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Christine Adler
University of Melbourne

Duncan Chappell
duncanc@uow.edu.au

Kenneth Polk
University of Melbourne

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Perspectives on the organisation and control of the illicit traffic in antiquities in South East Asia

Abstract

We intend addressing three issues in this paper. First we will describe in detail not available elsewhere the patterns that are found in the illicit traffic in antiquities that flow out of Southeast Asia in particular from Cambodia, China, Laos, Myanmar Thailand and Vietnam. Second, we shall examine the focus of organized crime that have emerged in order to support that traffic. Third, we will propose initiatives that are both focused on the demand end of the market chain (rather than on the supply end), and on the approaches that give emphasis to persuasion rather than punishment and prohibition.

Keywords

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PERSPECTIVES ON THE ORGANISATION AND CONTROL OF THE
ILLCIT TRAFFIC IN ANTIQUITIES IN SOUTH EAST ASIA

CHRISTINE ALDER
*Associate researcher in criminology
University of Melbourne*

DUNCAN CHAPPELL
*Professorial Fellow, Center for
Transnational Crime Prevention,
University of Wollongong,
Australia*

KENNETH POLK
*Professor of Criminology,
University of Melbourne, Australia*

When asked if an Indian object he had obtained was smuggled, the late Norton Simon was reported to have said: "Hell, yes, it was smuggled. I spent between \$15 and \$16 million over the last year on Asian Art, and most of it was smuggled" (as quoted in Burnham, 1975, p. 168).

Introduction

We intend addressing three issues in this paper. First, we will describe in detail not available elsewhere the patterns that are found in the illicit traffic in antiquities that flow out of Southeast Asia, in particular from Cambodia, China, Laos, Myanmar, Thailand and Vietnam. Second, we shall examine the forms of organized crime that have emerged in order to support that traffic. Third, we will propose initiatives that are both focused on the demand end of the market chain (rather than on the supply end), and on those approaches than give emphasis to "persuasion" rather than punishment and prohibition.

Limitations

We should begin by recognizing that study of the illicit traffic in cultural heritage material, especially in Asia, is at a much earlier, and

therefore cruder, level of development than studies of such illicit markets as those involving drugs or the trade in women. This is not because the traffic itself is new. In fact, one could easily argue that the plunder of antiquities pre-dates such problems as the current issues with illicit drugs since it extends back through the centuries. The tombs of the Egyptian pharaohs were often plundered almost as soon as they had been sealed. In China, a catalog of what were even by then ancient bronzes appeared as early as 1092, and a similar catalog of the antiquities collection of the Song court was published in 1123 (Debaine-Francfort, 1999, 15). No "grand tour" was complete without the learned gentleman returning home with various plundered trinkets to demonstrate his intimate acquaintance with Greek and Roman culture. In short, the antiquities traffic is much older than the more recent problems of the traffic in alcohol in the United States in the early 20th century, and the on-going drug wars that have their origins in developments in the mid to late 20th century.

What is remarkable is that the commentary on the plunder of cultural heritage has been so slow to evolve, and that there has been almost no major research grant money devoted to its study. Our work, for example, has been done almost exclusively out of our own resources. This is a major issue when it is recognized that the traffic itself is truly multi-national and transnational in scope. There are many different countries that yield up, however unwillingly, cultural material for the market. The chains involved from initial plunder to ultimate sale are lengthy and extend potentially across many national boundaries. Those involved represent many different languages and cultural backgrounds, languages and backgrounds that these investigators do not speak and are ignorant of.

Further, we are not helped in any way by the existing criminal justice system in terms of knowledge or even data. Virtually all art crime, including cultural heritage crime, belongs to the well known "dark figure" of crime, that is, it resides outside of the reach of current crime statistics. While there have been some who have struggled to find some information from sources such as customs records, in fact we have no solid evidence of the size of the traffic in plundered antiquities (despite rather extravagant claims about the volume of that this traffic). In addition, as university researchers, there are constraints imposed upon us by "human ethics" procedures that limit approaches that can be taken to study illicit traffic patterns. Investigative journalists such as Peter Watson (1998), despite his connection with Cambridge University, have much greater freedom to ask questions that we as university researchers are not permitted to ask (for example, of antiquities dealers who obviously are selling plundered objects). In Watson's case he could, as a journalist with funding from

television sources, actually entice major market players (including Sotheby's) to engage in a range of illegal behaviour involving the smuggling and preparation of false export/import documents of proscribed cultural material (for an all too brief discussion by a criminologist who actually went "undercover" and worked with police in the investigation of the antiquities trade, see Wilson, 2000).

Finally, it also must be pointed out that there are situations where close investigation of this illicit traffic could become exceedingly dangerous. As is true of many forms of illicit traffic, there is much money to be made, especially in the source nations. Those making that money are often well connected to police or military authorities, and take a dim view of interference in their lucrative activities.

Illicit antiquities traffic in southeast Asia

The focus of this paper is on the illicit traffic in antiquities that originates in the south and east of Asia (two important sources of material on this traffic are the excellent books by Murphy, 1995, and by Mackenzie, 2005). We have located our investigations on the gateway portals of Bangkok, and Hong Kong, with some attention paid to Singapore and Macau as well.

