

This ambitious Handbook is the first major attempt to bring human rights out of the fringe and to the fore of criminological debate. This is a superb example of trans-nationalising the discipline by bringing together scholars from the global north and south. The Handbook is an essential source of original and diverse scholarship that brings criminology and human rights perspectives together. It will appeal to a broad range of scholars across a number of disciplines well beyond criminology. It is also vital reading for policy makers, legislators and human rights activists and organisations across the world. I thoroughly commend it.

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For years many of us have bemoaned the lack of synergy between human rights and criminological scholarship. Happily, criminologists and human rights scholars are increasingly talking to each other and this diverse and rich collection marks an important milestone in that development. The editors and contributors are to be warmly congratulated.

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Trafficking cultural objects and human rights

Simon Mackenzie and Donna Yates¹

Introduction

Since the end of World War 2, international cultural heritage protection law and its domestic legal components have proceeded in their development in tandem with the development of international human rights laws and norms. A core tension in human rights thinking is evident also in debates about the right to cultural property: the potential for conflict between the right to cultural self-determination by one group and attempts to develop and promulgate human rights standards with universalizing ambitions. This is reflected in cultural property ownership debates, where cultural heritage² may be considered by some people as the common heritage of humankind and thus to some extent owned by us all, while others would see it as more properly owned by members of a more restricted group, or perhaps communally as tangible items of a certain culture.

So there is a universalism versus particularism debate about the right to own, possess or otherwise enjoy, worship or value cultural objects just as there is the same debate on a much wider scale about universalism versus particularism in human rights in general. As with that wider debate, where universalism has been criticized for being a veil for the global transfer of western liberal capitalist values (see, for example, Woodiwiss 2005), so too in the cultural property debate the construction of the idea of 'the world's cultural heritage' has tended to represent in practice a view that favours the idea of the 'encyclopaedic' western model of the museum, thus suggesting an ideal where material cultural heritage is stored in cultural repositories around the world rather than leaving (or reinstating) it to its country of origin or to a community thought to have the closest historical, cultural or religious connection to it.

This view is fiercely opposed by those who consider this to be, in effect, an attempted justification of the forcible extraction of this particular resource from the developing world. They prefer to define and delineate cultural property rights in terms of 'the property of a culture' rather than as 'property which is cultural' insofar as the latter might represent a contemporary reflection of the values and views of the global art market rather than the communities and cultures whose heritage is at stake. In international legislation aimed at cultural property protection there is some ambivalence around these views, with the preambles of the governing conventions tending to strike a diplomatic balance between recognizing important cultural artefacts

as the particular interests of cultural groups, states or 'all peoples', while also approving of some of the effects of the worldwide diffusion of cultural heritage, most of which is due to the mechanics of the art market.

Globally significant acts of cultural destruction threaten or completely eliminate people's opportunity to enjoy cultural heritage, as has been seen in acts of desecration like the destruction of the Bamiyan Buddhas in Afghanistan by the Taliban, or the reported acts of destruction by ISIS of ancient and magnificent cultural heritage sites like Nimrud in Iraq and Palmyra in Syria. These acts tend to shore up the arguments of the 'cultural internationalists' (Merryman 1986) who argue for the safekeeping of objects in world museums in developed countries. The interests of this type of internationalism are complicated by the legal regimes of many antiquities source countries which largely favour state or at least in-country ownership of cultural property, including archaeological objects that have not yet been discovered, even during times of conflict and instability. This leads to an impasse between the stated desire on the part of 'cultural internationalists' to pre-empt future destruction by storing international cultural property in cultural institutions within stable, inevitably western countries, and the desire on the part of source countries to retain cultural property. The artefacts coming out of source countries that the 'cultural internationalists' save are often therefore crossing borders illegally.

The illegal looting of cultural property from sites like tombs and temples, predominantly in the developing world, destroys the archaeological record, depleting opportunities for gathering knowledge about our past (Brodie et al. 2000). Although archaeological looting is less immediately dramatic than acts of large-scale iconoclastic destruction, it is no less important. Beyond the irrecoverable loss to our knowledge of the ancient past and, thus, to our own modern identity and social cohesion, the transnational criminal market in looted antiquities is associated with insecurity, corruption, and related serious crimes (Mackenzie and Davis 2014, Yates 2014).

