

*Criminalising the Market  
in Illicit Antiquities*

An Evaluation of the Dealing in Cultural  
Objects (Offences) Act 2003 in  
England and Wales

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THE 2003 ACT

**A**S OUR EDITORIAL introduction to this volume suggests, source country legal controls have only been proven of significant value in relation to their place in an international network of control, and it has gradually become apparent to commentators on the illicit market in antiquities that there are other points in such an international network of control where intervention may be more effective than at source (O’Keefe, 1997; Polk, 2000). Strategies of regulation at the demand end of the chain of supply have been thought potentially capable of achieving a sanitising effect on the market, and it is under this broad philosophy of demand-reduction as applied to illicit antiquities that the 2003 Act appears.

The 2003 Act, an apparent attempt to confront the illicit element of the London antiquities market, was put before Parliament as a Private Member’s Bill, taking effect as law on 30 December 2003. The Act, in section 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.

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Under section 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 in the United Kingdom or elsewhere. The intended effect of this legislation is therefore to criminalise (and by implication deter) the knowing possession or trade in the United Kingdom of antiquities looted either here or abroad.

The purpose of the present research was to evaluate the impact of the Act on the UK market and its role in the international illicit market. In approaching this research question we chose to focus on the market in London due to its prominent place in the international trade. While we have gathered some data outside London, both within the United Kingdom and abroad, our data are predominantly London-based. This focus was based partly on the need to effectively allocate research resources, attempting to achieve some depth of inquiry, which would have been lost if we had attempted greater breadth in approach. It was also based on jurisdictional legal issues such as the absence in Scotland at the time of the research of parallel legislation to the 2003 Act, which obviated the possibility of a UK-wide study. Where, therefore, we may sometimes talk of 'the UK market' in what follows, this extrapolation represents generic points that, based on our extra-London research and our study of the literature on the looting issue, we have no reason to think conceal major differences between market practices in London from those elsewhere in the United Kingdom.

#### CONDUCT OF THE RESEARCH: DATA COLLECTION

The first phase of the research was a postal survey, conducted during the summer of 2005. Using Internet searches, phonebook and other business directory searches, observation of suitable business premises, and recommendations from contacts in the market and among observers of the market, we identified in the London market all possible potential suitable recipients for the survey. This amounted to a sample frame of 102 persons/institutions. Of these, 13 were excluded from the mail-out due to either: (a) being impossible to find, (b) having indicated at an early stage that they did not want to receive a survey, or (c) having been included in the sample frame but for whom the survey was not thought appropriate or useful: these were generally research participants we knew, or knew of, from previous work and wanted to interview in depth and/or pursue informal discussions with. The number of survey recipients was therefore 89.

The number of responses we received to the survey was 24; a response rate of 27% of the 89 mailed out. This is a low response rate for a social survey, but should be considered in context. That context consists in a

necessarily rather blunt initial probe into a highly sensitive subject through an unsolicited approach to members of a community whose main public characteristic is its private nature and its reserve, and which has become rattled over recent years by academic and legal attacks on its way of doing business, the latter of which have resulted in the high-profile prosecutions of some of its members.<sup>1</sup> Further, some of the ‘non-responses’ we received were in respect of survey recipients who had died, or who had been incorrectly targeted as being specialists in antiquities. In this latter respect, we took an inclusive approach with our survey mail-out which meant that where research revealed an ambiguity over whether a person or institution fell within the remit of our sample population we erred on the side of caution and included them in the sample frame, sending them a survey. This inclusive approach tends to exaggerate non-response.

Against this background a response rate of 27% in relation to a survey which had the relatively modest aims described below does not, we would suggest, indicate methodological deficit or generate untrustworthy data. We would accept that, on the face of it, it would appear hazardous in the absence of supporting material to argue that a quarter of the surveyed respondents accurately represented the views and experiences of the whole market under study. That supporting material is, however, available in the form of the expanding literature surrounding the problem of looting—some of which is based on empirical investigation. The answers we received in the survey fit well with the picture of the market, and its relationship with the question of regulation, drawn by this literature, and this provides triangulation for our survey data which supports their validity. We must also bear in mind the small sample frame from which the survey population was drawn. That is, our 102 targeted respondents represented *everybody* we considered to be in possession of relevant information on the question of the regulation of London’s antiquities trade: a list put together building on known key players and supplemented by several weeks of research into market participants, commentators, and regulators. We also, of course, allowed for some snowballing during the project based on recommendations and introductions by current respondents, but the point we should make clear is that our response rate effectively represented over one quarter of the London market and its attendant spectators.<sup>2</sup> Put that way, and in light of the other arguments presented above, a low survey response redeems itself with a validity particular to the circumstances of the research area and design.

<sup>1</sup> eg *United States v Schultz* 178 F Supp 2d 445 (SDNY 2002), 333 F2d 393 (2d Cir 2003), 147 LEd 2d 891 (2004).

<sup>2</sup> To put the size of our sample in proportion, the Department for Culture, Media and Sport (DCMS) has informally estimated that ‘there are around 20 large dealers in the UK dealing in antiquities and a further 100 or so smaller dealers who deal, to some degree, in antiquities. Furthermore, there are around 80 museums around the country that regularly purchase treasure items and so have an interest in purchasing antiquities’ (personal communication).

The survey was designed to allow anonymous response, and many of the respondents chose this route rather than identifying themselves on the return. The short survey had several aims. One of these aims was to gather some ‘foundational’ information on the reactions of key market players to the legislation under study, in order that we might adopt a suitable interview strategy in the second phase of the research. Another aim of the survey was to invite participation in the interviews. The major rationale for the survey was, however, to elicit information from hard-to-reach respondents, who viewed the issue as too sensitive to warrant their volunteering for interview but who were, in fact, perhaps the most interesting subset of the market we wished to study. Previous research into the antiquities market (Mackenzie, 2005), combined with a review of the other research literature in the field, suggests that certain central figures participate repeatedly in opinion-forming opportunities relating to the question of regulation, and that while some of these ‘vocal minority’ are certainly high-profile market participants, they do not necessarily represent unproblematically the views of other dealers who operate, or try to operate, with a lower profile.