Bangkok as a Portal

Our work, and that of others, suggests that Bangkok is a major transit point for cultural heritage material flowing out of Cambodia, Myanmar, Laos and Thailand, although it seems also to be a secondary portal for material from China. The actual chain of movement can be complex, and depends upon such factors as the nature of the objects being transported, their origin, and their destination. Consider, for an example, Cambodian material that originates in the Khmer sites of Cambodia, most of which transits through Bangkok. Many of the Khmer objects are large stone statues, whose bulk and weight pose major problems in terms of the trans-shipment. Our field work suggests that much of the transport is accomplished by road with trucks crossing the border into Thailand, with an intermediate destination of Bangkok from where they are shipped to market centres around the world (see also Beech, 2003, p. 56). There also have been other reports of crated material weighing several tons being shipped from the Cambodian port of Sihanoukville by freighter via

Singapore, and from there onward to Bangkok (Doole, 1999, 7; see also Thosarat, 1999, 107). Even smaller objects from Cambodia, such as ancient beads, apparently make their way to markets in Bangkok (Thosarat, 2001; O'Reilly, 2005).

There is less firm documentation of the patterns of movement of material from Myanmar and Laos, although Bangkok appears to serve as the major market portal. There certainly over recent years has been a large amount of material from these two countries on offer in the antiquities shops in Bangkok, and at least one informant in an interview suggested that a major source of income for the "generals" in Myanmar was derived from cultural heritage material shipped by truck to the border with Thailand. Naturally enough, the venues around Bangkok also offer a range of material from various parts, and archaeological periods, of Thailand (many important Khmer sites, for example, are found in Thailand, see Freeman, 1996). Bangkok also seems to serve as a secondary source of material from China, since there can be found there a number of shops offering what appear to be high quality, expensive Chinese objects.

One factor which contributes to the role played in the region by Bangkok is that the criminal sanctions on export apply only to materials originating in Thailand, so that trade in objects that originate from Cambodia, China, Laos and Myanmar are not covered by the legislation (Mackenzie, 2005, 66). Raids on museums made in Los Angeles in early 2008 by authorities investigating illegal smuggling of material which had originated in Bangkok identified objects from China and Myanmar as well as Thailand (Serjeant, 2008).

Hong Kong and Macau as Portals

China provides a major source of cultural heritage material in the Asian region. Given its rich and long history, sites are to be found throughout the country. It should be noted that plundering also has a long history in China, with written evidence of the problem extending backwards at least to the Han Dynasty (206 BC-220 AD, see discussion of Murphy, 1995, 52-53), and also there are iconographic sources such as the painting of two gentlemen "*Enjoying Antiquities*" (presumably plundered) painted by the Ming Dynasty artist Tu Chin (active ca. 1465-ca. 1509) which is in the collection of the National Palace Museum in Taipei (Hearn, 1997, 98). The size of the country is huge, and the patterns of movement of plundered material complex. Commentators of identified numerous sources of illicit material, including sites in Hebei, Xingjiang, Hubei, Inner

Mongolia, Shaanxi and Shanxi provinces, among many others (Shuzhong, 1999; 88-91). The trail of antiquities is complicated, since a large amount of material flows to a huge domestic market in the major metropolitan centres of China. From these centres, the evidence indicates that a major route of some of the material is outward through the duty free ports of Hong Kong and Macau. As Murphy notes, Hong Kong is:

... an ideal conduit because of its proximity, its local expertise in Chinese antiquities and large number of dealers and buyers, its position as a financial and transportation centre, and its relatively open border (Murphy, 1995, 58).

Similarly, Shuzhong (1999, 92) states simply that Hong Kong is the "... most important staging post for the illicit traffic" out of China. There also appears to be, from our observations, a secondary traffic from Hong Kong to Singapore, Taipei and Bangkok, since large venues offering Chinese material can be found in those locations. Murphy and other observers have pointed out that there are risks involved in this trade of material from China, since there are some customs seizures of material, occasional arrests of those involved, and for the tomb robbers in China the penalties can include capital punishment.

Mackenzie (2005, 140) has argued that one issue that makes transit points like Hong Kong important in the market chain is that while extraction of the material is in violation of source nation laws and regulations, in most market nations (such as the United States, England and France) the sale of antiquities is open and legal. It is the passage of goods through portals such as Hong Kong that provides the illicit objects with what he terms a "mask of legitimacy" since they will be transported onward with what appear to be legitimate export/import documents (their status as stolen objects, Mackenzie is careful to point out, does not change despite having such documentation).

Singapore as a Portal

While it does not appear to be a major player (partly because of its own limited domestic market), Singapore as a duty free port seems to play some role in the flow of cultural heritage material in this region. Evidence of others, as noted earlier, has documented the movement of material from Cambodia into Bangkok via Singapore. The various antiquities venues in Orchard Road and the Tanglin Shopping Complex offer a range of quality

antiquities from China, Tibet, Cambodia, Thailand, and Laos, among others, and there appear to be links between establishments in Singapore and both Hong Kong and Bangkok. In comparison to Bangkok at least, an advantage of Singapore is that once the material has been shipped into that port, few problems are presented in the export of material.

