RETHINKING ENGAGEMENT WITH AND CONSUMPTION OF THE PAST: AN ETHICAL FRAMEWORK FOR THE 21ST CENTURY ANTIQUITIES MARKET

LAUREN DUNDLER

MASTER OF RESEARCH (MACQUARIE UNIVERSITY)
BACHELOR OF ARTS (MACQUARIE UNIVERSITY)

Submitted in fulfilment of the requirements for the degree of Doctor of Philosophy

Department of History and Archaeology

Macquarie University

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SUMMARY OF THESIS

The modern antiquities market is a product of colonialism, conflict, and crime. It exists within the broader context of dominant ontologies of the past, which can be harmful to both the deceased and the living. At its core, this thesis addresses a number of ethical and legal issues including cultural heritage crime, colonial collections and collection practices, and ancient world research ethics. This thesis also incorporates interdisciplinary frameworks, such as approaches from postcolonial theory, green criminology, and semiological studies – specifically Jean Baudrillard's theories of consumption and commodification. These perspectives are applied to an analysis of the antiquities market and ancient world studies, which demonstrate the intersection between colonialism, conflict, crime and collecting.

In response to these interpretations, this thesis proposes a framework designed to foster more ethical relationships with the past. The "Framework for Ethical Engagement with and Consumption of the Ancient World" is presented in a series of both overarching principles and targeted recommendations for antiquities market participants. In the context of this "Framework", engagement can be understood as the myriad of ways in which individuals and institutions intersect with the modern and historic market for antiquities. Consumption broadly refers to interpreting and framing of the ancient world. Whilst treated separately, engagement and consumption are overlapping concepts which collectively codify our modern relationships with antiquity.

The guidelines presented in the "Framework" are intended for practical implementation at an individual and institutional level. They could also be used to inform the design and delivery of policy. Based on the recognition of the global nature of the antiquities market, the "Framework" is presented in a decontextualised fashion. This approach allows the "Framework" to have maximum impact in the transnational antiquities market. However, it is intended that the guidelines be modified as appropriate when applied to specific jurisdictions. This approach is modelled within the thesis, with Australia as a proposed site for application.

Forging ethical relationships with the ancient world necessitates more than just returning objects to their countries of origin and descendant communities. Instead, it requires both

individuals and institutions to engage in the personal and professional work of decolonising their ways of viewing, knowing, and accessing the past. This thesis thus challenges individuals and institutions to act beyond their legal obligations and reconsider the broader nature of their interactions with the ancient world and its (in)tangible remains. It is a challenge to identify and reject (neo)colonial behaviours, practices, and policies which cause harm. Finally, and most importantly, this thesis is a challenge to those of us in the present to put ourselves in the service to the past: to show the same respect and ethical responsibility to the dead and their remains as we do the living.

DISCLAIMERS

The views expressed in my thesis are my own.

Aboriginal and Torres Strait Islander readers are advised that this thesis contains
reference to deceased persons.

STATEMENT OF ORIGINALITY

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

(Signed)___ _____   Date: 01/09/21
Lauren Dundler

DEDICATIONS

I dedicate this thesis to my father, Markus Dundler, who passed away on 11 June 2021 before the completion of this thesis. He never understood what a PhD was and he was completely disinterested in the study of history. But he was responsible for my strong work ethic and for showing me the importance of one's heritage. May you live forever, Dad.

ACKNOWLEDGEMENTS

INTRODUCTION

"The truth will set you free. But not until it's done with you." (David Foster Wallace)[1]

1. Preamble: The Provenance of this Project –

One night, sitting on the floor of Dr Rachel Yuen-Collingridge's lounge room, a peer described their thesis as a "love-letter" to a scholar we all knew. It was in that moment I realised this thesis was a "love-letter" to Rachel: mentor and teacher to many, interdisciplinary extraordinaire, renowned papyrologist, mother of two, and dear friend. The preamble to this thesis is thus a reflection upon my journey facilitated by Rachel and her postgraduate unit, "Historiography and Ancient History", into the issues of cultural heritage crime, colonialist collecting, and ancient world research ethics which have determined the shape of this project. Ultimately, this thesis is an attempt to encapsulate this journey and package it into a framework which guides ethical engagement with and consumption of the ancient world. It is this preamble that details the birth of the ideas, values, and research practices which have informed not only the "Framework for Ethical Engagement with and Consumption of the Ancient World" but also my identity as an ancient historian and a beneficiary of colonialism. In other words: this thesis is about telling truths and this preamble tells my own.