In the second phase of the research, interviews were conducted with targeted key respondents in London, Oxford, Cambridge, Cairo, and Bangkok. The total number of interviews was 38. The interviews were qualitative in method, meaning that their goal was less to elicit quantifiable data than to gain, in an interpretive vein, insight into what the 2003 Act means to actors ‘on the ground’. While attempting to secure the anonymity of our informants where possible, we can provide a general breakdown of the actors we interviewed:

- five dealers from a selection of the most prominent dealerships in London;
- five ‘specialists’ with expertise in observing, researching, and commenting on the illicit market;
- three specialist law enforcement representatives, including representatives of police and customs;
- four respondents in senior positions drawn from the United Kingdom’s museums sector, including prestigious museums, their major funding sources, and associations established to provide collaborative spaces for discussions of matters of museum governance;
- two key actors in the legislative process who played central influential roles in the design and/or passage into force of the 2003 Act;
- five respondents in Thailand, including a senior figure in the National Museum, a senior figure in the legal arm of the Fine Arts Department, a dealer, and two archaeologists (one local, one foreign);
- 13 respondents in Egypt, including senior representatives of the Supreme Council of Antiquities, foreign and local archaeologists, specialist academics, and a senior representative of the Egyptian Museum.

FINDINGS OF THE RESEARCH: DATA ANALYSIS

**Survey Data**

The survey responses provide a contextual framework within which to further analyse the importance of the 2003 Act in regulating the illicit part of the trade in antiquities in London. A list of the survey questions used is provided as an Appendix to this chapter. Trade survey recipients were asked all of the questions, while non-trade survey recipients were asked questions 1 to 6 only. The survey produced the following data:

- *Respondents*: What was the balance of trade/non-trade response to the survey? The survey was designed to be filled out anonymously if the respondent so desired, with the result that we cannot categorise respondents in this way unless they identified themselves on the form or otherwise made clear their affiliation in their answers. In fact, the vast majority of respondents were identifiable in this way. Therefore, we can say that 58% of respondents were definitely from the trade, 29% were not (that is, they fell into the categories of regulators, commentators, archaeologists, and other specialists), and in respect of the rest (13%), affiliation is unknown.
- *Self-regulation*: 75% of respondents thought the trade required formal regulation, and that self-regulation was not adequate to prevent the purchase of illicit antiquities by the trade. This compares with 25% who thought that the trade could effectively self-regulate.
- *Knowledge of the 2003 Act*: 71% of respondents reported familiarity with the requirements of the 2003 Act, 17% reported no such familiarity, and 12% did not answer this question on the survey.
- *Effect of the 2003 Act*: Asked if they thought the impact of the Act on the trade in antiquities in London ‘has been or will be positive or negative’, the majority of answers were neither. 17% thought the effect positive only, and 8% thought it negative only. 12.5% thought the effect to be both positive and negative, while the greatest proportion, 29% of respondents, declined to answer the question as it was put but instead wrote that they thought the Act had been and/or would be ‘neutral’, ‘minimal’ or ‘little’ in its effect, or would be ‘ineffective’.
- *Perceived change in market*: Asked whether they had noticed a change in the way dealers operate as a result of the Act, 50% of respondents said they had seen no change; 21% said they had noticed a change, and 29% did not respond. The 21% that had noticed change represents five responses, of which one suggested any change noticed was ‘purely cosmetic’ and had in effect driven the market ‘more underground or more under the counter than it was before’, one simply

noted that the *Art Newspaper* had reported a small number of dealers relocating abroad, and another claimed to perceive ‘less activity’ in the market due to ‘despondency’. None of these responses would seem to accord with the aims of the 2003 Act to ‘protect small business from the illicit trade, which threatens their commercial position through unfair competition’ (DCMS, 2004a: 1). ‘Purely cosmetic’ adaptation, dealer relocation, and ‘despondency’ have occurred precisely because the DCMS’s characterisation of the trade as bifurcated between ‘legitimate’ and ‘illegitimate’ dealers is in error. Illegitimate objects pass through the ‘legitimate’ trade, and therefore any regulatory attention paid to such objects will, rather than support ‘legitimate’ dealers by eliminating their ‘illegitimate’ peers, directly affect the business of the trade generally.

In fact, however, the Act appears to have been ineffective in achieving any substantial effect on the trade: the most important finding here for an evaluation of the Act is that half of respondents, and a significant majority of those who responded to this specific question, had seen no change in market routines as a result of the passage of the Act.

- *Change in personal routines*: This question was asked only of trade respondents. Asked whether their knowledge of the Act had affected the way they carried on business, or whether it would in the future, 64% said no, 22% said yes (although in some cases only ‘formal’ change was planned), and there was 14% non-response. The detail of these responses is important to understand their character within this statistical distribution. The majority ‘no change’ group generally saw no reason to change their routines, which they saw to be adequate to constitute legitimate dealing and therefore most unlikely to trigger an offence under the 2003 Act. That the majority of traders surveyed have not and do not intend to alter their activities in light of the Act must be seen to be a significant failing of the legislation unless the ‘bad apples’ market story (see below) is believed.

There is considerable evidence that there are bad apples in the antiquities trade, as there are in any business enterprise, in the sense of individuals or organisations who willingly break the law or violate social or moral norms of behaviour. There is also, however, considerable evidence that the problem of dealing in illicit antiquities is an issue that affects the ‘legitimate’ trade in so far as looted antiquities are bought and sold as part of the general routine dealing activity of the open trade, often, it seems, without direct knowledge of the illicit nature of an object due to a lack of provenance information (Mackenzie, 2005). The absence of thorough and effective provenance investigation has become routinised in the trade, in the United Kingdom as elsewhere, and as such in some deals made on the ‘legitimate’ market, illicit objects are traded with no direct knowledge as to

whether they have been looted or not. Importantly, although perhaps obviously, this means that these objects could have been looted, and that the trade either lacks interest in sanitising its procedures (in which case it requires incentive and/or supervision), or that it lacks the capacity to do so (in which case it requires the support of mechanisms of object identification such as databases).

The DCMS has not helped the cause of effective regulation here, having declined to use the legislation to spur the trade with incentive to change, supporting the reluctance of the market to adopt stringent and energetic provenance investigations upon contemplated purchase by stating in the guidelines accompanying the Act that ‘the Act does not necessarily oblige dealers to take steps to ascertain provenance or to exercise due diligence to avoid committing the offence’ (DCMS, 2004a: 1).

It also seems the DCMS has abandoned the idea of a UK database of illicit artefacts, recommended by the Illicit Trade Advisory Panel (ITAP) and briefly considered by government (DCMS, 2004b), but now dropped. In fact there are good reasons to doubt the efficacy of a database of illicit objects in addressing the problem of looting. Predominantly, looted objects are excavated and exported without coming to official attention in source countries, and therefore give rise to no precise information which might be entered on such a database. Indirectly, then, an illicit object database might have the perverse effect of serving to legitimate purchases of looted antiquities, as dealers could argue that, having checked the database and found no record of their intended purchase, they had no knowledge or belief of its illicit status.