Other Asian sites

While our attention has been directed primarily at material flowing through the major Asian portals such as Bangkok, Hong Kong, Macau, and Singapore, other regions merit attention. Vietnam was the centre of Cham culture (which for much of its existence was at war with the Khmers in what is now Cambodia, and then with the Vietnamese), but most of the important material from that culture was plundered either when the country was under French control, or during the Vietnam wars (see Guillon, 2001). Indonesia has in the past had a rich cultural heritage, including important sites showing Hindu influence that are from a period slightly earlier than similar developments in Thailand and Cambodia. Much of the material was plundered long ago, although we observed in recent years an exhibition (and attempts to sell) a large selection of stone objects (much like the Khmer material) on sale, with limited provenance, in Singapore. Korea had a large amount of cultural objects removed during the colonial occupation by Japan from 1910 to 1945, and a second wave of loss occurred during the Korean War from 1950 to 1953. As a consequence, as one observer notes "...Korean cultural objects are very rare" (Kim, 2001, 5), but there is apparently a small traffic in the few objects that are available, and the loss of any of these is important since there is little left of such cultural heritage material in its original and true cultural context. For somewhat different reasons, Japan similarly seems to see a relatively small traffic out of the country of unique cultural heritage material, in part because that culture prizes to a very high degree is cultural heritage, and has long been known for its willingness to protect its history. On the other hand, Japan occasionally becomes involved as a destination for other nation's cultural material, as in the case involving the Miho Museum in Kyoto which found it had purchased a rare Buddhist statute which had been stolen from China, which the Museum then returned (an interesting development because at the time Japan had not signed the various UNESCO and Unidroit conventions so there was no legal obligation to take this step) (Doole, 2001, 15).

Features of the illicit traffic in antiquities

Our previous research (see, for example, Alder and Polk, 2005) into the traffic in antiquities suggests that there are many similarities with other forms of illicit markets. (see also Mackenzie, 2005) Like most of these other markets (for a description, see Chawla and Pietschmann, 2005), the antiquities traffic has a strong international component. The demand from purchasers is the basic economic force which drives the market (and the consequent destruction of sites), and a significant component of that demand is found in such market centres as London, New York, Paris, Brussels or Amsterdam, among others. Particularly, but not uniquely, in Asia there is as well as strong domestic and regional demand for these objects which, as we shall see, complicates how we look at the control issue.

Given the international reach, the trade must contend with the problem that the movement of material out of the country of origin is illegal. In turn, this tends to generate two problems common to illegal markets. One, smuggling operations are required given that export is illegal, and these often involve complexities imposed by the nature of the goods being transported. In the case of some of the Cambodian and Chinese stone objects which often are quite large and exceptionally heavy, both the size and weight issues complicate the movement process. Huge crates, and the equipment necessary to move them, are expensive, and not easily either hidden or disguised. Two, if there is to be consistent and repeated movement of material across national boundaries, assurance of the success of the endeavors can be improved through the corruption of public officials. Both of these problems are addressed through the natural development of forms of organized social activity that we are likely to term "organized crime". There certainly is evidence in terms of the movement of these large objects through China, Cambodia and Thailand of some level of corrupt organization that resembles what is seen elsewhere in terms of organized crime.

Complicating all of this is the problem common to illicit markets is the fact that there are actually many different kinds of objects, and markets rather than just one "antiquities market" (this is true throughout the antiquities markets). One of our earliest informants, for example, was a dealer in jade objects from China. These items are actually quite small, and a relatively large "volume" of material can be carried easily on the person. In this case, there is no need for the complication of an "organization" to assure a constant supply of material since a dealer can obtain a reasonable supply of material on a single trip, carrying a large inventory on the person.

Similarly, we have found that dealers in Chinese ceramic material indicate that their yearly needs for material do not involve large volumes, so that as little as one container a year might be sufficient to satisfy the needs of a moderate sized antiquities shop. In short, while some form of "social organization" might be necessary to assure a sustained and vital market of any particular form of cultural heritage material, those needs may not require the full range of organizations that might be implied in the term "organized crime".

There are some differences, however, between the traffic in antiquities and other major illicit markets. One of the most important is that while the movement of material from source may be illegal, the sale of cultural heritage objects in the major market centres is open and legal. We have found Khmer objects from Cambodia, and various forms of ceramic and stone material from China on sale in venues in London, New York, Paris, Amsterdam and many other western locations, objects whose absence of provenance suggest illicit origins. In fact, it is not uncommon for the dealers, when approached by naïve potential customers, to have various devices or stories which are used to convince them that the objects are plundered and illegally smuggled, in order to counter the possibility that the objects in question are fakes. While doing field work out of Phimai in Thailand, we were taken by archaeologists to a burial site in a remote province which had been plundered. Some months later, in visiting a shop specializing in Thai objects in Singapore, we saw a photograph taped to a display case that bore a remarkable resemblance to the site we had seen. The picture was taken to show the "dig" in process (which was in fact a photo of the plunderers at work). The objects on offer were distinctive bronze age ceramics of the exact size and type we had seen at the site. Once again, what the shop owners were doing is presenting evidence of plunder as a way of assuring the "authenticity" of their merchandise, since faking is an endemic problem throughout the industry.

