

Conditions for Guilt-Free Consumption in a Transnational Criminal Market

Simon Mackenzie

Published online: 25 December 2013
© Springer Science+Business Media Dordrecht 2013

Abstract It has been widely opined in discussions around a number of transnational criminal markets that where a global economic supply and demand relationship exists, demand reduction by way of consumer education and ‘awareness-raising’ may be an effective intervention in reducing illicit trade. It seems an obvious and sensible suggestion on the face of it, but just how amenable are consumers to being educated away from purchasing illicitly obtained and trafficked goods, and what are the barriers that stand in the way of that process of demand reduction through awareness-raising? This paper approaches these questions by asking what are the conditions for guilt-free consumption in the international trade in illicit cultural objects. The paper identifies seven such conditions, and concludes that in this global market we are witnessing the playing out of a common social story in which a powerful group of market capitalists and end-consumers employs a range of sociologically developed linguistic and performative strategies to obfuscate or legitimise their exploitation of a group of less powerful victims. If that is the context for the so-called debate about illicit antiquities, crime-reduction strategies involving consumer education seem considerably more difficult to achieve than has been widely recognised in policy discussions on transnational crime.

Keywords Awareness raising · Consumer education · Crime reduction · Illicit antiquities · International criminal markets · Qualitative criminology · Techniques of neutralisation · Trafficking cultural property · Transnational crime

Consumption, Criminalisation and Education

I think the people in the antiquities market feel really, they don’t like feeling that they are dealing with shit, that they are shits, that they are criminals, that they’re drug dealers, that they’re arms dealers, that they are living in a really shady twilight world, that they are the, you know, having a Bond Street gallery you are the kind of gilding on a rotting lily or something, it’s... it’s rubbish (laughs). It’s like reading somebody’s espionage novel, it’s, it’s fantasy... And you know, I studied art... I’m just a bloke who works in the art world, and who likes wonderful things, and you know... then to be constantly looking behind

S. Mackenzie (✉)
SCCJR, University of Glasgow, School of Social and Political Sciences,
Ivy Lodge, 63 Gibson St, Glasgow G12 8LR, UK
e-mail: simon.mackenzie@glasgow.ac.uk

your back somehow as if you're some evil cultural monster, which is, you know, which is how dealers have become vilified... You just feel I'm a decent human being, I'm not evil, I don't do evil to people, I, why am I treated, you know, like some fucking evil c***! I'm a nice man! I love my mum! You know, I've got lots of books! (London Dealer)

This is a useful quote to start our reflections with, since it represents the trade reception of one type of market-end intervention aimed at altering the perception, or self-perception, of traders and consumers of cultural objects. This is the process of criminalisation, and the attendant moral narrative that goes along with that process. And this is a fairly standard example of dealers' expressed reactions to that criminalisation and moral denunciation process, a process which has been slowly rolling out across market countries for antiquities (Gerstenblith 2007; Mackenzie and Green 2009). There is also another type of market-end intervention, however, which aims to alter perceptions and self-perceptions in the market, which is less a matter of top-down enforcement or a labelling process that amounts to identity-reframing-by-accusation, but rather is more consensual and ongoing. That second process is one of education.

It has been widely opined in discussions around a number of transnational criminal markets that where a global economic supply and demand relationship exists, demand reduction by way of consumer education and 'awareness-raising' may be an effective intervention in reducing illicit trade. This is thought to be especially so given the notable failures of supply-side regulation in cutting down any illicit trade flow for which there exists a substantial level of demand (Polk 2000). This consumer education suggestion can be found in discussions on global markets in drugs (e.g. McSweeney et al. 2008), wildlife (Ngoc and Wyatt 2013; Schneider 2008), diamonds (Tailby 2002; Siegel 2009), people trafficking for sexual exploitation (Wilson and Dalton 2008; Home Office and Scottish Government 2008), and more, including the global trade in looted cultural objects. It seems an obvious and sensible suggestion on the face of it, but just how amenable are consumers to being educated away from purchase of illicitly obtained and trafficked goods, and what are the barriers that stand in the way of that process of demand reduction through awareness-raising?

The market for cultural objects includes a number of different types of consumers, and my observations here are only really in respect of one type – high end dealers. In terms of methodology, this paper uses interview data gathered in tape recorded interviews with high end dealers and their representatives (e.g. lobbyists and lawyers). By 'high end' I mean prominent business people dealing in particularly valuable and rare antiquities, usually with an international client base. Interview data is important for various reasons, particularly because it provides insights into the discourse of the top echelons of the market which is less orchestrated than the more performative texts or prepared statements made by market actors in the pages of trade or occasionally academic journals (e.g. Marks 1998; Ede 1998), or in representations to government commissions or similar official opinion-gathering processes (e.g. Palmer et al. 2000). There is a more private side to what dealers think than this public impression they create and manipulate, and personal interviews can, if they work well, access that private side to some extent. If we consider discourse and narrative to be important drivers of action then it is useful to supplement a reading of the performative public discourse of the market with interview records of the more private market discourse, and this is what I will do here in dealing with both of these public and private sources of data.

