

The Architecture of Illegal Markets

Towards an Economic Sociology
of Illegality in the Economy

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What Is Grey about the "Grey Market" in Antiquities?

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Introduction

The global market in antiquities has been described as a "grey market" in discussions by various commentators on the problem of illicit cultural property. In this contribution, we set out to examine that terminology, ultimately providing (we hope) a definitive breakdown of the meanings and implications of the idea of "greyness" as it applies to this particular illicit market. As we shall see, the term "grey market" has been applied fairly liberally by researchers working on illicit markets in cultural objects and is in danger of becoming a generic, but unrefined synonym for the interface between certain illicit practices in excavation and the public antiquities trade. It would therefore seem helpful at this point in the development of the research evidence based on illicit antiquities—and particularly in the context of the theme and other contributions in this book—to pause and reflect on what we mean when we observe greyness in this market.¹

In general, "grey" has become a term used to suggest a liminal or hard to assess zone between two poles. Often these poles are those identified by Mayntz in her chapter in this volume: il/legal, im/moral, and/or in/appropriate. In such usage, we find the assessment of the meaning of certain forms of social action described as "a grey area": in other words, hard to judge and open to argument either way, where, for example, the law or an institutional or personal code of ethics does not seem to provide a firm basis for pronouncement. Grey areas

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such as these may be only foggy, in that a correct interpretation is possible but hard to discern, or more genuinely grey in that the law, ethics, or social normativity in fact do not provide definitive guidance.

As well as questions of interpretation of the meaning of action, greyness can be used to signify a mixing of two types of black/dirty and white/clean things; for example, grey water for recycled household use is neither clean nor entirely tainted. In a similar vein, researchers speak of a grey literature, which is neither openly published nor entirely restricted from access upon request or negotiation. This includes the internal institutional reports of bodies such as government departments or the police. Grey can thus mean "neither one thing nor the other" in the context of mixed origins of constituent parts, or in the context of residing in a social realm that is neither fully public nor private.

Finally, we should distinguish from our discussion the economic use of the term "grey market," which is the normal use of the term. In discussions of international trade, a grey market in this usual sense is a parallel market. Parallel markets are not illegal, but the objects they move are unauthorized for sale in a particular jurisdiction by their manufacturers, who have developed different versions of the product for different global markets. Grey imports of cars, for example, may produce problems for consumers who find their vehicle to be unsupported by a national network of dealers and parts providers in a jurisdiction in which the car was never intended for sale. There are other versions of grey or parallel markets along these lines, but we do not need to go into detail here as the point is simply to note that the developed use of the term "grey market" to refer to the international trade in antiquities is at odds with the usual use of the term in the literature on international trade from the perspective of the disciplines taught in business schools.

Two dimensions of the interfaces between legality and illegality in markets that the editors draw out in their introduction to this book are (i) that definitions of legality and illegality are contested in the social practices of market actors, and (ii) that the distinction between legality and illegality is complicated by the intermingling of both types of activities in markets. These propositions map roughly onto a threefold distinction, which we will argue for in this chapter in relation to understanding the illicit antiquities trade as a "grey market," building on the general observations about greyness laid out above. That distinction is between: (a) an uncertainty or contest in the ethical, legal, or normative construction of the issue, (b) the practical mixing of licit and illicit chains of supply, and (c) the changing social/market and legal classification of individual artifacts as they are laundered through multiple transactions and jurisdictions over time. In summary, then, both of the editorial's dimensions of interfaces between legality and illegality are well reflected in studies of the global antiquities market.

In respect of the first point, there is illegality at each stage of the market (at source, in transit, and in terms of trade and collection in market countries). Archaeological looting is a criminal offence in most source countries, cross-border trafficking will usually breach a number of legal provisions, and trade in the international marketplace with knowledge or serious suspicion of illicit origins will also usually constitute a crime (Prott and O'Keefe 1984, 1989). There can be no doubt that the international legal regime and its constituent domestic jurisdictional parts consider trade in illicit antiquities to be illegal. However, at all of the stages of transaction there are deviance-normalizing and neutralizing engagements with the issues exercised by the actors and constituencies involved.

Looters have in some texts been characterized as "subsistence diggers" (e.g. Matsuda 2005), drawing them directly into line with the discourse the editors of the present volume identify as "survival strategies," in respect of which they suggest tolerance has been increasing since the financial crisis. It has even been argued that we should recognize looting as a moral and human right "where there is no viable alternative economic means for subsistence diggers to access their human rights to clean water, food and medicine" (Hardy 2015). One can equally, however, find studies that debunk this construction of looters working only to put food on the table. In recent known cases it is clear that the looters were career criminals, close enough to accepted definitions of organized criminals to merit discussion in those terms (Mackenzie and Davis 2014; Felch and Frammolino 2011).

In the cross-border trafficking phase we find the value and purpose of export restrictions disputed by market-oriented "cultural internationalists" (Merryman 1986). Source states are considered "retentionist" by these neo-liberal commentators, who would like to see cultural property the subject of worldwide free trade. They consider export prohibitions to be a causal mechanism in the formation of international black markets in cultural property, since by restricting the buying pool only to national collectors, export controls create a situation where higher prices are available for antiquities or significant artworks outside the jurisdiction in which they can be legally sold (Bator 1983).

