Transnational Criminal Justice

The concept of 'transnational criminal justice' has frequently been interpreted in the academic literature as 'international criminal justice' or 'global criminal justice'. Many publications that use the term 'transnational' therefore discuss international criminal justice and international legal frameworks. Another form of studies that has developed under the umbrella of transnationality in the field of criminal law is comparative. There has hence been a move from the terminology of 'international', 'global' and 'comparative' criminal justice towards 'transnational' criminal justice.

This series considers these developments, but focuses primarily on publications that adhere to a more literal interpretation of the term 'transnational'. The aim of the series is to provide a forum for discussion of bilateral and multilateral relationships between nations in the field of criminal justice. International law influences these relationships, but is not the focus here. Equally, to explain transnational relationships, comparative analyses are required. While incorporating comparative studies in this series, their aim is the explanation of challenges to criminal justice cooperation in bilateral or multilateral relationships.

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Global Perspectives on Cultural Property Crime

**Edited by
Michelle D. Fabiani,
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Appendix B

Proposed Corrections to Auction Catalogue Ownership History

Claude Monet
Pont dans le jardin de Monet
signed and dated "Claude Monet 1900" (lower left)
oil on canvas
89 × 92 cm

Provenance:
Paul Durand-Ruel, Paris (acquired directly from the artist, 30 October 1911);
Pierre Estevez, Paris (acquired from the above, 11 July 1913).
Leopold Ullstein.
Arthur Kauffmann, London (1947).[10]
Sale: Sotheby's, London, *Impressionist and Modern Paintings and Sculpture: Part 1*, December 4, 1984, lot 8.[11]
Anon. sale: Sotheby's, New York, *Impressionist and Modern Paintings and Sculpture: Part 1*, 11 May 1987, lot 48;
Berry Hill Galleries, Inc., New York (acquired at the above sale);[12]
Private Collection, New York (acquired from the above);
Sale: Christie's, New York, *Impressionist and Nineteenth Century Art*, 12 May 1999, lot 21;
Private Collection, USA (acquired from the above).[13]
Sale: Philips de Pury & Luxembourg, New York *Impressionist and Modern Art: Part 1*, 4 November 2002, lot 26 (bought in).

3 What auction catalogue analysis cannot tell us about the market

Sotheby's 2013 sale of Pre-Columbian objects from the Barbier-Mueller collection

Donna Yates

Introduction

For nearly two decades auction catalogue analysis has played a primary role in academic inquiry into the particulars of the global trade in antiquities (e.g., Beltrametti and Marrone 2016; Brodie 2006; Chippindale and Gill 2000; Davis 2011; Elia 2001; Gilgan 2001; Gill and Chippindale 1993; Levine and Martínez de Luna 2013; Yates 2006). Auction catalogues have been characterised as an easily obtainable, public record of the sale of often-illicit goods: A window into what may or may not be a vast underground trade which scholars have little access to. Yet there exists only limited critique (e.g., Brodie 2019) of the extent to which auction catalogue data can provide a representative picture of the antiquities trade, particularly the illicit components of the trade. Indeed, analysis of auction catalogue data may be an unsuitable method for understanding the very key questions and concerns that such analysis aims to address. Is auction catalogue data, then, fit for our academic purposes, or do we use the catalogues because they are readily available?

This chapter contains a case study of a single major antiquities auction: *Collection Barbier-Mueller Art Précolombien*: 313 lots of antiquities from throughout the Americas that were offered for sale at Sotheby's Paris on March 22–23, 2013. This sale is of note because the auction result appeared to display, at least to external speculators, some evidence of market "autoregulation": The market policing itself through antiquities buyers choosing either to not buy or pay less for antiquities with dubious histories. Autoregulation, as discussed below, has been presented by antiquities market actors as an appropriate way to regulate the market, as opposed to, for example, accountability to external bodies, mandates for increased transparency, or criminalisation. Focusing on this idea of autoregulation as an example, this chapter will (1) show how an antiquities auction can be analysed to reveal information about internal market dynamics; and (2) how such an analysis may lead to a misleading or, at least, an incomplete understanding of these internal market dynamics.

As such, this chapter will function as a self critique of the very methods that I myself have used to draw conclusions about the illicit trade in antiquities

Auction catalogues represent a limited segment of the antiquities market, and what we as researchers can reconstruct from the public information available about these auctions represents a limited segment of even the auction market. Thus, the applicability of assertions about the effectiveness of any regulatory approach based on such analyses is limited.

Auction catalogue analysis and illicit antiquities research

Through auction catalogues, researchers are able to see a near physical manifestation of the concept of artefacts as commodities. The process of commodification has a profound effect on how ancient objects are presented in catalogues. Their photographs, descriptions, provenances, and price tags are all marketing tools meant to appeal to buyers, not academics. Objects are photographed as singular, individual, and unique. Evidence of authenticity (patina, scientific testing, published in a work by a scholar) is emphasised, yet the objects themselves are presented with minimal archaeological information (provenience) and with brief, if any, ownership history (provenance). Archaeological context is rarely if ever mentioned: It is as if the antiquities mysteriously appeared in the possession of their first known owner, or in the pages of the catalogue.

