



Criminology and Archaeology

Studies in Looted Antiquities

EDITED BY

Simon Mackenzie and Penny Green

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and
Penny Green

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Neil Brodie graduated from the University of Liverpool with a PhD in Archaeology in 1991 and has held positions at the British School at Athens and the McDonald Institute for Archaeological Research at the University of Cambridge. He co-edited *Archaeology, Cultural Heritage, and the Antiquities Trade* (with Morag M Kersel, Christina Luke, and Kathryn Walker Tubb; 2006) *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology* (with Kathryn Walker Tubb; 2002) and *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage* (with Jennifer Doole and Colin Renfrew; 2001). Since October 2007 he has been director of the Cultural Heritage Resource at Stanford University, CA, where he is researching the economics and sociology of the antiquities market.

Penny Green is Professor of Law and Criminology at Kings College, University of London where she is Head of Research and Director of the Law School's Research Degree Programme. She has published widely on state crime, state-corporate crime, natural disasters, Turkish criminal justice and politics, transnational crime, and asylum policy. Her current research interests include illegal logging, state violence, environmental harms and looted antiquities (see ESRC-funded evaluation of the impact of the United Kingdom's Dealing in Cultural Objects (Offences) Act 2003, presented in this volume). She is the author of a number of books including *The Enemy Without: Policing and Class Consciousness in the Miners' Strike* (1990); *Drugs, Trafficking and Criminal Policy: The Scapegoat Solution* (1997), *Criminal Justice in Transition: Criminal Policy-Making Toward the New Millennium* 2000, and with Tony Ward, *State Crime: Governments, Violence and Corruption* (2004).

Linda Källman, BA, was at the time of writing her chapter a researcher at The Swedish National Council for Crime Prevention. She contributed to the Council's work on looted antiquities, published as *Crime Goes Underground: Crimes against Historical Sites and Remains* (2007). She was also a key contributor to the book *Cultural Heritage Crime* (2008).

Lars Korsell, jur dr (LLD), is Chief Legal Officer and Head of the Department of Economic and Organised Crime Research at The Swedish National Council for Crime Prevention, an authority under the Ministry of Justice. He has published widely in the fields of white-collar crime and organised crime. In the field of art crime, he was responsible for the study *Cultural Heritage Crime: The Nordic Dimension* (2006). He has also contributed to the work *Crime Goes Underground: Crimes against Historical Sites and Remains* (2007), and has written the second part of the book *Cultural Heritage Crime* (2008).

Gordon Lobay is currently Collections Management and Museum Planning Advisor at the University of Alberta. He leads collections management initiatives and facilitates the movement and certification of cultural property for the University museums. He has a PhD in Archaeology from the University of Cambridge (Homerton College) and wide-ranging excavation experience in Germany, Italy, Tunisia and Ukraine. He has previously held a position at the University of Texas (Institute of Classical Archaeology) and contributed to the project 'Criminalising the Market in Looted Antiquities' with Simon Mackenzie and Penny Green. His research interests focus on archaeological looting, the antiquities trade and the impacts of legal instruments on both the trade in cultural property and the protection of archaeological sites. His current research aims to assess methods intended to reduce the volume of illegal antiquities that reach the art market.

Simon Mackenzie is Reader in Criminology at the Scottish Centre for Crime and Justice Research, University of Glasgow. He has published articles on the criminological analysis of the market in looted antiquities in a number of international journals, and is author of *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (2005), which presented the results of his qualitative research interviewing high-level antiquities dealers in the United Kingdom, the United States, Switzerland, Thailand, Hong Kong and Australia. In 2006 the book was awarded the British Society of Criminology Book Prize. This project was followed by the ESRC-funded evaluation of the impact of the United Kingdom's Dealing in Cultural Objects (Offences) Act 2003 which is presented in this volume.

Kenneth Polk is Professor of Criminology at the University of Melbourne in Australia. Before that he was for many years Professor of Sociology at

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Tony Ward is Reader in Law at the University of Hull and has research interests in criminology, legal theory, and social epistemology. He is co-author with Penny Green of *State Crime: Governments, Violence and Corruption* (2004) and with Gerry Johnstone of *Law and Crime* (2009), and co-editor, with Bev Clucas and Gerry Johnstone, of *Torture: Moral Absolutes and Ambiguities* (2009).

