



Criminological Frameworks for Understanding Mexican Antiquities in Contemporary European Auctions



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1 The Auction

On 3 December 2021, when we were preparing the presentation that inspired this writing, the French auction house Millon¹ held a public sale of antiquities at the premises of the famous Paris Hôtel Drouot. Entitled *Les Empires de Lumière*, perhaps in reference to the painting series *L'Empire des Lumières* by René Magritte, the sale featured about 130 objects which were listed as having originated in pre-Conquest Latin America. None of the objects was offered with adequate provenance information: countries of origin were obscured, ownership histories were incomplete, and proof of legal export was absent. Experts on social media and, swiftly afterwards, the countries of origin complained about the sale, with Mexico, in particular, leading in demands for repatriation within the public forum of the popular press.² Over 70 of the objects in the Millon sale could have originated in the territory of Mexico, and it is highly unlikely that any of those objects left Mexico in compliance with the law. Requests to halt the sale were ignored, and the antiquities were sold to anonymous private bidders.³

As frustrating as that situation might seem, both the sale and the resulting dispersal to private collections despite the high likelihood of illegality did not surprise either Mexican authorities or researchers who specialise in illicit antiquities research. Indeed, this was just one of many bulk sales of

¹ <https://www.millon.com/>, consulted on October 21, 2022.

² E.g., see <https://www.thedailybeast.com/mexico-demands-end-to-sale-of-their-aztec-artifacts>, consulted on October 21, 2022.

³ See auction results at <https://www.millon.com/catalogue/vente1608-les-empires-de-lumiere/resultat>, consulted on October 21, 2022.



pre-Conquest Latin American material to be held in Europe recently. And with Mexico and other countries of origin experiencing little success in halting these auctions, the sales continue. Indeed, at the time of writing Millon is actively seeking pre-Conquest Latin American objects for two follow-up *Les Empires de Lumière* sales, scheduled for 14 September and 14 December 2022.⁴ The auction house and, presumably buyers, have rightly observed that Mexican protests result in minimal response from French authorities.

In this contribution, we will discuss some of the reasons that auctions of looted and trafficked Mexican antiquities continue to take place. We will briefly present some of the features of the market for pre-Conquest Latin American antiquities that support illicit trafficking and sale, and we will then point out some of the specific issues that are visible within the previously-mentioned Millon auction. We assert that these issues are not unique to the auction in question but are rather representative of this market as a whole. Following this we will put forward two framing techniques from the field of criminology which we can use to better understand this market and the behaviour of people within it. While the applications of these criminological frames are expanded upon in other publications, they are offered here as devices for scholars outside of the criminological field to consider. We conclude with some comments on how we can more effectively respond to these auctions in the future.

2

Features of the Market

How is the contemporary auction market for Mexican pre-Conquest antiquities supplied? Largely with the sins of the past. Little of the Mexican material that is available on the contemporary European auction market represents "fresh loot" or recent crime. Rather it is the backlog of tourist trinkets, collections of mid-20th-century connoisseurs, and objects that are not authentically

⁴ <https://web.archive.org/web/20220621113559/https://www.millon.com/nos-specialites/les-grandes-civilisations/art-premier>, consulted on October 21, 2022.

ancient that have been circulating for decades but are becoming visible in large groups due to the death of the generation that collected them. Little provenance data exists for this material, allowing for fantastic and unrealistic possible histories to supplant most likely trafficking scenarios.

2.1 Over a Century of Illicit Trade

Simply put, there are a lot of looted, trafficked, and otherwise undocumented Mexican antiquities in circulation within the private market. These objects represent the growth of the late 19th and early 20th century souvenir trade, with supply looted to meet constant touristic demand. Most of these objects are of low monetary value, the overwhelming majority of these objects were either excavated or exported in violation of Mexican law, and all of them lack sufficient paperwork to establish their social and legal trajectories.