In terms of theoretical orientation, the inspiration for this paper comes from two well-regarded criminology and sociology essays, which use the idea of 'conditions' for certain states of affairs in order to provide an exposition of how certain things happen. In other words, 'a good method for clarifying a process is to tell how to make it happen' (Duster 1971: 25).

The first essay in this line of thinking is Harold Garfinkel's very famous paper on 'conditions of successful degradation ceremonies' (Garfinkel 1956), which laid out the eight conditions he thought necessary for the successful public degradation of a person's 'total identity' through communicative work such that the individual's identity would be transformed into an identity lower in the group's scheme of social types. The second paper is Troy Duster's 'conditions for guilt-free massacre' (Duster 1971), which uses Garfinkel's paper as a 'suggestive model' and pursues an exposition of the social processes, settings and contexts which make the seemingly impossible notion of a guilt-free massacre possible. Here I intend to use both of these papers as my suggestive model, in asking what are the conditions which support guilt-free consumption in a transnational criminal market. Clearly this question stands at some distance from either of those Garfinkel and Duster were asking, but in the course of the paper I aim to persuade the reader that the social mechanisms these authors have identified (and in particular it is Duster's model I will follow) are useful in understanding not only status degradation and guilt-free massacres, but also a wide range of other phenomena of criminological relevance including guilt-free consumption of certain kinds of illicit art. The question of guilt-free consumption seems to be an important one to answer if we have any ambition to educate or raise awareness among the consumers who provide demand for illicit cultural objects. My particular concern is with the patterns of discourse in the international trade in cultural objects which constitute the conditions under which people can buy looted artefacts without either remorse for the now well-observed harm to knowledge that looting causes (Renfrew 1999; Brodie et al. 2000), or concern about the criminality which looting and trafficking involves (Polk 2000; Mackenzie 2011), both of which might be forms of 'guilt' which a consumer in the global antiquities trade as it currently exists may be imagined potentially to feel.

What therefore are the conditions for guilt-free consumption in this trade, or to put it another way, what is the sociological recipe for achieving an active market in which looted artefacts are bought (i.e. a 'guilty' act is committed) without triggering either (a) the subjective emotional state in actors that we would identify as guilt, or (b) a legal pronouncement of guilt?

Guilty Knowledge and Public Secrets

A precursor to any discussion of subjective feelings of guilt has to be the question of knowing, since we cannot expect someone to feel guilt in respect of the commission of an act which they did not know was wrongful. Indeed, such an apparent lack of knowledge forms the first basis of most defences where criminal legal proceedings are brought against people who have bought looted antiquities – 'I didn't know it was looted' or alternatively 'I didn't know it was illegal'. This can be observed, for example, in the recent prosecution and conviction of US dealer Frederick Schultz (Gerstenblith 2002, 2003, 2009). Similar arguments have been made in public statements issued by Marion True in respect of the recently time-barred prosecution brought against her by the Italian state. True was the former curator of the Getty Museum, charged in Rome in 2005 with conspiring to receive antiquities that had been illegally excavated and exported from Italy, and has suggested she would willingly have arranged for the repatriation of looted antiquities in the Getty collection had she been presented with proof they were stolen (True 2011).

The anthropologist Michael Taussig has developed a term in a different context which captures quite nicely the issue of knowledge in the antiquities trade. He suggests that there are 'public secrets' and defines them as what is generally known but, for one reason or another, cannot easily be articulated (Taussig 1999). He contends that one of the key social

competences for people these days is ‘knowing what not to know’; a capacity to go on in the world with an awareness of certain problematic public secrets but a circumspect approach to not talking about them. There are other theoretical approaches to this question of the sociology of moral cognition, and they all point to similar observations on issues of widespread public denial of issues which are known but not appropriately acknowledged or acted upon (Cohen 2001; Zerubavel 2006).

The antiquities trade is home to one such public secret. It is certainly difficult to articulate what proportion of goods in the market is problematic, in the sense of being cultural objects illegally excavated or otherwise ‘looted’ (e.g. forcibly removed parts of temples and similar types of culturally destructive theft) and/or unlawfully exported from a ‘source’ country. The difficulty involved in this articulation of illicit market size can be witnessed in the continuing academic discussion on the topic as well as the questions posed on the size of the illicit trade in almost every popular press article, which despite the impressive sounding figures usually quoted, in truth cannot currently be answered with any precision. But on the question of the presence of those problematic goods in the market, there can be no doubt:

Occasionally [prospective sellers will] even come in with photographs saying ‘this is... we know it’s genuine because these are the photographs of it being dug up’ (laughs)... You’re never quite sure if someone’s going to bang on the door and say, ‘right you lot, come along with me, you’ve been dealing in, you’ve been in illegal activity’ (London dealer).

Sometimes, the introduction of an element of doubt about the illicit nature of a transaction might be quite purposive on the part of the buyer, in the sense that there are circumstances surrounding the sale which allow them to reduce, in a rather artificial way, the suspicion which might otherwise be felt:

I mean it’s easily done to manufacture a, a provenance and, you know, archaeologists are not wrong in saying that provenances are being manufactured, because they are.