The evidence suggests that, like other transnational criminal markets, the illicit antiquities trade is driven by the supply–demand effects exerted when wealthy private and institutional collectors are prepared to buy looted artefacts for their collections (Polk 2000, Renfrew 1993). Is buying an antiquity in the high end boutiques of New York or London really an act with significant albeit obscured human rights implications? This contribution will review the literature on aspects of cultural property destruction, plunder and trafficking as they relate to human rights.

Cultural heritage crimes and human rights standards

Until recently, references to human rights in cultural heritage discourse have been more frequent than references to cultural heritage in human rights discourse:

worldwide, cultural heritage does not figure prominently in the extensive literature on human rights, but this does not mean it is an issue of minor importance or without significant social impact ... the notion of 'world cultural heritage' may, in fact, promote tolerance ... whereas the lack of tolerance for the identity of others often leads to the repression of minority cultural expressions.

(Silverman and Ruggles 2007)

The major treaties which have been established to engage with the international aspects of cultural property trafficking and destruction do not explicitly reference human rights, although they do hint at some relevant universalist conceptions in their preambles. The 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention on the Means*

of *Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* broadly approaches the issue using the state as its unit of analysis, looking to states to be both protectors of their own and other countries' cultural heritage, while also supporting in somewhat imprecise language a legal trade in cultural objects; imprecise enough to keep both antiquities trade interests and cultural property protectionists onside:

Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilisation of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations. . . . Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export; Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations.

The 1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects* also begins with a similar statement of support for the benefits of international cultural 'exchanges' and 'dissemination', which can be read as a backing for a legal commercial trade in cultural objects, while the Convention generally supplements the nation-state view of UNESCO 1970 with a raft of provisions on private personal rights to ownership of cultural property and recovery when it is stolen. The 1954 'Hague' *Convention for the Protection of Cultural Property in the Event of Armed Conflict* presents the most unambiguous statement of the universalist view: 'Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world'.

Explicit reference to human rights standards in UNESCO international instruments concerned with the protection of cultural property against destruction and theft began in 2001 with the *Universal Declaration on Cultural Diversity* which reaffirms in its preamble a commitment to the full implementation of human rights and fundamental freedoms contained within the *Universal Declaration of Human Rights* (UDHR) and other multilateral instruments, including the 1970 UNESCO Convention. In response to the Taliban's destruction of the Bamiyan Buddhas, UNESCO formulated its 2003 *Declaration Concerning the Intentional Destruction of Cultural Heritage* which in its preamble notes that intentional destruction 'may have adverse consequences on human dignity and human rights'. These and other examples show a trend towards the increasing insertion of references to human rights in international cultural heritage protection instruments since the turn of the millennium.

Vrdoljak (2012), a key writer on the relationship between cultural heritage and universal human rights, sees the relationship between legal protection against plunder of cultural objects and specific human rights as being based on: the right to property; the right to self-determination; the right to participate in cultural life; and minority protection. Other writers have acknowledged the wider relationship between cultural heritage and human rights, and it is helpful to consider some examples of this if we want to contextualize the place of our narrower concern with cultural heritage *crime* within the domain of human rights. That broader context of the intersection between cultural heritage and human rights includes:

indigenous rights (which are often articulated in resistance to national identity); war and other violence (political, ethnic, religious); access to and exclusion from shared sacred sites; the impact of economic development on cultural heritage of local populations; memory/forgetting; and intellectual property rights.

(Silverman and Ruggles 2007, pp. 6–7)

This list of possibilities shows the very wide prospective relationships between human rights and 'crimes to do with cultural heritage' including, for just one set of examples, the remembering/forgetting rights debate around the preservation of 'negative heritage' sites like concentration camps in Germany, or Ground Zero in New York, where criminal atrocities have created a legacy of sites which promote painful episodes of remembrance, but ones which affected groups may wish to maintain expressly for that purpose of never forgetting. Mindful of the very wide landscape of a debate around the relationship between crime, cultural heritage, and human rights, in this chapter we have selected to focus on the area of overlap between human rights thinking and the looting and trafficking of ancient cultural objects (antiquities) from archaeological contexts.