- *Bad apples*: There was no specific question asking whether respondents were of the opinion that problems relating to looted antiquities in the trade were the work of a perceived minority of ‘bad apples’ or whether the problem infected the trade as a whole. However, responses to the survey questions are noteworthy in that 25% of respondents (six in number) attributed problems in the trade to ‘bad apples’, suggesting that a small sector of the trade was untrustworthy and should not be associated with the legitimate trade. Of these six respondents, five were from the trade. Thus, 36% of the trade respondents associated the problem of looting with ‘bad apples’ without being prompted by a specific question to that effect. Given that this response was unprompted, we suggest that the ‘bad apples’ opinion carries significant weight in a diagnosis of the trade’s relationship with the looting problem. In light of previous research (Mackenzie, 2005), we suggest that this represents a somewhat pious and complacent view on the part of dealers who may well themselves be dealing in illicit antiquities, perhaps unwittingly.

## Interview Data

The conceptual starting point for an analysis of the data is the market reduction model of crime reduction strategy in relation to markets in illicit commodities, as developed by Sutton and colleagues and published by the Policing and Reducing Crime Unit at the Home Office (Sutton, 1998; Sutton, Schneider, and Hetherington, 2001). Jacqueline Schneider, an early proponent of the market reduction approach (MRA) with Mike Sutton, has very recently published a paper in which she explores the potential of the MRA to apply to commodity markets that are more exotic than domestic stolen goods markets, focusing on the international market in illicit wildlife. She notes that she has previously suggested at the UN Crime Congress 2003 that the MRA might be useful in tackling the property markets which are the concern of the UN Convention on Transnational and Organized Crime, including (as well as wildlife) weapons and ammunition, humans and body parts, and cultural heritage (Schneider, 2008). The 2003 Act, on the face of it, would seem to fit with a market reduction philosophy: in a simplified model of the movement of goods from source to market, that criminal sanctions applied to the purchase of illicit material in the market will reduce the uptake of such purchase opportunities; that this reduction in sales will filter back to the 'suppliers' of the market, the middle-men; and that the reduction of demand among the customers of these middle-market traders will result in a concomitant reduction in their demand for illicit antiquities from the looters who take objects from the ground in source countries. Sutton, Schneider, and Hetherington summarise the MRA as follows:

The general theory of the MRA—that reducing dealing in stolen goods will reduce motivation to steal—means that all MRA theft reduction strategies will begin with the following 2 aims:

- instil an appreciation among thieves that transporting, storing, and selling stolen goods has become at least as risky as it is to steal goods in the first place
- make buying, dealing and consuming stolen goods appreciably more risky for all those involved (2001: vii).

The MRA is broader than this simplified model, however. It speaks, for example, to the variations in the dynamic of supply and demand relations; conventional wisdom has held that demand stimulates supply in markets, but the MRA notes that thieves or fences can create markets by their offers of stolen goods for sale and that therefore supply can sometimes lead to demand. The MRA also discusses at some length the benefits of inter-agency approaches to tackling illicit markets—a trend which is increasingly popular across all fields of criminal justice presently (Hughes, 2006) and which seems particularly sensible in relation to markets such as that in

antiquities, which crosses borders and which is policed by a small squad with resources that are severely limited even by comparison to policing resources in general.<sup>3</sup>

The MRA also acknowledges the structural parameters within which certain property crimes occur, for example the ‘strain’ experienced by consumers who cannot afford products heavily advertised as fashionable or otherwise desirable. Sensibly, the model proposes that attending to the provision of alternative legitimate routes to the realisation of these goals for individuals or businesses will reduce the incentive to find or accept illegal means of goal-satisfaction. This might be characterised as a ‘harm reduction’ component to the regulation of illicit markets and can be seen to form a complement in the model to the more traditional ‘penal deterrence’ component outlined above and which, in our analysis, informs the 2003 Act. Our research suggests that the penal deterrence part of the MRA philosophy, in which conceptual location we see the 2003 Act, is fraught with difficulty in its application to the antiquities market, and that there may be other more productive approaches that a market country like the United Kingdom can take to tackling the problem of the international market in looted antiquities (see Polk, chapter one, this volume, for a similar view more broadly stated).

Dealers are apparently out of touch with the reality of the problem of illicit antiquities. As has been argued elsewhere (Mackenzie, 2005), while cases of high-level smuggling are given high profile in the media and therefore provide the most readily-available graphic case studies of the illicit transit of looted antiquities, these cases must be seen in the context of a market which operates in a routine manner to circulate illicit antiquities in much less remarkable ways. To be successful in sanitising the market the 2003 Act must require dealers not only to be averse to accepting offers of goods which are clearly illicit, but also to take serious steps to investigate the provenance of the objects they routinely purchase, from sources they might historically have assumed to be ‘trustworthy’. The MRA predicts that it is the disruption of this routine lack of reflexivity in seeing oneself *qua* buyer as a generative part of the chain of supply of illicit commodities that will have the greatest effect on the supply chain, and we might add that in the antiquities market this routine lack of reflexivity manifests itself as an assumption that open market dealing equates to lawful dealing in objects which are not tainted. In light of the evidence we have from sellers on the open market as to the depth of their investigation into object provenance (or general lack thereof), this faith

<sup>3</sup> The Art and Antiquities Squad of the Metropolitan Police is the unit which has responsibility for the specialist policing of the market under discussion here. It is staffed by a detective sergeant and three detectives, together with a small number of analysts and researchers.

in the open market, typified by comments such as that quoted below, appears to be misplaced:

Well, what I do for instance, is only buy on the open market. I don't buy from any individuals or anyone like that. I buy on the open market, which is basically an auction house—somewhere like Bonhams where they publish the object's description and it's been in a published catalogue, which could have been looked at by the people at the British Museum or the Police's Art and Antiques Branch, it has been illustrated, it has been up on the Internet and if there is any objections to its sale I would imagine that it would have been raised at that point ... So, there is no need to buy looted antiquities. When I looked at the Cultural Offences Act I thought, where would I go to buy looted antiquities? I mean how would you do it? ... I mean, this [the 2003 Act] doesn't really concern me because everything that I do is in the public domain and I think everything that most of other dealers do is in the public domain. Unless someone can show me that I am acting illegally then I cannot see where the question of problems are. (London dealer)

