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Article

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Law, Regulation and the Illicit Antiquities Market

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*Introduction*

The study on which this paper is based documented and examined UK and international laws governing the movement of antiquities, and coupled this legal exercise with a qualitative study of buyers in Western markets. The data showed the marriage of legal governance with market response in this particular trading forum to be rather an ineffective coupling. [\[FN1\]](#) Many of the market traders interviewed had little or no real understanding of the terms of the laws which governed their business practice. This is not unusual in the art market (see further Kenyon and Mackenzie 2002). More concerning than this, however, the interviewees projected a strong sense of entitlement to buy looted antiquities. This entitlement was manufactured through the implementation of techniques of neutralization, drawn by the interviewees from a self-protective discourse propagated by, and itself sustaining, the market.

The main aim of this paper is to highlight one aspect of the social nature of market practice which informs action and appears, in the case of the antiquities market at least, capable of creating and defending a boundary against regulatory initiative.....

The question of the regulation of the antiquities market will be addressed by alluding in turn to the questions: 'how does a buyer know where an object has come from?'; 'how do buyers operate in cases where they cannot be sure where an object has come from?'; 'what criminal laws apply to buyers who operate without knowledge of where an object has come from?'; and 'what is the prospect for success of these criminal laws in regulating the market?'. ... [I argue] that law- through its privileging of the concepts of rights and entitlement-is centrally implicated in the creation of psychological states of denial and justification of harmful action, when its concepts are put to use in social, rather than legal, discourse.

*Looting in Context*

The establishment of an international trade in antiquities is not a recent phenomenon. The same can be said for looting. Looting, of course, is a cultural construction: the definition of the action depends upon prevailing sentiment. Lord Elgin, who brought back the 'marbles' from the Parthenon between 1801 and 1810; Sir E. A. Wallis Budge, curator of Egyptian and Assyrian antiquities at the British Museum between 1894 and 1924, translator of the *Book of the Dead*, and excavator and collector of a great number of other papyri from Egypt and beyond; Sir Flinders Petrie, excavator of the Great Pyramid of Giza between 1880 and 1883: these British adventurers are rescuers of relics from the unreliable care of native populations to some, and culturally insensitive looters to others. It is safe to say that more people view them as the latter in 2004 than did so in their day. Somewhat ironically, it is Petrie who is now credited with setting the exacting standards of methodology-including a regard for the intellectual worth of even the

smallest and apparently most insignificant object-unknown to his archaeological predecessors whom we now see to have caused catastrophic destruction. A looter with a legacy?

The debate on the ethics of trading in looted objects is therefore not without its history. Today's antiquities dealers and collectors are the product of a once noble line in colonial exploration; the export of Western European science and the import of the objects it brought home when it returned are the proud and regal string accompaniment to a contemporary market distressingly unconcerned with the rapacious consequences of continuing the tradition of trading in archaeological material, albeit suffocatingly beautiful archaeological material. Contemporary looting is considerably less glamorous, being performed most often by local opportunists who see in their country's art-rich soil a means to improve their impoverished circumstances, rather than 'cultural pioneers' or army generals with a sideline in art enthusiasm. A well documented, if under-researched, chain of supply exists between local finders, international dealers and destination markets, but the feeling that the market saves and preserves objects for future generations still runs in a strong current through its dealership. The ethics of the unsavoury beginnings of objects in the chain of supply are accordingly submerged beneath waves of historical, political and cultural sentiment concerning, quite literally and always emotionally, the future of the past.

The history of legal attempts to control the international market in looted antiquities begins considerably more recently than the history of looting itself. Indeed, the inadequacy of the two main treaties governing the international movement of stolen cultural heritage-the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Transfer of Ownership of Cultural Property 1970 and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995 -coupled with the rarity of noteworthy cases where art and antiquities dealers have been convicted for smuggling-related offences, reflects the fact that we are now in the early formative stages of the development of suitable control mechanisms.