David Whyte is Reader in Sociology at the University of Liverpool, where he teaches and researches issues of corporate power and regulation and crimes of the powerful, and he has published widely on those subjects in both academic and wider circulation journals. His books include *Unmasking the Crimes of the Powerful* (ed, with Steve Tombs, 2003) *Expanding the Criminological Imagination* (ed, with Alana Barton, Karen Corteen, and David Scott, 2007) and *Safety Crimes* (with Steve Tombs, 2007). His latest book, *Crimes of the Powerful*, will be published in 2009 by Open University Press. He is a board member of the Centre for Corporate Accountability and an advisory board member of Corporate Watch.

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Introduction: A Context for the Engagement of Criminology and Archaeology

SIMON MACKENZIE AND PENNY GREEN

THIS COLLECTION IS the product of a collaborative venture between criminologists and archaeologists concerned with the international market in illicit antiquities. Criminology has long been interested in transnational crime and its regulation; archaeology in the pedagogical consequences of antiquities looting. In the chapters presented here both disciplines present new data and analysis to forge a more coherent understanding of the nature and failings of the regulatory framework currently in place to combat the criminal market in looted antiquities.

The international market in illicit antiquities presents a useful case study of a form of transnational crime. Looted antiquities may be defined as those taken illicitly from the ground, or from their place as an integral part of, or attachment to, a temple or other ancient structure (Meyer, 1973; Bator, 1983; Renfrew, 1999). Looting happens routinely (Conklin, 1994; Pastore, 2001; Thosarat, 2001) and many countries, including the United Kingdom (see Bland, chapter five, this volume), have rich underground, or undersea, deposits of cultural material (Stead, 1998).

The list of source countries is long, and serious looting has been recorded for example in Egypt, Italy, Peru, Mexico, Greece, Turkey, Southeast Asia, and China. Antiquities are highly collectable for reasons both of value and of aesthetics, and there are several prominent international centres for trade, most notably London, New York, Paris, Brussels, Hong Kong, Geneva, and Bangkok. The United Kingdom is widely acknowledged to be a significant market for looted antiquities in global terms, both by way of end point in the chain of supply, and as a transit point for looted antiquities which will subsequently leave the country (DCMS, 2000).

The harm looting causes is not immediately obvious to the non-expert. Aside from the incidental destruction of objects deemed subsidiary to the gold, silver, and jewels that attract looters, there is the loss of stratified context and consequent loss of historical record (Burnham, 1975; Renfrew, 1993, 1999). Stratification and context are archaeological terms for the depth at which objects are found (indicating their age) and their relationship

to other objects and structures found around them. The association between artefacts *inter se* and their place in the earth in which they are found can add greatly to our knowledge about the human past. The collection of such knowledge and its publication is the essence of archaeology (Coggins, 1969, 1970). The loss of the cultural assets themselves as they travel to overseas markets is, of course, also a detrimental effect caused by looting to source countries. However, this loss is remediable (in theory and occasionally in practice) when a looted and smuggled object is returned to its country of origin. The loss caused to the archaeological record by looting is, on the other hand, irremediable—once context is destroyed, the knowledge it can offer can never be reclaimed (Gill and Chippindale, 1993; Chippindale and Gill, 2000).

The two largest market centres for the sale of antiquities, in terms of volume of trade, are New York and London (Gerstenblith, 1995; Polk, 2000). Antiquities looted from source countries routinely travel to London to be sold by international dealers and auction houses to other dealers, private collectors, and museums (Elia, 1994; Alder and Polk, 2002).

The market therefore operates across national borders. Source states from which looted objects are exported for sale have responded to the problem with a two-pronged legal approach: vesting legislation and export controls. ‘State vesting’ legislation, as we will call it here, follows a similar model across many source countries: objects over a certain age, usually 100 years old, in the ground are declared to be the property of the state, making their finding and removal a theft from the state (Prott and O’Keefe, 1984). Integral parts of national monuments are often also expressly declared to attract criminal sanction if removed. Export controls usually take the form of licence requirements. Objects of artistic or cultural interest over 100 years old should not be exported without a licence, which will be granted by the state arts or antiquities department (Prott and O’Keefe, 1989; O’Keefe, 1997). Despite these restrictions at source, many countries report widespread looting and unauthorised export of their underground heritage (Brodie, Doole and Renfrew, 2001). Further, due to deficiencies of UK law and practice, these illicit objects have tended to readily enter the London market (DCMS, 2000; O’Keefe, 2000; Polk, 2002).