The 'problems' become apparent when we see the antiquities market as a 'grey market'. This signifies that the flows of licit and illicit objects are intermixed and therefore that, rather than being a market characterised by a 'clean' public trade and a 'dirty' private or 'underground' trade, the supposedly clean public trade in antiquities is tainted 'grey' by the circulation therein of illicit antiquities (Polk, 2000). This is not to say that there is no private or underground trade in illicit antiquities, of course. Rather, it is simply to observe that the public antiquities market is in this sense a 'grey market', and indeed was described in precisely these terms by one of our specialist interviewees. Characteristic of such a grey market, dealers who would describe themselves as 'legitimate', while at times expressing (usually publicly) concern about looted artefacts in the market, are, at other more private moments, surprisingly complacent about the issue of dealing in stolen goods. In a market which functions without the serious transmission of provenance, such dealing is seen as a standard risk, and remains so despite the creation of the offence in the 2003 Act:

So, stolen goods, yes, they must be here. Possibly over the course of time 10% of my stock has probably been stolen at one time or another ... I don't know, but it would not surprise me if it was that high, ..., either stolen in China, or wherever, you just don't know. (London dealer)

The 2003 Act is perceived by dealers and regulators alike as an ineffective control mechanism. A law enforcement respondent put it pithily: 'they passed a dead duck there'. We can identify the failings of the 2003 Act in terms of a series of 'problems' which are given clear form by the data, and which come together to undermine the impact of the legislation. These include:

- (1) the problem of proof;
- (2) the problem of national self-interest and political will;
- (3) the problem of power.

## (1) The Problem of Proof

The problem of proof in relation to the 2003 Act arises in relation to:

- (a) the non-retroactivity of the operative provisions of the Act;
- (b) the absence of provision for enforcement of breach of foreign export prohibition;
- (c) the difficulty of availability of evidence in relation to the central ‘knowing or believing’ provision.

We shall examine these in turn.

### *(a) The Non-retroactivity of the Operative Provisions of the Act*

The 2003 Act came into force on 30 December 2003. It is not retroactive and therefore a ‘tainted’ object is only such if it has been stolen after that date. This clearly restricts the application of the Act in respect of objects already in circulation in the market on that date. More seriously, in any successful prosecution it must be proven that the object in question was stolen after the above date. This perpetuates a problem of proof that existed for prosecutors under the law prior to 2003. The sites from which antiquities are stolen are often isolated, their contents are known only to the finders, and looted antiquities cross national borders without being recognised or recorded. In these circumstances, it is very difficult indeed to establish proof of the date of theft of an object which has appeared on the market without accurate accompanying information relating to its date of finding.

### *(b) The Absence of Provision for Enforcement of Breach of Foreign Export Prohibition*

Objects which have been exported in breach of a foreign export restriction are not included in the definition of ‘tainted’ under the 2003 Act and, as such, a considerable proportion of illicit antiquities are excluded from its scope. This could have been an effective site of intervention into the illicit market for the 2003 Act, had it been decided to follow examples of international illicit market regulation for other commodities, such as the CITES regulation of the international movement of protected wildlife, which encourage countries to sight export documentation from source before allowing import. The opportunity to tie import into the United Kingdom with licit export overseas was not taken for antiquities, however.

As well as declining to engage with the import into the United Kingdom of objects illegally exported from other countries, the 2003 Act exists within a context of difficulty in the control of illicit objects within the United Kingdom which are to be exported. EC Regulation 3911/92 applies

to the export of cultural goods outside the EU (export within the EU does not require an export licence). EC Regulation 3911/92 in Article 2 creates in the United Kingdom the obligation to provide an export licence for cultural goods to be exported outside the EU where ‘the cultural object in question was lawfully and definitively located [in the United Kingdom] on 1 January 1993’ or if it is presently located within the United Kingdom ‘following ... lawful and definitive dispatch from another Member State, or importation from a third country’.

In other words, where an object has been imported into the United Kingdom after 1 January 1993 then, unless it has come from an EU Member State, its ‘dispatch’ from that importing country does not have to have been ‘lawful’ in order for it to be entitled to grant of an export licence from the United Kingdom. Even if an object is known to have been looted in a country outside the EU, in contravention of a state vesting statute, it appears contrary to the EC Regulation for the United Kingdom to refuse it an export licence. This creates a situation of conflict between the EC Regulation and the 2003 Act. The latter defines ‘deals in’ under section 3(1) to include export. Therefore, putting the two rules together, if a person dishonestly deals in (here, exports from the United Kingdom) a cultural object that is tainted, knowing or believing that it is tainted, and where that taint has occurred by virtue of its theft from a non-EU state, the person commits an offence in terms of the 2003 Act, but the United Kingdom is powerless to refuse the grant of an export licence under the terms of the EC Regulation. This unfortunate situation looks unlikely to be resolved in the near future:

Lord Renfrew of Kaimsthorn asked Her Majesty’s Government:

What progress there has been with the proposed amendment of the European Community regulations governing the refusal of export licences for illicitly removed cultural materials that have entered the United Kingdom (a) from another member state of the European Community; and (b) from outside the European Community?

Lord Davies of Oldham replied:

No amendment is required to Council Regulation EC 3911/92 to enable the UK to refuse an export licence in relation to an item that has been illegally exported from another member state. In such cases, the UK will not be the competent authority as defined in Article 2 of that regulation to issue a licence in relation to such an item and would, therefore, have to refer the matter to the member state in question.

The UK has made a proposal for the amendment of Council Regulation EC 3911/92 which would allow the UK to refuse an export licence in relation to an object that had been illegally exported from a third country to the UK. However, this proposal does not yet have sufficient support from other member states (*Hansard*, 2006).

This is a considerable lacuna in the legislation, since an application for export licence is clearly a point of legal ‘surfacing’ at which many artefacts will come to the attention of the UK authorities; a ‘pinch point’ in the MRA crime reduction jargon. The export licensing system was considered by ITAP to be a productive potential site of application of the 2003 Act, but has been proven ineffective in this regard by the conflict that has emerged with EU legislation.

*(c) The Difficulty of Availability of Evidence in relation to the Central ‘Knowing or Believing’ Provision*

Proving that a defendant was aware, to the extent of ‘knowing or believing’, that an object he or she dealt in was tainted in practical terms renders unworkable, in three words, the offence the Act creates. At the same time, this wording serves to undermine the basic message that unites all critics of the market: that effective due diligence in relation to object provenance needs to become an essential component of any purchase of antiquities. As the DCMS guidelines state:

The burden of proving knowledge or belief that an object is tainted rests with the prosecution and such proof must be beyond all reasonable doubt. *This means that a failure by the accused to carry out adequate checks on the provenance of an object will not constitute knowledge or belief* (DCMS, 2004a: 8, emphasis added).