Situating the statement in its proper cultural and historical context, then, for modern legal purposes, we can define looted antiquities 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. This looting happens routinely throughout the world. Looters, while digging, often destroy objects that they perceive to be of lesser value than the gold, silver and jewels that they prize. More serious, perhaps, is their destruction of stratified context. This refers to the placement of artefacts in a tomb, or the particular layer of the earth in which they are found: information valuable to a trained excavator that can add greatly to our knowledge about the human past. Archaeology is dedicated to the collection of such knowledge and its publication.

A further detrimental effect of looting is in the loss to a country of its cultural assets as they travel to overseas markets. However, this loss is theoretically remediable if looted and smuggled objects are traced and returned to their country of origin. In practice, cases of return are few. Given the irremediable nature of the loss caused to the archaeological record by looting-once context is destroyed, the knowledge that it can offer can never be reclaimed - it seems sensible to take as a starting point of regulatory principle the premise that any solution to the problem of the international market in looted antiquities must revolve around stopping the looting rather than increasing incidents of reclaimed objects. The market structure of the global movement of antiquities leads us to see the reduction of demand for the purchase of looted antiquities as a productive avenue to the reduction of looting itself.

A useful geographic framework within which to examine the global trade is that of 'source' and 'market' states:

... the world divides itself into source nations and market nations. In source nations, the supply of desirable cultural property exceeds the internal demand. Nations like Mexico, Egypt, Greece and India are obvious examples. They are rich in cultural artefacts beyond any conceivable local use. In market nations, the demand exceeds the supply. France, Germany, Japan, the Scandinavian nations, Switzerland and the United States are examples. Demand in the market nation encourages export from source nations. When, as is often (but not always) the case, the source nation is relatively poor and the market nation wealthy, an unrestricted market will encourage the net export of cultural property. (Merryman 1986)

Although omitted from Merryman's list of market nations, the United Kingdom is home to one of the world's largest market centres, in terms of volume of trade, for the sale of antiquities. Antiquities looted from source countries routinely travel here to be sold by international dealers and auction houses to other dealers, private collectors and museums. The other main international centre for the purchase of high-end antiquities is New York. Different classes of material have their own geographic market signature in terms of their flow- the United Kingdom and New York have strong markets in South-East Asian and Chinese material for example, Paris remains a centre for the sale of traditional Cambodian material, and much African material moves through Paris and Brussels:

When you look at the true money for all of this, the big money is in America and in Europe. And that's where it's going, that's where the really big work's going. The pieces that are being ripped out of the ground, or off the temple, that's where it's going. And it's frightening. (Melbourne Dealer 2)

Legal attempts at protection of local cultural heritage in source countries take two broad forms: the creation of state ownership rights and the implementation of border controls. Many source countries have legislated to vest undiscovered antiquities in the state, making their looting a theft from the state. The export of cultural property without a licence is also usually the subject of some restriction. It therefore appears proper to refer to looted antiquities as 'illicit', since irrespective of the leniency of market states towards their entry and purchase within those jurisdictions, they do carry with them into the market an historical breach of a legal provision.

Market nations have traditionally failed adequately to control the circulation of looted antiquities within their borders exotic objects have for centuries found favour among buyers in the United Kingdom. Police and customs have shown little interest in the issue which, compounded with their quite understandable lack of art history expertise and concomitant confusion over the powers available to them to interrupt import or trade through the seizure of artefacts (HM Customs and Excise 2000; House of Commons Culture Media and Sport Committee 2000), makes for a commercial climate in the United Kingdom approaching that of a free trade forum, even in the face of treaties (UNESCO 1970; UNIDROIT 1995, both above-mentioned), legal regulations (Prott and O'Keefe 1989; Mackenzie forthcoming) and ethical codes of conduct (UNESCO 1999; ICOM 2001, amongst others), internationally and domestically designed to restrain market enthusiasm for stolen goods. The focus of this paper will be regulatory deficiencies at this market end of the chain of supply, for it is here that the United Kingdom has recently legislated for change in the form of a new criminal offence of knowingly dealing in 'tainted' cultural objects, introduced by the Dealing in Cultural Objects (Offences) Act 2003.