[How are they being manufactured?]

They’re being manufactured however way I mentioned to you earlier. You say to somebody, ‘what I’d really like to know is that this comes from your mother’s collection’... that kind of stuff. You have leading questions. It’s a series of compromises I guess that a dealer gets involved in at that point. To do with his own reputation, his own safety, the object itself, plausibility of the man who... he’s dealing with, the woman he’s dealing with. So that’s how a provenance can be manufactured (London dealer).

So one of the conditions for guilt-free consumption in this market is *the obfuscation of knowledge about the provenance of objects, allowing the buyer to introduce an element of doubt into the question of illicit origin*. The illicit purchase must take place in the zone of ‘knowing but not knowing’ rather than the more straightforward zone of ‘knowing’ (cf: Cohen 2001). Clearly there are criminals involved in the market who trade in that latter zone, in the clear knowledge of criminality (Watson and Todeschini 2006; Felch and Frammolino 2011), but these are not the subjects in our field of enquiry when we ask the question about social norms of guilt-free consumption. These criminals may indeed be operating ‘guilt-free’, but they are not doing so in any way that seems to require a complex explanation, and they are presumably likely to be highly unreceptive to educational initiatives or awareness-raising interventions highlighting the harm they are causing, so in that sense they are outside the scope of this paper.

Undermine Victims

The second condition for guilt-free consumption in this transnational criminal market is *to undermine the platform of the victims of your consumption*. Duster provides a list of examples of the derogatory phrases which are part of the process of dehumanisation preceding massacres. In ways parallel to those in which the victims of massacres are dehumanised, source countries as victims of the global illicit antiquities trade must be denigrated. As Duster puts it in his study, ‘you indicate that the contact [between victims and perpetrator groups] is not between equals; you talk about the disadvantaged, the deprived. You make sure that the culture and customs of the target population are seen as having no value to your own group, and you inculcate this attitude either by laughing at those cultures and customs or by destroying them’ (Duster 1971: 27).

Source countries for antiquities are viewed by those active in the trade as lesser states than the market nations: less developed, more corrupt, less organised, and generally less deserving of sympathy. They are thought to have brought their plight on themselves through poor resource management, bad policing, and restrictive policies which foster underground trade.

Now, what’s cultural patrimony? The foreign nation said, well everything is our cultural patrimony. But the other view, by Professor Merryman, he says ‘well, that’s a bunch of crap, you know maybe a dozen objects per nation will rise to a level where they become irreplaceably significant’ (New York trade lawyer).

The speaker’s point here is to press the quixotic argument that source countries are unduly restricting the export of unremarkable antiquities; an odd line since the context is one in which the market wants access to these artefacts – so the argument effectively amounts to ‘source countries are hoarding objects they shouldn’t want, because they are not important or distinctive enough... but we want them, so they are clearly important or distinctive enough to be valued and collected in the market’. We can see this strange logic at work again in this excerpt from a paper by Bill Pearlstein, a trade representative and lobbyist.

A New York antiquities dealer suggested to the author that although the Sevso Treasure is a rare collection, worth millions on the open market, it lacks the aesthetic or other special qualities needed to render it more than just another expensive, museum-quality antiquity. The same might be said of most of the objects subject to Turkey’s patrimony claims... (Pearlstein 1996: 139, fn 62)

The source countries are portrayed as complainants in a pejorative constitutive manner rather than because of substantive grievance:

We agree that the looting of fresh archaeological sites is a problem, and indeed by the early 70’s this had reached crisis proportions in Central America and maybe in Italy, although the Italians always wail, right? That’s part of the national character (New York lawyer).

Source countries are talked about in a broad-brush fashion as being ‘run by dictators’, and as attempting to exert undue influence on the laws of western collecting market states:

To the extent that any dictator in any country can stand up and say ‘everything that’s over 100 years old that’s in my country belongs to me and anybody who takes it out is a thief’ and American courts, or British courts for that matter, decide to recognise in local law that definition of stolen property, I think we’re all up the spout (New York dealer).

The other complainant-victims of the piece, archaeologists, are de-legitimised as valid condemners of the market with reference to their laziness in publishing the results of their

work, and their lack of cultural capital compared to the worldly aestheticism of connoisseurs in the global marketplace.

So there are archaeologists who have a contempt for the object... its validity in many archaeologists' eyes is the archaeological aspect of it. And not that it could be an object of beauty. In fact some of them you'd say 'gosh isn't this beautiful', they look at you as if you're insane!... It's really quite shocking. And then there are archaeologists who dug, recorded and have never been published... and, you know you've got archaeologists that don't understand the objects that they're digging up... (London dealer).

Source states are further dismissed as worthy victims by questioning the link between what they see as 'their' cultural patrimony and the actual relations between current occupants of the state's territory and the makers or depositors of the buried cultural objects in question. A recurring theme in titles of books written by market lobbyists is 'who owns the past?' (Fitz Gibbon 2005; Cuno 2008), as if the answer might just as reasonably be 'US collectors' as the countries which have legally declared ownership to their territorial resources. Archaeologists and anthropologists, it is said, 'have gained the ethical high ground in the antiquities wars with the dealers, collectors and museums because of several oversimplifications – the principal one being the notion that source countries are entitled to retain all antiquities for themselves as national patrimony' (Marks 1998: 122).