Like many of my peers in ancient world studies, my interest in antiquity emerged from a passion for fantasy worlds. An avid reader from a young age, I was always captivated by the potential for escapism offered by books, especially those in the fantasy genre. It was in my early years of secondary school that I was first introduced to the ancient world, and very quickly I observed the relationship between ancient civilisations and the imagined worlds of my favourite books. From the depictions of ancient underworlds in J. R. R. Tolkein's *The Hobbit* to the ghost of Aeschylus in *Harry Potter and the Half-Blood Prince,* I had been unknowingly orbiting antiquity from earliest childhood.[2] In their collection of essays examining the fantasy genre as a "site for classical receptions", Brett M. Rogers and Benjamin Eldon Stevens argued "fantasy's alterity – its requirement of belief in metaphysically different worlds – is powered in

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[1] Foster Wallace, D., *Infinite Jest.* London: Abacus, 1997. p. 973.
[2] Rogers, B. M. and Eldon Stevens, B. (eds), *Classical Traditions in Modern Fantasy.* Oxford and New York: Oxford University Press, 2017.

part by the genre's engagement with Greco-Roman antiquity."[3] It was unsurprising, then, how swiftly and acutely my interest in the ancient world developed throughout secondary school.

At university I continued my engagement in ancient world studies, from the compulsory "AHIS110 Rome: From Republic to Empire" in first year to my capstone thesis on the Roman Emperor Hadrian's philhellenism. Through analysis of the records of ancient peoples, I was privy to their memories and beliefs, their shared and individual identities, their triumphs as well as their traumas. At no point during my undergraduate studies, however, was I encouraged to interrogate the nature of this voyeuristic relationship I had forged with the past. As an ancient historian with minimal archaeological training, I was never exposed to the ethical and legal issues faced by my colleagues embarking on overseas excavations. It is also problematic that the only opportunities for encountering the histories of Aboriginal and Torres Strait Islander peoples were in my modern history and English literature studies, which only addressed the experiences of First Nations Australians post-European contact.

The profound limitations of my education as an ancient historian were made apparent in the first semester of my Master of Research. As a student of ancient history in this program, completion of the first part of the degree involved a unit created and convened by Dr Rachel Yuen-Collingridge. Unlike all previous lecturers in her field I had been taught by, Dr Yuen-Collingridge started her first lecture with a summary of what not to expect from her course. From the very beginning we were challenged to think about our discipline beyond the familiar terms of bias, primary and secondary sources, and the singular historical narratives which depicted the rise and fall of civilisations. Instead, "Historiography and Ancient History" was a crash-course in the theoretical and socio-cultural contexts from which the discipline emerged.

Throughout the unit I encountered familiar theories and themes from my English literature and modern history studies, but had never been challenged to consider them in relation to the ancient world. In fact, I had been actively discouraged from doing so for fear of "anachronistic hindsight".[4] My prior teachings had led me to believe that ancient historians were to strive toward a state of objectivity and view the remnants of antiquity as they were intended to be viewed. In the same vein, Rachel introduced the class to the genre microhistory: where the author embeds themselves into the work of history. Microhistory is also an historiographical practice "whereas its theoretical references are varied and, in a sense, eclectic."[5] In writing this

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[3] Rogers and Eldon Stevens, *Classical Traditions in Modern Fantasy*. p. vii.
[4] A term I was taught during secondary school history.

thesis I have included elements of microhistory, including embedding myself and my experiences as an ancient historian into the text.

"Historiography" was also where I was first introduced to the writings of Walter Benjamin, specifically his "Über den Begriff der Geschichte" ("On the Concept of History" or "Theses on the Philosophy of History"). The German philosopher and cultural critic wrote the short essay before fleeing France in an attempt to evade the Gestapo, making it his last completed work before his suicide in Spain in September 1940.[5] Before his death, Benjamin had given a collection of manuscripts, including "Theses on the Philosophy of History", to his close friends Hannah Arendt and Heinrich Blücher.[6] Once in New York, Arendt passed on the manuscripts to editor Theodor Adorno, leading to their eventual posthumous publication.[7]