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#### *Privacy and Provenance*

Provenance details-in other words, documentary evidence of a past chain of ownership-are notable in their absence from most transactions in the antiquities market, and therefore it is, in many cases, impossible for purchasers to tell whether the object that they buy has been recently looted, or has been circulating in the market for many years:

I bought a wonderful piece of sculpture in Paris from an old dealer. He told me it came from an old collection. Fine. How do I prove it? This is the madness of provenance. It's just impossible to prove. (London Dealer 2)

It's very rare to get something with a provenance, with an actual collection name. Usually it's entirely anonymous, especially in the London and New York trade, just objects for sale in a shop ...

[So what percentage of the stuff that you buy comes with provenance, would you say?]

Ooh, a very, very small percent.

[Percentage of acquisitions of yours that come with archaeological information?]

Just tiny. 1%. Absolutely miniscule, yeah.

[And that come with some sort of ownership history?]

That would be a little bit higher. Of course, any pieces purchased from a dealer, they don't pass on any details of where they purchased it from-that's just part of a dealer's policy. Unless it's a famous collection. But if they've bought it from somebody, they won't pass on any of the details. It's the same with anything in the shop here, like 19th century ceramics, we don't pass on who we purchased it from unless it's a well-known family, you know; a celebrity or something. It's the same with the archaeological pieces and any auction rooms won't advise that either, unless it's from something like the Petrie collection or the Elgin; once again, the celebrity factor.

[If you asked what would they say?]

An auction room would point blank refuse-it's part of their policy I think .... (Melbourne Dealer 1)

Historically, the antiquities market functioned without the transmission of information relating to the provenance of purchases, and without giving any consideration to that omission. This is perfectly understandable, both on grounds of seller privacy and buyer apathy. Why, in the absence of a celebrity provenance, would a buyer care where an object had come from? The climate until the first writings on the subject of looting in the late 1960s (beginning with Coggins 1969) was generally supportive of the trading and collecting of antiquities, whatever their origin. Provenance was simply not an issue:

The issue of provenance has become something that people are more aware of in the last 5-10 years. (London Dealer 7)

The whole issue has become so emotional. We've got on the one hand archaeologists saying 'all dealers are thieves' and on the other hand you've got dealers saying 'well this is ridiculous, everything should be for sale and who the hell cares about any of it'. Now not many dealers say that these days. They used to. Things have changed a great deal in the last 10 years ... I can tell you that I've been dealing in antiquities since the 70s, and in the 70s the world was a completely different place. Guys were turning up in London with suitcases full of stuff every week. Nobody knew that there was a problem with selling antiquities that were illegally excavated. It was not regarded as being a problem in this country. (London Dealer 8)

To be clear about the historical association between lack of provenance in the market and the presence of looted antiquities, provenance was not seen as an issue because looting was not seen as an issue. The purchase of objects dug up by inhabitants of source countries was the norm:

Let me start somewhere around 1965-1970. No one had any complaints whatsoever when it came to stealing and to plunder of artefacts. The criminology was actually created during that time. Before, it was a perfectly legitimate way to acquire objects wherever you wanted and to bring them wherever you wanted and keep them or sell them or whatever. And a few archaeologists had here and there some complaints, but only if their own work was disturbed. Which did happen then, still happens-some cowboys jumping over fences and digging at night while the archaeologists coming back in the day-time and it's always empty.