It is the experience of this commodified view of the past that forms the basis of much academic critique of antiquities auctions specifically, and the illicit antiquities trade more generally. The focus on form, on art over the archaeological need for contextual information and the sanctity of complete archaeological sites (e.g. de Montebello 2012) challenges the tenets that archaeology, for example, is built upon. From this standpoint it becomes difficult for either side to internalise the views of the other and to critically evaluate accusations, inquiries, and claims. Thus, for those studying the antiquities trade with an eye towards illicit dealings, data gleaned from public auction becomes a stand-in for more in-depth and qualitative methods which are prevented by mutual animosity.

Yet the very medium of the antiquities auction may have only a tangential connection to the majority of antiquities sales. The semi-public, ultra-high end, limited scope of the auction houses does not reflect the market for, say, low-end pre-Conquest fabric scraps on the streets of Lima, "affordable" ancient coins on eBay, or nondescript ceramic oil lamps in a shop in Tel Aviv. The auction houses are the visible tip of the antiquities trade iceberg, and conclusions drawn from auction analyses are unlikely to reveal much about the murky depths of the market. However, we keep coming back to auction catalogue data because it is accessible and reflects at least some of the trade. We also keep coming back to it because we take auction houses seriously.

And so we need to seriously consider the claims of the houses based on their own published record. We need to test their responses to public concerns about illicit objects, and not just accept or dismiss auction house statements based on what feels "correct". It is safe to say that changes have been made to antiquities auction presentations based on external critique. However, the reasoning behind these changes has not been adequately challenged, nor has the rhetoric used by

the auction houses to present these changes and to validate what they believe are their efforts towards transparency and away from illicitness and illegality.

In particular, auction houses, dealers, and trade actors have begun to claim that buyers, fearful of antiquities regulation and repatriation requests, prefer to buy antiquities with older provenances and established ownership histories (e.g., [illegible]lkian 2013). In such assertions, the date of the 1970 UNESCO convention is often cited as the barrier for best practice with regard to provenance, and it is implied or directly stated that objects that surfaced on the market after 1970 or were subject to a known repatriation claim by a source country would be rejected by buyers. This process of buyers choosing antiquities with older surface dates and better provenance/no contested ownership, if true, would be a strong indicator that autoregulation, "the market policing itself", works in this area and that further regulation or oversight is not needed. The question remains: Can the antiquities market autoregulate? And if it can, can we see the effects of that autoregulation in auction data through analysis of publicly available information?

Case study: The Barbier-Mueller Sotheby's sale

The Collection Barbier-Mueller Art Précolombien had 313 lots of antiquities from throughout the Americas that were offered for sale at Sotheby's Paris on March 22–23, 2013. Each of the lots offered had a "surface date", a date in which it reportedly appeared in a collection, publication, and such, assigned to it by the auction house. As those surface dates ranged from the late 1800s to the mid-2000s, the comparative saleability of objects that surfaced during different time periods was observable. Furthermore, at least six source countries, countries from which the antiquities in question originated, publicly objected to the sale. Several initiated formal proceedings to seize the objects so they could be evaluated for repatriation as stolen property. Finally, over half of the lots in the auction failed to sell, an outcome which caused many commentators to deem the auction a "failure" which was attributed to the public controversy over the alleged illicit origins of many of the pieces for sale. The implication was that market autoregulation resulted in sale failure in this instance. If autoregulation works in this market, and if the threat of repatriation and allegations of trafficking affect auction sale performance (i.e., if buyers police themselves by avoiding purchasing questionable antiquities), the Barbier-Mueller sale should display some indication of that. The obvious next step is to analyse this auction using established techniques to detect any effects of autoregulation in this sale.

To place the sale in context it is worth discussing the market context of the antiquities collection on offer. In the 1920s Josef Mueller, a Swiss antiquities and art collector, started what would come to be known as the Barbier-Mueller collection of Pre-Columbian objects (Musée Barbier-Mueller, n.d). Since the 1970s, Josef Mueller's son-in-law, Jean Paul Barbier Mueller, as well as Mueller's daughter, Monique, have administered the Barbier Mueller collection (Musée Barbier-Mueller, n.d). The couple have expanded the collection and opened two museums: the Musée Barbier-Mueller in Geneva, Switzerland, in 1977 and the Museu

Barbier-Mueller d'Art Precolombí in Barcelona in 1997. The shape and content of the Barbier-Mueller collection as it stands today relate more to the activities of the Barbier-Muellers in the latter part of the 20th century than to the collecting of Mueller in the early part of the 20th century. The Barbier-Muellers state that while Joseph Mueller did not seek to create "a synchronous whole", they "later succeeded in presenting a rationalised collection" (Musée Barbier-Mueller, n.d).

In 1997 the Museu Barbier-Mueller d'Art Precolombí opened in Barcelona specifically to house the Latin American items from the Barbier-Mueller Museum in Geneva. On September 14, 2012, the Museu Barbier-Mueller d'Art Precolombí closed because it was deemed not to be economically viable. Originally the collection was to be sold to the Spanish government for around $26 million but the financing for this fell through due to economic crisis (Kahn 2013). The museum collection was then sent to Switzerland and the Barbier-Muellers decided to sell a portion of it via Sotheby's auction house's Paris location. The Sotheby's sale was announced about a month after the Museu Barbier-Mueller d'Art Precolombí shut its doors (Barcelona Cultura 2012; Kahn 2013).