Internationalism, nationalism and community interests

Perhaps the most important step represented by the development of cultural heritage protection in connection with human rights values has been a move away from thinking about cultural heritage as solely a state interest (as evident in the comments about the UNESCO 1970 Convention above), and towards affirming its primary fundamental importance as being to people and to the international community: 'Human rights law reinforces that states alone are not the only rights-holders in respect of moveable heritage . . . it is "peoples" who have the right to determine whether and how their moveable heritage is transferred' (Vrdoljak 2012, p. 139). This move away from seeing the state as the primary benefactor from and interested party in the cultural heritage which may at any time reside within its borders not only broadens and deepens the community of 'victims' who may be affected by its theft or destruction, but it also expands 'downwards' the amount and types of cultural heritage which may be seen as deserving of protection in law. As Vrdoljak puts it: 'contemporary interpretations of several human rights norms require states parties to protect and prevent illicit traffic of cultural heritage which is not only of national importance but also of significance to non-state groups, including minorities and indigenous peoples' (Vrdoljak 2012, p. 121).

This movement in the dialogue is to be welcomed: the signal importance of a human rights discourse in the approach to penal/legal and property/interest issues around trafficking antiquities is that it makes it increasingly difficult for global economic interests to ignore community-level interests in source countries. As alluded to in the introduction, those in the market who want to deal in and collect cultural heritage have famously been called, approvingly, 'cultural internationalists' by Merryman, with their interests set against those he disapprovingly calls 'cultural nationalists' or 'retentionists' (Merryman 1986, 2000). In Merryman's version of events, community and state interests in not having their heritage looted out and transmitted around the world by market forces are condemned as striking against the educative and ambassadorial dissemination value of travelling heritage, as well as concerns about preservation and restoration which are said to be better allayed by elite global ownership. This, therefore, is the legitimate academic face of the 'it belongs to all of us' approach to the right to ownership or possession of cultural property; but the inherent risk in such a view is that it may be feared to function as a veil for the continuation of a kind of resource exploitation that carries colonial undertones and reinvents them in the world of cultural appreciation and financial investment markets. The injection of a human rights ethos, or even a human rights *question*, into this debate may work at least to unravel some of the now ingrained, and perhaps therefore hard to see, assumptions about the natural supremacy of market practice and the right to property.

Meanwhile, some philosophers have developed arguments against the private right to ownership of everything, considering ideas around the 'moral limits of markets' and concluding that

'some things should not be for sale' for a variety of reasons including adverse social outcomes, but ultimately because for some things the concept of private ownership is simply morally offensive to the very essence of the category of the things in themselves (Sandel 2012, Satz 2010). Private international collection of culturally significant antiquities is seemingly under pressure from all sides.

That tangible cultural objects play an important role in the development of intangible cultural and social identity is well established in academic literature and is clearly reflected in recent human rights instruments. The UN *Declaration on the Rights of Indigenous Peoples* (UNDRIP 2007) states that 'Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture', and that 'Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature'. In other words Indigenous people, who are often equated with the communities that normally 'lose' their cultural objects via looting and trafficking, have the right to not have their culture, as they define it, destroyed and they have the right to maintain that culture, which specifically includes archaeological sites and artefacts, not because of an inherent right to property, but rather an inherent right to a self-determined identity.