This major failing of the 2003 Act is well known to market participants. Through the ‘publicity vacuum’ which has surrounded the non-enforcement of the Act since its inception, the problem of proof even acts as a kind of ‘pre-emptive’ neutralisation of the MRA approach of the 2003 Act, in that ‘capable guardians’ (Cohen and Felson, 1979; Felson, 1994) in the chain of supply remain unlikely to report suspicious behaviour. Thus, a museum respondent reported that if offered a cultural object he suspected to be tainted, he would in all likelihood simply refuse to purchase the object and send the seller on her way rather than report her to the police. This fits with the findings of prior research on the most common reaction of conscientious trade figures to offers suspected of being illicit (Mackenzie, 2005). In the case of the museum respondent, the prospect of reporting a suspicious offer to the police ‘never occurred to me’. Even after prompting on the matter, the interviewee suggested that you would have to be ‘pretty damned sure of your ground before you ... summon the police’.

We have accumulated considerable evidence of the ‘don’t ask, don’t tell’ culture in relation to provenance in the antiquities market. This culture of ignorance in relation to the origin of objects is no longer a fresh revelation, having been raised in almost all of the literature on the illicit market. Given that it was precisely this aspect of ‘the problem of proof’ that the

panel recommending the offence which would be enshrined in the 2003 Act purportedly wanted to encourage (DCMS, 2000), namely due diligence in provenance-checking by dealers when purchasing antiquities, it is instructive here to reproduce some extracts from the transcript of a prominent dealer in London as illustration that the culture of secrecy remains little affected after the 2003 Act:

*Dealer:* The people in Hong Kong don't tell you [about provenance] because the people who smuggle the goods out of China are not the sort of people you want to talk about. When I've asked about odd pieces, you know, 'Are there any excavation notes? Can you find where something like this came from? It would be fascinating to know' they just say, 'You don't ask those questions; you don't want to get a reputation for asking questions.' It wasn't me saying that; that's what they say. That's the way presumably, if you're a Hong Kong dealer, to end up in the harbour.

*Interviewer:* So, when you bring things back here there is no culture of people wanting to know where they came from ...

*Dealer:* No, as far as I know in that field, there is no particular question. They're more concerned with the objects rather than any sort of cultural history attached.

Dealers remain more concerned with the question whether they can recover their outlay if an object purchased turns out to be stolen than they do with the new penal consequences of such a purchase under the 2003 Act. In this way, then, the market reduction deterrence penny is still to drop with respect to illicit purchases, and trustworthy sellers are seen as removing the need even to ask about provenance, since if title turns out to be defective the buyer knows he will get his money back from the seller. The same dealer reports:

A dealer friend could walk in any minute now and put something on the table in front of us and say, 'It's £70, do you want to buy it?' I like the thing and say, 'OK, yes, I want to buy it, where does it come from?' He's going to sit there and say, 'You think I'm going to tell you where I got this, get out of here!' He's never going to disclose a source. That's your biggest problem, you can't get a source, all you can do is trust that person. And with my friends I wouldn't even dream of asking them; I would know that if it's stolen you don't have a problem [ie they will refund the price]. Other dealers are not quite so good.

International transport compounds the problem of the difficulty of proving dealers' knowledge or belief. One can find in the literature, and even in the case law, lively reports of dealers smuggling artefacts from source to market using inventive scams (see, for example, Gerstenblith, 2002, in relation to the *Schultz* case) or organised criminal networks (Mackenzie, 2002). There is also a considerably more mundane side to the international transportation of illicit antiquities, which is symptomatic of and contributes to the lack of provenance information in the market. From the dealer's perspective, the mechanism of transport of illicit commodities is rather straightforward, even

to the point of being unworthy of great attention. One dealer in our sample reported never to have been approached by any law enforcement officials ‘with any hostility as it were—certainly Customs has never said anything; they never seem to ask any questions’. When asked a more detailed question about his dealings with customs and the mechanism of getting his goods through the customs barrier, he revealed an extraordinary lack of knowledge; indeed, it was as if he were being asked to think about the question of import and legal barriers for the first time. One is left with an impression of a market in which goods just unproblematically turn up at the office door:

I don’t personally take it [the shipment], it just comes in and our shippers deal with it. I don’t know exactly what Customs does, I suppose they inspect it ... I mean there is a shipping invoice that says what everything is, so they look at that, but it pretty much just comes here (London dealer).

This dealer acknowledges that, at least until the passage of the 2003 Act, he specialised in excavated material, and we can be sure that some of that material will have entered the United Kingdom and been dealt with in breach of domestic law prior to 2003. The 2003 Act does not seem to have seriously altered this position, and, as we will discuss later, it is the dealer’s reluctance to break the law rather than any successful enforcement activity making use of the new law’s provisions which have reduced his demand for illicit objects.

We can offer a practical example of the ‘knowing or believing’ provision in the 2003 Act as it currently affects the routine activity of the market. This example, provided by a law enforcement source, illustrates the powerlessness of the authorities to restrict illicit activity in the market using the offence in the Act, consequent upon the inability of officers to prove, or even gather evidence on, *mens rea*:

I got called in last week by one dealer who said, ‘Right, these are the objects, can I sell them?’

I asked ‘Do you think they’re stolen?’

He said, ‘No!’ [laughs]

Such interaction with the authorities is not uncommon in the trade in London. Dealers sometimes ask the police for a certificate stating that the cultural objects they wish to buy or sell are not on the police’s database of stolen objects. Obviously this does not in practice mean that these objects have not been looted. This level of superficial formality in the legitimisation of transactions is symptomatic of a sophisticated market operating under ineffective legal controls. These ineffective legal controls have left police disaffected:

*Interviewer:* What proportion of your work is in antiquities?

*Police respondent:* This year, 5%; two years ago, 34%.

*Interviewer:* Why is that?

*Police respondent:* Because there is no point; we're not getting any convictions. You have to accept that we have to get convictions and we have to arrest people and prevent crime, and I can't do any of that at the moment in the antiquities world ... I'm rarely getting any arrests ... so you've got to look and see where our time is best deployed ... because I'm not getting any results there, so what's the point of carrying on?

The problem of proof is so severe that when the 2003 Act is held up alongside other avenues of prosecution that permit a greater chance of success in court, the offence in the 2003 Act finds itself languishing at the bottom of the toolbox available to the police, the Crown Prosecution Service (CPS), and Her Majesty's Revenue and Customs (HMRC).

