

Trafficking Cultural Objects: Introduction

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Cultural Objects and Their Contexts

The papers in this special issue offer different theoretical and empirical considerations in relation to the transnational traffic in cultural objects. They are the result of a call for papers sent out by Trafficking Culture, an ERC-funded initiative that gathers and analyses evidence on the scale and nature of the global trade in looted cultural objects. More details on the topic are available on our website at traffickingculture.org. We would like to express our thanks to the journal for inviting us to organise this special issue, and to the editorial team who have worked with us in the process, especially Ernesto Savona and Giulia Berlusconi. In this introduction to the volume, we will set out some of the parameters and background to the current criminal justice debate on looting and traffic of cultural objects, while drawing out some common themes in the papers which follow.

Cultural objects are objects whose monetary value derives from their cultural worth. The most obvious example is a painting. The price of a painting cannot today be reduced to the cost of its materials and the time taken to paint it. The price reflects instead the artistic merit and thus scarcity of the painting, assessed by subjective consensus in terms of conception, originality, content, style, execution and so forth — the painting is said to have cultural value. It has not always been so. In fifteenth century Italy, for example, contracts were drawn up between patrons and painters itemising cost in terms of the quantity and quality of ingredients and the skill and labour of the artist (Baxandall 1972: 1–28). Present day ideas of artistic merit are rooted in nineteenth century Romantic reifications of creative originality or genius (Shiner 2001: 197–212). But not all cultural objects are art objects. Most are not. Many cultural objects have a religious or otherwise ritual significance. Donna Yates, for example discusses the theft of devotional objects from churches in Bolivia. Neil Brodie, Sam Hardy and Christiana Panella focus on ‘antiquities’, cultural objects of historical interest excavated from archaeological sites. Some cultural objects can mean different things to different people. Many of the antiquities

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recovered by the operation Cerberus Action discussed by Carolyn Shelbourn are sacred to Native American tribes (Maffly 2014). Thus the cultural value of a cultural object is not intrinsic to the object itself; it is socially constructed.

The concept of context is important here. The meaning and significance of a cultural object derives from its tangible and intangible contexts. The artistic merit of a painting is determined by the intersubjective judgment of a critical audience. The archaeological importance of an antiquity owes as much to the interpretation of its stratigraphy and associations within an archaeological site as it does to the material or stylistic qualities of the object itself. Sacred objects too are ascribed meaning by their encompassing belief systems and the nature and importance of their liturgical role. The fact that cultural value arises out of a social confection of object and context implies that the cultural significance of an object will change along with its context, and this is in fact the case. The traffic in cultural objects removes objects of archaeological or religious importance from their original sites to be traded and recontextualised as ‘art’. The conversion is not without problems.

Consider, for example, a pair of wooden Ahayu:da (War Gods) produced by the Zuni people of the southwestern USA (Ferguson et al. 1996). Between them, the two figures are believed to embody a divine power beneficial to the Zuni and to the world more generally, and at the end of their allotted lifespan it is important that this power should dissipate through the slow disintegration of the Ahayu:da in outdoor locations. The same pieces taken from their ritual contexts and displayed in a museum as works of art are understood to encapsulate human creativity, and therefore as something to be carefully curated and protected from decay — a horrifying and potentially calamitous state of affairs for the Zuni. Not surprisingly the Zuni have made it their business to recover what Ahayu:da they can from museums around the world.

For an archaeological example, there is the Euphronios krater (Hoving 1993: 307–340). The Euphronios krater is a decorated pottery bowl depicting scenes from the Trojan War made in Athens during the late sixth century BC. Soon after its manufacture it was exported to Etruria in central Italy, where it was used as serving ware at banquets before ultimately being deposited in a tomb by or alongside its owner. The tomb was broken open and excavated destructively and illegally in 1971, and the Euphronios krater was taken and sold on the international market. It was subsequently bought by the Metropolitan Museum of Art in 1972 for the then record-breaking price of \$1 million, heralded as ‘... a work that would force the history of Greek art to be rewritten’ (Hoving 1993: 318), and placed on prominent display. The chance to investigate ancient Etruscan society through scientific excavation of the tomb had been lost. (In 2006, the Metropolitan restored ownership of the krater to Italy after Italian police investigations into the original theft of the krater from the tomb).

As both of these examples show, the intended meanings and functions of a cultural object can be erased and new ones assigned by a simple transposition across contexts. In both cases, the transposition also entails commodification, as objects of spiritual or intellectual importance are transformed into high-priced artworks. Thus the traffic in cultural objects is predicated upon financial gain, and it achieves this end first by creating both artistic and commodity value and then by trading the created commodities qua artworks. However, the transposition also entails the usually irrevocable loss of original context, a loss that oftentimes is not recoverable even when objects are retrieved. Thus the traffic is associated with a set of cultural harms that in aggregate can erode the beliefs and identities of dispossessed communities and countries, and damage or destroy the raw material of archaeological and historical enquiry.