The portion of the collection offered at Sotheby's was an eclectic mix of "Precolumbian" pieces from throughout the Americas. The contents of the Barbier-Mueller sale catalogue are not unlike those of several decades of Sotheby's New York's biannual Precolumbian sale (see Gilgan 2001; Yates 2006), and a number of items had been purchased by the Barbier-Muellers at previous Sotheby's sales. Some of the types of artefacts offered in the sale have been called fakes by Karen O. Bruhns and Nancy L. Kelker (see Kelker and Bruhns 2009 and Bruhns and Kelker 2009). Several commentators, including the Mexican government (INAH 2013), have stated that many of the objects offered in the sale are not ancient.

In the lead-up to the Barbier-Mueller auction, Sotheby's heavily promoted the idea that the Barbier-Mueller collection had its foundation in the early collecting activity of Josef Mueller, not the later collecting of the Barbier-Muellers (Martin 2013). The auction house's promotional material stated that the collection is "century-old", perhaps in an effort to make the items offered seem like a less risky investment for buyers. An interview conducted with Jean Paul Barbier-Mueller and published via Sotheby's magazine includes the quote "[p]rovenance was always a concern, and I was able to purchase various objects acquired back in the 1960s from the Guy Joussemet Collection", seemingly to emphasise, again, the age of the collection (Martin 2013). However, the collection is not as old as Sotheby's would have liked buyers to think.

Legal claims and calls for return

Peru was the first country to attempt to intervene in this sale by requesting the return of 67 objects that they claimed were stolen cultural property. An article in the *Wall Street Journal* quoted an unnamed source at the Peruvian Ministry of Culture as saying: "It is possible to deduce that their exportation must have been clandestine, given that from April 2, 1822, Peruvian regulations prohibit the ... of archaeological goods without government authorization" (Kozak

2013). This statement was widely quoted in the media and, at times, criticised: 1822 was dismissed by some as far too early a cut-off date for artefact repatriation, both by researchers who had previously considered Peru's cut-off year to be 1929[1] and from commentators seeking to promote the trade in antiquities (e.g., Fitz Gibbon 2013). Specifically, those commentators believed that "that museums and others were snookered into accepting a 1970 date for acquisitions of artifacts" and that Peru was going back on the 1970 deal that had been struck at the UNESCO convention (Tompa 2013).

It is important to note here that neither the government of Peru nor any other government gave up legal ownership of archaeological material upon signing the 1970 UNESCO convention. The UNESCO convention does not take away the sovereign rights of any signatory to determine ownership. In this sense, the idea of antiquities with pre-1970 surface dates being "safe" to buy is problematic at best and highly deceptive. The year was meant as a general guideline for best practices but does not supersede local law regarding ownership nor does it provide an international statute of limitations for the recovery of what local law considers to be stolen property. To use Peru as an example, a Peruvian object that left Peru prior to 1970 but after 1929 (or, perhaps, 1822) could, at any time, be claimed by the Peruvian government as stolen property. Those who assert otherwise are mistaken about the nature and scope of the 1970 UNESCO convention. This is what happened in the Barbier-Mueller auction.

As the argument over Peru's 1822 claim of ownership died down, the topic of reporting on the auction began to shift. In the weeks leading up to the auction at least six countries (Costa Rica, Guatemala, Mexico, Ecuador, Peru, and Venezuela) either made formal requests to French authorities or made public statements that they were considering formal action against Sotheby's (AFP 2013; Barillas 2013; El Universal 2013; INAH 2013; Kozak 2013; Lizarzaburo 2013; Mashberg 2013; Verza 2013). Each of these countries claimed that the Barbier-Mueller pieces represented national cultural property and that they were stolen objects that had been exported illegally.

Despite the requests for repatriation, the auction was not halted, yet it was considered by many to be unsuccessful. One of the most common statements made by commentators after the sale was variations on the idea that the auction "will likely be judged a mess" (Wennerstrom 2013). The sale achieved €10,296,300, only about half of the estimated €20,000,000 that the auction house is reported to have expected (Moore 2013), and 165 out of 313 lots did not sell. According to President-Directeur General of Sotheby's France Guillaume Cerutti, the sale "achieved less than expected" but that "these results are good considering the context in which the sale unfolded" (Sotheby's 2013).

Analysing the Barbier-Muller auction

Turning now to detection of autoregulation within the auction, this section is based on a "traditional" antiquities auction catalogue analysis using established techniques. The results of this analysis both affirm and refute that autoregulation was a factor in this auction, leading to a muddled picture of how provenance, claims of repatriation, and contested authenticity interact with this sale, and indeed within the portion of the antiquities market viewable within public auction data.

When approaching the concept of autoregulation within the antiquities market, the natural first questions to ask are: Was provenance a factor in how well the items sold? and did objects with "better" provenance sell better? It is nearly impossible to assess the believability of the provenance offered in an auction catalogue, and there are many well-known examples of famous (and non-existent) anonymous collectors consigning recently looted antiquities for public sale. It has been claimed that items first seen on the market before 1970, the date of the UNESCO convention, are either "safer", "cleaner", or have "better provenance" than items that emerged after (see Gerstenblith 2013 for a full discussion of this issue). The American Association of Art Museum Directors, for example, has promoted 1970 as a cut-off date for museum acquisitions since 2008, considering antiquities that can be shown to have been out of their source country before 1970 to be acquirable (AAMD 2013). The 1970 date is non-binding, and in many jurisdictions stolen property is still stolen property, a fact that antiquities trade commentators have increasingly acknowledged (e.g., IADAA n.d.). However, many in the trade take the idea of a 1970 cut-off date seriously, and some auction houses and dealers have both begun to heavily promote objects with pre-1970 provenance dates, as in the case of the Barbier-Muller auction.