At the time we conducted our fieldwork for this study, there had been no prosecutions in terms of the offence in the 2003 Act, and this remained the case at the conclusion of the study in 2007 (see Baroness Scotland's reply to Lord Renfrew's question in *Hansard*, 27 October 2007, col WA143, where she confirms that at that date no prosecutions had been recorded either by the CPS under section 1 of the Act or by HMRC under section 4). Asked to expand upon this, a law enforcement respondent said:

I'll tell you that there haven't been any because we don't consider it [the Act] of any real value. There are so few lacunas in the law that we considered that it would fill, that I don't foresee us ... we've estimated that we may pursue one charge under it every five years. That's a view that was supported by CPS opinion at the time. The only scenario that we actually envisage using it for is if a person is stealing property from their own premises, if it is a listed property. That is the only part of law that we think isn't filled by some other statute and most particularly the Proceeds of Crime Act, money laundering. That is where we pursue nearly all charges now, we don't use 'handling in stolen goods'; that is nearly always a secondary or alternate charge. The primary offence is the Proceeds of Crime Act because of its burden, the elements of proof required compared to the 'Dealing in Tainted' Act, which has the double-non-retrospective problem as we foresee it. I don't see it as being of any value at all.

## (2) The Problem of National Self-interest and Political Will

The 2003 Act is designed to play a part in the control of London's part in the international market in illicit antiquities. As London is a central market for the sale of antiquities which originate, and in some cases have been stolen from, overseas, this mission involves the acceptance by the UK government of a role in policing crimes which predominantly affect the interests of foreign powers. The idea of the protection of the interests of humanity generally—'the world's history', 'our common cultural heritage' and other such emotive terminology—is lost in the practical implementation of a system of resource prioritisation which inevitably occurs in the routine conduct of policing in the context of limited funding and manpower,

and a climate of public and political accountability and attention to targets encouraged by the risk-management paradigm which characterises contemporary law enforcement (at least at the level of central government; see Hughes, 2006). A law enforcement respondent is clear on this point:

Also, you have to look at the fact that most of our use of this Act would be to help other countries and now you have to say that we as a [law enforcement] service don't really even want to help the other countries because our responsibility is to make London safer, it's not to protect the cultural heritage of Iraq or Afghanistan. And that's where our efforts are focused. Even on our very small team my primary role is not to recover Iraqi or Afghani or other antiquities and send them back, my primary objective is to arrest people in London and send them to prison and stop them dealing in art work stolen in London, that's my primary role. Very much my secondary role when we have spare time I can try to do the other side of it.

There is in our research interviews evidence of a widely held perception that the government no longer attributes much importance to the question of the market in looted antiquities. The 'flurry of activity' represented by the ITAP report, accession to the UNESCO Convention, and the 2003 Act is now perceived in many quarters to have ceased, and the government appears to have no firm plans to follow up on this period of regulatory focus through pressing for application of the offence in the 2003 Act or otherwise. DCMS representatives since Alan Howarth are thought by our sample to have little interest in the issue, and their occasional statements of concern are seen as performative and superficial by market-watchers.

### (3) The Problem of Power

At issue here is the capacity that 'powerful' constituencies have to protect their interests. In our study, the powerful constituency is the antiquities market, including some museums<sup>4</sup> and collectors, but particularly comprised of a core of active dealers and their lawyers. This group has managed to achieve such a high level of representation in official circles that their interests have become fused with the more 'controlling' elements of

<sup>4</sup> Some representatives of museums in the United Kingdom present similar attitudes to dealers. Generally, however, the museums sector in the United Kingdom appears considerably more sympathetic to archaeological concerns than the trade, and certainly the sector is public and visible in its attempts to address the illicit trade through such measures as the Museums Association Code of Ethics. In the United States the position is different, with museums in general being closer to the market than they are in the United Kingdom. In a parallel to the 'bad apples' argument we have discussed in respect of dealers in London, a museum respondent suggested in the present research that 'most museum opinion in this country is firmly on the side of the archaeologists in deploring the illicit trade and in taking a strong stand against it', but that against this general stance there were 'a few mavericks' (personal communication). This suggestion would usefully be the subject of further research by way of an independent review of attitudes in the sector.

the 2003 Act. We have explored the history of the 2003 Act elsewhere, tracing the influences on its structure and content from inception to passage into force (Mackenzie and Green, 2008). In that work, we show how the incorporation into the legislative process of the interests of the more powerful spokespeople in the antiquities market has served the end of control dilution. Market interests were in fact in considerable degree constitutive of the 2003 Act, and in this way a picture emerges of a market taking a leading role in its own regulation. This is not self-regulation, however. Rather, it is a form of legislative influence corrosive of the regulatory mechanism; a purposive and forceful watering-down of the laws that govern a certain market sector through a process of inclusion in discussions around appropriate levels of control at the time the law was drafted. As with other historical examples of market influence on the laws which govern harmful market activity, for example in the automotive industry (Lee, 1998) and the asbestos industry (Calhoun and Hiller, 1988; Tweedale, 2000), what on the face of it might appear to be benign consensus-based policy and legislation is on the basis of our findings more properly construed as the sabotage of formative mechanisms of control through tactical legal and discourse-based manoeuvres by affected parties with the power to do so.

In the case of the 2003 Act, a significant site of market influence on the process of governance of its activities was the ITAP panel, which brought representatives of the trade lobby together with archaeologists and lawyers with the aim of achieving a consensus as to the most appropriate regulatory way forward. The DCMS view is that ITAP ‘was representative of all the stakeholders that have an interest in combating the illegal trade in cultural property’ (personal communication). Such a stakeholder view of the formation of criminal legislation is at odds with the top-down model generally adopted in criminal justice legislation and, particularly in questions of regulation of a grey market, can set business interests against effective criminal legislation. In this forum, as members of the ITAP panel have reported to us, the question of what the dealers would ‘acquiesce to’ (specialist interviewee) became the measure of how tight the legislation would become, and once ITAP’s recommendation for an Act came to fruition by way of a Private Member’s Bill, the matter of acquiescence became all the more important. The ‘knowing or believing’ wording—which significantly diminishes the reach of the 2003 Act—was a central plank of the bridge which had to be built between the trade and its archaeological critics, and its dilution of the *mens rea* attached to the offence was important in achieving the acquiescence we have mentioned.