The different ways of viewing cultural objects have led to the development of two overarching international discourses which might loosely be defined by the terms ‘art’ and ‘cultural heritage’; roughly equivalent to Merryman’s (1986) ‘cultural internationalism’ and

‘cultural nationalism’ (see also Prott 2005). Those who believe in the status and importance of cultural objects as moveable artworks argue for the free, or at least only lightly-regulated, circulation of what are perceived to be singular creations, for the benefit of the widest possible international audience. The attendant commodification promotes their survival in the hands of private and institutional owners careful to protect the value of their investment. Proponents of the idea of cultural heritage look instead towards more holistic conceptions of ‘sites’ or ‘landscapes’ as broad, integrated cultural wholes that require in situ appreciation and protection. To achieve that end, cultural objects should be taken out of commerce, and cultural heritage sites placed in public ownership. These two competing discourses argue respectively for incompatible weak and strong regimes of regulatory control. The ‘cultural heritage’ discourse has structured and draws authority from two UNESCO conventions: the 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and the 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage*. In turn, these conventions have shaped international public policy which aims to curtail the traffic in cultural objects through strong regulatory control at source.

As a consequence of this policy, cultural objects in most countries enjoy statutory protection as cultural heritage and their removal and subsequent trade across borders is usually illegal (Prott and O’Keefe 1984, 1989). Though seemingly small in value and volume when compared to other headline-grabbing commodity traffics such as weapons or drugs, and usually without obvious human victims, the traffic in cultural objects is starting to attract criminological investigation and analysis because of its unusual straddle across organized and white-collar crime and the culturally prestigious positions of potential and actual criminals in the art world of retail galleries, auction houses and museums (Polk 2000; Mackenzie 2011; Brodie and Bowman Proulx 2013). It also shows no sign of abating. Public policy, depending as it does to a large extent upon principles and practices set down 45 years ago in the 1970 and 1972 UNESCO conventions, seems almost anachronistic in the twenty-first century world of global transport and communication. It is also under continuing attack from wealthy individual and institutional members of the art world wishing to further their interests by a systematic, international weakening of regulatory control. Thus this special issue offers a timely assessment of policy effectiveness with a special focus on issues of regulation and discourse.

Regulation and Control

The subject of regulation is a thread of continuity which runs through all of the papers in this issue, as one might expect in a field where the legitimacy, politics, design and practical implementation of control policies are still individually and collectively matters of significant controversy. Regulation and control debates in this field of study have tended to be based on (sometimes implicit) constructions of the overall problem. So for example criminal sanctions for removal of cultural objects in ‘source’ countries take looting to be a form of theft-by-finding, since most source states have taken ownership of buried, lost, or long-abandoned cultural objects along with significant monuments, heritage sites and other potential targets of theft (Gerstenblith 2007). Alongside this sovereign approach to penal sanctions for thieves exists an economic type of approach which looks to the global market aspects of the trade in looted cultural objects, and suggests that market-end regulation would reduce demand for looted artefacts, thus depressing supply and acting indirectly to prevent looting at source (Kersel 2006; Alder and Polk 2002; Chappell and Polk 2009). Around these two sometimes complementary and sometimes contradictory views (punish looters vs punish market buyers)

subsists a third, and only very fairly recently developing view (punish traffickers, as the transit phase between looters and buyers) as well as a raft of other approaches and arguments, like the value of public education in respect of the harms associated with the illicit trade (Alder et al. 2009), some of which are set out above. The papers in this volume come to the problem against this background in the literature of arguments about appropriate and effective regulation and control, and take them forward in some key respects.

Brodie engages with a popular proposition made by pro-trade lobbyists on the subject of regulation. This is that, to paraphrase, there is no pressing need for serious levels of market regulation since left to its own devices the market will, and indeed may already be observed to, 'autoregulate' in the sense that buyers prefer objects that are clearly legitimate, and therefore they will pay more for well provenanced objects. This, so the argument goes, will suppress the market for unprovenanced or poorly provenanced objects, and the basic free rein of capitalist consumptive choice among buyers will gradually sanitise the marketplace of the pollutive effects of the ingress of looted cultural objects. Brodie brings a quantitative empirical method to bear on this hypothesis, and finds it to be unsupported by his data. Autoregulation appears not to be a reality in this case, so more traditional forms of regulation are required.

Yates charts some of the unexpected and undesirable effects of source-end regulation of the illicit trade in cultural objects, especially when that source-end regulation is perceived locally to be ineffective. This is not an uncommon scenario due to the resource demands involved in protecting remote archaeological sites, or in the case of Yates' paper, churches. Very often, aspirations to any serious level of situational crime prevention or policing presence are entirely unrealistic. In the case of church thefts in Bolivia, Yates recounts the deadly ramifications of local cultural impressions of appropriate community justice for church thieves, in a case study of lynching which calls into serious question the universal viability of the propositions of the 'protect the objects at source' camp in the overall regulatory debate.