Prior to the Barbier-Mueller sale, 313 lots offered were reviewed, and their stated provenances, specifically their "surface date" (the earliest date recorded according to the auction catalogue, an antiquity appeared in a publication, a museum display, auction catalogue, or another demonstrable and recorded medium), were noted. This date is taken as a proxy for when the antiquity left its country of origin; in other words, it had to have left by that date. While it has been demonstrated that the dates listed in auction catalogues can be unreliable and even purposefully misleading (see the work of Tsirogiannis, e.g., Tsirogiannis 2015), the dates presented in the Barbier-Mueller catalogue were accepted in this instance as they represent the information that a potential buyer had while considering a purchase. Thus, dates in the form of "X Collection, 19XX" were recorded, despite not being independently verifiable. When an object was listed as entering the collection (or any collection) "before" a certain year or at an unknown point in a decade, it was counted amongst that decade. For example, objects listed as "before" 1960 were counted as if 1960 was the surface date, and so in the "1960s". Objects from the 1920s or before were grouped together as their removal from country of origin, if illegal, is likely far too distant to be actionable (Figure 5.1).

Of the 313 lots offered for sale, 152 had surface dates from before 1970 and 161 had surface dates after 1970. A slight majority of the items surfaced after 1970 and 31 objects surfaced in the 2000s, that is, very recently.

If buyers do favour objects with long, detailed, and distant provenance, one might see a pattern in the Barbier-Mueller sale (Table 5.1) where objects with older or perhaps pre-1970 surface dates sell better.

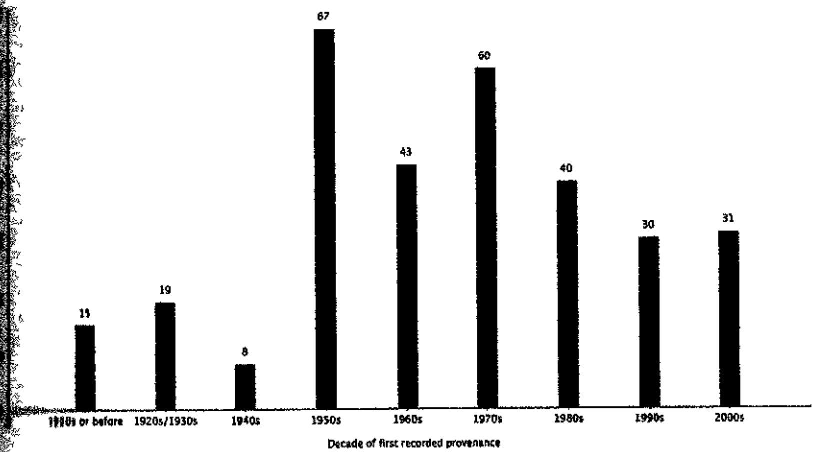


Figure 5.1 Number of lots per decade of surface date offered in the Barbier-Mueller sale.

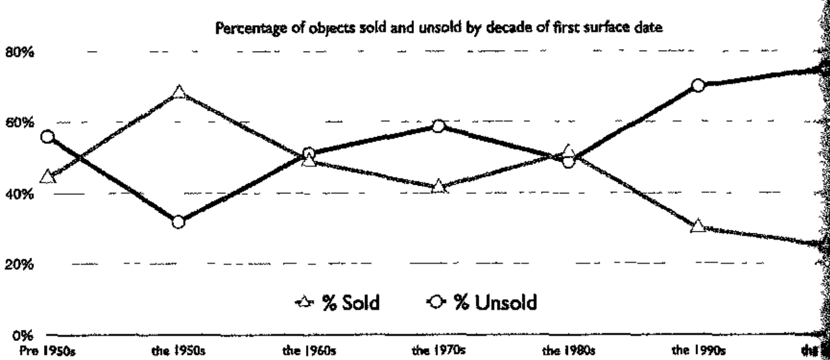
Table 5.1 The number of objects sold and unsold with pre- and post-1970 surface dates offered in the Barbier-Mueller sale

	Sold	*Unsold*	*Total*	*% Sold*	*% Unsold*
Pre-1970	86	68	153	56.21	44.44
Post-1970	61	98	159	38.36	61.64
Total	147	166	313	46.96	53.04

Looking at objects sold with pre- versus post-1970 surface dates, on the whole objects with pre-1970 dates sold better. This would seem to indicate that buyers may have rejected objects with recent surface dates. However, when the sale is broken down by decade (Figure 5.2), a more complex picture emerges.

These results seem to indicate that items that surfaced on the market in the 1990s and 2000s were avoided by buyers, items from the 1980s were not avoided by buyers, and items from the 1970s were, again, avoided. This pattern is at odds with the idea of buyers regulating their buying behaviour and favouring antiquities with older surface dates. The decades with the highest percentage of items sold were the 1950s (68%) and the 1980s (51%); in other words, a decade before the 1970 UNESCO convention date, and a decade after it.