In the 1950s and continuing into the 1960s and 1970s, demand for Mexican antiquities abroad expanded beyond the tourist market to the more elite spaces of art collecting. This was a boom-period for the collecting of pre-Conquest Latin American antiquities. Taste-making collections such as the contents of Nelson Rockefeller's Museum of Primitive Art (now in the Metropolitan Museum of Art), and Mildred and Robert Woods Bliss' Dumbarton Oaks Research Library and Collection redefined Mexican antiquities as art, driving up demand and thus prices for particularly significant pieces. It also inspired the devastating and broad-sweeping looting of Mexico's archaeological sites, as well as the looting of other Latin American countries, to feed market demand. The time period that this looting and collecting occurred may be of direct relevance to the contemporary manifestations of this market.

Doing simple calculations, the male collectors who fuelled this 1960s market have nearly all recently died, and their (presumed) slightly younger wives are also of an age where they are now passing away. As they die, their collections are left to heirs who appear to be placing them up for sale *en masse*. This creates a subsidiary boom in the availability of pre-Conquest Latin American antiquities that is tied more to market demand 60 years ago than it is to market demand now. It also explains the low sale prices achieved for most of these objects at auction: these are not freshly looted pieces that satiate hungry consumers, rather they are the now-unwanted orphans of past desire.



2.2 Not Authentically Ancient

Complicating the mix of tourist pieces and curated collections that we see appearing in contemporary sales is the long history of Mexican archaeological fakes. Documented as early as 1910 in Leopoldo Batres' *Antigüedades Mejicanas Falsificadas: Falsification y Falsificadores*,⁵ contemporary Mexican artists and craftspeople had produced a prolific amount of material that mimics pre-Conquest antiquities. Some of these objects can certainly be considered "fakes" in that they were produced with the intent of passing them off as authentically ancient to inspire increased profits. However, many of these objects were not made or initially sold with the intention of deception on the part of Mexican craftspeople; these modern replicas were souvenirs purchased by knowing tourists. Yet once these replicas reached foreign soil and were gifted, inherited, or sold, their modern pedigree was lost. On the market a modern replica (or intentional fake) with no paperwork appears the same as an authentically ancient but looted and trafficked antiquity with no paperwork, and the two become mixed together on the market. Thus, within the European sales in question, we see an undercurrent of large groups of low-value sales of likely fakes/replicas in the same second and third tier auction houses that sale low-value authentic pieces. At times it is impossible even for experts to distinguish between the two.

2.3 A Lack of Provenance

Complicating things further, there is a general lack of provenance information offered or available within this market, an issue evident in all previous research on the topic.⁶ This is, in part, because that provenance information

5 BATRES, Leopoldo, *Antigüedades Mejicanas Falsificadas: Falsification y Falsificadores*, Impr. De F.S. Soria, México, 1910.

6 e.g., BRODIE, Neil, "The Internet market in Precolumbian antiquities", in KILA, Joris and BALCELLS, Marc (eds.), *Cultural Property Crime: An Overview and Analysis on Contemporary Perspectives and Trends*, Brill, Leiden, 2014, pp. 237-262; GILGAN, Elizabeth, "Looting and the market for Maya objects: a Belizean perspective", in BRODIE, Neil, DOOLE, Jenny and RENFREW, Colin (eds.), *Trade in Illicit Antiquities: the Destruction of the World's Archaeological Heritage*, McDonald Institute of Archaeology, Cambridge, 2001, pp. 77-87; LEVINE, Marc N. and MARTÍNEZ DE LUNA, Lucha, "Museum Salvage: A Case Study of

does not exist. First the majority of this material left its country of origin in violation of that country's law, and second the majority of the material available and in question is of "low" market quality and of little note. Even after it was looted and trafficked, it did not inspire a paper trail on the market. As such, it appears that provenance does not matter very much within the market for pre-Conquest Latin American material broadly,⁷ or specifically in the market for cheaper pre-Conquest antiquities that are represented in European auctions. While extensive provenance might draw some buyers to some pieces, the volume and turnover of unprovenanced pieces on the market clearly shows that a lack of provenance is not prohibitive.