Forces influencing changes in the market for south east Asian antiquities

In the years that we have been observing the movement of cultural heritage material, we have begun to see that significant changes take place over time in the forms of illicit traffic. There are a number of factors that seem to be shaping this market. *Economic developments* play an important role, since the demand for antiquities in the market centres depends to some degree upon the health of the economy. When the Asian economies went through a major downturn a few years ago, there seemed to be a marked

slowing in the demand for antiquities from the region. It can be presumed that the current economic crisis will have a similar effect, although it may be much greater since it involves a world-wide economic recession. *Political developments* play their role, as we find in the changing in the relations between Cambodia and Thailand. Since much of the Khmer material passes through Bangkok as its main gateway, if the Thai authorities decide to take a stronger stand against that traffic, as they did in the period 5 to 6 years ago, there is a slowing in the movement of material, at least through the major venues such as the River City shopping complex in Bangkok. Currently there is a high level of tension between the two countries, however, and it should come as no surprise that it seems to us that much more Cambodian material is on public display in Bangkok. Equally important are the steps taken by the individual governments against the traffic, and these seem to rise and wane with the movement of different individuals in key political positions. Recently we have noticed a marked increase in the flow onto the market of material from Tibet, and this probably can be traced to the strained relations between the central Chinese government and the culture of resistance that still exists among native Tibetans. *Fads in the market* also play a role, since events such as the Chinese Warriors exhibitions a few years ago tend to result in an increased demand for Chinese objects, with that demand falling off as the fad fades. *Changing technologies* play a role as well, as seen in the role in the market now played by such internet based sources as eBay (one of the places where the presence of Tibetan material is so obvious in the middle of 2008). Finally, theoretically at least one might presume that *developments in the criminal justice system* would play a role, since it is reasonable to assume that major players in the antiquities markets will be aware of such events as the conviction and three year sentence handed out to a well-known New York dealer (for a commentary on the Schultz case, see Gerstenblith, 2008, pp. 70-74), or the dramatic arrest and then death in jail in Seattle of a well known Bangkok dealer (Felch, 2008). The conclusion of all of this is that these markets have to be viewed as dynamic, and in a constant process of change and development, an observation which can complicate enormously our attempts to bring this traffic under some amount of control.

Illicit antiquities and organized crime

Any complex criminal activity that involves a long chain of individuals linked internationally from initial plunders in supply

environments, to agents, to buyers, to smugglers, and then to antiquities dealers in market states will require some degree of "organization." Whether that fits into traditional conceptions of organized crime is another matter. A number of issues seem important in shaping this discussion. First, there is no doubt that the type of activity we have described does in many cases match the requirements of the UN Convention against Transnational Organized Crime (UNODC, 2004. see also Bowman, 2008) to be considered as being carried out by an 'organized criminal group,' namely:

...a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit (Article 2).

Despite this match, unlike many other forms of illicit traffic covered by the Convention, the efforts of an established criminal enterprise is not required to keep the activities flourishing but hidden since the sale of antiquities in most market locations is legal. Most of our images of organized crime, as in the media stereotypes found in movies or TV, feature the "mob" working in the destination market. Emphatically, the "Sopranos" are not part of the sale of elegant Chinese antiquities in the high end venues in London, Paris or New York.

Second, as we have already indicated, much of the traffic in antiquities is of a relatively low volume (since many of the objects are small, and not a great number are needed for a reasonable profit to be made), and does not require a large infrastructure for the support of equipment, personnel and subterfuge. Some overlap might still be expected when the need for organization in antiquities occurs in geographic proximity as it does in the Middle East with opiates (and a long history of classical antiquities), Latin America with cocaine (and Pre-Columbian objects), or perhaps sections close to the "Golden Triangle" in Asia (with proximity to at least some cultural heritage sites). And, indeed, one does pick up some anecdotes of such overlap. In a television program some years ago there was a short clip of a van stopped at a customs check point somewhere in the Middle East, and agents were in the process of removing a cache of both drugs and small antiquities. One of our informants in Bangkok alleged that the military authorities in Myanmar routinely sent trucks down to the border with Thailand, loaded, it was said, with "girls, drugs and antiquities".

Some observers have pointed out that physical items such as art and antiquities can provide objects that might prove useful as a way of "laundering" the wealth in cash obtained from the drug traffic or other illicit activities. While authorities worldwide have sought to curb the flow of 'black money' by tightening regulations regarding banking and allied financial bodies the use of such objects for money laundering has grown. As Fidler (2003) has noted:

Ferrying cash across borders is difficult, and carrying diamonds or bullion creates suspicion. Moving works of art or antiquities is much easier. Even big works can be moved; ancient friezes, for example, can be exported as Italian tiles. For money launderers, antiquities [also] have an advantage over prominent paintings; it is often impossible to determine if they are stolen (Fidler, 2003, 1).

The lack of any documentation regarding the provenance or provenience of a particular antiquity is an issue we discuss in more detail below. But in general, unless an object has been taken from an established site or museum it is unlikely to have any verifiable identification which would reveal to a suspicious border control or customs official whether it came from a legitimate or illegitimate source. Further, most of these officials at the exporting and importing level are unlikely to have an expertise in archeology or cultural studies which might prompt their curiosity or suspicion about the origins of an object. Thus the risk of detection for any money laundering or other related offence is usually at a minimum.

The broad conclusion that we have come to as a result of our field work is that there is little evidence coming through at the present time of major involvement of traditional elements of organized crime in the illicit trade in antiquities within the geographical region of interest. In fact, as we have suggested, there is for much of the trade scarce need for complex organization because of the nature of the objects being dealt with (some small, and others of moderate size and volume of trade). Large criminal organizations are quite expensive to maintain and require reasonable volumes to justify the expense. This is consistent with the observations of Mackenzie (2005), who found that for most dealers the transport problem was mundane, commenting that while drugs such as heroin are not usually trafficked by FedEx, "... this was the method of shipment recommended to me by an antiquity dealer I spoke to on Hollywood Road" (Mackenzie, 2005, 137).