Ultimately, dealers are currently—and wish to continue to be—lightly regulated. In practice this boils down to forms of self-regulation. ‘Self-regulated’ in this market takes on an even more insular meaning than its use in the compliance and regulation literature would suggest, however. While there are professional bodies such as the Antiquities Dealers Association

(ADA) in the United Kingdom which provide, amongst other things, a code of ethics for their members, a very small proportion of dealers have chosen to join such organisations. One dealer described his reluctance to pay a £300 per annum membership fee to join the ADA when he was 'confident that my [personal] code of ethics is better'. He also adverted to the observed deviance of some members of professional organisations, which activity suggested to him that the ethical commitments of members were formal rather than substantive:

[T]here are a few members of the ADA who in my view have also acted unethically. There is one dealer who has in the past acted almost like a supermarket, if there was a catalogue and you wanted to buy one object, he has one of a type illustrated and he's got no end of them. I suspect some of that supermarket-style selling might have dubious sources, but again that is doing the trade a lot of harm. Again, this individual is a member of the ADA, so in my view the ADA needs to police their activities better than they do. (London dealer)

Of course, the trouble with individual self-regulation is that, when coupled with a view of the market as generally unproblematic in its relation to the issue of looted antiquities, it results in inadequate due diligence and the perpetuation of the problem the 2003 Act was intended to address.

#### POSITIVE EFFECTS OF THE 2003 ACT

The data are not uniformly dismissive of the effect of the 2003 Act, however. Despite the lack of prosecutions and the other problems, theoretical and practical, with the Act, listed above, there is evidence that some members of the trade have been affected by the new legislation.

Generally, the reaction from the trade which we have distilled from our interviews and our observations of the market more generally has been one of a cautious and more reflexive 'business as usual'. As one of our specialist informants euphemistically put it: 'the impact of the Act is not instantly evident!' Dealers generally appear to engage in the same transaction routines as before the implementation of the 2003 Act, encouraged by the general (accurate) perception of a culture of non-enforcement around the new legislation. They remain conscious that at this relatively early stage in the aftermath of legislative activity this period of non-enforcement might come to an end, but we might hypothesise that the longer the period of enforcement inactivity continues, the more confident the market will become in the permanence of this state of affairs and the more likely it is that old dealer routines will persist.

That said, some dealers have reportedly begun to implement changes in their patterns of dealing as a result of the 2003 Act. One dealer in our sample in particular asserted that he was taking the new legislation very seriously and that his office had 'cut down dramatically on things we buy

from Hong Kong'. He suggested that on his construction of the Act, 'you can buy there [in Hong Kong, with particular reference to the large auction houses], but you can't sell what you've bought there!' In criminological terms, this reaction might be interpreted as the self-control of an individual particularly susceptible to criminal justice deterrence.

*Dealer:* You mean, why am I self-policing in this manner?

*Interviewer:* Yes.

*Dealer:* Well, I just think that the law ... I mean, the general view in the trade is that the law is difficult to enforce and a bit toothless ... although obviously the penalties are quite large, essentially. My own view is that laws might start off like that, but you never know, they might change one day! You just need a couple of zealots to go around trying to enforce it and the whole aspect of it changes quite rapidly. I don't like the idea of dealing with that sword of Damocles hanging over my head.

It would be mistaken, on our reading of the market, to take this extreme self-policing as common among market actors, although some level of self-policing is characteristic of the 'semi-conscious state of siege' (London dealer) which typifies the current market reaction to the new Act. The deterrence-susceptible dealer cited above has considered relocating to America or continental Europe, where he perceives the legal constraints on purchase are less stringent. Whether they are in fact less stringent 'on the books' and in practice is a matter for debate which we shall not address here, other than to note that despite the high net worth of many of the community of dealers in the United Kingdom, few have yet actioned any such relocation plan, and even this dealer who considers himself obliged to comply with both the letter and spirit of the law 'may yet [relocate abroad], but the current plan is to try to deal in things that don't contravene the Act'.

While we did obtain reports of dealers relocating to jurisdictions perceived to display less regulatory interest in the market, these dealers were thought to be those whose merchandise was suspect enough to demand a retreat from the heightened climate of control in the United Kingdom. While displacement does not 'solve the problem' of the international market in looted antiquities, it does suggest that if other jurisdictions follow the United Kingdom's lead in implementing controls, the bar may be internationally raised in relation to the segment of the dealing community who are able and willing geographically to follow the path of least resistance to their activities:

A number of dealers and collectors panicked, of course, and some dealers moved to Brussels, which doesn't have any laws like this and actually is one of the most liberal countries in that sense because Belgium doesn't even have any worries about export licences. I know some people moved there who deal in material that might be at risk. But, there are lots of antiquities dealers that are still operating in London. (London dealer)

Importantly, for such a general raising of the bar to occur, the United Kingdom would have to begin to set an international example by taking seriously its regulation of the market, and building a more effective structure of control on the platform of the moral sentiment contained in its currently half-hearted and flawed attempts to control the flow of illicit antiquities into and through its jurisdiction by means of the 2003 Act.

In this vein of optimism, perhaps the most important latent potential the Act has is its cumulative effect. Leaving aside problems of drafting and other issues with the practical workability of the legislation as it stands, the problem of non-retroactivity becomes less of a restraint to prosecution as time passes. It is harder to break the law put in place by the 2003 Act now than it will be in five years' time, simply due to the increased number of objects which will be excavated in that time, and therefore which will fall foul of the Act. However, in the absence of mechanisms of object provenance identification it will remain very difficult to prove date of excavation. Therefore, in the final section we will offer some constructive suggestions as to how to capitalise on the opportunities a sustained focus on the market might bring as the 2003 Act increases its reach over objects in the market over time.

#### IMPLICATIONS FOR POLICY

The MRA works where buyers of stolen goods feel that they are under a level of law-enforcement scrutiny such that an illegal purchase will have adverse consequences for them. Deterrence theory traditionally has comprised three elements (Nagin, 1998): certainty (that is, likelihood of being caught); celerity (swiftness of punishment); and severity (a punishment of a level that is thought sufficient to provide a disincentive to law-breaking). The offence in the 2003 Act has failed to have a market reduction effect because, although it may satisfy the severity test—and possibly the celerity test, although without cases to study this is difficult to say—it falls down on the most basic premise of deterrence: likelihood of detection and punishment. The dealers in our sample were well aware that the police are largely unable to detect the crime of dealing in tainted cultural objects, for the various reasons set out above. This absence of relevant, irrefutable evidence leads dealers to maintain the view that they are not breaking the new law by continuing 'business as usual':

I don't think I am under threat from the law personally, so I feel pretty relaxed about it. I don't want to break any law, but I don't feel that I will. (London dealer)