Because of this lack of provenance, recently trafficked antiquities, however limited they may be in this market, are indistinguishable from those looted and trafficked long ago.⁸ Objects whose criminal histories are recent enough to still be investigated by law enforcement are then masked by the hopeless cases in which time hides the crime (see below). The lack of consumer demand for provenance and proof of legality promotes a laxity among dealers and auction houses who, understandably, are not motivated to ask questions about objects that they do not want to know the answer to.

Mesoamerican Artifacts in Museum Collections and on the Antiquities Market", *Journal of Field Archaeology*, 38-3 (2013), pp. 264-276; LUKE, Christina and HENDERSON, John S., "The Plunder of the Ulúa Valley, Honduras, and a Market Analysis for Its Antiquities", in BRODIE, Neil, KERSEL, Morag M., LUKE, Christina and TUBB, Kathryn Walker (eds.), *Archaeology, Cultural Heritage, and the Antiquities Trade*, University Press of Florida, Gainesville, 2006, pp. 147-172; TREMAIN, Cara, "Fifty Years of Collecting: The Sale of Ancient Maya Antiquities at Sotheby's", *International Journal of Cultural Property*, 24-2 (2017), pp. 187-219; YATES, Donna, *South America on the Block: The changing face of Pre-Columbian antiquities auctions in response to international law*, MPhil Dissertation, University of Cambridge, 2006; YATES, Donna, "Value and doubt: The persuasive power of 'authenticity' in the antiquities market", *PARSE*, 2 (2015), pp. 71-84; YATES, Donna, "Failures and consequences of anti-antiquities trafficking policy in Mesoamerica", in C. TREMAIN, Cara and YATES, Donna (eds.), *The Market for Mesoamerica: Reflections on the Sale and Acquisition of Pre-Columbian Collections*, University Press Florida, Gainesville, 2019, pp. 189-203; YATES, Donna, "What auction catalogue analysis cannot tell us about the market", in FABIANI, Michelle D., BURMON, Kate Melody and HUFNAGEL, Saskia (eds.), *Global Perspectives on Cultural Property Crime*, Routledge, London, 2022, pp. 43-60.

⁷ YATES, Donna, "Value and doubt...", ob. cit.

⁸ MACKENZIE, Simon and YATES, Donna, "What is Grey about the 'Grey Market'", in BECKERT, Jens and DEWEY, Matias (eds.), *Antiquities', The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy*, Oxford University Press, Oxford, 2016, pp. 70-86.



3

Barriers in Law

3.1 Evidence Burdens

While it is true that the initial acts of looting and trafficking of the Mexican antiquities in contemporary European auctions happened in the now-distant past, it must be emphasised that, first, those actions were illegal and second that the antiquities remain the rightful property of Mexico. These objects remain the tangible manifestation of Mexico's heritage and the time that has passed since the point of initial theft in no way negates either the cultural significance of these pieces within Mexico or Mexico's right or even duty to attempt to reclaim them. However, because of the significant time that has elapsed since the initial crime occurred, Mexico and other countries of origin face evidentiary challenges with regards to establishing crime has occurred, establishing ownership, and halting auction sales abroad.

To simplify the problem, with the understanding that each context and jurisdiction has its own unique legal challenges, at a basic level Mexico must prove that any given antiquity left in a manner that violated Mexican law. Practically speaking, this usually means that Mexico must prove that the specific object in question was in Mexico when Mexico declared national ownership of such objects, and that the object left Mexico after Mexico made such export illegal. The problem arises: how do you prove that an archaeological object that was looted from the ground and, thus, that Mexico has no record of and that was exported clandestinely and with no record was actually in Mexico at the relevant date. A court is certain to ask how, in the absence of documentary evidence, does Mexico know the object did not leave Mexico at any point between the 1500s and the much more recent cut-off date? How can Mexico prove it? While in many cases, the most likely scenario is meant to be accepted by the court, it is not so easy to convince a court that more recent and illegal looting and trafficking is, indeed, the most likely scenario even when all existing research assures that it is.