The failure of the impressive-looking regime of control at source can best be explained by (a) the local context in which regulation is played out in source countries, and (b) the international legal context enjoyed by travelling antiquities.

In terms of local legal and social practices at source, several factors militate against the effectiveness of regulation, leading in practice to a situation in which both sets of legal restraint are routinely ignored by looters and dealers in source countries (Mackenzie, 2005a). The chances of apprehension in the act of looting are, rightly, perceived as negligible. In some countries looting is considered a craft, the skills for this alternative

employment being passed down generations of ‘*tombaroli*’ or ‘*huaqueros*’, the local words for tomb robbers in Italy and South America respectively (Paredes Maury, 1996; Ruiz, 2001). Neither is passage of objects out of a source country perceived to be problematic; poorly paid customs officials and the culturally unexceptional nature of ‘payment for service’, or what western observers would call bribery, undermine the effectiveness of formal export controls. Any cultural restraint on grave-robbing as might be thought likely is often in fact absent due to a certain paradox of respect. This paradox takes the form that, whether the dead are respected or not, their graves often end up fair game for plunder. In some countries the buried are simply not accorded much thought if they are not direct blood ancestors of the present culture, or where they worshipped a different God. This is the case for example where Buddhist objects are found in the now predominantly Muslim Pakistan, and has been brought to public attention most spectacularly in Afghanistan, where the Islamic Taliban destroyed the Bamiyan Buddhas in 2001. In this way, current citizens often feel little connection with the artistic, religious, or bodily remnants of prior occupiers of the land. The other side of the paradox is that where there is an ancestral connection between the buried and the living, the latter often consider the grave goods of the former as gifts from their forebears, entombed precisely so as to assist their descendants in times of financial hardship.

The failures and inadequacies of the international treatment of source country legal controls have also been noted in the literature. Once an object is out of a source country, the export restriction which barred its exit may become useless. While it may be assumed that market states would normally enforce the export laws of source states, this is in fact not the case. Export laws are public laws (as are, for example, taxes), and just as one state is not obliged to collect taxes for another, so a breach of a foreign export provision is not something a market country will ordinarily feel obliged to enforce (Merryman, 1986, 1988; Gerstenblith, 2000). In effect, this renders export prohibitions in relation to antiquities a legal form of shutting the stable door after the horse has bolted.¹

State vesting legislation has in the past rested on a similarly uneasy footing, being at odds with western neo-liberal doxa such as the right to private ownership and freedom of the individual from the unduly wide and imprecise inroads government may make into such perceived fundamentals as property rights and entrepreneurial choices. In spite of this, the answer to the question whether domestic laws against handling stolen property in market states includes property stolen abroad has slowly moved from ‘no’ to ‘yes’ in several market states: notably the United States (Gerstenblith, 2002, 2003; Mackenzie, 2005b: 251 fn 4) and also the United Kingdom.

¹ See particularly *Attorney-General of New Zealand v Ortiz* [1983] 2 WLR 809 (HL), affirming [1982] 3 WLR 570 (CA).

In the United Kingdom, the Theft Act 1968 in section 24 made it clear that the offence of handling stolen goods included goods stolen overseas; an inclusion which lives on and is made explicitly applicable to antiquities in the Dealing in Cultural Objects (Offences) Act 2003 (see Mackenzie and Green, chapter eight, this volume). In this respect, then, source country controls are an important element in constituting a theft charge against a buyer of looted property overseas, if not instrumental in preventing the practice of looting in the first place.

This is a good example of the systemic transnational nature of the regulatory effects of legal controls in the antiquities market—a pattern which follows the systemic transnational nature of the market itself. As Michaelowski and Kramer (1987) have observed, there are ‘spaces between laws’ which in our study might be thought to include the inadequate treatment at home of foreign export laws. There are also, however, ‘bridges between laws’, where the importance of the existence of a law in one country, such as state vesting, is not in its more obvious domestic effect (that is, in respect of the deterrence of looting, in which it is a demonstrable failure) but in the opportunities it triggers for recognition in the legal processes of other states and prosecutions there which may lead to the seizure and return of looted and illegally exported objects.