The original 'cultural internationalist' conception essentially rested on a constructed dichotomy between the global public (or rather a global public constructed of individuals who wish to own property) and retentionist states considered to propagate a dangerous form of nationalism by restricting the movement of cultural heritage (Merryman 1985). If that debate could ever be accepted as a reasonable reflection of facts on the ground, which is a contentious proposition to say the least, the contemporary assertion of an 'internationalist' right to property and the definition of heritage objects as property seems to run into new types of conflict with the emerging understandings that there is a human right to identity and self-definition, that cultural heritage can be an important component in that process, and that these human rights may subsist in people and collectives sitting below a level of analysis that engages with positions taken on issues of cultural heritage trade or retention by states. In human rights mechanisms, the state is not the primary unit of the right to assertion of identity, rather it is the individual or, at times, the cultural group or community. These nations, in the true sense of the word, usually do not form a political state and almost certainly lack the power to define property and ownership. Yet it is in these groups that mechanisms like UNDRIP vest control over identity-based cultural assets. Abusing or denying the right to self-determination and identity in these groups brings a new register to allegations against the market. The discussion moves beyond the trade's previous portrayals of the issue as being conflict between the legitimate claims of private individuals and the illegitimate claims of states, the latter often having been denied true 'ancientness' in the argument by a focus on fractures between past civilizations and modern groups claiming a past-based identity, therefore suggesting a sort of deficient cultural 'title and interest' to claim true ownership. An example would be the pro-trade position that modern Greek society is not really linked to ancient Greek society due to the passing of time, religious conversion, and the genetic influx of Ottoman DNA; and therefore that contemporary Greek claims to restitution of ancient Greek artefacts should be denied.

The history of the negotiation of the 1970 UNESCO Convention is instructive in helping us understand the political economy of the interests at play in the question of regulating the international trade in antiquities. An early draft of the convention's preamble referred to Article 27 UDHR (Vrdoljak 2012). The United States (US), however, pressed through a revised (by them)

draft of the Convention which was the one that ultimately came to be agreed (Bator 1983), and from which reference to UDHR was deleted. The rights which the US preferred, as a significant market country for cultural property originating overseas, were pro-trade and the preamble to the 1970 Convention, mentioned above, now carries more of a flavour of cultural internationalism than the earlier more protective drafts. Seen in this context we can perhaps observe that rights-related discourse can be quite ideologically loaded towards economic interests. The particular way one incorporates rights-based thinking into the language of international law can support and promote the continuance of international trade, putting pressure on the rights of those with an original local cultural interest in the heritage at stake. In that case, what we end up with is a neoliberal version of human rights protection, which in preferring to cast cultural heritage as the subject of 'interchanges' presumed to be beneficial, promotes a capitalist model of elite global property ownership in which the right to own heritage is in principle considered most appropriately (absent the demonstration of manifest criminality in the supply chain) to be dependent on money. This capacity to 'wash' a human rights discourse about cultural heritage in one political or economic colour or another is not really surprising, especially considering the significant and now well established line of critique aimed at human rights discourse in general, that it is a contemporary veil for the evaluation of global society through the lens of US neoliberal capitalist values and norms (Woodiwiss 2005).

These debates are therefore in broad terms indicative of the inherent capacity for human rights-oriented views of cultural heritage to lead to dispute about which person or group the particular right appropriately vests in; and in narrower terms may suggest a productive new direction in developing standards to use when trying to resolve these disputes, based in rights around identity. Although the statist, and implicitly market oriented, discourse prevailed to a significant extent in the final draft of the 1970 UNESCO Convention, as we have observed there has since then been an incremental progression towards the inclusion, in UN level debates about cultural heritage, of a human rights discourse that is more sophisticated, and more willing to recognize and value the rights of 'peoples'. In its General Comment No. 21 (2009), the Committee on Economic, Social and Cultural Rights recognized the right of minorities to conserve, promote and develop their own culture, and the obligation on states to recognize, respect and protect minority cultures as an essential component of the identity of the states themselves. The UNDRIP 2007, mentioned above, in Article 12 obliges states to implement effective mechanisms of redress for cultural objects removed without free, prior and informed consent and in violation of customary law.

Crimes of necessity?