Compounding the problem is that ancient borders do not correspond with modern borders, and when no evidence of the exact find spot of an antiquity exists, which is the case for nearly every Mexican antiquity on the market, a court may reasonably hold that Mexico might not be the right country to return it to. Mexico has to prove they are a valid claimant. If Belize, Guatemala,



Honduras, etc. might be the proper owner of a trafficked antiquity, giving it to Mexico simply because Mexico asked without evidence would be wrong. While a convincing case for exclusively Mexican objects might be convincing in court (although not always, in the authors' experience), Maya objects, for example, are found in five modern countries. When they have been looted, it is usually not possible to determine which one would be the correct claimant.

4 Criminological Frames for Thinking about this Market

Ultimately this is a market that has its foundations in illegal actions of the past, where consumption of Mexican antiquities depends on sellers and buyers both accepting a high degree of uncertainty in purchases. Why would an otherwise law-abiding person take the risks involved in consuming unprovenanced antiquities. While, admittedly, there is little risk of these people facing legal penalties for this activity, there is a significant financial risk that the antiquities they buy will not be authentically ancient. Perhaps more importantly, there is a personal psychological risk in engaging in crime adjacent actions, of doing the wrong thing, that harms one's self-identity of being a good person. This is where the discipline of criminology, which studies the social constructions of crime, could be useful. Via criminological framings we can begin to consider why people are able to consume illicit Mexican antiquities.

In this section we will discuss two criminological concepts which are useful in considering how and why elite actors engage with the market for unprovenanced Mexican antiquities. Both of these concepts, Neutralisation Techniques⁹ and Creative Compliance,¹⁰ have been used by scholars to

9 MACKENZIE, Simon and YATES, Donna, "Collectors on illicit collecting: Higher loyalties and other techniques of neutralization in the unlawful collecting of rare and precious orchids and antiquities", *Theoretical Criminology*, 20-3 (2016), pp. 340-357; MACKENZIE, Simon R. M., "Dig a bit deeper: law, regulation and the illicit antiquities market", *British Journal of Criminology*, 45-3 (2005), pp. 249-268; MACKENZIE, Simon R.M., *Going, Going, Gone: Regulating the Market in Illicit Antiquities*, Institute of Art and Law, Leicester, 2005.

10 MACKENZIE, Simon and YATES, Donna, "What is grey about the 'grey market'...", ob. cit.; MACKENZIE, Simon, "The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organised Crime



successfully analyse behaviour in antiquities markets. Here we will describe these two concepts and show examples of how they can be applied in this market. My hope is that by seeing them in use, the reader will be inspired to consider these and other criminological theories for approaching crimes related to cultural objects.

4.1 Techniques of Neutralisation

In the 1950s, criminologists Gresham Sykes and David Matza¹¹ conducted research among youth offenders in the United States in the 1950s. While previous criminological research had hypothesised otherwise, the adolescents who participated in the study did not appear to be members of a criminal subculture that viewed bad acts as good. Instead, the youths were part of regular society like everyone else, and they experienced feelings of guilt about their crimes. To deal with the psychological pressures of committing crimes, the youths had developed a number of internal narratives to neutralise their actions: stories that they told themselves which justified their actions and allowed them not to think of themselves as criminals. Sykes and Matza were able to classify these justifications into five "neutralization techniques", the employment of which allowed the individual to be "freed to engage in delinquency without serious damage to [their] self-image".¹² These are *Denial of Responsibility*, *Denial of Injury*, *Denial of the Victim*, *Condemnation of the Condemners*, and *Appeal to Higher Loyalties*.

While each of these neutralization techniques are interesting and, arguably, can be used to consider actors and actions within the illicit trade in Mexican antiquities, here I will focus on the last technique: *Appeal to Higher Loyalties*. Sykes and Matza defined this as a situation where offenders were aware of rules and perhaps even considered them to be right but thought that something greater or more important forced them to break those rules.

in the International Antiquities Market", in MANACORDA, Stefano and CHAPPELL, Duncan (eds.), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer, New York, 2011, pp. 69-85.