This is not to say that there is no "organized crime" involved in the antiquities traffic. The movement of large, bulky and heavy items involves a number of complications, and steps. Extraction of the material may

require manpower and expertise at removal (especially in terms of large stone objects). Payment has to be arranged for the extraction by agents who then must work through the transit problems. The objects have to be lifted and carried from site of origin to some transit point (for example, being lifted by a crane so that they can be carried by truck to a point where they are placed in a container for shipment by sea). Papers have to be arranged which permit some form of access to both export and import procedures. Dealers who are complicitous in this process must then be found so that the items can be placed on wholesale and ultimately retail markets in destination countries. In turn, buyers must be found who are willing to purchase cultural heritage material without asking questions about provenance.

The criminal organization for antiquities in these circumstances *at the source end* likely will be surreptitious and involve individuals who know they are taking risks but for whom the financial rewards are great enough justify taking those risks. In the less developed regions of Asia, there is not a large range of sources that can provide the transport infrastructure that will be required for the large objects in terms of cranes, trucks, containers and ships. It is not surprising that the military often appears in accounts of traffic at this end of the market (eg, regarding the involvement of Cambodian military authorities in the traffic of Khmer objects, see Beech, 2003, 56; and Thosarat, 1999, 69 comments on a "General" who was making "...a very lucrative profit off the sales of artefacts ..."), as do police (Doole, 1999, 7). Mackenzie (2005, 19) describes a situation where the looting of a Cambodian temple site involved several hundred soldiers and heavy machinery, with the objects reportedly being stolen to order by the army in response to a request by a Thai antiquities dealer operating out of Bangkok. One of Mackenzie's (2005, 141) informants pointed out the obvious fact that in China, "... the army has the lorries with which they can transport the objects".

There is, thereby, some amount of organization to the illicit traffic in antiquities. Watson and Todeschini state in their analysis of looting in Italy that the illegal "... trade in antiquities is *organized*" (Watson and Todeschini, 2007, 340, emphasis in original). A key element in their analysis was the way the networks ("*cordate*" in Italian) are crucial to the successful accomplishment of the sale of plundered goods. While these might not correspond to stereotypic notions of drug-centered organized crime, in fact, emerging criminological conceptions of organized criminal workings are widening to incorporate such activity. Edwards and Levi (2008) argue that one of the major ways criminologists today look at the

phenomenon of organized crime is focused precisely upon the notion of "networks", this approach serving:

As a way of describing the structure and/or everyday workings of the market as a whole, in the sense that the market can be regarded as a complex social network (*singular noun*) within which different participants have to network (*verb*) (to carefully seek out and interact with traffickers who may be like or unlike themselves, etc....In other words, through networking, traffickers [and other offenders] construct the market (Edwards and Levi, 2008, 364, emphasis in original).

Put in other words, the evolving conceptions of organized crime appear to be widening (for another example, see Coles, 2001), and the kinds of processes involved in the traffic in antiquities contain such elements as networking, smuggling, and political corruption that are consistent with at least some of these theoretical perspectives.

During our research the senior law enforcement officials within the region with whom we discussed the possible links between organized crime groups and the antiquities trade tended to share our general view of the situation. Many admitted to a lack of knowledge at large about the trafficking of cultural objects, seeing it at best as a minor law enforcement issue and at worst as a possible distraction in the 'war against drugs'. Some acknowledged a particular interest and concern about the money laundering aspects of the antiquities marketplace.

One former crime agency head who now spends most of his time advising governments throughout the region about anti money laundering measures told us recently that he suspected the 'dark figure' of cultural objects laundered by persons involved in the trafficking of drugs and humans was far greater than many believed, and that organised groups of traffickers were well ahead of law enforcement in recognizing the benefits of this particular ruse to wash clean the products of other illicit endeavors. The same source told us that in his view a significant weakness in the anti money laundering arsenal was the ease with which cultural objects from the region could be trans-shipped around the globe by established air freight couriers with few questions asked at the point of shipping or receipt, usually because of the ignorance of the officials involved about the cultural significance of particular objects, or through corrupt practices such as the use of false documentation.

In the absence of detailed studies of the antiquities marketplace throughout the region views like those just expressed must remain speculative. Nonetheless, it would be misleading to give the impression that law enforcement is at a total standstill when it comes to tackling the problems of looted antiquities. For example, in Cambodia international law

enforcement agencies like the FBI have been invited by the Cambodian Government to advise a new national heritage police force established to end the systematic pillaging of the country's ancient monuments (De Launey, 2007). This development was preceded by an agreement between the US, a nation which has been one of the main recipients of plundered Khmer art, and Cambodia aimed at stifling the illicit trade in cultural objects. As part of this agreement the US has placed import restrictions on ancient stone, metal and ceramic objects from Cambodia (BBC News, 2003).

The failure of punishment and the need for persuasion alternatives

Each form of illicit traffic presents its own set of problems in terms of the harm caused, and how that might be addressed. A major aspect of the harm in terms of the plunder of cultural heritage material consists of the loss to human knowledge about our past that results from the destruction of heritage sites. The need for urgency of action can be found in the words of Professor Colin Renfrew who has argued that the looting of archaeological sites is an "... unmitigated and continuing catastrophe for the world's archaeological heritage" (Renfrew, 2006, 15). Anything that is done must be assessed against the hard criterion of whether or not it contributes to a reduction in this destruction.