What international import/export controls as might remain once we discount the ineffective legal treatment given to source export controls by market states are further tested by the indirect routes often taken by looted objects on their way to market. Objects either travel direct from source to market countries, or pass through one or more ‘transit’ states. Transit states are functional ports of call for looted antiquities; they perform a laundering role in respect of illicitly obtained objects by freely allowing them entry and then giving them permits when exported. In this way an object looted from China may arrive in the United Kingdom with an export permit from Hong Kong. Although the knowing purchase of looted objects from China is now expressly prohibited in the United Kingdom under the 2003 Act, as is the import of such an object, HM Revenue and Customs has an understandable history of low levels of activity in distinguishing looted objects from legitimately owned ones or fakes, and a dealer in the United Kingdom may safely claim that, while he knows the object to be Chinese, it bears no evidence of looting, and as it came from an international trading port like Hong Kong he had no reason to believe it to be illicit.

It is within this problematic international and local regulatory context that the work presented here emerges. The chapters in the present volume are the outcome of a workshop held at the International Institute for the Sociology of Law in Oñati in 2007. The impetus behind the workshop was to bring archaeologists and criminologists together to discuss the state of regulation in the antiquities market, with a particular focus on the United

Kingdom's position, but also with reference to the international context more generally. It was hoped that a fruitful interdisciplinary discussion might result from the mutual engagement of the disciplines of criminology and archaeology. In particular, it was felt that a discourse which brought together, on the one hand, academics whose 'tools of the trade' were various forms of legal regulation and social control and, on the other, front-line observers of the consequences of the international market in looted antiquities was more likely to articulate successful regulatory strategies.

The important chapters presented here show, we hope, how productive such interdisciplinary discussion can be. They deal in varying degrees with the conceptual theme of harm: an object which has moved to the forefront of contemporary critical criminology, asserted as one of the most salient disciplinary reference points. Many of the chapters illustrate the harm associated with the international market in illicit antiquities. They show that this harm is caused in various ways, intentionally and negligently. Perhaps most importantly, however, the harm which the illicit antiquities market produces emerges from many of the contributions to this volume as being most appropriately identified as systemic. While there are various degrees of intent and negligence at different points in the market for looted antiquities, these legal terms often do not seem to capture the essence of the routine harm caused by a global system in which harms in source countries are driven by demand for objects in sometimes distant market countries; in which looters sometimes depend on the income they make from their illegalities and destroy context as a side-effect of their search for objects valued by the market; in which infrastructure projects do not proceed with appropriate sensitivity to the archaeological record and result in destruction (Källman and Korsell, chapter six, this volume); in which contradictions in moral positions and value judgements are manifest, and deeply entrenched (Ward, chapter two, this volume); in which a range of 'facilitators' profit from their complicity in this international illicit market (Brodie, chapter three, this volume); in which the Internet creates a web of 'always on' instantaneous global connections that allow semi-anonymous trading relations to flourish where distortion or concealment of important declarations about object provenance can be easily performed without appearing unusual (Bland, chapter five, this volume); in which strategies of regulation that focus only on one point in the chain of supply have tended not to succeed in market reduction (Polk, chapter one, Lobay, chapter four, Mackenzie and Green, chapter eight, this volume); and in which the very idea of illicit market control may contain internal contradictions, requiring that thinking about regulation become more sophisticated than has been evident in the usual range of legal and other regulatory interventions which have aimed to punish or persuade those who offend, intentionally or negligently (Whyte, chapter seven, this volume).

Kenneth Polk introduces the collection with an overview of the field in which he has taken a pioneering role in applying criminological theory. This chapter opens the collection by examining the international traffic in illicit antiquities as a criminal market. This approach calls attention to market dynamics in order to help us understand at which points the market is likely to respond to regulatory intervention. Polk revisits key criminological concepts which have developed in his prior writings on this particular 'criminal market'. Among these are a critique of some of the traditional assumptions of deterrence theorists. He finds Braithwaite's models of deterrence more useful than less reflective legalistic views which consider prohibition-type strategies as effective ways to reduce markets. Supply reduction is observed to have an uninspiring history in harm reduction in criminal markets: he suggests that demand-focused initiatives hold more promise.

The chapters which follow this global view of a criminal market fall into three categories, based on particular areas of research within the overall market. These are the *demand* for looted antiquities, the *supply* of cultural artefacts which originate in source countries, and *regulation* of the international market in antiquities.

Tony Ward opens the first category of analysis by drawing on Simmel's phenomenology of value to conceptualise the harm involved in a trade in looted antiquities. He compares and contrasts it with illicit logging, probing the meaning to individual market participants of apparently 'harmful' destruction. Building on classic 'neutralisation' theories in the sociology of deviance, he helps us understand the psychology of participants in harmful criminal markets.