Widely considered to be one of his most controversial and important works, "Theses on the Philosophy of History" is a critique of historicism. An intellectual movement of the late 18th and early 19th centuries, historicism had a "simple but ambitious goal: to legitimate history as science."[8] According to Michael Löwy, Benjamin's response to historicism draws on three unique sources – German Romanticism, Jewish Messianism, and Marxism – from which he builds an original construction: "an alchemic fusion to produce philosopher's gold."[9] Despite its name, "Theses on the Philosophy of History" does not present a philosophical framework; it is a series of essays or fragments with the "passages wrenched from their context being made to serve [Benjamin's] own approach" to history.[10]

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[5] Eiland, H. and Jennings, M. W., *Walter Benjamin: A Critical Life.* Cambridge, MA and London: Harvard University Press, 2014.

[6] Dean, M., *Sharp. The women who made an art of having an opinion.* London: Fleet, 2018. pp. 79 – 80; 81; and 82. For further reading about Arendt and her friendship with Benjamin, see: Heller, A., *Hannah Arendt: A Life in Dark Times.* Boston and New York: Houghton Mifflin Harcourt, 2015 and Young-Bruehl, E., *Hannah Arendt: For the Love of the World,* 2nd ed. Yale University Press, 2004.

[7] "Theses on the Philosophy in History" was eventually printed in a mimeographed booklet entitled *Walter Benjamin zum Gedächtnis* (In Memory of Walter Benjamin). A French translation was published in 1947 as "Sur le concept d'histoire" by Pierre Missac in the journal *Les Tempes Moderns.* A collection of Benjamin's works, including the essay, was translated into English by Harry Zohn and edited by Hannah Arendt (Benjamin, W., *Illuminations.* Frankfurt: Surkhamp Verlag, 1955. Trans. H. Zohn. New York: Schocken Books. 1968.)

[8] Beiser, F., "Historicism," in M. Rosen and B. Leiter (eds), *The Oxford Handbook of Continental Philosophy.* Online Publication September 2009. Accessed 17 April 2021. https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199234097.001.0001/oxfordhb-9780199234097-e-6 . For further reading about historicism as a theory of historical knowledge, see: Bos, J., "Nineteenth-Century Historicism and Its Predecessors: Historical Experience, Historical Ontology and Historical Method," in R. Bod, J. Maat, and T. Weststeijn (eds), *The Making of the Humanities. Volume II: From Early Modern to Modern Disciplines.* Amsterdam: Amsterdam University Press*,* 2012. pp. 131 – 148; Iggers, G. G., "Historicism: The History and the Meaning of the Term," *Journal of the History of Ideas* 56.1 (1995), pp. 129 – 152, and Reynolds, A., "What is historicism?" *International Studies in the Philosophy of Science* 13.3 (1999), pp. 275 – 287.

[9] Lowy, M., *Fire Alarm. Reading Walter Benjamin's 'On The Concept of History'.* Trans. C. Turner. London and New York: Verso: 2005. p. 4.

[10] Lowy, *Fire Alarm,* p. 4.

At its core, Benjamin's essay is a challenge to "dominant historiography" (in the form historicism), which is "steeped in the ideology of linear, beneficent, inevitable progress."[11] This opposition is based in what Lowy calls an "ethical, social and political decision to support the victims of oppression and those who fight that oppression."[12] Whilst this statement is reflected throughout "Theses on the Philosophy of History", it is best encapsulated in "Theses VII" through its analysis of historicism's tendency to empathise with the "victors".[13] In this passage Benjamin challenges that civilisation and barbarism are "two mutually exclusive poles, or as different stages of historical evolution".[14] Instead, Benjamin dialectically presents civilisation and barbarism as "a contradictory unity"[15]:

> There is no document of civilization which is not at the same time a document of barbarism. And just as such a document is not free of barbarism, barbarism taints also the manner in which it was transmitted from one owner to another.[16]

My reading of Walter Benjamin instigated a process of deep critical reflection on both my personal beliefs and professional practices. Simply put, this period during and following "Historiography" was the first time I had questioned the ethics of the discipline I had been studying for over a decade; the first time I approached the awareness that the methodologies I used as a budding ancient historian were harmful to past communities and their living descendants. The insights gained from reading Benjamin – and the other readings curated by Rachel for the unit – fundamentally challenged my ways of understanding the ancient world. And I soon realised the only way forward was to devote my research endeavours to telling these (his)stories.