An additional tactic for pushing victims or condemners out of sight and out of mind is to individualise them. Individual claims to moral superiority are more easily discounted if they are not associated with significant institutions of state. Archaeologists have tended to suffer from this sort of individuation, taking the role of lone prophets speaking outside the walls of the market (Coggin 1969; Elia 1994; Brodie et al. 2001), while inside those walls are significant and weighty institutions including museums. For many people, institutions like museums and even government are associated with a certain degree of legitimacy irrespective of their actions, so to mount criticism against those institutions from a position of fragmented individualism or small-group 'moral entrepreneurialism' (Becker 1963) is an uphill struggle.

Language Games

Thirdly, one must *develop a language which supports the ideology underpinning guilt-free consumption*. The victim nations are 'retentionist' and 'culturally nationalist' (Merryman 1986); to the contrary the great collecting museums are 'universalist', and 'encyclopedic' (Cuno 2008), and collectors and dealers are 'cultural internationalists' (Merryman 1986). Objects are not looted but rather are 'chance finds' (Mackenzie 2005); where they appear on the market without provenance they are lately referred to as 'orphans', suggesting they need someone to give them a home, to take care of them. There is a whole lexicon which has been purposively developed by those favouring trade in looted objects, with the aim of framing the issue in terms supportive to their attitudes and beliefs. In dealing and collecting circles, the issue is not spoken of in terms of crime, theft, trafficking, or handling stolen goods, although incontrovertibly this is what it is in many cases. Here is an example of a member of the trade lobby making the suggestion that looting is not an example of 'actual theft'. This is Ashton Hawkins, who was Secretary and Counsel at the Metropolitan Museum in New York, and then Executive Vice President and Counsel to the Trustees of the museum:

Although most such cases [of patrimony claims] do not involve *actual theft*, foreign governments seek to characterize the property as stolen in order to exploit United States

law to the effect that even a good faith purchaser cannot take title to ‘stolen property’ (Hawkins et al. 1995: 52, fn 17, my emphasis).

This is clearly rather loaded language, not only suggesting a distance between looting and other more conventional forms of theft - ‘even if it was not stolen in the traditional sense’ (Pearlstein 1996: 128) - but also painting foreign governments as exploitative, the suggestion being they are wilfully manipulating circumstances to suit their patrimony claims.

State vesting legislation is referred to by trade lobbyists as ‘found-in-the-ground law’, or ‘umbrella statutes’ (Pearlstein 1996), suggesting by the use of this language that the ownership claims of undiscovered antiquities by source governments are an example of state over-reach. Regulation in market countries is similarly constructed as a front for the pursuit of political objectives:

I see the legal efforts to reshape the art market based on political considerations as misguided, driven by myopic ideology rather than reality... (Marks 1998).

Social and Cultural Well-Being

Fourthly, *a link must be soldered between the consumptive and trade activity in question and the fundamental well-being of society*. For Duster in his study of military and police abuses of power, the important connection to be soldered was between ‘faith in the well-being of a society and faith in its organisational arm of violence [i.e. externally, the military; internally, the police]’ and he says that ‘once the connection is made between the well-being of the state and the actions of its army or police, citizens may soon conclude that the army or the police can never be wrong’ (Duster 1971: 28). Questioning the legitimacy or benign intent of the police thus appears as a challenge to the social fabric, and as subversive or reactionary. ‘For [some] people, the police and the army are right by definition’ (Duster 1971: 29).

In the antiquities trade, we can see a similar process leading to presumed institutional and trade legitimacy. The soldering of a connection between consumptive trade activity and the fundamental well-being of society seems to happen in three ways. First, the cultural well-being of developed societies is constructed as dependent on access to ownership of cultural objects from other parts of the world, which is made possible by dealers who are therefore considered the organisational means for effecting this form of cultural access, with a presumed legitimacy to their means of doing so and a reluctance to enquire into those means. Second, that question of ownership of foreign cultural objects is linked, in the US in particular, to basic constitutional rights of property. And third, the question of national cultural depletion through market control is set in a context of needless self-sacrifice by any market nation implementing restrictions:

So looking at ... the recent all-encompassing import restrictions granted by the US... you go, wait a second, I don’t get it. Most of the world isn’t doing a fucking thing... (New York lawyer).

Through these three mechanisms, criticism of trade in stolen cultural goods is taken as an attack on the constitution, a type of treasonous speech, and as an attack on the cultural well-being of developed societies. Market forces are constructed as benign or indifferent, not as causes of certain adverse effects:

Even if the despoliation of archaeological sites was market driven, the market forces are not responsible, per se... market forces are not intrinsically bad... (Marks 1998: 126)

And the trade is constructed as an essential part of ‘civilised society’:

... the antiquities market serves as the medium through which American museums have assembled their world class collections and have exposed the American public to objects and cultures from other parts of the world. And ... this is essentially a good thing and part of the core value system that we as a civilised society value (New York lawyer).