Finally, in the international marketplace, it is clear that high-end antiquities buyers contest some of the premises upon which the current legal regime is based, and engage in practices of "creative compliance," which use the letter of the law to defeat its spirit (McBarnet 2003). Less clear is whether this reflects a genuine clash of values, or something more like a process of Matzian neutralization (Matza 1964), where the general ethical and normative value structure underpinning the governance of trade in antiquities is largely accepted but traders engage in occasional moments of drift where they are temporarily dislocated from conventional normativity and open to the

performance of a criminal act, using discourse/narrative as the mechanism to achieve that drift into deviance (Mackenzie and Yates 2016).

It is primarily in respect of the editors' second point—the mixing of legal and illegal supply chains in the market—that, as we shall see, the antiquities market has been considered "grey" rather than black or white. Market actors tend to refer to "the legitimate market" (the "white"), which they consider to be separate from the market in illegitimate artifacts (the "black" market), presenting a picture of an above-board trade whose reputation is sullied by criminal traffickers engaged in a parallel but separate enterprise. In the black-market paradigm, illicit trades are the province of underground private sales and if the so-called legitimate trade is found to be involved it is because either the dealer was a "bad apple" or he was duped.

As we shall see, however, the weight of research evidence suggests that analysts should reject the black-market hypothesis and work instead with a view of the antiquities trade as "grey," in the sense that what has been called the legitimate market is empirically a mix of legality and illegality at the demand end of the supply chain. Dealers, collectors, auction houses, and museums are regularly the subject of complaints about their involvement in trading illicit cultural and archaeological goods, which often result in successful repatriation claims in respect of the objects by their countries of origin. Within the grey-market paradigm, while it has been clear for some time that we are talking about a market which is in some respects dirty, it has not really been analytically clear exactly how illicit artifacts are intermixed with legal trades, in other words the mechanics by which the market is polluted. Some of our research in the Trafficking Culture project over the past few years has helped to clarify the polluting mechanism that greys the market in this sense (Mackenzie and Davis 2014).

As we shall see in the next section, the mixing type of greyness mentioned above of being neither definitively one thing nor another applies well to the antiquities trade, which is in another inflection of the term "greyness," similar to "grey literature," at once out in the open but hidden to an extent, neither fully public nor entirely private. The greyness in this sense might be summarized as meaning that the activities of the trade are slightly obscure or inscrutable to the average person.

The Functioning of the Illicit Trade in Antiquities

The term "antiquity" is commonly used to mean a human-made object created in the past and found at an archaeological site. There is no set definition of how old an object has to be to be considered an antiquity, rather the essence of an antiquity is that it was constructed then deposited before the present.

Antiquities are a sub-set of what are termed “cultural objects” or “cultural property.” Cultural property is related to ideas of heritage and experiences of cultural identity, but objects classified as cultural property need not have been made in the past or deposited at an archaeological site. Many countries legally define antiquities by clear “older than” dates: for example, anything over 100 years old is considered an antiquity. These dates vary from jurisdiction to jurisdiction. For the most part, though, antiquities are equivalent to artifacts: the terms are and will be used interchangeably.

Artifacts are the primary unit of archaeological investigation and archaeological investigation has provided a significant amount of our collective knowledge of humanity’s past. Yet it is the careful observation of these artifacts within deposited strata that allow archaeologists to draw conclusions about our ancestors. Determining how an artifact relates to the surrounding matrix of other artifacts and architectural features allows an archaeologist to slowly reconstruct the sequence of cultural and environmental events that brought about its deposition. In archaeology this concept is called “context” and artifact context is vital to everything that an archaeologist does. An antiquity with context adds another piece to the complicated puzzle of understanding ancient lives. An antiquity without context, it has been argued, is archaeologically worthless.

When an archaeologist excavates a site, the majority of their time is spent recording artifact context via forms, notes, photographs, plans, drawings, and digital scanning. This is because the act of conducting archaeology destroys context: once a site is disturbed by excavation it cannot be reconstructed. Thus unprofessional excavations at archaeological sites inevitably destroy vital context which can never be recovered. In archaeological looting, then, the theft of the object from its rightful owner (usually the source country, although in some jurisdictions it may be the private landowner) is strongly associated with the destruction of the context of the find, obliterating our only window into the past. The looting of antiquities is always destructive.

This destruction extends beyond archaeology and can translate into economic loss for communities that live near archaeological sites. Many countries with rich archaeological pasts are currently economically poor. These countries depend on the cultural tourism that comes from foreign visitors to their spectacular archaeological sites. However, the very countries that outsiders most equate with intact archaeological wonders (for example Peru, Cambodia, or Jordan) are naturally hotspots for antiquities looting and trafficking. The despoliation of these sites challenges the viability of vital national tourism industries and threatens the livelihood of anyone involved (Brodie 2010).