The current response has evolved to consist primarily of various forms of legal prohibition. Most source nations have created a number of layers of protection. Many of these began by creating a range of laws which prohibit the export of material without state approval. When these proved insufficient, additional laws have been created in the major source states which define the removal of cultural heritage material without approval as a form of theft, in some cases reinforcing this with heavy penalties (in China, for example, convicted offenders may be executed). At the international level, a number of supporting conventions and treaties have been developed by the UN, including the important UNESCO Convention of 1970 as well as the Underwater Cultural Heritage Convention of 2001 (this last convention aims to close down entirely the market, providing that there be "no commercial exploitation" of underwater material). It needs to be pointed out, however, that one of the unique aspects of the traffic in antiquities is that the sale of antiquities has not been criminalized in most market nations (although many have signed one or another of the UN sponsored conventions), and today antiquities without documentation (and therefore presumed to be plundered) can be found on open and legal sale in

the various sale centres, such as New York, Paris, Amsterdam, Stockholm and London.

In short, the major response to try to counter the illicit traffic in antiquities has been the passage of various laws which are aimed at prohibition of that traffic in the source environments, while the demand has been allowed to continue virtually unabated. For criminologists, there are major questions to be asked about the effectiveness of prohibition as the primary or sole form of public policy, especially given the record of failure of major attempts to restrict supply, in the face of continued demand. Where rich demand communities are willing to pour vast sums of money into the purchase of the goods, those trapped in lives of squalor and hopelessness in the poor communities where the cultural heritage sites are found are likely to be willing to consider the risks posed by even the most draconian laws. Mackenzie (2002) has stated the conclusion as succinctly as anyone, observing that when it comes to antiquities existing laws appear to be "... creating problems rather than solving them", going on to comment that:

Ineffective prohibitions by source States combined with complex and hugely expensive civil mechanisms for recovery of looted artifacts, all amount to a system of legal governance which is demonstrably failing to stop the plunder (Mackenzie, 2002, 160-161).

From our perspective, it is unfortunate that many in the archaeological community do not share in these conclusions, and in fact place considerable faith in those policies which are based primarily in prohibition. Writers such as Kersel and Luke (2003) comment that there have been great advances in the way individual source nations strive to protect their cultural heritage (for example, by training their own archaeologists, and restricting access of outsiders, including scholars, to cultural heritage sites), and instead of seeking other options, state their belief that "... protection efforts must continue to focus on international and national legal frameworks for cultural property protection" (Kersel and Luke, 2003, 30).

We agree that a primary goal is the protection of archaeological context, and if the existing policies were achieving that goal, there might be more support for these propositions as a basis for building the major effort to control this illicit traffic. From the perspective of criminology, however, it has to be said that there is no reason to have faith in penal tactics based in prohibition and deterrence, especially given the particular set of factors that shape the traffic in antiquities. One of the most important of these is that the trade in antiquities in market centres continues to be legal, and vigorous.

However one might wish it to be otherwise, there is, and will continue to be, a robust trade in antiquities. In part this is because there is in private hands a huge amount of heritage material that can not be prohibited from being placed on the market. Antiquities have been traded for decades, even centuries, and any attempt to restrict the access to the market of those who own this property (for example, heritage material with a provenance extended back before 1970) will run afoul of a number of economic and civil rights issues. Equally important, while from the standpoint of prohibitionists there might have been some gains (such as the conviction of Schultz in New York) that may have some effect on the market, in general there continues to be a huge volume of material on the current market that clearly comes from cultural heritage sites and is being sold with no provenance or provenience information whatsoever.

We are not, however, calling for an abandonment of the existing prohibitions in the source nations. Rather, we are asking whether it is possible to widen the policy framework to add into the present regulatory approaches a framework that we believe might add to our ability to control this illicit traffic. Specifically we suggest that at the same time we attempt to close off supply at source, new kinds of policy initiatives be considered which address the basic force that powers this trade, that is, the demand that is exerted in the market environments.

An obvious solution, especially given the directions followed by those trying to increase the protection of cultural heritage, might be to impose prohibitions in the demand environments comparable to those now found at the supply end of the market chain. We do not suggest such a step for two reasons. One, from a criminological perspective there is no reason to believe that prohibition without strong public support (which it would not have) would be any more successful in controlling the trade in antiquities that it has been in the failed attempt to control the consumption of alcohol or prohibited drug substances. Two, as stated above, there are a number of ethical and civil rights issues that would arise with any attempt to impose naked and strong penal sanctions onto a trade such as antiquities.

The alternative proposals that we suggest are founded in calls for models of regulation that incorporate a mix of (mostly) persuasion and (scarce) punishment. The "pyramid" model (Braithwaite, 1993; Ayres and Braithwaite, 1992) which heuristically captures this emphasis on persuasion in the regulation of complex commercial behaviour has been applied primarily to classic situations involving the control of corporations by government regulatory bodies (for example, with reference to occupational health and safety). The model has been extended to global business regulation (Braithwaite, 2000; Braithwaite and Drahos, 2000). To capture

the complexity of regulation Grabosky (2000) suggests expanding the dimensions of the pyramid metaphor to include "third parties" such as public interest organizations and other commercial actors influencing corporate bodies.

The central assumption of the approach being proposed is that control of the illicit antiquities market requires an expansion of "persuasive" efforts within a more responsive and responsible regulatory framework. The investigation follows Braithwaite's (2000, 222) call for "new ways of thinking about crime and crime control ..." in the "...new regulatory state" (Braithwaite, 2000, 227-230). It is Braithwaite's argument (see also Braithwaite, 2002) that the traditional focus on crime control based on legal prohibitions enforced by police, court and prison mechanisms are decreasingly relevant to today's needs. Much of that analysis examines the transformation, for example, of policing from traditional public law enforcement to new patterns of private policing and emerging patterns of regulation such as those concerned with "risk management" of nuclear energy, transport companies, and space industries (as in Vaughan, 1997).