Organisational Forces and Strategies

Fifthly, where the consumers are not individuals acting alone but are institutional actors, there are other well-documented processes which operate to generate *social forces within an organisation that can diminish individual tendencies to independent moral decision-making, and subsume or subordinate individual will to the will of the organisation*. There are a range of theoretical perspectives on this process and we can mention some of the more pertinent here. Sutherland’s differential association sees deviance occurring where in a social group or organisation there is a preponderance of definitions favourable to deviance over definitions unfavourable (Sutherland and Cressey 1978). Vaughan’s ‘normalisation of deviance’ thesis sees wrongful action occurring incrementally in organisational settings. Small infractions of rules which occur without adverse consequence can push the boundaries of the acceptable norm in an organisational setting, and if this process continues then over time those boundaries can shift considerably, to the point that major acts of deviance are committed in a context in which they have become gradually normalised (Vaughan 1996, 1998, 1999, 2004). Sociologists including Bourdieu have noted a process of promotion within organisations which bears comparison to natural selection – those who rise within the ranks are those who best appreciate and implement the organisational goals and culture, so organisational cultures can become self-perpetuating as people who may challenge established norms are passed over for promotion (Bourdieu 1996). These theoretical perspectives on organisational deviance and others bear clear relevance to understanding white-collar crime by museum personnel in making acquisitions of illicit material (Brodie and Bowman Proulx forthcoming). They may also assist, *mutatis mutandis*, in the analysis of the high end of the market more generally, where closely networked activity can come to approximate some of the characteristics of the reproduction of intra-organisational norm and value structures.

Sixthly, as well as organisational effects on individuals in terms of the development of their moral and normative dispositions, there are a number of *organisational strategies for avoiding the external attribution of blame*. Duster says that ‘of these, the most important and the most effective are secrecy and isolation, usually in combination’ (Duster 1971: 31). He is referring there to the police and the army as claiming that secrecy is crucial to their operations, while benefitting from the lack of public accountability that secrecy brings. Operators in the antiquities trade make comparable claims to secrecy as an essential context for successful business in this particular market, and likewise this trade secrecy over sources, prices, profits and object histories brings substantial benefits to traders in illicit goods through lack of public or official scrutiny.

Another classic organisational strategy for avoiding blame is to single out a bad apple, or as John Braithwaite has put it, a ‘vice-president responsible for going to jail’ (Braithwaite 1984). This allocation by the organisation, and sometimes acceptance by the individual, of personal responsibility for wrongdoing serves to exempt the structures and processes of the deviant organisation from further scrutiny. As the corporate crime literature makes clear, ‘where blame does attach to the organisation, top officials always disclaim any knowledge of what was going on’ (Duster 1971). In the museum buying context, case studies seem to suggest that the personalisation of responsibility happens not explicitly within the organisation, but is taken on

over time by some of those with buying responsibility, seen as a risk which adheres to and is in some degree mitigated by an implicitly understood culture of acquisition that permeates throughout the institution. Organisational deviance thus manifests as action by curators who operate in a conflicted context where ethical codes such as ICOM are subscribed to by the museum and appear to govern practice, but where the internal culture of the institution retains an emphasis on impressive acquisitions which in fact may only be available with code-breachingly low levels of provenance information.

Secrecy operates in the antiquities market in many ways, including as a standard business practice. While critics of the market and policy makers express hope for more provenance information to pass through market transactions, some traders have good economic reason for keeping their knowledge of good provenance secret. Here, a dealer's assistant had through inadvertent research found provenance information for an object his employer had previously sold without provenance:

I remember actually giving, sending the provenance on to the person that bought it, much to the annoyance of my boss. I think he would have hoped that perhaps in another time in another life it was going to come back to him and he could give it better provenance (London dealer).

The point here being that, based on the perception that provenance information increases the price of an artefact,¹ buying back an object with 'no provenance' and then attributing it with a provenance that you knew all along, but nobody else did, is a quick way to turn a profit.

Creative Compliance, Creative Non-compliance, Neutralisation and Othering

Seventh, *work must be done to prevent the attachment of legal pronouncements of guilt*. The moral sense of guilt is only one dimension; whether or not a person feels guilt, the law can still find them 'guilty'. In a global market with supply which is clearly illicit at source, but consumption which takes place more or less openly and apparently legally in the market, some process of transition is needed between the two (Alder et al. 2009). There have been several contributions observing the mechanisms of this transition, including the use of free ports or transit points which will issue export documentation without asking too many questions about the original import of the material (Murphy 1995; Mackenzie 2005); warehouses that store illicit goods while limitation periods run (Redmond-Cooper 2000; Watson and Todeschini 2006); people who are able to operate across the margins of the transition between illegal and legal, such as culturally competent international traders who present one face to their illicit suppliers and another to their buyers (Polk 2000; Tjihuis 2006). Lobbying activity in market countries results in laws which hopelessly operate only on the basis of knowledge, where the whole organisation of the global market has evolved to obscure that knowledge and support the public secret, the knowing but not knowing (Mackenzie and Green 2009).