That kind of chasing the treasure is hundreds of years old, and nobody seemed to make an issue out of it ....  
(London Dealer 5)

Much has changed over the past 30 years, but the historical indifference of the market to provenance still casts a shadow over attitudes in the trade. There is more provenance information in the market now than ever before, but objects with provenance still form a small fraction of all the objects on the market. And with a continuing strong market for unprovenanced pieces, there is not much impetus for change:

There's more reluctance nowadays for better material without provenance. There's more reluctance now. I don't think that the market has changed that drastically. There are always collectors that have insisted on provenance. There are collectors that thrive on no provenance. I can think of two major collectors in the US that are absolutely thrilled to find a piece that's just come out of the ground illegally. It's something exciting. They're cheating.... And they're known for it. (New York Dealer 4)

[How do you feel as a dealer in terms of your practice? Has it changed recently?]

No. No sort of concrete changes at all. However, obviously I'm aware of these sort of moves off-stage. So you know, one's casting around trying to maybe deal in things which have more obvious provenance and so on. But I haven't done very much about it. (London Dealer 3)

For most dealers, the absence of provenance is a norm which they purport to accept without question:

[You won't get findspot information when you buy an object?]

No, no ... I think you just have to keep a clear head and make your own decisions. (London Dealer 1)

What little provenance information as is passed in transactions tends to take the form of verbal assurance:

Material gets lost, unfortunately. And a lot of it is apocryphal, a lot of it is 'so and so told me that such and such came from somewhere, and he got it from their grandfather' and that's very often the only kind of documentation you have. (New York Dealer 5)

Rarely, there will be some paper documentation to accompany the piece. This might be as little as a sticker with the name of a past collector on it.

You may get a label, like I was saying before, that's nice, or an ink inscription, but otherwise, yeah, a lot of it is verbal. (Melbourne Dealer 1)

I just bought a head from a colleague in Geneva for \$340,000. An Egyptian head, with an old auction, the remnant of an auction sheet underneath it, with the name of the original owner; part of the famous family. (New York Dealer 4)

How seriously can such provenance documentation be taken? It seems that while it is *de facto* accepted by dealers as better than nothing, they generally agree that it should be accorded little weight. Provenance documentation can easily be faked, and genuine documentation can just as easily be lost. Sighting documentation is therefore not an end to the issue of legitimacy, nor is its absence seen in any way as fatal.

*Risk and Trust in the Antiquities Market*

The preferred method of self-protection in this market, where looted objects are known to circulate, is to do business only with sources that the dealer trusts. This leads to a market comprising many small circles of dealing in which relationships are formed based on trust. Through a course of dealing, that trust is established and cultivated. Reputations are formed which sustain trade. To a dealer, the maintenance of a reputation and the goodwill that it brings are of the utmost importance:

There is an awful lot of illicit stuff ... and you know, the answer is one doesn't know, one can only suspect. And being involved in the marketplace I know a vast swathe of people, and I think off the top of my head I have or will do business with less than 10% of them. Purely because I regard the rest as untrustworthy, to put it mildly. You just don't know where you are with them. You don't know whether there's any integrity there, whether you have title when you buy, and all these things. So it's a sort of crazy world. (London Dealer 4)

However, highly desirable objects are sometimes offered by sources which are not accorded such trust, and at that stage the dealer must decide whether to buy or to turn the seller away. The still very slim chance of criminal conviction in relation to illicit trading-perceived now to be only marginally higher than the wholly unregulated pre-1970s market-must be balanced against the desire to own and profit from objects of ancient art:

I try these days to take less and less risks. I try to deal with people who I consider to be reliable, responsible and reputable. But then again if somebody walks in and offers me a great treasure, I'll probably get tempted ... especially if it's not too expensive. (Bangkok Dealer 1)

You can make a hell of a lot of money in this business playing it straight, but it's also so easy to be tempted. (New York Dealer 4)

Doing business with 'established trade sources' is often used as an example of transacting with people who can be trusted, in contrast with strangers who approach a dealer 'off the street' and might be seen as being more suspicious:

If we buy from reliable suppliers, if we can then demonstrate to them later on that it was a mistake (i.e. a fake), they will take it back and go and fight with the guy they bought it from. But if you're dealing with some guy who runs in from the jungle with a bag over his shoulder, you're hardly likely to ever see him again and so you have to take your own risks. (Bangkok Dealer 1)

That established traders can be trusted is seen as a legitimate assumption in the face of all the investigation which would be necessary were these trade sources not accorded such trust. 'Trust' in this market therefore equates to faith and expediency:

If I'm on my way back to the subway and somebody offers me something who I've never met, I'm not going to say that's acting in good faith. But we deal with established businesses and dealers in Europe and, you know, I think that can be construed as good faith ... I don't think it's possible for you to do some kind of background check on people and find out everything you can about them. (New York Dealer 3)

If you buy an object from a reputable dealer in one of the major countries of Europe, you assume that that person has title to the object because this business is based a lot on trust. (New York Dealer 5)

In fact, however, when pressed on the issue of trust, the dealers admit that there is a general assumption of goodwill in respect of most sellers. Faith, it seems, is liberally granted:

I like to believe that most people are straight and that you shouldn't be required to prove that you are.

That somebody should be required to prove that you aren't. (London Dealer 8)

The same process of vetting the seller by exception is undertaken by auction houses in deciding which objects to accept in their sales:

So assuming the client is one that we know and have had a good long relationship with, and one that we know haven't played games or anything in the past, then we would be inclined to ask the standard question, you know, does this come from anywhere strange, is there a problem with it? And we would generally accept their answers. (Hong Kong Auction House 1)

Even if suspicious circumstances exist, the dealer may still choose to transact. He might at that stage ask for documentation, but in the absence of available provenance information, this will probably take the form of a legal assurance of title given by the seller. Dealers are not so naive as to ignore the possibility that the signature with which the seller vouches her title may be applied fraudulently. However, their concern being to protect themselves in any subsequent legal inquiry into the transaction rather than actually to attempt to verify the seller's title, they are not much concerned with such fraudulent possibilities:

Whether they have a good story or not, I get a document which is a bill of sale in which they state, they sign a piece of paper which says 'I have full and clear ownership, no liens or encumbrances, and I agree to sell this to you'. It's a very simple, boilerplate kind of thing that they sign off on, and frankly it's if and only if there's a great deal of value or any reason to think there's something funny going on would I go beyond that exercise. (New York Dealer 1)

There is much in the data to support this observed practice of obtaining a signature on a document of title as one way of allaying fears of repercussions when proceeding in a transaction with a suspicious seller.

The issue underlying all checks into the seller and her title is that of provenance. Has the object been recently looted? While dealers feel that the warranties they obtain from the seller as to his or her title protect them in a future inquiry into the transaction, they know that in truth they are not checking the seller's title-and therefore the provenance of the object-with any degree of rigour or certainty:

We require that they tell us the truth; in every transaction that we do, we want complete and full information, and therefore contractually speaking they have no right to withhold from us. Having said that, we have no way of actually verifying that the information given is the full and open and complete information. So this is a dilemma we face. (New York Dealer 6)

The sensible and balanced view that *some* unprovenanced objects on the market are probably looted and therefore *all* objects without provenance should be treated with at least a base level of suspicion does not figure in the thinking of dealers:

The thing that I really do take issue with is this idea that something is hot unless it's proved to be cold. I won't buy that, at all, under any circumstances. I feel very strongly about that. Guilty until proven innocent is not acceptable. (London Dealer 8)

One does not have to go so far as to suggest that, given the difficulties of telling unprovenanced-and-looted and unprovenanced-but-licit objects apart, dealers should close shop. The ethical middle ground between an end to the market and an unrestrained market begins with a commitment from dealers to investigate provenance with a degree of diligence. Opting to treat all objects as 'innocent until proven guilty' when contemplating purchase works as a rather effective expedient to a completed \*258 transaction, for who among an interested buyer and a willing seller will have an interest in proving the subject of sale 'guilty'?