These auction results do not support the assertion that pre-/post-1970 provenance, nor the recentness of the surface date of the objects offered for sale had much of an effect on the results of this auction. While there seems to be a weak aversion to objects that surfaced in the 1990s and 2000s, interest in objects from the 1980s contradicts the idea that "post-1970" mattered to buyers. It seems more likely that provenance (i.e., the surface date) was judged by buyers to be a



	Sold	Unsold	Total	% Sold	% Unsold
Pre 1950s	19	24	43	44.19%	55 81%
the 1950s	45	21	66	68 18%	31.82%
the 1960s	22	23	45	48.89%	51.11%
the 1970s	24	34	58	41 38%	58 62%
the 1980s	20	19	39	51.28%	48 72%
the 1990s	9	21	30	30 00%	70 00%
the 2000s	8	24	32	25 00%	75.00%
Total	147	166	313	46 96%	53 04%

Figure 5.2 The number of objects sold and unsold by decade of surface dates off[illegible] in the Barbier-Mueller sale.

minor consideration in favour of other aspects of the piece (aesthetics, collect[illegible]ity, popularity), except, perhaps, in cases where "authenticity" was being jud[illegible] (see below).

Another pertinent question about the presence of autoregulation in this [illegible] is if there is any indication that return requests affected how well the objects [illegible] (see Tables 5.2 and 5.3). At least six countries (Costa Rica, Guatemala, Me[illegible] Ecuador, Peru, and Venezuela) expressed public disapproval of the contents of [illegible] sale and indicated that they may seek the return of any object sold, with one [illegible] country (Colombia) reported as considering a similar stance. It has been sugg[illegible] that these return requests and expressions of interest may have had an effect on [illegible] sale of the items. The theory goes that buyers were deterred by the possibili[illegible] their ancient investment being seized and, thus, avoided buying items that [illegible] be the subject of a future litigation. This would mean that buyers are conc[illegible] about the possibility of a forced return and, thus, that repatriation requests [illegible] threats of legal action do, indeed, affect the high-end antiquities market.

When the items that were subject to a direct return request or an expre[illegible] of return interest are separated from the other items in the sale, it appears [illegible] there is no clear association between return request and failure to sell. Ov[illegible] 53% of the items in this auction did not sell. While 64% of the items that were [illegible] subject to a return request/objection did not sell (Table 5.3), 49% of those [illegible] were from a return request/objection country did not sell (Table 5.2). In o[illegible] words, items from a country that requested their return sold marginally be[illegible] than objects from a country that did not request their return.

[illegible] Number of objects sold and unsold from countries that made a return request

	Sold	Unsold	Total	% Sold	% Unsold
[illegible]*	5	3	8	62.50	37.50
[illegible]	7	18	25	28.00	72.00
[illegible]	6	4	10	60.00	40.00
[illegible]	4	10	14	28.57	71.43
[illegible]	60	56	116	51.72	48.28
[illegible]	34	21	55	61.82	38.18
[illegible]	2	3	5	40.00	60.00
[illegible]	118	115	233	50.64	49.36

[illegible] Colombia (noted with *) is not known by the author to have made formal overtures [illegible] issue but was rumoured to have been considering such action.

[illegible] Number of objects sold and unsold from countries that are not known to have lodged an objection to the sale or have made a return request

	Sold	Unsold	Total	% Sold	% Unsold
[illegible]	0	1	1	0.00	100.00
[illegible]	6	19	25	24.00	76.00
[illegible]	1	0	1	100.00	0.00
[illegible] Republic	2	5	7	28.57	71.43
[illegible]	2	1	3	66.67	33.33
[illegible]	1	2	3	33.33	66.67
[illegible]	8	15	23	34.78	65.22
[illegible]	1	1	2	50.00	50.00
[illegible]	5	3	8	62.50	37.50
[illegible]	26	47	73	35.62	64.38

[illegible] is well illustrated when we compare the five countries which had the larg[illegible] number of items in the auction (Table 5.4): Three with clear return requests [illegible] of legal action (Costa Rica with 25 items, Peru with 55 total items, [illegible] Mexico with 116 total items, the most in the auction) and two with no clear [illegible] requests or long history of successful repatriation (Panama with 23 items [illegible] auction and Brazil with 25 items in the auction).

[illegible] buyers seemed to reject objects from Costa Rica, items from Peru and [illegible] sold marginally better than items from Brazil and Panama. Based on the [illegible] associated with repatriation requests, it would have been safer for a buyer to [illegible] Brazilian or Panamanian antiquities to buy at this auction, yet that did not [illegible]. The reason for this may be the popularity of Mexican and Peruvian items [illegible] collectors. In other words, the objects from Mexico and Peru themselves [illegible] more collectable and more in demand than those from Brazil and Panama [illegible] as Costa Rica), and any negative impact of the possible seizure and return

Table 5.4 Number of objects sold and unsold from Mexico, Peru, Costa Rica, Brazil and Panama

	Sold	*Unsold*	*Total*	*% Sold*	*% Unsold*
Mexico	60	56	116	51.72	48.28
Peru	34	21	55	61.82	38.18
Costa Rica	7	18	25	28.00	72.00
Brazil	6	19	25	24.00	76.00
Panama	8	15	23	34.78	65.22

Table 5.5 Number of objects sold and unsold from Mexico

	Sold	*Unsold*	*Total*	*% Sold*	*% Unsold*
Mexico	60	56	116	51.72	48.28

of the objects to their country of origin did not seem to divert buyers to "less risky" items in the sale. Yet there were 233 items in the sale from countries that requested return and only 73 from countries that did not.[2] This difference is enough to potentially skew the numbers, and care should be used when asserting that repatriation requests have any effect on buying habits.