A troublesome aspect of the debate about local people's rights to their cultural heritage comes in the question whether this extends to destroying it, or selling it after having dug, chiselled, chainsawed or otherwise removed it from its archaeological context. Some authors have proposed a 'human right to loot', but in very restricted circumstances (Hardy 2015). Effectively this has been proposed as the case only where survival demands it and the economic rewards of looting are put to use in keeping people alive, where otherwise they would likely have perished. In such a construction of the case, the right to life is set against concerns about the protection of cultural heritage, and the former would seem to trump the latter. Circumstances are rarely so clear-cut on the ground, however. While there have been anthropological and archaeological studies and reports of so-called subsistence diggers (Staley 1993, Brodie et al. 2001), including acknowledgements that 'subsistence' looting happens in the absence of other economic alternatives and in the context of a struggle for survival including 'basic living

expenses and medical supplies' (Foster et al. 2005), many other reports suggest various levels of organized criminality in the looting process, and if not organized crime then local opportunism which is entrepreneurial and driven by the temptations of the illicit market rather than by a basic need for economic survival (Atwood 2004). Cultural heritage is not a sustainable (in the sense of endlessly self-reproducing) resource, so looting involves the realization only of short-term local gain at the expense of any longer term monetization of the heritage, for example through sustainable tourism in the region (Prott and Bessières 2001). Furthermore, looting enriches only the individuals involved rather than whole communities in the way other forms of monetization of the resource might do (Brodie 2010). Studies of the price escalation up the supply chain have shown that looters are paid only a fraction of the final sale prices of artefacts once they make their way to market destinations, with the biggest mark-ups and rewards going to middlemen who traffic cultural objects from source to international market (Brodie 1998). The result of all of these studies and reflections is that looting, as well as being a crime, is a short-termist and anti-communitarian economic strategy, which seems difficult to view positively in human rights propositions framed around cultural groups, since whatever survival benefits may be obtained by individuals come at the expense of other people in the region who lose access to a resource which may be both culturally and traditionally important (Udvardy et al. 2003), and potentially a useful income generator for the longer term.

For these reasons, archaeologists have tended to agree that 'it is very clear that looting destroys the contexts that give objects their meaning; it is to be condemned' (Silverman and Ruggles 2007, p. 16). However, the question of the ethics of dealing in objects that may have been previously looted is sometimes considered less unequivocally: 'But the moral implication of historic (and archaeological, artistic, etc.) objects bought by wealthy collectors from impoverished sellers is more complex' (Silverman and Ruggles 2007, p. 16). Many in the dealing and collecting community do not agree that there is much complexity to it, and argue straightforwardly and often forthrightly both for their right to acquire (Cuno 2008) and against repatriation (Cuno 2014).

Repatriation: towards a restorative approach?

While analysis of criminal justice responses to trafficking in illicit antiquities shows that they are often weak – weakly designed and weakly implemented (see, for example, Mackenzie and Green 2008, 2009) – in some places, to the contrary, criminal sanctions for offences against cultural heritage have been extremely harsh. In 2004 the convicted looters of the ancient site of Jiroft in Iran were sentenced to death, and China has also used the death penalty in respect of cultural property looting offences. Such highly retributive state responses would seem to merit their own level of inquiry into the infringement of the human rights of offenders. Although this 'sharp end' of the relationship between justice and the antiquities market may seem the obvious place to look for human rights abuses, and of course it clearly is important to do so, the less obvious discussion is in respect of the corrupting exercise of trade power behind the scenes of the 'weak law' examples (Mackenzie and Green 2008). This can be considered pertinent to a discussion of adverse effects on the human rights of source communities by an international commercial enterprise controlled by a networked global elite of dealers, collectors, appraisers, authenticators, ethically compromised academics who wish to study illicit material (Brodie 2009), and public and private institutions which acquire and display or, in some cases, hoard antiquities (for museums, it is not unusual for items sequestered long term in basements and warehouses vastly to outnumber the objects on display).