The adaptations of this market to the issue of risk in relation to adverse consequences perceived as possible repercussions of an illicit purchase may be summarized as follows. In view of the dearth of reliable provenance information attached to objects for sale, dealers purport to deal only with sources that they trust. When probed on the issue, they admit that they do in fact deal rather often with unknown sellers, and, in this case, they often request written assurances of title from the seller. These adaptations to risk are superficial in that the dealers interviewed were aware that neither the established status of a trading source nor a possibly fraudulent signature from an individual seller giving an assurance of legitimacy bore any verifiable relationship to the likelihood of a given object offered for sale's being looted. Superficial rather than real responses to risk are sufficient given the inadequacy of legal attention focused on the market. Due to regulatory deficiencies, the likelihood of adverse consequences' being visited upon dealers who make illicit purchases is generally perceived to be low.

#### *Regulation of the Purchase of Antiquities*

That law does not adequately reach and control those it purports to govern in this field can be demonstrated by examples from both the source and the market end of the chain of supply. Thailand is a source country which has passed laws vesting undiscovered antiquities in the state and restricting their export, as mentioned above. These provisions are enacted as ss. 22 and 24 of the Act on Ancient Monuments, Antiques, Objects of Art and National Museums, B.E. 2504 (1961), as last amended by the Act on Ancient Monuments, Antiques, Objects of Art and National Museums (No. 2), B.E. 2535 (1992). There is much suggestion in the literature, however, that the economic attractions of illicit excavation and export to Western markets provide an often irresistible incentive to disobey the law (Renfrew 1993; Elia 1994). Corruption of official enforcement officers, both in the police and the Thai government's Fine Arts Department, has become commonplace. This is supported by the data:

[Do you foresee a time where there might be a crackdown by the Fine Arts Department?]

No. Because all the top, top people in government would have artefacts which are illegal.

[Really?]

Oh, yeah.

[So everybody's a collector to some extent?]

They collect Buddhas, mostly.

[Why do they do that?]

It's just the Thai way ...

[They collect Buddhas for religious importance?]

Yes.

[So we've got a system of law which is incredibly restrictive on the books, but which doesn't actually do anything?]

Doesn't work at all.

[And even the people who are supposed to be responsible for drafting and enforcing those laws are themselves breaking them by collecting objects?]

Yes. The officials of the Fine Arts Department, some of them have been buying and selling ...

[What about the police? Are they interested in this at all?]

Oh, they were very interested. They were arresting the people coming out of these burial sites, confiscating the goods and then re-selling them. They get a low salary. (Chiang Mai Collector 1)

The second example of legal failure relates to its disappointing record in controlling the purchasing decisions of Western dealers, and it is on this issue of law in the marketplace that I wish to focus here.

Handling stolen property is an offence in England, Wales and Northern Ireland under s. 22(1) of the Theft Act 1968. The section reads:

s. 22(1): A person handles stolen goods if (otherwise than in the course of the stealing), knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so.

Under s. 24, 'stolen goods' can include thefts outside England, Wales and Northern Ireland. Therefore, in so far as import of a foreign stolen object involves possession within this jurisdiction, it would seem to be covered by the second half of the s. 22(1) offence, provided the import is for the benefit of someone other than the importer him or herself. Import of stolen property for one's own benefit does not constitute handling (Chamberlain 2002), although receiving does.

The new offence was introduced on 30 December 2003 by the Dealing in Cultural Objects (Offences) Act 2003, in part to close this import loophole in the handling offence, and in part to provide an outright statement of disapproval of the purchase of looted antiquities. The Act, in s. 1, provides for a sentence on conviction on indictment of up to seven years' imprisonment and/or a fine, where a person:

... dishonestly deals in a cultural object that is tainted, knowing or believing that the object is tainted.