The next question to consider is: Was questionable "authenticity" a factor that caused buyers to autoregulate? On March 8, 2013, the government of Mexico sent a diplomatic note to French authorities requesting that the Barbier-Mueller auction be halted pending investigation (INAH 2013). On March 20, 2013, the Government of Mexico via the Instituto Nacional de Antropología e Historia (INAH) announced that 130 objects in the Barbier-Mueller sale had come from Mexican territory[3] (INAH 2013). Of those 130 objects, they stated that only 51 of them were archaeological and thus the property of the Mexican nation, while the other 79 were *piezas artesanales de reciente manufactura*, handicrafts of recent manufacture. The government of Mexico wanted 51 objects in the sale to be returned and did not want 79 objects that they deemed to be fake antiquities.

Just over half (60) of the Mexican lots identified in the catalogue (Table 5.5) were sold at auction, only nine more than the number that the government of Mexico declared to be genuine. It is important to note that the government of Mexico did not release a list of Barbier-Mueller lots that it considered to be fakes, leading to a situation where buyers might experience a significant amount of doubt about purchasing any Mexican object. It may be disconcerting to buyers for a country to imply that objects for sale at a major auction house are so obviously fake that they do not want them returned. Why would a buyer who is interested in the authentically ancient want an object that Mexico does not want?

The Mexican objects were not the only pieces in this auction that were subject to authenticity questions. Many of the objects were of types that some scholars

are of modern manufacture (see Kelker and Bruhns 2009 and Bruhns and Kelker 2009). This is the type of issue that may affect buyers' purchase decisions (2015). A cursory glance at dealer websites, advertisements, and literature seem to indicate that they stress that objects are real and rarely mention issues surrounding legality or looted status. However, many antiquities are praised as art, are bought as investments, and buyers do care about monetary value, which drops if the piece is a fake.

By declaring some of the antiquities in the Barbier-Mueller auction to be fake, the Mexican government may have introduced an intolerable level of doubt in the minds of potential bidders. An fMRI study (see Huang et al. 2011) has found that even the mere suggestion that a work of art might be a fake causes subjects to actually experience the works differently: Potential fakes cause a different brain response. In that study, it did not matter if the images, in this case Rembrandt paintings, shown to subjects were actually authentic or fake, what mattered was if the subjects were told that the object was authentic or fake. The subjects experienced real paintings as fakes if they were told they were fakes and fake paintings as real if they were told they were real. If the buyers had cause to doubt the authenticity of the items in the Barbier-Mueller, they may have seen all the items as potentially fake, changing their experience of the antiquities. However, it is impossible to say exactly why buyers shied away from this auction without surveying them.[4]

Further analysis: Was the auction a failure?

As previously mentioned, 165 out of 313 lots did not sell. The sale achieved €10,396,300, only about half of the estimated €20,000,000 that the auction house is reported to have expected (Moore 2013). As such, commentators dismissed this auction as a "failure", with buyer autoregulation cited as a reason for this failure. While "failure" is difficult to define, some degree of evidence of success or failure is assumed to be evident in public auction data. Auction catalogue analysis, then, has been used to illuminate the success/failure aspect of the market. Yet again, the results of such analyses are opaque at best, and assessment of success versus failure cannot be gleaned from publicly available auction results, particularly if a sale "creates" a market for a certain type of antiquity as will be discussed below.

Auction houses traditionally publish a price estimate for each lot offered in advance of an auction in the form of a price range. In theory, this is meant to act as a guide for buyers thinking about bidding on a particular object, allowing them to manage their expectations for the amount of money they are likely to need to spend to purchase the item. In reality, it appears as if price ranges are used as marketing tools by the auction houses rather than impartial guides for buyers. Anecdotally, it is said that auction houses set price estimates low when they want to attract buyers and high when they want to attract consigners for future auctions. The propensity for items to sell far outside the published price range is proof of this; auction houses are certainly shrewd enough to realise that big-ticket items will sell for an appropriately hefty sum. Rather, they seem to work under the assumption that a lower estimate will attract more bidders and that reporting that an item went for well beyond estimate makes good press. The idea behind higher-than-normal price estimates in a catalogue is to appeal to collectors with objects to sell: As the potential consigners leaf through a Sotheby's catalogue and see high potential prices attached to items, they might be tempted to sell pieces of their collection via the house.

To be clear, a price estimate is not a true valuation of an antiquity, nor does it always reflect what the auction house expects an object to sell for. Indeed, it was reported that the Barbier-Mueller collection was expected to fetch around €20,000,000. However, the total of all the low estimates of the 313 lots offered was €13,866,200 and the total of all the high estimates of the 313 lots offered was €17,760,500. This means, confusingly, that the items in the Barbier-Mueller auction were estimated to sell for more than they were estimated to sell for.