¹¹ SYKES, Gresham M. and MATZA, David, "Techniques of Neutralization: A Theory of Delinquency", *American Sociological Review*, 22-6 (1957), pp. 664-670.

¹² *Ibid.*, p. 667.

The example given by Sykes and Matza was loyalty to friends or obligation to family, but that is not the only possibility. The *Appeal to Higher Loyalties* then is defined by an offender who feels themselves to be in an ethical, moral, or social quandary; that they are "caught up in a dilemma that must be resolved, unfortunately, at the cost of violating the law" or other rules or norms.¹³

Research has found a number of instances of the use of an appeal to higher loyalties to neutralise the negative aspects of participation in the antiquities market.¹⁴ One of the primary and, seemingly, the most internally compelling form that the technique takes is an assertion that the object in question is or was in some sort of danger, and by purchasing it, the buyer saves the antiquity from obscurity and destruction. The buyer may suspect laws were violated and know that the antiquity is unprovenanced and likely looted and trafficked, but their feeling of commitment to the antiquity, to the act of saving, justifies their actions. They have a higher loyalty to preservation. Yet, often when evaluated against available evidence, or external realities, there is little to no evidence that the act of buying saved the antiquity in question or any antiquity. There is ample evidence that demand in this market causes supply, and the willingness of buyers to buy antiquities in the first place is what puts these objects in danger of being looted or destroyed.¹⁵ Believing in the saving narrative, however, allows buyers to excuse their own behaviour and ultimately to do what they want.

Thinking specifically of Mexican antiquities and understanding that this does not represent a complete analysis, a few examples of the technique of appeal to higher loyalties comes to mind. While these are not unique to Mexico, they have been applied to Mexican contexts on numerous occasions. One common application of this technique used to argue against facilitating the voluntary return of looted antiquities is that these antiquities are "safer" in Europe, North America, etc. People who employ this technique often say that while they know the pieces in question have been looted or trafficked, the instability that they see as inherent in lower income countries would put

¹³ *Ibid.*, p. 669.

¹⁴ E.g., MACKENZIE, Simon and YATES, Donna, "Collectors on illicit collecting...", *ob. cit.*

¹⁵ MACKENZIE, Simon, BRODIE, Neil, YATES, Donna and TSIROGIANNIS, Christos, *Trafficking Culture New Directions in Researching the Global Market in Illicit Antiquities*, Routledge, London, 2019.



the antiquities at risk.¹⁶ The antiquities, they often note, could be returned once the country of origin is more stable or less risky, but ultimately, they argue that what is best for the antiquities should rest above the law. Should be a higher loyalty. Related to this is an argument that the lower income country in question either does not have the facilities or local expertise to properly care for the antiquities if returned.

While our purpose is not to fully deconstruct that argument, although it is not one that we agree with in any context, seen through the lens of neutralisation we can think of how and why it is being used; what the person using it gains from it and who is meant to hear the excuse. Taking a step into reality, Mexico is home to modern, world class, secure museums and hosts the best specialists in researching and preserving Mexican culture. Mexican museums are fully capable of preserving, securing, and displaying Mexican antiquities, and they do it very well. Insecurity in Mexico is not specifically museum insecurity, there is no threat of, say, an airstrike like there would be in an active conflict zone, and there is no indication that Mexican museums are robbed more frequently than those outside of Mexico. Further, Mexican antiquities in European museums or collections are not inherently safe. The beautiful and significant Dresden Codex, one of the handful of Maya books to survive to the present, is held in the Saxon State Library in Dresden Germany. During the bombing of Dresden in 1945, the codex experienced significant water damage and deterioration. Had the codex been in Mexico at the time, such damage would not have happened. That is not to say that the codex could not have been damaged in Mexico, but rather that Europe is not an inherently safer place for Mexican antiquities.

Yet this neutralisation technique is not used in an argument against the above reality. Rather it is used by and heard by people with deeply ingrained views about benevolence and economic privilege, about the inherent superiority of the institutions of the global north, and a willingness to believe negative things about the professional capabilities of non-white people and their institutions based on little evidence; ultimately this is deep seated racism, although the neutralizer using these techniques would likely resist that label.