Besides economic destruction, there are indications that the looting of archaeological sites results in challenges to community cohesion and

perceptions of security. Antiquities are tangible objects but they often serve as a physical manifestation of intangible concepts that underlie the social fabric of local and descendant groups. Threats to these objects are felt as threats to culture, and the trafficking of antiquities to Western markets, especially in post-colonial situations, is interpreted as a racist challenge to indigenous sovereignty and cultural dignity. It outwardly confirms the lived experience of social inequality between the developing and the developed world.

There is incredible variation in the structure of antiquities trafficking. It can range from objects passing through numerous countries and changing hands many times before ultimately being sold to a collector or museum (for example, the Cambodian statue-smuggling networks described by Mackenzie and Davis 2014), to situations where the object passes through no hands, with the collectors themselves digging up the artifact, transporting it, and keeping it (for example, the “pothunters” who loot Native American sites in the southwestern United States). That said, it is possible to present common features seen in various antiquities trafficking networks and cases.

At source, “looters,” meaning the people who actually dig antiquities out of the ground, are often poor locals with few other economic options. They may take significant risks to locate sellable artifacts: there are many cases of looters dying in cave-ins or from suffocation, and they are also the group in the trafficking chain most likely to be caught and prosecuted. For their efforts, they are paid a derisory percentage of the final sale value of the antiquities they find (Brodie 1998).

Because antiquities that come from archaeological sites are unknown before they are looted, there are no official records of their existence. That, coupled with the remoteness of many archaeological sites, makes it incredibly difficult to protect against or even detect archaeological looting. How does a country protect an archaeological site that it does not yet know exists? Furthermore, as many archaeologically rich countries are located in the developing world, the systematic and structural deficits of local and national authorities may allow antiquities trafficking networks to function. Underfunded, ineffectual, or corrupt police and customs abet all kinds of commodities smuggling, antiquities among them (Yates 2014a, 2014b).

Thus at source, the model antiquities network would be economically marginal locals digging at a nearby, poorly protected archaeological site. They would then sell their finds to an in-country broker or intermediary with connections to corrupt inspection or enforcement authorities, who could be paid to look the other way when the objects are exported.

During the transit phase of antiquities trafficking, objects follow routes based on the nature of the objects themselves and the needs of both the intermediaries and the ultimate buyers. In some cases, antiquities are moved directly from their country of origin to their country of sale: carried on flights, driven overland

across a border, or shipped/posted. In other cases the objects are moved through one or more "transit ports," which physically distance the pieces from their illicit origins and, at times, result in the acquisition of import/export paperwork that supports the impression of legitimacy (Polk 2000).

Paperwork, then, is an important part of the transit stage. False customs declarations may allow shipments of antiquities to pass through customs checks. Valid paperwork for legally exportable antiquities may be used to traffic other antiquities that are not exportable (Kersel 2006). Weaker import restrictions in transit ports may result in antiquities that were illegally exported from their countries of origin acquiring legitimate export documentation as they pass through on their way to their final market. This documentation may be used later to create a false provenance narrative.

During transit, the model antiquities network would see the source end intermediary shipping the pieces through one or more transit ports on the way to the final market country. Export documentation for the pieces would list them as modern handicrafts or replicas and such replicas might be mixed in among the authentic artifacts. An official in the country of origin may have been bribed. The antiquities may seem to move in a nonsensical path (for example, from Egypt to Thailand to Dubai), but the path represents both known security weaknesses and differences in import and export regulation in each country. At each transit port, the shipment would obtain legitimate import and export documentation, which would eventually ease its transition into the ultimate market country where a suitable paper trail becomes useful in selling the item. In an alternative model a carrier might put an artifact in their cabin luggage, get on a plane, and bring it into the market country through security checkpoints that are screening for guns, not antiquities.

After the transit phase we move to the market phase, where antiquities enter the wider art market, usually in relatively wealthy developed-world countries that have either a long tradition of antiquities collecting (Western Europe, USA) or an elite class with significant spending power (China, UAE). It is at this stage that documentation acquired during the antiquities-trafficking process may be converted into a false provenance to allow for public sale. For example, a freshly looted artifact that passed through Switzerland on its way to being sold in New York might be presented to buyers as "property of an anonymous Swiss collector," with the implied understanding of "old money" selling off artifacts that were collected before restrictions were put in place. False provenance, then, is a narrative that casts a dodgy artifact as legitimate and is accompanied by the minimal amount of fraudulent or misleading paperwork needed to allow the piece to pass into the art market.

The model market end of the antiquities-smuggling chain, then, is where an artifact is exported from a transit port into a market country along with whatever paperwork it has acquired. The receiver of the piece is likely to be a

high-level intermediary or dealer who may know or at least suspect the illicit origins of the piece, and who participates in the elite circles of the art market. That dealer then offers the piece for sale either quietly to private buyers or by consigning it to public auction. The dealer will say the piece was in an old family collection in a plausible foreign country, supporting this either with the available paperwork or with a persuasive but false narrative. The buyer may or may not believe this false provenance, but it will be considered sufficient for sale. The piece will be sold, sometimes along with a certificate of authenticity, but not a certificate of legality.