It is the present argument that a central focus should be on demand, and should address those initiatives which would result in a market where consumers take an ethical position that there should be no purchase of heritage material that lacks adequate provenience. The "persuasion" here, we believe, should be aimed at increasing the awareness of consumers and dealers of the importance of provenience, and the consequences of continued consumption of material which has been plundered from archaeological sites. Such an approach is both aimed at demand, and would be based on persuasion rather than deterrence from coercive penal sanctions.

We have observed that the continued trade of plundered cultural material is supported by the shared understanding among sellers and buyers that issues of provenance, or more exactly, provenience, will not be raised when articles are purchased: thereby avoiding questions about illegal digging and export practices. Consistently, for cultural heritage material reviews of auction house and private dealer catalogues demonstrate that little or no information is provided regarding the previous history of the object (Chippendale and Gill, 2000; Mackenzie, 2005). Provenance in the art world generally refers to the ownership history of the object. For cultural heritage material, archaeologists require more exact information regarding where the material was found, when and by whom the dig was conducted, any published information about the material, and its entry onto the commercial market, and the term "provenience" has been suggested for

this more exacting form of provenance (for a discussion of the use of this term, see Mackenzie, 2005, or Lapatin, 2002). One of the features that permits the trade to continue to flourish is the collective indifference of purchasers, dealers and antiquities traders to this issue of provenance (for an elaborated discussion of this problem, see Mackenzie, 2005). If dealers would not sell, and customers not buy, cultural heritage material that lacked provenance information, there would be no market for illicit antiquities.

Since the persuasion approach to address this problem has not been tried in terms of its application to the antiquities traffic, at present the model provides only a sense of direction. To be sure, applying what Grabosky, or Braithwaite are attempting in their regulatory regimes is qualitatively different than the antiquities markets. The classic regulatory situation is like that found regarding occupational health and safety. In that context, there tend to be a clear set of potential victims (workers), a set of possible offenders (companies), and a specific regulator that has responsibility for addressing the problem (an occupational health and safety unit). To apply a persuasion model to the antiquities trade requires more than a little innovation. The victims can be seen either as the sites that are being destroyed, or perhaps the nations that have responsibility for protecting these sites (for an example of an argument that focuses on a nation as a victim of cultural heritage crime, see discussion of Sassoon, 1999). The offenders are the various market players, including both dealers and consumers. There is no exact fit in terms of a regulatory agency, but that role might be played by individuals or units who have a stake in the control of the problem.

One example of the "persuasion" approach might be, then, for seminars to be held in major market centres that bring together representatives from nations and locations where looting has been a problem, a gathering of market participants such as dealers and potential consumers, and the setting could be organized by groups such as archaeologists, or representatives of ethnographic units or museums, or cultural heritage agencies, who seek to limit the impact of the illicit traffic. Such seminars could present vivid evidence of the consequences of illegal digging of objects, and also present clear understandings of the meaning and application of issues of provenance and provenience (this is similar to an idea suggested by a Nordic research team addressing cultural heritage crime, as reported by Korsell, et al, 2006, 175).

Another example of a non-punitive, collective agreement across demand and supply nations is found in the ethical code of the International Council of Museums (ICOM) which provides that museums will not buy looted material. An illustration of the work of ICOM can be found in their

publication *Looting in Angkor* (ICOM, 1997) which lists "100 stolen objects" taken from Cambodia (ICOM, 1997). The strategy is a practical one deriving from a professional association's ethical code that, through the publication of a public document, incorporates the general public and other interested parties in the "policing" of the purchase of illicit antiquities. It serves both a preventative/control function (identifying works that have been stolen and therefore should not be purchased) and a restorative function (the return of the stolen goods to the source country). In our field work over the years, we have found a number examples of how this process works to identify looted material, and to result in the restoration of that material to its country of origin (although it must be noted that often the museums involved are less than forthcoming about their role in the process). For our purposes, however, its critical function is to provide a clear set of understandings that underscore the principle that unprovenanced material will not be acquired by museums, either through purchase or donation.

Since historically museums have been one of the major purchasers of important archaeological artifacts, the publication itself, and the successful return of stolen objects, could have considerable effects on the antiquities trade more generally (e.g. dealers and individual buyers) in terms of expectations regarding the provision of full provenance. Further the importance of the development of such lists is indicated by the production of an Emergency Red List of looted objects from Iraq (June, 2003) as one of the first responses to the recent events which have resulted from that war (for a discussion of looting in Iraq, see Polk and Schuster, 2005; and for a documentation of the effects seen in the war in Afghanistan, see van Krieken-Pieters, 2006).

While these ideas might have appeal to many concerned today with the problem of controlling this illicit traffic, there are other proposals which are more contentious. One example of a negotiated/collaborative control process in a source country that we have identified in our field work is the excavation and documentation of the Hoi An shipwreck in Vietnam, and the subsequent archiving of some items and sale of others, involved a collaborative agreement between the Vietnamese Government, marine archaeologists, salvage operators, and, ultimately, antiquities dealers. It is an example of a control strategy of negotiation and collaboration between interested parties with competing and diverse interests, but one which involves direct involvement of a source nation in defining the mechanisms by which ultimately the material reaches a legal market (for a brief description of this example, see Krowitz, 2003, 28). A somewhat similar case is found in the arrangement between the British Government and

salvage operators in the exploration of the *Sussex* wreck in Mediterranean waters. In both of these cases, the source nation retains its control over the material, its extraction, and its distribution, and the objects are not thereby subject to looting by criminal networks. Further, and important for present interests, if and when material comes onto the market (as it did in the Hoi An example) it brings with it explicit reference to the provenience of the material.