Even if we assume that price achieved versus price estimated is a fair indication of market strength, the results of the Barbier-Mueller collection are not a clear-cut failure (Tables 5.6 and 5.7). Putting aside the 166 unsold lots, 7 lots sold for below the lower figure of their price estimate, 76 lots sold for within their estimated price range (including 4 that sold exactly for their high estimate) and 64 lots sold for above the high estimate. Of those that sold for above the high estimate, 47 of them sold for 101 to 199% of the high estimate, 13 sold for 200 to 299% of their high estimate, and 4 sold for over 300% of their high estimate. These four objects accounted for an extra €1,391,025 above what the objects were "estimated" to sell for. Whether this is an indication of either success or failure is up for debate.

Aside from the price estimate, there is often an unpublished reserve price that has been negotiated by the auction house and the lot's owner. This is the absolute lowest that the lot can sell for: The lowest acceptable bid price. At Sotheby's

Table 5.6 Number of lots that sold above, within, and below the published price range

	Number of lots
Above estimate	64
Within estimate	76
Below estimate	7
Unsold	166

Table 5.7 Number of lots that sold for a % above high estimate

	Number of lots
Between 101% and 199% of estimate	47
Between 200% and 299% of estimate	13
Between 300% and 399% of estimate	4

[illegible] reserve price must be below the low-price estimate, but this amount is not [illegible] public as, in a sense, this figure represents almost a valuation of the lot, an [illegible] of what the piece is worth to the seller. It is thought that publication [illegible] prices discourages high bids, and the auction house does not reveal [illegible] lots received bids that did not exceed the reserve price. This is an important [illegible] when it comes to our discussions of whether buyers were willing to risk [illegible] items with poor provenance or from countries that had made a repatria-[illegible] request.

[illegible] important to think about reserve price and the possibility of bids that did [illegible] the reserve as these factors might have an effect on how we interpret there [illegible] 165 unsold lots and the auction achieving €10,000,000 less than expected. [illegible] each one of those 165 lots could have attracted bids that were all [illegible] the reserve price, causing them not to sell. In other words, it is possible [illegible] buyers may have wished to purchase the antiquities that were left unsold in [illegible] auction, but just not at the price that they were being offered at. This might [illegible] represent a "failure" for Sotheby's and for the Barbier-Muellers, but when it [illegible] to the study of the market for illicit antiquities, this would evidence a clear [illegible] for the objects coupled with poor pricing on the part of the house and the [illegible] Muellers. We do not know what the sold/price achieved numbers would [illegible] if this were a "no reserve" auction. It is possible that many more lots [illegible] have sold and the gulf between expected results and actual results would [illegible] significantly, but we cannot tell from the publicly available data.

[illegible] a provocative question can be asked about this sale: Was a market [illegible] The two lots that achieved the highest sale price in the auction were [illegible], a Chupícuaro "Venus" figurine which sold for €2,001,500 (within esti-[illegible] and Lot 160, a Tarascan "flying duck" vessel which sold for €1,609,500 [illegible] estimate). These items were considered to be the "best" lots for sale. [illegible] appeared on the promotional material for the auction, were featured on [illegible] Sotheby's website, and the duck appeared on the cover of the sale catalogue. [illegible] review of the sale of Mexican figurines at Sotheby's in the ten years before [illegible] Barbier-Mueller auction (2002 to 2012) indicates that many of them sell [illegible] outside of their estimate, with figures assigned the stylistic categories of [illegible]", "Nayarit", and "Chinesco" performing particularly well. A number [illegible] figurines from these "cultures" (a controversial term in this context, "style" [illegible] more appropriate) were offered at each of Sotheby's Pre-Columbian sales [illegible] this time. However, before the Barbier-Mueller sale, painted Chupícuaro [illegible] were only offered three times. These figures sold well, if one is to believe [illegible] above estimate should be considered an indication of success: Lot 251 in [illegible] 2002 sale sold for $9,560 (137% above high estimate); Lot 167 in the [illegible] 2006 sale sold for $39,000 (195% above high estimate); Lot 108 in the [illegible] 2009 sale sold for $25,000 (250% above high estimate). In other words, [illegible] figures did not appear often at Sotheby's but sold well when they

[illegible] contrast, in the May 2013 Sotheby's Pre-Columbian sale immediately [illegible] the Barbier-Mueller auction, four painted Chupícuaro figures were offered for sale (two were offered as a lot together). Lot 10 sold for $43,[illegible] (175% above high estimate); Lot 11 sold for $10,625 (152% above high estimate); Lot 15 sold for $185,000 (154% above high estimate). One of the figurines sold in the Barbier-Mueller sale is listed as a cf. in the description accompanying Lot 15. Thus, following a much-hyped sale of a relatively rare type of antiquity, Sotheby's was able to both consign and sell at one auction as many of these figurines as they had sold in the previous decade. The only other Tarascan vessel to be offered at Sotheby's in the last ten years was also in the Barbier-Mueller sale: Lot 48, a Tarascan vase with a looped handle, sold for €35,000, 233% above the high estimate of €15,000. It will be interesting if we see more high-end Tarascan-[illegible] items have appeared at auction since 2013.

Was a potential seller attracted by the high price and hype surrounding the Barbier-Mueller Chupícuaro figure? Did Sotheby's create demand for these antiquities with their promotion of two particular objects, and meet that demand with planned consigned pieces?