Under s. 2 of the Act, a cultural object is 'tainted' if it is excavated, or removed from a monument or other building or structure of historical, architectural or archaeological interest, and such excavation or removal constitutes an offence. It is stated to be immaterial whether the excavation or removal took place here or elsewhere. The intended effect of this legislation is therefore to criminalize (and, by implication, deter) the knowing possession or trade in the United Kingdom of antiquities looted either here or abroad. What, however, of a buyer who harbours a *reasonable suspicion* that the subject of purchase was looted? The offence would not be triggered: in relation to the 'knowing or believing' test for handling under the Theft Act, the courts have held that neither suspicion nor wilful blindness—a considered recklessness—is enough to constitute *mens rea*.

Here lies the continuing loophole for antiquities dealers who operate in a market where provenance information is rare, making any suspicions about the origins of a piece relatively simple to dismiss as unsubstantiated. Indeed, the government acknowledges the loophole—such is the result of the peculiarly conflicted approach through which it has introduced criminal legislation in order to be seen to be addressing archaeological and public concern about the destructive aspects of the trade, while at the same time treading carefully to avoid direct confrontation with those it seeks to 'control'. In its guidance notes on the effect of the Act, the Cultural Property Unit of the Department for Culture, Media and Sport says that: 'the Act does not necessarily oblige dealers to take steps to ascertain provenance

or to exercise due diligence to avoid committing the offence' (Home Office Department for Culture Media and Sport 2004: 1). That is, it does not require the one thing that market buyers could do to produce a real effect on the looting problem; or the one thing that all buyers of goods should be encouraged to do in order to reduce the opportunities for, and rewards of, fencing.

Formal justice initiatives risk producing further formal, but not substantive, adaptations by the market. Even before the introduction of the 2003 Act, dealers had become accustomed to deflecting criticism of their trade in un-provenanced objects by asking for details of provenance in the knowledge that there was little chance of getting them. Thus, they purport to have 'investigated' the provenance of the piece as much as possible before purchasing it regardless. This practice seems likely to continue. Importantly, they have no more knowledge or belief in the good origins of the artefact after this superficial exercise than before:

I'm in the trade, I've seen how things have changed. Even when I'm dealing with friends of mine, I'll say to them 'that's nice, you know, how about provenance?' Everybody says that now. 'Got your provenance?' Because if it has a demonstrable good provenance, that helps. It helps with the selling of it. And very often they'll say to me, 'well, not really, you know, I bought it from a dealer' and that to me is okay. Because I trust them to buy in the way that I buy. And I'll say the same thing to them. (London Dealer 8)

This Weberian discrepancy between formal and substantive justice runs through the adaptations of all of the institutions in the market to the new levels of scrutiny that they face in their purchases. Even museums, which might have been thought to be reputable public institutions beyond reproach, are implicated in the 'style over substance' approach to the looting issue when buying from dealers:

Now museums are in a total quandary; they don't know what to do. Some don't care. Some just ask us, I mean this is very confidential, they ask us for paperwork. And I say look, sometimes I can't do this. But I'm sure there are plenty of dealers who come up with the provenance.

[So they ask you to make up paperwork yourself to try to trace where it might have come from?]

Yes. To invent paperwork.

[Oh, I see. To cover them?]

To cover them. Because they desperately want the object. (London Dealer 2)

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[FN1]. The data were generated from a core sample of 29 interviewees in the antiquities market, a subset of the wider art market, supplemented by a further sample of 12 interviewees from the larger sample population of the art market. One of the core interviews was conducted with two respondents simultaneously. Thus, a total of 40 interviews were conducted in Melbourne, Sydney, New York, London, Geneva, Bangkok, Chiang Mai and Hong Kong between September 2001 and January 2003. Many of those interviewed fall into the category of 'key informants': access was obtained to some of the world's most important and successful dealers. My focus was on South-East Asian antiquities. The interviewees' words are reproduced here without grammatical edit.