Immediately it needs to be acknowledged that there would be strong objections to the Hoi An experience as a model. For one, the placing of the material onto the market would be in violation of the Underwater Cultural Heritage Convention which explicitly prohibits economic exploitation of underwater cultural material. Archaeologists would argue that a major goal in addressing such sites is the preservation of the material as much as possible in situ, thereby assuring the context for future research. Finally, most source nations today have a complete ban on any material leaving the country, especially if it is destined for the commercial antiquities market.

One of the main reasons we present the Hoi An program is that, for all of its faults, it demonstrates that it is possible for source nations and the market to negotiate issues relating to the study of cultural heritage sites, and access to material that is produced. Because of the collaboration, it was possible to investigate a site where otherwise the source nation likely would not have the economic resources to carry out the work. There may be ways other than sale to move the material onto a wider cultural stage, these might procedures whereby the ownership remains vested in the source nation, including loans of material, leasing arrangements, or perhaps joint ownership.

The position of many in the cultural heritage community is that commercial exploitation of cultural heritage should not be permitted. In one form (a presented above by Kersel and Luke, 2003), archaeologists argue that cultural heritage sites should be preserved for study by specialists who have an understanding and appreciation of the critical importance of context.

That is a view that merits public attention and debate. While we are willing to defer on many of these issues to the expertise of our archaeological and cultural heritage colleagues, we would point out two major problems in this argument. One, it is impossible to eliminate the market for antiquities. Given that the market exists, present understandings within that market (and continuing demand) assure that unprovenanced cultural heritage material leaks into that market. Ways need to be found, we would argue, to increase the willingness of those inside that market to

avoid dealing in, or purchasing, unprovenanced material. Two, reliance totally on prohibition, when moral support for demand remains strong, has a number of potentially disastrous effects. Not only will the market continue to flourish (and the destruction of archaeological sites continue), but such attempts generate a high level of contempt for the rule of law. When demand remains high, and the economic rewards are considerable, that contempt fosters the wider problem of organized crime. In the case of antiquities, the disastrous effects of whatever organized crime will result not only in the continued destruction of heritage sites, but forms of organized crime that are at considerable distance from the niceties of the economic, social and political life found in demand environments.

It also needs to be said that we have only begun a discussion on the forms of persuasion that might be tried. While we have pointed out the dismal record of prohibition and deterrence as major or sole planks of public policy, there are examples where mixes of persuasion and punishment appear to have enduring effects. Over many years in countries such as the United States and Australia, there has been a concerned attempt by Anti-Smoking campaigns to alter attitudes and behavior toward smoking. Most of this effort has been through public health and educational initiatives, with some support in terms of laws banning smoking in various public places, and the mix seems to have met with success. A similar campaign has been launched regarding the use of seat-belts, although in that case there is probably a heavier role played by the punishments provided in the criminal laws. Both suggest the possibility that mixes of persuasion and punishment can serve as a guide for public policy.

More work can be done where there are indications of potentially helpful initiatives. The heavy-handed retentionist policies of many source nations might receive greater support in the market environments if there were more positive efforts to share material through such mechanisms as joint ownership (as for example in art material between France and England), leasing arrangements, or long-term loans (especially to specific and dedicated museum collections that can serve as centers for learning as well as exhibition). There is scope for much wider use of the sale of replicas (developed in collaboration with source nations), especially through the museum shops that have become such an important marketing device for funding of the larger museums. Efforts might be undertaken to broaden and deepen initiatives such as can be seen in the group Save Antiquities for Everyone (SAFE). In a discussion of SAFE, Lazrus (2008, 272) comments that an important question that needs to be addressed is: "Why should and how can people ensure the safety of works they will never see?"

There is a flaw in our proposals that requires mention. The approach suggested here calls for major effort in the demand environments, focusing on dealers and potential customers in such venues as New York, London, Paris, Amsterdam, Brussels and similar locations. Such efforts by definition will have no purchase on the large domestic markets in Asia, especially in China. There is no question that for hundreds of years a primary source of market pressure producing the plunder in Asia has come from demand exerted by these domestic markets. Parallel thought, and work, will have to be undertaken in these if there is to be any significant reduction in the size of the illicit antiquities problem, especially in Asia.

Conclusion

Currently there is a peculiar kind of standoff that is found concerning the traffic in illicit antiquities. On one side are the cultural heritage supporters and archaeologists who base their strategy for the control of illicit traffic in antiquities on prohibition at source. On the other side is the market which because of demand, and because sale at destination is legal, continues to flourish (which is possible in part because due diligence regarding provenance is, by mutual consent, ignored). The consequence of the standoff between these positions is that cultural heritage sites around the globe continue to be turned into moonscapes. However necessary and important prohibition regulations may be, these are not by themselves protecting cultural heritage. There is no surprise in this for the criminologist, since this form of illicit traffic can be added to a long list of problems which are not solved simply by prohibition. We would urge that the debate be widened, and that the question of "who owns the past" (Gibbon, 2005; Cuno, 2008) be taken as an issue for negotiation, and as that problem is considered, steps are taken to reduce demand in the market nations.

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