While Ward considers how antiquities dealers neutralise their part in causing distant harm, Neil Brodie examines the ethical dilemmas confronted by archaeologists involved in legitimising looted antiquities through scholarship. Academic archaeologists are often called on to value or authenticate unprovenanced cultural objects, impacting on the market value in the process. In their doing so, Brodie argues that they are complicit in the illicit trade and therefore encourage further looting and destruction at source. In this case study of academic involvement in the illegal trade in ancient manuscripts he finds support for a more expansive take on the controversial proposition that 'collectors are the real looters' (Renfrew, 1993).

Gordon Lobay's chapter is based in a wider research project in which he used US auction catalogues to quantify US import of Italian antiquities around the time of a border control initiative; the US–Italy bilateral agreement. He found only weak support for the agreement in terms of impact on demand in the US: he suggests that the only major effect of the agreement has been in encouraging the publication of previous sale data in auction catalogues. Even this, he argues, is not an especially useful indication of object provenance, and generally his chapter constitutes an indictment of unilateral attempts to control global illicit markets.

The second category of analysis—concerned with supply and source countries—comprises two chapters. The first is Roger Bland's review of the United Kingdom's Portable Antiquities Scheme, which aims to increase the number of finds reported to the authorities. His team at the British Museum have also been monitoring the impact of the Internet on the market in portable antiquities. Although the United Kingdom is usually seen to be a market country in antiquities, Bland points out that it is also a source of antiquities and explores the difficulties involved in regulating this market at source, especially with the growing number of Internet sales.

The second chapter in the 'supply and source countries' section reports a study of crimes against historical sites and ancient remains in Sweden. Lars Korsell and Linda Källman distinguish between two ways in which the destruction of cultural heritage sites can come about: looting, and inadvertent damage as a result of economic development. They come to the provocative conclusion that while the harm caused by the illicit antiquities trade has tended to be attributed to looting, in fact development projects and other forms of land use have had a more significant destructive impact on historical sites in Sweden.

The final section of the book considers the question of market regulation. David Whyte brings a wider perspective to the question of regulation, incorporating historical, theoretical, and criminological observations on criminal markets to argue that a 'paradox' of regulation is that it 'controls' at the same time as it 'enables', becoming a force of legitimization in many instances. This is clearly a significant flaw in the project of regulation conceived as a tool of state intervention in markets. Whyte argues that a better framework is one that sees states and markets as irrevocably intertwined, and regulation emerges from this view as a conceptually highly problematic activity.

Whyte's ideas are developed empirically in the work of Mackenzie and Green, presented as the final chapter in this volume. They explore the development of one particular attempt at demand-oriented regulatory reform—the United Kingdom's Dealing in Cultural Objects (Offences) Act 2003. This chapter reports the findings of a two-year evaluative study of the impact of the Act on both the United Kingdom and the international illicit market. The authors conclude that while the Act may have made some antiquities dealers more cautious in their market activity, their transaction routines have remained largely unchanged. Given the culture of non-enforcement which has accompanied the Act, they argue that the Act as an attempt at market reduction has failed and is unlikely to have any significant impact in the future. A more fruitful harm-reduction approach is proposed which combines international cooperation with a more effective deterrent for market dealing outside any such cooperative schemes.

In this volume we have drawn together several strands of thinking about the issue of looted antiquities which serve a variety of ends in taking the

debate forward. At such a relatively early stage in the emerging conversation between criminology and archaeology our main aim has been fairly straightforward: to present a range of chapters which, in addressing some of the key problems in the market, on the one hand, display why the market is an appropriate site of study for criminologists and, on the other, present some theoretical reflection by criminologists on matters such as morality and regulation which may suggest to the archaeological community that criminology can be a productive partner discipline in addressing the looting problem. For colleagues already involved in the study of the illicit antiquities market we think that some of the chapters will be of interest for their development of previous lines of inquiry, while some (for archaeological colleagues, perhaps particularly those by the criminologists Ward and Whyte) will intrigue by introducing a style of thought and writing to the field which may appear new—and, we hope, refreshing. For those new to the subject area, the collection contains key overviews and reflections on the market from some of its established commentators, as well as a range of ideas for further research. We are certain that the essays which follow contain many insights which prove the worth to archaeology of ‘thinking with’ criminology, and vice versa. Exploring the most effective ways to capitalise on this disciplinary engagement will be an important task for those concerned with reducing the harm associated with the illicit antiquities market.

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