In civil, criminal, and diplomatic cases raised in the contemporary field of looted and trafficked cultural objects, success is often seen as the repatriation, restitution or, in layman's terms, return of the artefact to its country of origin. There have been a string of recent examples of this trend towards repatriation, many of them involving multi-million dollar ancient statues. On the face of it, this may look like a process of restorative justice: reparation is made to 'the victim' (if we conceive of the state as the victim, which the repatriation mechanism tends to do), the object is returned, the state may hold a return ceremony which records among other things the legal acknowledgement of its international standing as a culturally rich political entity, and some sort of balance is restored. For various reasons including expediency and the massive cost of international litigious proceedings, however, the person or institution returning the object will often negotiate a type of 'no-fault' settlement agreement whereby they agree to surrender the offending item but without any admission of guilt (in having knowingly or negligently bought the object, for example), and sometimes with a requirement that all parties to the return agreement make explicit public statements to the effect that there is no longer any guilt alleged. Current international repatriation claims are therefore very often concluded in a way which those who study criminal justice might struggle to recognize as being much like restorative justice, other than in a surface veneer. In genuine applications of restorative justice theory to dispute resolution, a process of reintegrative shaming is a key goal, through which the offender may be brought back into the normative and moral life of the community (Braithwaite 1989). This rip in the social fabric is the thing that needs to be addressed, and respect for the community's value system, and the dislocated offender, are the things that need to be 'restored'. Apology, acceptance of guilt, a productive form of shame, attention to the social forces driving offending behaviour – these are all thought to be key elements of a restorative approach which binds societies back together when a criminal breach occurs. Simply giving back stolen goods when caught red handed with them, and with an explicit agreement that no apology will be made, looks problematic as a process of restorative justice. A wider discussion would seem useful about the human rights implications of looting and trafficking cultural heritage in the context of restorative approaches to deep historical social and cultural rifts and the legacy their economic modes of 'internationalization' have left, and continue to leave, on victimized communities in less powerful parts of the world. Those economic forces, however, work to make such an overarching restorative discussion strained.

Conclusion

The debate about the criminalization of theft, trafficking, fencing and purchasing of antiquities stands to gain insights from human rights arguments which have the potential to open up new avenues of progress in what has become a vitriolic pitched battle between two sides. Trade interests are entrenched on one side, justifying their international buying and collecting decisions as the practice of certain kinds of property-oriented rights against an activist opposition which seeks to undermine those rights by drawing attention to their role as drivers of a culturally harmful system of enterprise. The increasing recognition of the value that should be placed on the identity rights of sub-state cultural groups brings a nuance to a debate that has often been conducted in reified and statist terms. The increasing rights-based sensitivity to cultural group identities introduces difficulties and complexities to the ethical, legal and financial positions so far adopted by protagonists in the discourse in this field. It will be interesting to see if this will be a progressive incursion of human rights ideas into a domain of thought and practice traditionally premised on principles which may have to adapt to new more culturally aware modes of 'thinking about cultural property' (Merryman 1986).

Notes

- 1 The work on which this publication is based received funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007–2013)/ERC Grant agreement n° 283873 GTICO.
- 2 In this chapter we use the terms 'antiquities', 'cultural heritage', 'cultural property', and 'cultural objects' relatively interchangeably – occasionally we even say 'artefacts' since that is how lay persons and newspapers often describe the objects in question. All these terms have different inflections to their meaning, however, and in the way they are interpreted by parties interested in the debate we describe in the chapter. For example, 'property' clearly has a different implication to 'heritage' as terminology to employ when it comes to arguing about who should rightfully own cultural objects, and indeed whether they should be owned in a trading–market sense at all. This being a criminology text, and our attempt being to raise awareness of these debates rather than necessarily resolve them, we have spared readers terminological partiality or impartiality here and simply mixed the terms throughout, to give a flavour of the way the objects in question can be described.