Hardy's paper is a rich historical review of evidence for practices of both looting and collecting in Cyprus. He suggests that in a 'silent accord', enforcement of extant punishments for buying looted cultural objects was suspended for a period of time by the Greek Cypriot administration, purportedly to allow Greek Cypriot collectors to buy (and thus 'save') artefacts which were thought to be coming out of Turkish Cypriot enclaves through looting. Hardy uses his data analysis to suggest that this was not in fact the whole story, and the regulation waiver existed alongside widespread looting by both Greek and Turkish Cypriot communities, thus serving to whitewash in legal terms substantially more than the premise of the policy would suggest.

Shelbourn's paper is an extended case note on the US law enforcement activity in the 'Four Corners' prosecutions, where local pot-hunters in the border zone of Utah, Colorado, Arizona and New Mexico were brought before the courts for looting of Native American cultural objects. Shelbourn presents one view of the story as a lesson in the perils of (over) criminalization of looting as seen in a perceived heavy handed federal law enforcement response to a practice which the pot-hunters had legitimized in their community as a hobbyist pursuit, harmless, and something of an entitlement. The major theme here is continued in Panella's paper — of a great divergence between an official construction of looting as crime (and depending on the jurisdiction, sometimes comparatively serious crime), and looters' subjective constructions or understandings of their practices as something very different. Panella presents a deep and intricate anthropological view based in ethnographic investigation of looters' self-image as set against official processes of criminalization and 'heritization', the latter term drawing attention to the official construction of ideas of national heritage and the re-defining effects these ideological moves can have on traditional practices of discovery and taking.

Finally, Simon Mackenzie's contribution engages with the proposition that regulation of the global illicit market in cultural objects requires an awareness-raising or educational initiative. Clearly that idea is not all bad, but it is problematic insofar as it slides into an assumption that buyers could be dissuaded from acquiring illicit cultural objects if only they knew more about those illicit origins and/or were schooled in the variety of harms implicit in this transnational criminal trade. Mackenzie reports on interviews with high-end dealers and collectors which suggest something of an entrenched commitment to a perceived right to operate in a market where the risks and harms involved are already well known, and are put to one side by market players through the mechanism of neutralizing discourse (Sykes and Matza 1957; Cohen 2001). As well as its important interaction with questions of regulation, the theme of discourse/narrative is itself an independent concept which draws together the papers in this volume, and we can briefly review that coherence of theme here.

Discourse and Perceptions

Perceptions as mediated through discourse are central to the issues involved in the debate on trafficking cultural objects. Brodie touches upon this subject when he criticizes the emerging Panglossian view of auction sales of antiquities, which as mentioned holds that aggregate customer choice is acting in the best interests of cultural heritage and customers alike to promote the sale of demonstrably licit objects. Hardy is questioning an 'official' discourse developed by archaeologists and other heritage experts of the Republic of Cyprus that for him apportions blame for the early-1970s looting and trade of antiquities inaccurately and unfairly to the Turkish Cypriot community while at the same time absolving the Greek Cypriot community of any guilt. While the evidence of Turkish and Turkish Cypriot involvement in the trade is incontrovertible (O'Connell-Schizas 2014), in the context of Cyprus there are clear political overtones, and Hardy demonstrates how official discourse is something to be challenged and interrogated, not something to be taken at face value. Intentionally or not, the discourse reconfigures a criminal justice problem into a political one. Panella develops this theme further in her discussion of the illegal digging and trade of terracotta statuettes within Mali. The UNESCO-mandated normative discourse of cultural heritage protection in situ as implemented through national policy has been met by an oppositional narrative constructed by the people who discover and excavate the statuettes for sale, displacing and denying their official status of 'looter' with a self-conception of 'hero', drawing upon their harsh existence in the field. There are echoes of this theme in Shelbourn's account of the prosecution of offenders for looting federally protected archaeological sites in the Four Corners region of the south-western USA. She shows how 'pot-hunting' is viewed by some local inhabitants as an act of resistance to overbearing and unwelcome federal proscription of long-established and accepted community practices. By suggesting that what appears to be a criminal justice problem might be more fruitfully approached as a political one, Shelbourn closes the analytical circle opened by Hardy. The development 'on the ground' of oppositional narratives and practices is not universal, however, as Yates shows in her account of the community justice of lynching among the Indigenous communities of highland Bolivia where national and local policy goals are concordant in theory if not in implementation. Bringing things to a close, Mackenzie examines why discourse is resistant to what might be considered 'reasoned argument' and thus to crime reduction strategies based on consumer education and awareness-raising.

Perhaps the most striking result of our call for papers for this special issue in support of our Trafficking Culture project was the engagement of such a range of disciplines with the topic. We have made efforts to represent this spread here, with contributions not only from

criminology but law, archaeology and anthropology. No doubt some of these papers will differ in style and approach from the format with which readers of this journal might feel most comfortable, but we hope in a multi-disciplinary vein that bringing in views, reports and cautionary tales from outside criminology will be received as a useful exercise and one that attempts to do some justice to the vibrant and eclectic scholarship which is currently practised in relation to a challenging subject for contemporary criminal justice.

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