Antiquities Market Features that Facilitate "Greying"

While the specifics of how the antiquities market can be considered "grey" will be discussed in the following sections, it is worth noting in preliminary observations and context for that discussion that there are several features particular to this trade that can be seen as facilitating the process of greying.

Research has identified certain individuals who, due to their position at the nexus between what might be termed the "black" and the "white" market for antiquities, allow for the functioning of the entire smuggling network. Termed "Janus figures" (Mackenzie and Davis 2014), these intermediaries are able to transition looted antiquities from their dubious origins into the high-class world of art sales through their connections on both sides. The Janus figures know at least some details about the looting and smuggling of the pieces and they know at least some details of their subsequent high-end sale: like Janus, they look in both directions.

The art market is traditionally opaque. Despite the large sums of money that change hands, the market functions on the basis of trust and reputation, not asking too many questions. This reflects an unspoken understanding that sales of art reflect the financial state of the wealthy sellers and an understanding that such financial matters are private. Thus art and antiquities sales are in effect somewhat "back-door," with no public record of the buyers and sellers that are connected through dealers. Even at public auction, both consigners and buyers are able to remain anonymous. In other words, it is an art-market tradition not to ask who is selling an antiquity, why they are selling it, or where they got it from.

There is no requirement that antiquities sale details be made public in most countries or to provide proof to buyers that an antiquities sale is legal. While there are various guidelines on good practice in codes of ethics and laws in various jurisdictions, there is no universally accepted standard for what constitutes seller or buyer due diligence when it comes to the ownership and import/export history of antiquities. The art market trains participants to not

ask questions that may result in the divulging of problematic knowledge about the origins of a proposed purchase. For the most part, then, the antiquities trade relies on self-regulation of participants, which clearly does not work as there is no financial or social motivation for them to self-regulate.

Finally, the public has no access to most private antiquities collections and, in many jurisdictions, neither does the state. While some states may require collectors to register the antiquities that they own, others do not, including such collecting bastions as the United States and the United Kingdom. The opacity enveloping collections means that antiquities can disappear into the private market, not to be heard of until they surface again. The fact that the market has developed this terminology of "surfacing" highlights the routine nature of the effective disappearance of artifacts into the depths of the private collecting market.

Use of the Concept of the Grey Market in the Literature on Illicit Antiquities

Let us revisit our threefold classification of antiquities market "greyness," mentioned above and further explicated in the following sections. We have identified greyness here as either (a) some type of normative indecipherability, (b) practical mixing, or (c) transition in individual object status/classification (and, of course, these three types are connected by an overlap in their coverage, where mixing leads to indecipherability, status transition complements general mixing, and so on). We can identify these approaches in the idea of the "grey market" with in the academic literature on the illicit antiquities trade (often implied in the context in which the term is used).

First, and most commonly, the market is described as grey to suggest that, in general or aggregate terms, streams of looted (illegal/black) antiquities are commingled with streams of recirculating (legal/white) antiquities to the point that it becomes impossible to say that the market as a whole is a legitimate or legal trade, as of course it generally purports to be. This mixing of licit and illicit produces a market that overall has the features and performs the functions of both a black market and a legal market, and so is close to the interpretation of "grey" as meaning "neither one thing nor the other" and rather displays properties of both black and white. The image is also one of pollution, where the white market is tainted by the insertion of black-market objects. One example of this polluted market imagery is references to the trade as a "murky shade of grey" (Bowman 2008: 226).

The second sense in which researchers have used the terminology of the grey market in analyses of the global trade in antiquities is on the level of the individual object, as opposed to the first sense, which applied to supply flows

in the market in aggregate. Individual antiquities have been categorized as "white" (legally excavated and exported), "black" (looted and illegally exported), or "grey." In this sense grey antiquities were looted and so started out black but have become legally saleable through the operation of law. This can occur where in some jurisdictions a good faith purchase vests title to a stolen chattel in the bona fide purchaser (Redmond-Cooper 1997). It can also occur through the application of limitation periods which may bar a claim by a dispossessed owner, in this case the state from which the artifact was taken. These grey antiquities are therefore legal but, for some critics at least, still tainted ethically by the circumstances of their illicit origins, especially if a purported good faith purchase is suspected to have been a ruse in which "forum shopping" has been used to identify a soft-touch jurisdiction in which title to an object can be easily laundered.

The third sense in which the concept of a grey market has been applied to the antiquities trade considers the "grey market" to be something separate from the "legal" and the "illicit" trade (Bichler et al. 2013: figure 1). It is not clear, however, what the properties of that grey market are conceived as being if they are separate from an elision of the legal and the illicit parts of the trade. This interpretation of the grey market as a separate zone from the legal and the illicit trades seems to be at odds with all other uses of the idea of the grey market in the illicit antiquities literature. In Bichler et al.'s formulation, the grey market interfaces with both the legal and the illicit markets, but also contains transactions that are part of neither the legal nor the illicit zones of trade. The authors do not explain how that grey market is supposed to work outside both the legal and the illegal types of trade, but the model must mean that the grey market contains trades with regard to which we cannot be reasonably sure whether they are legal or illegal. On that interpretation, it is a different way of putting the first version of greyness mentioned above: the mixing of licit and illicit supply flows such that it becomes hard to tell them apart.