2. (Re)Defining Consumption and Engagement –

History repeats itself, we are told. Variations of this saying – based in the belief of historic recurrence[17] – have long been applied to the history of the world and its relationship to the

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[11] Lowy, *Fire Alarm,* p. 116.
[12] Lowy, *Fire Alarm,* p. 116.
[13] Benjamin, *Illuminations,* p. 247. The passage is quoted in full at the beginning of Part 1 of the thesis.
[14] Lowy, *Fire Alarm,* p. 51.
[15] Lowy, *Fire Alarm,* p. 51.
[16] Benjamin, *Illuminations,* p. 247.
[17] For further information about historical recurrence, see: Graham, G., *The Shape of the Past,* New York and Oxford: Oxford University Press, 1997; Toynbee, A. J., *Civilization on Trial.* New York: Oxford University Press, 1948, and Trompf, G. W., *The Idea of Historical Recurrence in Western Thought, from Antiquity to the Reformation.* Berkeley, CA: University of California Press, 1979.

present day. During the 1st century BCE, the orator Marcus Tullius Cicero warned: "to be ignored of what occurred before you were is to remain perpetually a child."[18] Referencing Thucydides, Dionysius of Halicarnassus allegedly defined history as "Philosophy teaching by examples".[19] "Those who cannot remember the past," said Spanish philosopher Jorge Santayana, "are condemned to repeat it."[20] History, according to these thinkers, serves an instructive function for future generations. We study history to learn about the successes and failures of past societies with the intent of directing future actions. History is thus reduced to a didactic model for us to determine our pathways for the future; a template for best and worst practice.

The past, then, is in service to us. It guides and enlightens us, protecting us from missteps, and acts "however imperfectly, as our laboratory" for the experiment that is human society.[21] But where is the reciprocity of this arrangement? When are we in the present in service to the past? How often does our engagement with and consumption of antiquity provide benefit for ancient peoples? How do we and how *should* we access the past via its tangible and intangible remains? And how do collections of antiquities and the antiquities market – both modern and historic – mediate our relationship with antiquity?

This thesis argues that our ontologies of the past can be harmful to both the deceased and the living. This argument is supported by a postcolonial critique of the modern antiquities market, as well as our wider consumption of the ancient world.[22] In response to these interpretations, this thesis aims to reconcile this tension between past and present with a framework designed to foster ethical relationships with antiquity. Whilst this is an endeavour intended primarily for those who engage with the past for professional purposes – including *inter alia* historians and

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[18] Cicero, *De Oratore,* 120. Trans. G. K. Hendrickson and H. M. Hubbell, Loeb Classical Library 342. Cambridge, MA: Harvard University Press, 1939.

[19] Dionysius of Halicarnassus, *Ars Rhetorica,* XI.2.19-21. However, the attribution of the *Ars Rhetorica* has been questioned, and is now considered to be the work of a pseudo-Dionysius. Malcolm Heath also observes that the work is not an art of rhetoric either. See: Heath, M., "Pseudo-Dionysius *Art of Rhetoric* 8–11: Figured Speech, Declamation and Criticism," *The American Journal of Philology* 124.1 (2003), pp. 81 – 105.

[20] Santayana, J. A. N. R., *The Life of Reason: The Phases of Human Progress* (1905-1906), vol. 1: *Reason in Common Sense.* p. 284. The Project Gutenberg eBook, 14 February 2005. Accessed 14 April 2021. https://www.gutenberg.org/files/15000/15000-h/15000-h.htm . Winston Churchill is often misidentified as the author of this quote.

[21] Stearns, P. N., "Why Study History? (1989)" *American Historical Association.* Accessed 12 April 2021. https://www.historians.org/about-aha-and-membership/aha-history-and-archives/historical-archives/why-study-history-(1998)

[22] Postcolonialism as a framework for understanding the world and antiquities collecting in this thesis is largely informed by the works of Leela Gandhi (Gandhi, L., *Postcolonial Theory. A Critical Introduction,* 2nd ed. New York: Columbia University Press, 2018) and Edward Said (Said, E., *Culture & Imperialism.* London: Random House, 1994 and *Orientalism.* London: Random House, 2003).

archaeologists, museums and schools, antiquities collectors and dealers – the ancient world can and is endlessly consumed and commodified by us all. Media in all forms (re)imagines and (re)shapes the ancient past, keeping it in continuous service to the present day. Without realising it, we engage with and employ ancient knowledges and worldviews on a near constant basis: the video games we play, the books we read, the music we listen to. Even our sartorial choices and diets are informed by the ancient world and the value we confer upon it. We are always consuming the past.