Now, there are other guys who come in, you know, with Middle Eastern accents and a suitcase full of stuff, and, and you know you can't touch it. You just know you can't touch it and sometimes you see amazing things and you just say, 'there's no way I can touch it'... You would say to this person, 'how did it get into the country?' He might say, 'I brought it in in my suitcase yesterday', and you would say to him, 'it would be

¹ See Brodie's paper in this issue which suggests that this common assumption may well be incorrect.

much better if you were to say that this comes from your private collection which I'm – is it based or is it – are you doing it for a friend whose collection's been based here for many years? Because it would be good for us to know that it's come, you know, it was out of wherever it was before 1970. So go back and see if you can find any more information...please (laughs)'.

[And then he finds the information?]

And then he would come back and he would probably sign an... invoice, it says that, that you as the seller declare that this piece is legally on the market, that it's...I think we had a huge rider on the back of the invoice that ... put the onus on the person selling it to us to say, and I suppose you'd just say, 'I'm sorry but the guy we bought it from said this'. (London Dealer).

One aspect of the legal treatment of this form of wrongdoing which requires to be neutralised as a condition of guilt-free consumption is the prosecution and conviction of other traders. My observations here tie in with Duster's third condition: *'the merger of individual responsibility with the organisation and its fate'* (Duster 1971: 30-1) as well as drawing on some of the suggestions made above about organisational context and the personalisation of responsibility. In a small market, there might be thought to be an unavoidable proximity between dealers and collectors in the sense that when someone who was previously considered a colleague or acquaintance is convicted of a criminal offence, the implications may be problematic for the self-image of those who continue to perform actions similar to those which warranted the conviction. Despite the unambiguous nature of a criminal conviction, the market introduces an ambiguity around wrongdoing when its dealers talk about those who have been labelled in the criminal justice system. It appears to do so in two ways: (a) the 'rotten apples' narrative and (b) the above mentioned merger of individual responsibility with the organisation and its fate. The rotten apples story is well known to corporate and white-collar crime studies: the purported wrongdoers are outliers, not representative of the general approach of the trade and not performing acts which other lawful traders would condone (Bakan 2004).

Some of the dealers convicted of serious criminal offences or otherwise known for being involved in trafficking have, however, been such central actors in the global trade that it would be difficult for their fellow dealers to write them off as rotten apples. The public discovery of their illegal practices risks tainting the whole trade, and as a result other damage limitation explanations are needed. In this scenario, 'their illegal actions cannot be charged as guilty, for that would reflect upon the organisation' (Duster 1971: 31), and what in fact happens is that rather than rotten apples, whose actions and intents are condemned but not thought representative, they are characterised as well-meaning in their intent but aberrant in the way they went about their trades. Here we have a selection of views on two such dealers. The first dealer is widely believed to have been centrally involved in a major trafficking network, and apparently needs 'a slap' rather than a more conventional criminal justice disposition.

I'm not an apologist for him really, and I didn't, I knew him, I didn't know him very well and I've seen him subsequently to his downfall. And he's a pompous bloke really, he needs a slap, but you know, he was placing stuff, remarkable stuff, into very safe custody (London dealer).

The second set of examples come from discussions about Frederick Schultz, a major dealer in New York who in 2003 was convicted of handling stolen goods and jailed in a landmark US prosecution. Schultz had received stolen and unlawfully exported Egyptian antiquities from Jonathan Tokeley-Parry, himself a convicted English art smuggler, and the evidence presented

in Schultz's prosecution showed the two had conspired to fake the provenance of the loot to allow it to be sold on to the public market (Gerstenblith 2002).

I know Schultz... he's a good guy. He's a straight-up, honourable guy... there's nothing sleazy or scummy about his practice. Fred did a fair amount of business with an Englishman called Jonathan Tokeley-Parry, early to mid-90s. Tokeley-Parry was scummy, and deranged, and all that stuff (NY lawyer).

Yeah, Tokeley-Parry. He's a pathological liar and I met him on several occasions when Fred was dealing with him and I mean he was just a nutter. Fred was stupid, but that should not be an imprisonable offence (NY dealer).

I don't think the serious people in the art market behave badly. I mean one or two of them behave extremely stupidly... (London dealer).

You're probably familiar with the Fred Schultz story? He was stupid. He actually did something criminal in that they faked paperwork and so on. But what they actually did, the thing that they dealt with, was not that immoral or evil or didn't do anyone any harm. The bottom line is: are you doing anybody any harm, or are people going to benefit in some way from having things distributed around the world (Bangkok dealer).

The fact that Fred Schultz might have done some stupid things in not getting good information from the guy who was offering him things on consignment for sale, and the fact that the guy who was offering things on consignment for sale was a clear crook and a nutcase, you know that's out there for anybody to, if you're buying a used car or you're buying art then you have to protect yourself in that situation (NY dealer).