References

- Atwood, R., 2004. *Stealing history: tomb raiders, smugglers, and the looting of the ancient world*. New York, NY: St Martin's Press.
- Bator, P.M., 1983. *The international trade in art*. Chicago, IL: University of Chicago Press.
- Braithwaite, J., 1989. *Crime, shame and reintegration*. Cambridge: Cambridge University Press.
- Brodie, N., 1998. Pity the poor middlemen. *Culture Without Context*, 3(Autumn).
- Brodie, N., 2009. Consensual relations? Academic involvement in the illegal trade in ancient manuscripts. In: S. Mackenzie and P. Green (eds), *Criminology and archaeology: studies in looted antiquities*. Oxford: Hart, 41–58.
- Brodie, N., 2010. Archaeological looting and economic justice. In: P.M. Messenger and G.S. Smith (eds), *Cultural heritage management, policy and issues in global perspective*. Gainesville, FL: University Press of Florida, 261–77.
- Brodie, N., Doole, J. and Renfrew, C. (eds), 2001. *Trade in illicit antiquities: the destruction of the world's archaeological heritage*. Cambridge: McDonald Institute for Archaeological Research.
- Brodie, N., Doole, J. and Watson, P., 2000. *Stealing history: the illicit trade in cultural material*. Cambridge: McDonald Institute for Archaeological Research.
- Cuno, J., 2008. *Who owns antiquity? Museums and the battle over our ancient heritage*. Princeton, NJ: Princeton University Press.
- Cuno, J., 2014. The case against repatriating museum artifacts. *Foreign Affairs*, November/December.
- Foster, B., Foster, K. and Gerstenblith, P., 2005. *Iraq beyond the headlines: history, archaeology, and war*. London: World Scientific Publishing.
- Hardy, S., 2015. Virtues impracticable and extremely difficult: the human rights of subsistence diggers. In: A. González-Ruibal and G. Moshenska (eds), *Ethics and the archaeology of violence*. New York, NY: Springer, 229–39.
- Mackenzie, S. and Davis, T., 2014. Temple looting in Cambodia: anatomy of a statue trafficking network. *British Journal of Criminology*, 54(5), 722–40.
- Mackenzie, S. and Green, P., 2008. Performative regulation: a case study in how powerful people avoid criminal labels. *British Journal of Criminology*, 48(2), 138–53.
- Mackenzie, S. and 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: S. Mackenzie and P. Green (eds), *Criminology and archaeology: studies in looted antiquities*. Oxford: Hart, 145–70.
- Merryman, J.H., 1985. Thinking about the Elgin Marbles. *Michigan Law Review*, 83, 1880.
- Merryman, J.H. 1986. Two ways of thinking about cultural property. *American Journal of International Law*, 80, 831.
- Merryman, J.H. 2000. A licit international trade in cultural objects (originally published in (1995) *International Journal of Cultural Property*, 4, 13). In: J.H. Merryman (ed.), *Thinking about the Elgin Marbles: critical essays on cultural property*. Art and Law. London: Kluwer Law International, 244–93.
- Polk, K., 2000. The antiquities trade viewed as a criminal market. *Hong Kong Lawyer*, September, 82–92.
- Prott, L.V. and Bessières, M., 2001. The cost of looting: Indiana Jones has no future. *UNESCO Courier*, 54(4), 18–21.

- Renfrew, C., 1993. Collectors are the real looters. *Archaeology*, 46(3), 16–17.
- Sandel, M.J., 2012. *What money can't buy: the moral limits of markets*. London: Penguin.
- Satz, D., 2010. *Why some things should not be for sale: the moral limits of markets*. New York, NY: Oxford University Press.
- Silverman, H. and Ruggles, D.F. (eds), 2007. *Cultural heritage and human rights*. New York, NY: Springer.
- Staley, D.P., 1993. St Lawrence Island's subsistence diggers: a new perspective on human effects on archaeological sites. *Journal of Field Archaeology*, 20, 347–55.
- Udvardy, M.L., Giles, L.L. and Mitsanze, J.B., 2003. The transatlantic trade in African ancestors: Mijikenda Memorial Statues (Vigango) and the ethics of collecting and curating non-western cultural property. *American Anthropologist*, 105(3), 566–80.
- UNDRIP, 2007. *United Nations Declaration on the Rights of Indigenous People*. 13 September.
- Vrdoljak, A.F., 2012. Human rights and illicit trade in cultural objects. In: S. Borelli and F. Lenzerini (eds), *Cultural heritage, cultural rights, cultural diversity: international law perspectives*. Leiden: Martinus Nijhoff, 107–40.
- Woodiwiss, A., 2005. *Human rights*. London: Routledge.
- Yates, D., 2014. Church theft, insecurity and community justice: the reality of source–end regulation of the market for illicit Bolivian cultural objects. *European Journal of Crime Policy and Research*, 20, 445–57.