Fourth, and finally, there are psychological "grey areas" that have been identified in research on the illicit antiquities market and have been analyzed in terms of the techniques of neutralization that pervade market discourse. These are discursive tools that have been quite well recognized and written about in criminology and beyond (Maruna and Copes 2005), attenuating the "moral bind to law" (Matza 1964) via mechanisms of justification and excuse of illegal action in context (Scott and Lyman 1968; Mackenzie and Yates 2016).

In the following section we will review the first, second, and fourth types of greyness mentioned above, passing over the third type in the absence of a clear specification of its parameters, but in the likelihood that it is a reformulation of the first type. Then we will conclude with some thoughts about other relevant kinds of greyness beyond those explicitly discussed in the literature to date.

Three Main Ways that the Market Might Be Considered Grey

Mixed Streams of Supply

The most common proposition about the grey market in the literature is that the antiquities market may be considered to be grey based on the belief that the market is the confluence of a supply of legitimate antiquities and a supply of illegitimate antiquities that are impossible to distinguish from each other. In other words, white (licit) antiquities mix with black (illicit) antiquities to form a grey market and this grey market is allowed to flourish because of tolerance of the opaque business practices of the art market. This position implies that both looted and trafficked antiquities and legal and saleable antiquities will look roughly the same when they are presented on the market: lacking in provenance documents, import/export information, or excavation history.

Examples of this “mixed-supply” greyness proposition can readily be found in writing on the market. Mackenzie and Green write of the grey market as signifying that “the flows of licit and illicit objects are intermixed and therefore that, rather than being a market characterized by a ‘clean’ public trade and a ‘dirty’ private or underground trade, the supposedly clean public trade in antiquities is tainted ‘grey’ by the circulation therein of illicit antiquities” (Mackenzie and Green 2009: 154). Bowman Proulx observes that “the fact that legally obtained antiquities circulate side-by-side with illegally obtained objects further obfuscates the market and turns the issue from one of black and white to an ominous shade of grey” (Bowman Proulx 2011a). Alderman thinks “there is no distinct black market or white market for antiquities” (Alderman 2012). Visconti sees the antiquities market as “intrinsically opaque, so much so that we should think in terms of a ‘grey market,’ with licit and illicit dealings closely interwoven” (Visconti 2015). Brodie thinks “it is now clear that the antiquities market cannot be separated into legal and illegal components, but is better described as what criminologists call a ‘grey’ market. Legitimate actors and actions facilitate the trade of illegally acquired artefacts . . . the legal and illegal markets cannot exist apart” (Brodie 2012). Mackenzie sees a grey market in which illegitimate objects pass through the “legitimate” trade (Mackenzie 2011). Bowman Proulx has perhaps the most explicit definition of a grey market in this context, which she describes in a glossary entry in a crime handbook as follows: “Grey Market: A market that is neither definitively ‘black’ nor ‘white’ in terms of its legality. Grey markets instead exhibit dynamics of both the licit and the illicit” (Bowman Proulx 2011b).

The main problem with this interpretation of the idea of a grey market is that on this definition rarely would a market be definitively black or definitively white. It is very common for public markets in any goods to have an illicit side. Sometimes that illicit side is called a shadow or informal economy (Shapland and Ponsaers 2009), although those terms tend to describe an

untaxed economy taking place outside the purview of official scrutiny rather than, as in the case of antiquities, a shadow that interfaces and ultimately merges with the formal, taxed supply chain. Criminologists, sociologists, anthropologists, and economists have produced a considerable wealth of studies of a wide variety of markets that all suggest that where there is legal trade there will be an undercurrent of illicit activity which interfaces with it and exploits the profit opportunities it presents (Naylor 2004a, 2014b, 2010; Ruggiero 1997; Passas 2003). In the present volume alone we can see plenty of examples of this in the studies of markets in diamonds (Engwicht), wildlife (Hübschle), organs (Steiner), and fake goods (Endres).

Thus a definition of greyness that places grey markets somewhere between the wholly black and wholly white is redundant, since so many purportedly legitimate markets are probably grey in that sense, although some will be more so than others. More sense and usefulness can be made of this “mixing streams” idea when we combine that type of greyness with the others covered below.

Interestingly, this argument presenting the market as grey due to mixed supply is used by both supporters of an unregulated trade in antiquities and supporters of tighter regulation or bans. Pro-market commentators often state that any given unprovenanced antiquity has a chance of being licit and because it is impossible to tell either way they should be “innocent until proven guilty.” Anti-market commentators often assert that because the market is tainted by illicit objects, all unprovenanced antiquities should be treated as suspect. Either way, the idea of the antiquities market as grey because of a mixing of looted and unlooted antiquities assumes that such objects are truly indistinguishable. This will not always, and perhaps not even often, be the case.