It must also be recognised that the prohibition of dealing in tainted cultural objects is in effect a prohibition on an unknown, but clearly considerable,

part of the trade as it currently functions. While estimates have been put on the size of the illicit trade (DCMS, 2000; Brodie, Doole, and Watson, 2000; House of Commons Culture, Media and Sport Committee, 2000), it is acknowledged on all sides that these figures are in fact educated guesses as to the extent of the problem rather than hard facts. In addition to general studies, individual case studies have catalogued the extent of looting in a given area, on the one hand, and the amount of unprovenanced material appearing in auction catalogues, on the other, which in combination give quantitative analysts grounds for assessing the scale of the international illicit market (Gill and Chippindale, 1993; Chippindale and Gill, 2000; Elia, 2001). We have not entered into such a quantitative analysis here, but our qualitative market data lead us to assert that, *in the view of some of the most prominent and successful traders in the market*, trafficking in looted artefacts is central to its activity. These market actors equate the cleaning up of the market's activities with its inevitable demise:

I suppose the other thing where the individual is concerned is that the standards have tightened over time. Whereas 20 years ago no one really cared what they were selling, so they'd find themselves in a profession earning a livelihood, it is now almost impossible to do it legitimately if you start asking all of the questions, I think. (Museum interviewee)

I mean if you envisage a situation where no new material has been acquired by the British Museum in the world of Greek, Roman, or Mesopotamian cultures for 50 or 60 years, then people will say 'What is the point of having these frozen collections?' because it has always been axiomatic in the museum community that a collection that doesn't flow is one which will fossilise and wither on the vine. (Another museum interviewee, from a different museum)

We put this proposition to a major dealer in London:

*Interviewer:* I think it is a noble proposition for an antiquities dealer to make, to say that 'I don't agree with looting', because although in the abstract we may say that we disagree with looting, in actual fact, what the current realities of the national situations mean is that if an antiquities dealer says 'I don't agree with looting' that is the end of the trade in new objects ...

*Dealer:* Oh yeah.

*Interviewer:* There is nothing new, there's only old things to circulate around ...

*Dealer:* Absolutely.

*Interviewer:* So, it must be a very difficult thing to come to terms with.

*Dealer:* Professionally, it's suicide.

In this context, the MRA as currently operationalised in the antiquities market, albeit in a deficient manner in the case of the 2003 Act, calls for the end of the antiquities market as it has traditionally functioned. Where most source countries have passed vesting legislation, taking ownership of undiscovered antiquities, and where UK dealers are prohibited from dealing

in these antiquities if they are discovered, excavated, and exported, the UK market may only deal in the corpus of artefacts which were in circulation prior to 30 December 2003. This is a finite class of objects, and a proposition which market actors see as ‘professional suicide’. Objects new to the market may be discovered uncatalogued in attics and basements as time goes on, but these are thought, by the market at least, not to provide sufficiently interesting opportunities for profit when compared with freshly excavated archaeological material. ‘Option 1’ then, as we might call it, is to tighten up the law—perhaps by amendment to the generous wording of the offence in the 2003 Act—so that the deterrence component of the MRA works more effectively in this market: and to kill the market in antiquities in the United Kingdom as we know it.

Option 2 might involve working towards a compromise between the market and source countries. This would involve a shift in the weight attached to internal components of the MRA. The MRA component currently prioritised in UK policy approaches to the market, and embodied in the 2003 Act, is, as mentioned above, punishment-based deterrence, focused on market purchase. The problem of looted antiquities in the market is transnational, however, and, as such, somewhat more complex than domestic stolen goods markets. In addition to the penal component of the MRA—which focuses on reducing the number of stolen goods passing into a market—is the desire of the MRA model to attend to structural ‘strains’ which underpin stolen goods markets. Thus we might consider mechanisms to maintain the market while reducing the damage it causes. This is a ‘harm reduction’ approach to stolen goods markets, which asks: ‘What is the harm that this market causes, and what can we do about it?’ Harm-reduction has come to form a core mode of contemporary intervention into criminalised markets, illicit drugs markets being a notable reference point here, and given some of the successes of the approach (often in the face of political opposition and the challenge of deeply embedded social problems), it would seem worthwhile to consider the philosophy of harm reduction as it might apply to the looting problem.

In the antiquities market the damage caused by looting is predominantly to the archaeological record, and secondarily to the financial and patrimonial interest of source countries in their heritage. Several examples of schemes for the sponsored excavation, cataloguing, division, and sale of antiquities have been practised over the years, and many market participants support the idea of such schemes, which can in theory involve benefit for all: for archaeologists who conduct the digs and can gather their data; for the market, which receives a share of the finds (in some models in return for sponsorship); and for the source state, which exercises control over proceedings and decides which objects to release to the market and which to retain. The suggestion that these schemes may provide a panacea for the current problems in the antiquities market often meets

with disapproval from archaeologists, however, who argue (among other things) that legitimating a section of the market will not discourage illicit dealing, and may indeed provide opportunity and motive for greater illicit activity. There are in fact many serious objections to such a model of market sanitisation, and clearly the application of a harm-reduction strategy through this mechanism is problematic on many fronts. Yet the structure of regulation we have now is not working, and further thought about alternative models of engagement with the problem remains a useful activity. The emergence of initiatives such as the United Kingdom's Portable Antiquities Scheme operating alongside the Treasure Act 1996 is interesting in this regard. Bland, in chapter five of this volume, has suggested that this model and its possible variants can encourage reporting of finds, and such strategies can fit the harm-reduction philosophy in their capacity to address the problem of the grey market by marking out legitimate markets in reported goods.

The regulation of the international market in antiquities does not have to be a zero-sum game, and to achieve the mutual benefits which can occur from market reconstruction, a shift in the philosophy of the United Kingdom's intervention is required so that the structural dictates of the MRA model are given due weight alongside its more penal dictates. International cooperation towards worthwhile harm reduction approaches, combined always with an effective deterrent for dealing outside any such cooperative schemes as are erected or revived, appears a more productive route to market sanitisation than the bare implementation of the penal part of the MRA model which currently informs the philosophy of UK intervention into the market. It is hoped that the DCMS will turn its attention to exploring possibilities for such harm-reduction approaches, perhaps through funding research in this direction, rather than investing further in the 'pseudo-crackdown' approach which has been shown here to be so problematic. In respect of what precise form a harm-reduction model for the antiquities market might take, further research is needed.

#### APPENDIX: SURVEY QUESTIONS

- (1) What do you think of current market regulation? Should the trade be left to regulate itself?
- (2) Do you think that looted antiquities are a problem for the trade? If so, what is the scale of the problem? If not, why not?
- (3) Are you familiar with the requirements of the Dealing in Cultural Objects (Offences) Act 2003?  
Yes  
No

- (4) If yes, do you think its impact on the trade in antiquities in London has been/will be:  
Positive  
Negative?
- (5) Please take a few moments to explain the reasons for your answer below:
- (6) Have you noticed a change in the way dealers operate as a consequence of the Act?
- (7) Has your knowledge of the Act affected the way you carry on your business, or will it?

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