This idea of consumption is informed by the early work of Jean Baudrillard.[23] The French cultural theorist first approached the idea of consumption and global consumer society in the 20th century in the *Le Système des objets.*[24] His 1968 publication set forth a semiological analysis of the system of objects, which provided a framework for understanding the collecting of historical objects.[25] The antique object, Baudrillard argues, seems to fall outside the system of the functional, everyday objects of modernity.[26] But the ancient object maintains a vital function within the system: "namely the signifying of time".[27]

These ideas were expanded upon in two related papers,[28] which laid the foundation for the analysis of consumption offered in Baudrillard's 1970 work *La Société de consummation: ses mythes, ses structures.*[29] Influenced by the cycles of American consumerism, which were beginning to spill out into India and China by the late 1960s, Baudrillard's postmodernist approach completely radicalised the idea of consumption.[30] For Baudrillard, the *"locus of consumption"* is in daily life, however, not as the mere "sum of daily doings, the dimension of banality and repetition".[31] But, rather consumption is a system of interpretation: "an active

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[23] Jean Baudrillard (1929 – 2007) was a postmodernist and poststructuralist sociologist and cultural theorist. His work combines "philosophy, social theory, and an idiosyncratic cultural metaphysics that reflects on key events and phenomenon of the epoch." Stanford Encyclopaedia of Philosophy, "Jean Baudrillard," First published 22 April 2005; substantively revised 18 December 2019. Accessed 17 April 2021. https://plato.stanford.edu/entries/baudrillard/
[24] Baudrillard, J., *Le Système des objets.* Paris: Gallimard, 1968.
[25] This understanding of antiquities collecting is also informed by the following works: Belk, R., Wallendorf, M., Sherry, J., and Holbrook, M., "Collecting in a Consumer Culture," *Highways and Buyaways.* Provo: Association for Consumer Research, 1990; Muensterberger, W., *Collecting. An Unruly Passion.* Princeton: Princeton Legacy Library, 1994; and Pearce, S. M., *On Collecting. An Investigation into Collecting in the European Tradition.* New York: Routledge, 1995. Motivations for collecting and the historical context which has informed antiquities collecting practices are the subject of Chapter 1.2.
[26] Baudrillard, J., *Le Système des objets,* p. 77.
[27] Baudrillard, J., *Le Système des objets,* p. 78.
[28] Baudrillard, J., "La Morale des objets: Fonction du signe et logique de classe," *Communications* 13 (1969), pp. 23 – 50 and "La genèse idéologique des besoins," *Cahiers Interationaux de Sociologie* 6.47 (1969), pp. 45 – 68.
[29] Baudrillard, J., *La Société de consummation: ses mythes, ses structures.* Paris: Gallimard, 1970.
[30] Purwanti, S. and Mas'ud, M., "Consumption Practice in the Baudrillard Perspective," *Russian Journal of Agricultural and Socio-Economic Sciences* 86.2 (2019), p. 40.
[31] Baudrillard, *La Société de consummation,* p. 53. NB: Author's own italics.

collective behaviour" and "a whole system of values, with all that expression implies in terms of group integration and social control functions".[32] Consumption within the Baudrillardian model is the ontological tool of consumer society, and one which is learned and socialised through the "social training in consumption".[33]

According to Baudrillard, a consumer's relation to the "real world" – *inter alia* politics, history, culture – is not

> a relation of interest, investment or committed responsibility – nor is it one of total indifference: it is a relation of **curiosity.** On the same pattern, we can say that the dimension of consumption as we have defined it here is not one of knowledge of the world, nor is it one of total ignorance: it is the dimension of **misrecognition.**[34]

In this framework, antiquities market participants (including the general public) do not collect objects; they consume what the objects signify (i.e. the past) through the accumulation, appreciation, and study of the tangible remains of the ancient world. Further, consumption is motivated by this dynamic of "curiousity" and "misrecognition", which puts the past in the service of the present. This type of consumption is a learned and socialised behaviour, and one which is informed by millennia of imperialist philosophy.[35] The past is also consumed during the processes of (mis)appropriation of intangible ancient thoughts and beliefs, including the retelling of myths, the influence of philosophies and sacred beliefs, and the reverence afforded to the leaders of antiquity.