There is an interesting common construction to these narratives. In the Schultz story, we have a bad apple in Tokeley-Parry, and a more respectable representative of the trade in Schultz. The bad apple is portrayed as a 'nutter', bringing into play in a colloquial way a suggestion that some sort of mental illness or inherent pathology must lie at the root of the actions of the worst criminal traders, whose dealings are otherwise inexplicable. By contrast, Schultz comes out of these narrative constructions as naïve or gullible; a legitimate trader who was taken advantage of, and whose 'crime' was that he wasn't sufficiently wary of the 'crook and nutcase' he was receiving goods from.

British readers may also recognise the resonance between some of these phrases and the plea of being a 'pretty straight guy' which became famous, and widely excoriated in the left wing press, when Tony Blair made it in his defence to allegations of a seemingly over-close relationship with millionaire Formula One boss Bernie Ecclestone, culminating in a scandal around Ecclestone's seven figure donation to the Labour party and Formula One's subsequent exemption from the government's ban on tobacco advertising in sport (Cohen 2004). The 'pretty straight guy' motif is in effect an attempt to separate the person from the action, and is seen above used in relation to Schultz: like Blair, his actions may have the appearance of wrongdoing but his intent is suggested to be legitimate through the presentation of this image of his core identity as pretty straight.

Conclusion

Perhaps the most notable feature of the debate about the global trade in looted cultural objects is the *debate* itself – the much remarked-upon discursive stalemate between trade and archaeology which has characterised the academic literature and public impact of this research field for several

decades. Positions have become entrenched over years of argument. What I have tried to do here is to begin the work of analysing some of these so-called arguments, with the aim of questioning whether they are legitimately held rational viewpoints or whether, alternatively, they are representative of a more widely-used technique of discourse in which a systematic range of strategies is deployed in order to create and sustain the conditions for guilt-free wrongdoing. If this is the case, then we are not simply experiencing a stalemate in value-conflict between two viewpoints with contrasting beliefs on the subject of trade and harm, but rather we are witnessing the playing out of a common social story in which a powerful group employs a range of sociologically developed linguistic and performative strategies to obfuscate or legitimise their exploitation of a group of less powerful victims. If that is the context for the so-called debate about illicit antiquities, crime-reduction strategies involving consumer education seem considerably more difficult to achieve than has been widely recognised in policy discussions on transnational crime.

Acknowledgments The research leading to these results has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007-2013) / ERC Grant agreement n° 283873 GTICO.

References

- Alder, C., Chappell, D., & Polk, K. (2009). Perspectives on the Organisation and Control of the Illicit Traffic in Antiquities in South East Asia. In S. Manacorda (Ed.), *Organised Crime in Art and Antiquities* (pp. 119–144). Milan: International Scientific and Professional Advisory Council of the UN Crime Prevention and Criminal Justice Programme.
- Bakan, J. (2004). *The Corporation: the Pathological Pursuit of Profit and Power*. New York: Free Press.
- Becker, H. S. (1963). *Outsiders: Studies in the Sociology of Deviance*. New York: Free Press.
- Bourdieu, P. (1996). *On Television and Journalism*, tr. P. Parkhurst Ferguson. London: Pluto Press.
- Braithwaite, J. (1984). *Corporate Crime in the Pharmaceutical Industry*. London: Routledge and Kegan Paul.
- Brodie, N. and Bowman Proulx, B. (forthcoming) 'Museum Malpractice as Corporate Crime? The Case of the J. Paul Getty Museum', *Journal of Crime and Justice*.
- 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.
- Brodie, N., Doole, J., & Watson, P. (2000). *Stealing History: the Illicit Trade in Cultural Material*. Cambridge: The McDonald Institute for Archaeological Research.
- Coggins, C. (1969) 'Illicit Traffic of Pre-Columbian Antiquities', *Art Journal*, Fall: 94-8.
- Cohen, N. (2004). *Pretty Straight Guys*. London: Faber and Faber.
- Cohen, S. (2001). *States of Denial: Knowing about Atrocities and Suffering*. Cambridge: Polity.
- Cuno, J. (2008). *Who Owns Antiquity? Museums and the Battle Over Our Ancient Heritage*. Princeton, NJ: Princeton University Press.
- Duster, T. (1971). Conditions for Guilt-Free Massacre. In N. Sanford & C. Comstock (Eds.), *Sanctions for Evil*. San Francisco: Jossey-Bass, Inc.
- Ede, J. (1998). Ethics, the Antiquities Trade, and Archaeology. *International Journal of Cultural Property*, 7(1), 128–131.
- Elia, R.J. (1994) 'The World Cannot Afford Many More Collectors with a Passion for Antiquities', *The Art Newspaper*, 41(October): 19.
- Felch, J., & Frammolino, R. (2011). *Chasing Aphrodite: the Hunt for Looted Antiquities at the World's Richest Museum*. Boston/New York: Houghton Mifflin Harcourt.
- Fitz Gibbon, K. (ed) (2005) *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*. New Brunswick, NJ: Rutgers University Press.
- Garfinkel, H. (1956). Conditions of Successful Status Degradation Ceremonies. *American Journal of Sociology*, 6, 420–424.
- Gerstenblith, P. (2002) 'United States v. Schultz', *Culture Without Context: the Newsletter of the Illicit Antiquities Research Centre, University of Cambridge*, 10(Spring).
- Gerstenblith, P. (2003) 'The McClain/Schultz Doctrine: Another Step Against Trade in Stolen Antiquities', *Culture Without Context: the Newsletter of the Illicit Antiquities Research Centre, University of Cambridge*, 13(Autumn).