Antiquities that left their countries of origin either via legal export or before relevant export restrictions were put in place might well have acquired documentation that proves their legitimacy. Since the seventeenth century, antiquities in private collections have been extensively published, displayed, declared on taxation and insurance forms, have appeared in wills, and have been the subject of academic study. When an object that is truly from an old European collection is offered for sale, this documentation is presented with the piece and it is immediately distinguishable from the unprovenanced antiquities surrounding it. An example of this is the sale at Christie’s London of an ancient Egyptian statue depicting the scribe Sekhemka in 2014 by the Northampton Museum (UK). The statue had been in the private collection of the Marquess of Northampton who gifted the statue to the museum in 1870, placing the object firmly out of Egypt before that date. The piece sold for £15.8 million. The sale was controversial as it represented the movement of a publicly held antiquity into private hands and, ultimately, Northampton Museum lost their accreditation from Arts Council England over it. The

response shows both how rare it is for a legitimate, legal antiquity to enter the market and how obvious that legality can be to observers. It is not impossible that there is a steady stream of undocumented but legal antiquities flowing from the grandmothers' attics of the world, but it does seem unlikely.

Changing Status of Individual Objects as They Pass through Trafficking Networks

Another way that we might cast the market for antiquities as grey is related to the so-called "washing" of antiquities as they pass through a trafficking network. To continue the analogy, a black (illicit) antiquity is slowly cleaned as it passes through different hands; moving towards white (licit), but most likely ending up grey: not ethically clean, but legal.

This cleaning process is at the core of the antiquities-trafficking chain. Indeed, many aspects of antiquities-trafficking networks are structured as they are in order to promote this cleaning process. As previously discussed, in some cases antiquities-trafficking networks include multiple intermediaries and one or more transit ports. As the object moves farther from its illicit excavation it becomes less "hot" or less likely to be associated with a direct theft from the ground. It may be initially exported with forged paperwork or pass through transit ports where they acquire questionable export certificates or other fraudulent documentation, which creates a false provenance for the piece. It also may be held in a freeport warehouse or other location for a certain amount of time until statutes of limitation for reclamation of stolen goods have passed. We can see, therefore, that within these variants of the laundering process there are two possibilities: looted artifacts either become legalized or they become more difficult to identify as looted because they become more deeply inserted into the normal market supply chains.

Antiquities that come onto the market after this process of cleaning are bought and sold openly; however, even if they are rendered legal by good faith purchase and/or time bar, it would be hard to say they were truly clean or licit in all senses. The dubious or illegal actions that brought them to their sellable state leave them suspect; the perception that a loophole was exploited stays with the object. Thus the argument for the market as grey in this respect rests on the assertion that no amount of laundering through network and market structures can completely negate the object's illicit origins.

This understanding of greyness therefore has an object focus rather than a market focus, and in the literature in this field it is seen most clearly in statements about the legal and moral transitions made by objects as they pass through trafficking networks and into the public trade (Bowman 2008; Mackenzie 2005).

Neutralization and the Greying of the Moral Psychological Processes of Engagement

One final way that we can conceive of the antiquities market as "grey" is through the moral ambiguity inherent in engaging with it. At the very least since the drafting of the 1970 UNESCO Convention, the destructive nature of archaeological looting and its clear links to the trade in antiquities have been public knowledge. Numerous repatriations and criminal cases have further increased public understanding of the link between antiquities and serious crime. Thus to participate in the market for antiquities is to some degree to participate in, or at least to benefit from, criminal enterprise and the process through which market participants justify their actions can be described as neutralizing an otherwise morally reprehensible action; greying it.

Both collectors and dealers in antiquities frame their engagement with the market in ways that portray their actions as favorable and even heroic (Mackenzie and Yates 2016). They tend to appeal to higher loyalties to justify their purchases. While many will concede that antiquities come from illicit digging and trafficking and that both of these are illegal, they assert that their actions actually save the objects; they believe that the law is wrong and that their actions are justified. These justifications validate the dealer/collector getting what they want (Mackenzie 2005).

Thus by appealing to higher loyalties, an antiquities buyer acknowledges, for example, that an ancient funerary relief was looted from a Syrian tomb, but asserts any or all of the following: that by buying it they can pay to preserve the piece properly; that Syria was obviously not caring for it or it would not have been stolen; that if it was left in Syria it would be destroyed by fundamentalists; that they will donate it to a museum someday for the public to enjoy; even that they are indirectly funneling money to poor looters who have no other job. Using these techniques they push illegal (black) acts of purchase into a grey area.

What Does This Mean for Our Broader Understanding of Grey Markets?

To say that the antiquities trade operates as a grey market is therefore to call attention to a particular cocktail of its properties. Usually the term is used to refer to the mixing of recently looted antiquities with those that can be sold legally. Unlike in so-called black markets where purchasers will usually knowingly seek out and buy from criminals, the antiquities market is grey because of the sale of illicit objects via a public, visible, and purportedly legitimate network of dealers and auction houses. This interface is supported by the

ethical greyness applying to looted objects through the effects of the passage of time and their passage through jurisdictions via multiple trades that obscure or overwrite their illicit origins. It is also supported by the active greying of the binary right/wrong distinction achieved by a neutralizing discourse that permits the purchase of illicit objects in constructed circumstances of "saving" or "preserving" artifacts.

