzie, S. (2002b). *Regulating the Market in Illicit Antiquities* (Trends & Issues in Crime and Criminal Justice No. 239). Canberra: Australian Institute of Criminology.
- Mackenzie, S. (2005a). Dig a Bit Deeper: Law, Regulation and the Illicit Antiquities Market. *British Journal of Criminology*, 45, 249–268.
- Mackenzie, S. (2005b). *Going, Going, Gone: Regulating the Market in Illicit Antiquities*. Leicester: Institute of Art and Law.



- Mackenzie, S. (2006). Psychosocial Balance Sheets: Illicit Purchase Decisions in the Antiquities Market. *Current Issues in Criminal Justice*, 18(2), 221–240.
- Mackenzie, S. (2007). Transnational Crime, Local Denial. *Social Justice*, 34(2), 111–124.
- Mackenzie, S., Green, P. (2008). Performative Regulation: A Case Study in How Powerful People Avoid Criminal Labels. *British Journal of Criminology*, 48(2), 138–153.
- Mackenzie, S., Green, P. (2009). Criminalising the Market in Illicit Antiquities: An Evaluation of the Dealing in Cultural Objects (Offences) Act 2003 in England and Wales. In Mackenzie, S., Green, P. (eds.), *Criminology and Archaeology: Studies in Looted Antiquities*. Oxford: Hart.
- McBarnet, D. (2003). When Compliance is Not the Solution but the Problem: From Changes in Law to Changes in Attitude. In Braithwaite, V. (ed.), *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Aldershot: Ashgate.
- McBarnet, D. (2006). After Enron will “Whiter than White Collar Crime” Still Wash? *British Journal of Criminology*, 46(6), 1091–1109.
- Murphy, J. D. (1995). *Plunder and Preservation: Cultural Property Law and Practice in the People’s Republic of China*. Hong Kong: Oxford University Press.
- O’Keefe, P. J. (1997). *Trade in Antiquities: Reducing Destruction and Theft*. London: Archetype.
- Palmer, N. (1994). Recovering Stolen Art. *Current Legal Problems*, 47, 215–254.
- Polk, K. (2000). The Antiquities Trade Viewed as a Criminal Market. *Hong Kong Lawyer*, September, 82.
- Polk, K. (2002). *Controlling the Traffic in Illicit Antiquities: Are Criminal Sanctions Appropriate?* Paper presented at the Implementation of the UNESCO 1970 Convention conference. London: Department for Culture Media and Sport.
- Renfrew, C. (1993). Collectors Are the Real Looters. *Archaeology*, 46(3), 16–17.
- Renfrew, C. (1999). *Loot, Legitimacy and Ownership: The Ethical Crisis in Archaeology*. Amsterdam: Joh. Enschede.
- Schneider, J. L. (2008). Reducing the Illicit Trade in Endangered Wildlife: The Market Reduction Approach. *Journal of Contemporary Criminal Justice*, 24(3), 274–295.
- Smith Jr., D. C. (1980). Paragons, Pariahs and Pirates: A Spectrum-Based Theory of Enterprise. *Crime and Delinquency*, 26(3), 358–386.
- Stead, I. M. (1998). *The Salisbury Hoard*. Gloucestershire: Tempus.
- Sutton, M. (1998). *Handling Stolen Goods & Theft: A Market Reduction Approach* (Home Office Research Study 178). London: Home Office.
- Sutton, M., Schneider, J., Hetherington, S. (2001). *Tackling Theft with the Market Reduction Approach* (Crime Reduction Research Series Paper 8). London: Home Office.
- Sykes, G. M., Matza, D. (1957). Techniques of Neutralisation: A Theory of Delinquency. *American Sociological Review*, 22, 664–670.
- van de Bunt, H. G., van der Schoot, C. R. A. (2003). *Prevention of Organised Crime: A Situational Approach*. Den Haag: WODC.
- Vander Beken, T. (2004). Risky Business: A Risk-Based Methodology to Measure Organized Crime. *Crime, Law and Social Change*, 41, 471–516.
- Vander Beken, T. (ed.) (2005). *Organised Crime and Vulnerability of Economic Sectors: The European Transport and Music Sector*. Antwerp: Maklu.
- Vander Beken, T. (ed.) (2007a). *The European Pharmaceutical Sector and Crime Vulnerabilities*. Antwerp: Maklu.
- Vander Beken, T. (ed.) (2007b). *The European Waste Industry and Crime Vulnerabilities*. Antwerp: Maklu.
- Vander Beken, T., Defruyter, M. (2004). Methodological Tools for Assessing the Risk of Organised Crime. In van Duyne, P. C., Jager, M., von Lampe, K., Newell, J. T. (eds.), *Threats and Phantoms of Organised Crime, Corruption and Terrorism: Rhetoric and Critical Perspectives*. Nijmegen: Wolf Legal.
- Vander Beken, T., Van Daele, S. (2008). Legitimate Businesses and Crime Vulnerabilities. *International Journal of Social Economics*, 35(10), 739–750.
- Watson, P. (1997). *Sotheby’s: The Inside Story*. London: Bloomsbury.