- Gerstenblith, P. (2007). Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past. *Chicago Journal of International Law*, 8(1), 167–195.
- Gerstenblith, P. (2009) 'Schultz and Barakat: Universal Recognition of National Ownership of Antiquities', *Art, Antiquity and Law*, 14(1).
- Hawkins, A., Rothman, R. A., & Goldstein, D. B. (1995). A Tale of Two Innocents: Creating an Equitable Balance Between the Rights of Former Owners and Good Faith Purchasers of Stolen Art. *Fordham Law Review*, 64(1), 49–96.
- Home Office and Scottish Government. (2008). *Update to the UK Action Plan on Tackling Human Trafficking*. London: Home Office.
- Mackenzie, S. (2005). *Going, Going, Gone: Regulating the Market in Illicit Antiquities*. Leicester: Institute of Art and Law.
- Mackenzie, S. (2011). Illicit Deals in Cultural Objects as Crimes of the Powerful. *Crime, Law and Social Change*, 56, 133–153.
- 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 S. Mackenzie & P. Green (Eds.), *Criminology and Archaeology: Studies in Looted Antiquities*. Oxford: Hart.
- Marks, P. (1998). The Ethics of Art Dealing. *International Journal of Cultural Property*, 7(1), 116–127.
- McSweeney, T., Turnbull, P., & Hough, M. (2008). *Tackling Drug Markets and Distribution Networks in the UK: a Review of the Recent Literature*. London: UK Drug Policy Commission.
- Merryman, J. H. (1986). Two Ways of Thinking about Cultural Property. *American Journal of International Law*, 80, 831.
- Murphy, J. D. (1995). *Plunder and Preservation: Cultural Property Law and Practice in the People's Republic of China*. Hong Kong: Oxford University Press.
- Ngoc, A. C., & Wyatt, T. (2013). A Green Criminological Exploration of Illegal Wildlife Trade in Vietnam. *Asian Criminology*, 8, 129–142.
- Palmer, N., Addyman, P., Anderson, R., Browne, A., Somers Cocks, A., Davies, M., et al. (2000). 'Ministerial Advisory Panel on Illicit Trade', December 2000. London: Department for Culture, Media and Sport.
- Pearlstein, W. G. (1996). Claims for the Repatriation of Cultural Property: Prospects for a Managed Antiquities Market. *Georgetown Journal of Law and Policy in International Business*, 28(1), 123–150.
- Polk, K. (2000) 'The Antiquities Trade Viewed as a Criminal Market', *Hong Kong Lawyer*, September: 82–92.
- Redmond-Cooper, R. (2000). Limitation of Actions in Art and Antiquity Claims: Part II. *Art Antiquity and Law*, 5(2), 185–206.
- 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.
- Siegel, D. (2009). *The Mazon Ritual: Culture, Customs and Crime in the Diamond Trade*. Dordrecht: Springer.
- Sutherland, E. H., & Cressey, D. R. (1978). *Criminology*. Philadelphia: Lippincott.
- Tailby, R. (2002). 'The Illicit Market in Diamonds', *Trends & Issues in Crime and Criminal Justice No 218, January 2002*. Canberra: Australian Institute of Criminology.
- Taussig, M. (1999). *Defacement: Public Secrecy and the Labor of the Negative*. Stanford: Stanford University Press.
- Tijhuis, E. A. J. G. (2006). *Transnational Crime and the Interface between Legal and Illegal Actors: the Case of the Illicit Art and Antiquities Trade*. Nijmegen, Netherlands: Wolf Legal Publishers.
- True, M. (2011) 'Neither Condemned Nor Vindicated', *The Art Newspaper*, 220.
- Vaughan, D. (1996). *The Challenger Launch Decision: Risky Technology, Culture, and Deviance at NASA*. Chicago: The University of Chicago Press.
- Vaughan, D. (1998). Rational Choice, Situated Action, and the Social Control of Organizations. *Law and Society Review*, 32(1), 23–61.
- Vaughan, D. (1999). The Dark Side of Organizations: Mistake, Misconduct, and Disaster. *Annual Review of Sociology*, 25, 271–305.
- Vaughan, D. (2004). Organizational Rituals of Risk and Error. In B. Hutter & M. Power (Eds.), *Organizational Encounters with Risk*. New York: Cambridge University Press.
- Watson, P., & Todeschini, C. (2006). *The Medici Conspiracy: the Illicit Journey of Looted Antiquities - From Italy's Tomb Raiders to the World's Greatest Museums*. New York: Public Affairs.
- Wilson, J. M., & Dalton, E. (2008). Human Trafficking in the Heartland: Variation in Law Enforcement Awareness and Response. *Journal of Contemporary Criminal Justice*, 24(6), 296–313.
- Zerubavel, E. (2006). *The Elephant in the Room: Silence and Denial in Everyday Life*. Oxford: Oxford University Press.