There are also, however, other inflections to the idea of this type of grey market that we have not mentioned so far. We can, for example, observe a public disapproval but private tolerance of the issue of looted antiquities in the market among key sectors, such as the personal and institutional collecting and dealing communities, and indeed some degree of ambivalence or lack of interest among the general public. This we might call an elephantine type of greyness: a large-scale ignoring of the "elephant in the room" (Zerubavel 2006). As well as grey elephants there are grey people in the market, referred to above as Janus types. These are figures who have occupied peculiar positions in the market over decades, being simultaneously both notable collectors and dealers, supplying major institutions worldwide with high-end artifacts, and also suspected, rumored, and by some parties known, to be criminal handlers of stolen antiquities. In the grey areas these individuals occupy they have traditionally performed brokering roles important to connecting the supply and demand phases of the international trade. The apparent respectability of the dealers in question insulates those at the demand end from direct knowledge of wrongdoing at source (Mackenzie and Davis 2014).

By way of conclusion, in greyness, which at first seems a somewhat straightforward and perhaps self-evident adjective to describe the global antiquities market, closer analysis finds several layers of meaning which allude to the multiple ways in which the interface between il/legal, il/legitimate, and in/appropriate works to produce a marketplace that has so far successfully resisted most of the ethical and legal scrutiny directed at it.

References

- Alderman, Kimberly. 2012. "Honour among Thieves: Organized Crime and the Illicit Antiquities Trade." *Indiana Law Review* 45(3): pp. 601–27.
- Bator, Paul M. 1983. *The International Trade in Art*. Chicago: University of Chicago Press.
- Bichler, Gisela, Stacy Bush, and Aili Malm. 2013. "Bad Actors and Faulty Props: Unlocking Legal and Illicit Art Trade." *Global Crime* 14(4): pp. 359–85.
- Bowman, Blythe A. 2008. "Transnational Crimes against Culture: Looting at Archaeological Sites and the 'Grey' Market in Antiquities." *Journal of Contemporary Criminal Justice* 24(3): pp. 225–42.

- Bowman Proulx, B. 2011a. "Organized Criminal Involvement in the Illicit Antiquities Trade." *Trends in Organized Crime* 14(1): pp. 1–29.
- Bowman Proulx, B. 2011b. "Trafficking in Antiquities." In *Routledge Handbook of International Criminology*, edited by Cindy J. Smith, Sheldon X. Zhang, and Rosemary Barberet, pp. 192–9. London: Routledge.
- Brodie, Neil. 1998. "Pity the Poor Middlemen." *Culture without Context* 3(Autumn): pp. 7–9.
- Brodie, Neil. 2010. "Archaeological Looting and Economic Justice." In *Cultural Heritage Management, Policy and Issues in Global Perspective*, edited by Phyllis M. Messenger and George S. Smith, pp. 261–77. Gainesville: University Press of Florida.
- Brodie, Neil. 2012. "Uncovering the Antiquities Market." In *The Oxford Handbook of Public Archaeology*, edited by Robin Skeates, Carol McDavid, and John Carman, pp. 230–52. Oxford: Oxford University Press.
- Felch, Jason, and Ralph Frammolino. 2011. *Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum*. New York: Houghton Mifflin Harcourt.
- Hardy, Sam. 2015. "Virtues Impracticable and Extremely Difficult: The Human Rights of Subsistence Diggers." In *Ethics and the Archaeology of Violence*, edited by Alfredo González-Ruibal and Gabriel Moshenska, pp. 229–39. New York: Springer.
- Kersel, Morag M. 2006. "From the Ground to the Buyer: A Market Analysis of the Trade in Illegal Antiquities." In *Archaeology, Cultural Heritage and the Antiquities Trade*, edited by Neil Brodie, Morag M. Kersel, Christina Luke, and Kathryn Walker Tubb, pp. 188–205. Gainesville: University Press of Florida.
- Mackenzie, Simon. 2005. *Going, Going, Gone: Regulating the Market in Illicit Antiquities*. Leicester: Institute of Art and Law.
- Mackenzie, Simon. 2011. "The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organised Crime in the International Antiquities Market." In *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, edited by Stefano Manacorda and Duncan Chappell, pp. 69–85. New York: Springer.
- Mackenzie, Simon, and Tess Davis. 2014. "Temple Looting in Cambodia: Anatomy of a Statue Trafficking Network." *British Journal of Criminology* 54(5): pp. 722–40.
- Mackenzie, Simon, and Penny Green. 2009. "Criminalising the Market in Illicit Antiquities: An Evaluation of the Dealing in Cultural Objects (Offences) Act 2003 in England and Wales." In *Criminology and Archaeology: Studies in Looted Antiquities*, edited by Simon Mackenzie and Penny Green, pp. 145–70. Oxford: Hart.
- Mackenzie, Simon, and Donna Yates. 2016. "Collectors on Illicit Collecting: Higher Loyalties and Other Techniques of Neutralization in the Unlawful Collecting of Rare and Precious Orchids and Antiquities." *Theoretical Criminology*. doi: 10.1177/1362480615607625.
- Maruna, Shadd, and Heith Copes. 2005. "Excuses, Excuses: What Have We Learned from Five Decades of Neutralization Research?" *Crime and Justice* 32: pp. 221–320.
- Matsuda, David. 2005. "Subsistence Diggers." In *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*, edited by Kate Fitz Gibbon, pp. 225–65. New Brunswick, NJ: Rutgers University Press.
- Matza, David. 1964. *Delinquency and Drift*. New York: John Wiley.