To say, "I am saving a Mexican antiquity by buying it", legitimises the purchase, but only among people who share the same view of the world. The

16 MACKENZIE, Simon and YATES, Donna, "Collectors on illicit collecting...", ob. cit.



effect of that technique is ruined when contrary evidence is presented. And this is, perhaps why this criminological framing is useful beyond the limited scope of academic research. An organisation or government agency wishing to discourage the consumption of illicit Mexican antiquities on the market, which (?) has identified "appear to higher loyalties" in the form of a "saving narrative" among buyers seeking to justify their purchases can develop messaging that directly contradicts that narrative. They can tune the message to exactly what the buyer is thinking and directly invalidate their excuse. That may be enough to move many buyers away from the market.

4.2 Creative Compliance

McBarnet and Whelan have defined "creative compliance" as "using the law to escape legal control without actually violating legal rules" which "emphasises the two-sided nature of law, as a means of controlling and a means of escaping control".¹⁷ Creative compliance is the use of legal literalism "in a manipulative way to circumvent or undermine the purpose of regulation".¹⁸ Through creative compliance, one violates the spirit and purpose of a law while still complying with the letter of the law. It "thrives on a narrow legalistic approach to rules and legal control, on a formalistic conception of law".¹⁹ Creative compliance is often used to benefit the creative complier, either monetarily or otherwise, and is usually used knowingly: the creative complier may take pride in getting around what they know to be the intent of the law.

In some ways, creative compliance is another way that someone who engages in the illicit market for Mexican antiquities can justify their actions. In this case they either make the argument explicitly or through their actions that if buying or selling an antiquity does not directly violate the law it is not wrong and is likely right. Yet to restate, the results of creative compliance are often that someone does the opposite of what the law was intended to do while technically not breaking the law. So, on a practical level, understanding how

¹⁷ MCBARNET, Doreen and WHELAN, Christopher, "The Elusive Spirit of the Law: Formalism and the Struggle for Legal Control", *The Modern Law Review* 54 (1991), pp. 848–873.

¹⁸ *Ibid.*, p. 849.

¹⁹ *Ibid.*, p. 848.



people creatively comply with laws related to the protection of antiquities will allow us to make better and more effective law.

One particularly strong case of creative compliance related to Mexican antiquities involves the movement in 1979 of about 200 real and not authentically ancient Mexican antiquities into Australia to exploit a tax loophole related to museum donation. The full details of this case can be found in other publications.²⁰ The important point of this case here is that while Australia's intent was to encourage private individuals to donate artworks to museums so that everyone can enjoy them, their legislation allowed for a situation where freshly looted, freshly imported unprovenanced antiquities could be overvalued and then donated to a museum for inflated tax relief. That was not what the writers of the law wanted, but as it turned out it was perfectly legal to do. Australia did close the loophole when it was brought to their attention, however the collection of Mexican objects remains in Australia. Looking ahead and evaluating all antiquities protection policy through the lens of someone wishing to creatively comply, could allow us to make more robust and effective policy from the start.

5

Closing Thoughts: How we can Respond

While this chapter's primary goal was to consider the current trend in European based auctions of Mexican material, and advocate for the use of criminological framings for approaching such sales in both academic and practical settings, there are two more points we would like to make in closing. These relate to the direction that I believe we need to take when it comes to our work with, in, and against the illicit market for Mexican antiquities going forward.

First, we believe that provenance research is the key to most of our approaches and should be an element of all research. As noted above, "proof" of when and how an object was stolen can be what is needed to halt an auction or even effect a return. Courts can be quite sympathetic to countries seeking to claim their stolen culture but are bound by their own rules. Evidence is and

²⁰ YATES, Donna, "Museums, collectors, and value manipulation: tax fraud through donation of antiquities", *Journal of Financial Crime*, 23-1 (2016), pp. 173-186.