This is likely weak association; however, the possibility of the Barbier-Mueller sale inspiring further antiquities sales illustrates that we must change our mode of thinking about how we assess success and failure of antiquities auctions. [illegible] cannot think of a single auction as representative of the antiquities market within a particular auction house, let alone the market as a whole. If every much-hyped sale inspires the sale of three more like pieces at public auction and ten more [illegible] pieces via private sale, the auction house has done well.

An incomplete understanding of market dynamics

As previously stated, the goal of this chapter was to (1) show how an antiquities auction can be analysed to reveal information about internal market dynamics and (2) how such an analysis may lead to a misleading or, at least, an incomplete understanding of these internal market dynamics. To sum up what was just discussed as it relates to, particularly, the second goal, to questions asked previously will be revisited concerning evidence of autoregulation within the Barbier-Mueller auction. By attempting to answer these questions using auction catalogue analysis, the results were interesting and confusing and, ultimately, lead to little further understanding of internal market forces or the existence of autoregulation in the antiquities market.

First, was provenance (here surface date) a factor in how well the items in the auction sold? The data gleaned from the Barbier-Muller auction results does [illegible] indicate that pre- vs. post-1970 surface date had an effect on whether a lot [illegible] or not. Objects that surfaced in the 1980s sold better than objects that surfaced before the 1950s. Whether the object was from a country that had initiated a return request or not does not appear to be a factor either: Objects from countries that initiated a return request sold better than objects from countries that did not.

It seems likely that this reflects a situation where buyers buy based on their own collecting desires rather than based on a fear of objects being seized. Th[illegible]

[illegible] collectors of popular Peruvian or Mexican items, for example, bought [illegible] on whether they liked the objects or not. A key factor in this is probably [illegible] of authenticity. The government of Mexico cast a shadow of suspicion [illegible] authenticity of a number of objects being sold. It is possible that this, [illegible] than any other factor, may have kept buyers away. Of course, these beliefs [illegible] be confirmed without surveying potential and actual buyers, a task made [illegible]ible by the anonymity associated with auction sales. In other words, when [illegible] within market context, the results of this auction analysis indicate that [illegible] and different, more labour-intensive research is needed to understand the [illegible] collected, and that research cannot be conducted due to market opacity. [illegible] likely that the only entity that can conduct the type of research needed to [illegible] and the auction segment of the antiquities market is the auction houses [illegible]selves.

[illegible]ond, was the auction a failure? The honest answer to this is that it is hard to [illegible]. While the auction did not achieve the expected €20,000,000, which was, in [illegible] more than €17,760,500, the total of all the "high estimates" of the 313 lots [illegible], and fewer than half the lots sold, this does not necessarily represent a [illegible]. Putting aside the possibility of immediate post-auction sales of items for [illegible] lower prices, the offering of certain items for sale may have bolstered [illegible] sales simply by the publicity this auction garnered. This is difficult to measure, however, the apparent increase in the offering of certain types of figurines [illegible] the Barbier-Mueller sale might be an indication of this.

Another way the auction may not have been a failure, at least for the auction [illegible], is that they weathered this storm, so to speak. Despite public outcry, official requests, and the involvement of journalists, academics, and politicians, the [illegible] was not stopped. French authorities did not intervene, and no objects [illegible] seized.

Simply put, success versus failure in the auction world is beyond our ability [illegible] with the information made public after a sale. Furthermore, we cannot [illegible] begin to imagine how public sales inspire and influence private sales. We [illegible] call this sale a failure because we are not even sure what a failure is as we [illegible] know the auction house's needs, internal targets, or contextualised business strategy.

What the Barbier-Mueller sale does demonstrate is that various stakeholders, including academics, are watching auctions closely. It is easy to draw conclusions from a cursory look at auction data, but the picture quickly shifts when the [illegible] is scratched. It has been said before and it is worth saying again: Major [illegible] most likely do not reflect the bulk of the antiquities market. The information that many researchers seek in auction data just is not there. We cannot demonstrate that buyers care about provenance information (and, of course, we cannot determine if provenance information is true). We cannot demonstrate [illegible] repatriation requests inspire insecurity in the market. We cannot apply auction data to the non public market. We cannot even determine if an auction was a [illegible] or a failure. In other words, neither the Barbier Mueller sale nor, indeed, [illegible] auction is a clear window into the market for illicit antiquities.

Notes

1 Both Peruvian Law No. 6634 of June 13, 1929, and Peruvian Law No. 2404[illegible] January 5, 1985, are usually cited when it comes to the Peruvian claim of nati[illegible] ownership of all archaeological material. This was the first time that I had seen Supreme Decree No. 89 of April 2, 1822, pointed to in a Peruvian repatria[illegible] claim. This may represent an error on the part of the person quoted.
2 This is 7 lots short of the full 313 items offered. These seven were listed [illegible] ambiguous countries of origin: Antilles (1); Honduras or Guatemala (1); Me[illegible] or Costa Rica (1); Mexico or Guatemala (4).
3 I only count 116 but my numbers are conservative; Mexico may have cou[illegible] objects that are listed in the catalogue as being from neighbouring count[illegible] Maya objects, for example, can come from any one of five different countries.
4 It is nearly impossible to survey potential and actual buyers as bidders' iden[illegible] are not made public by the auction houses.

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