- McBarnet, Doreen. 2003. "When Compliance Is Not the Solution but the Problem: From Changes in Law to Changes in Attitude." In *Taxing Democracy: Understanding Tax Avoidance and Evasion*, edited by Valerie Braithwaite, pp. 229–43. Aldershot: Ashgate.
- Merryman, John Henry. 1986. "Two Ways of Thinking about Cultural Property." *American Journal of International Law* 80(4): pp. 831–53.
- Naylor, Robin Thomas. 2004a. "The Underworld of Ivory." *Crime, Law and Social Change* 42(4): pp. 261–95.
- Naylor, Robin Thomas. 2004b. *Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy*. Ithaca, NY: Cornell University Press and McGill-Queen's University Press.
- Naylor, Robin Thomas. 2010. "The Underworld of Gemstones. Part 1: Under the Rainbow." *Crime, Law and Social Change* 53(2): pp. 131–58.
- Passas, Nikos. 2003. "Cross-Border Crime and the Interface between Legal and Illegal Actors." *Security Journal* 16(1): pp. 19–38.
- Polk, Ken. 2000. "The Antiquities Trade Viewed as a Criminal Market." *Hong Kong Lawyer* 82: pp. 82–92.
- Prott, Lyndel V., and Patrick J. O'Keefe. 1984. *Law and the Cultural Heritage*, Volume 1: *Discovery and Excavation*. Abingdon: Professional Books.
- Prott, Lyndel V., and Patrick J. O'Keefe. 1989. *Law and the Cultural Heritage*, Volume 3: *Movement*. London: Butterworths.
- Redmond-Cooper, Ruth. 1997. "Good Faith Acquisition of Stolen Art." *Art, Antiquity and Law* II: pp. 55–61.
- Ruggiero, Vincenzo. 1997. "Criminals and Service-Providers: Cross-National Dirty Economies." *Crime, Law and Social Change* 28(1): pp. 27–38.
- Scott, Marvin B., and Stanford M. Lyman. 1968. "Accounts." *American Sociological Review* 33(1): pp. 46–62.
- Shapland, Joanna, and Paul Ponsaers (eds). 2009. *The Informal Economy and Connections with Organised Crime: The Impact of National Social and Economic Policies*. Den Haag: Boom Juridische Uitgevers.
- Visconti, Arianna. 2015. "Cultural Property Trafficking." In *Routledge Handbook of Transnational Criminal Law*, edited by Neil Boister and Robert J. Currie, pp. 264–79. Abingdon: Routledge.
- Yates, Donna. 2014a. "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(4): pp. 445–57.
- Yates, Donna. 2014b. "Displacement, Deforestation and Drugs: Antiquities Trafficking and the Narcotics Support Economies of Guatemala." In *Cultural Property Crimes: An Overview and Analysis on Contemporary Perspectives and Trends*, edited by Joris D. Kila and Marc Balcells, pp. 23–36. Leiden: Brill.
- Zerubavel, Eviatar. 2006. *The Elephant in the Room: Silence and Denial in Everyday Life*. Oxford: Oxford University Press.

5

Governance in Online Stolen Data Markets

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Introduction

The massive increase in online banking and financial transactions completed via web-based retailers has made personal information a valuable commodity, to be bought and sold by corporations for retail marketing (Newman and Clarke 2003; Peretti 2009).¹ The increased availability of information on transactions has also transformed personal information into a prime target for criminal actors who can acquire sensitive data, such as credit or debit card numbers, addresses, and other identifying details, through various means, including mass breaches of retailers' customer databases (Peretti 2009). There are now a range of stolen data markets operating via web forums, internet relay chat (IRC), and other communications platforms as an underground online economy offering for sale not only stolen credit card data and user account information, but also tools and services for hacking this information. Cybercriminals rely on these markets to acquire a wide range of goods and services: stolen email addresses for spam and phishing; credit card information for making fraudulent purchases; scans of real passports for identity theft; stolen gaming accounts for attaining vulnerable virtual items; custom malware for payment diversions and bitcoin theft; and stolen cloud accounts for hosting command and control servers (for detailed information, see Symantec Corporation 2014).

Researchers have focused on such market characteristics as the price of goods sold and the net worth of transactions conducted (Beckert 2011; Beckert and Wehinger 2013; Franklin et al. 2007; Herley and Florencio 2010; Holt and

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