3. Objectives –

If history repeats itself, so too does our relationship with history. This thesis presents an opportunity for a circuit breaker delivered in the proposed "Framework for Ethical Engagement with and Consumption of the Ancient World". In the context of this "Framework", engagement can be understood as the myriad of ways in which individuals and institutions intersect with the modern and historic market for antiquities. Framed by Baudrillard's semiological theories, consumption in the "Framework" refers to the system of interpretation through which we understand the ancient world. Whilst treated separately, engagement and consumption are overlapping concepts which collectively codify our modern relationships with antiquity.

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[32] Baudrillard, *La Société de consummation,* p. 96.
[33] Baudrillard, *La Société de consummation,* p. 98.
[34] Baudrillard, *La Société de consummation,* p. 52. NB: Author's own emphasis.
[35] The theoretical and historical context which informs the antiquities market and this thesis will be established in Chapters 1.1 and 1.2.

The "Framework for Ethical Engagement with and Consumption of the Ancient World" is presented in a series of both overarching principles and targeted recommendations for market participants for reframing traditional practices and values in order to foster more ethical relationships with the past. The guidelines presented in the "Framework" are intended for practical implementation at an individual and institutional level, and to inform the design and delivery of policy. Directed at encouraging ethical conduct, the "Framework" encourages individuals and institutions to act beyond their legal obligations. Thus, this thesis promotes a transformation in normative standards and behaviours for the antiquities market based on broader notions of harm.

The development of the "Framework for Ethical Engagement with and Consumption of the Ancient World" relies on two underlying assumptions, which are established throughout the first and second parts of this thesis. They are:

1. that the modern antiquities market operates on a foundation of colonial practices and beliefs, as well as contemporary and historic crime; and

2. that antiquities market participants and the wider public, individuals and institutions alike, have both legal obligations and ethical responsibilities when consuming the past.

The first assumption is supported by a postcolonial critique of the modern antiquities market and its historic origins. This view is demonstrated in an examination of the antiquities market in Chapter 2.1. Whilst the legal and ethical issues with the contemporary trade of antiquities have been addressed by scholarship, legal frameworks, and law enforcement, the same level of attention has not been paid to this transformation to e-commerce. Sitting within a broader framework of illicit internet marketplaces, the internet market for antiquities present unique challenges for regulation. This case study thus highlights the colonial and criminal nature of this market, whilst emphasising the failure of existing regulatory regimes to stem the flow of illicit traffic.

The second assumption emerges from the theoretical approach to environmental crime known as green criminology.[36] In its broadest sense, green criminology addresses the issues of

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[36] Green criminology and its influence on the "Framework" will be explored in section 3.1.1.d. See also: Lynch, M. J. and Stretesky, P. B., "Green Criminology," in *The Oxford Handbook of Criminological Theory*, F. T. Cullen and P. Wilcox (eds). Oxford Handbooks. Oxford: Oxford University Press, 2012; Potter, G., "Justifying 'Green' Criminology: Values and 'Taking Sides' in an Ecologically Informed Social Science," in M. Cowburn, M. Duggan, A. Robison and P. Senior (eds), *The Value(S) of Criminology and Criminal Justice*. Bristol: Policy Press,

environmental harms from criminological perspectives. Of central value to this thesis is the theory's aim to re-define crime beyond traditional ideas of law-breaking. Instead, it extends the scope of criminology to consider some deleterious acts that are not encapsulated by the law as crimes. Due to the harmful and destructive nature of the acquisition and distribution of antiquities, such an approach is vital to improving the ethical standards of the modern antiquities market.

This second assumption is also influenced by the notion of colonial complicity and the need for beneficiaries of colonialism to reckon with that complicity.[37] Within Clare Land's framework,[38] antiquities market participants could be considered as complicit with the forming of colonial collections. This complicity is extended not only to those who were directly involved in colonial collecting processes between the 18th and mid-20th centuries, but anybody who now benefits from colonial collections. These beneficiaries can include any institutions and individuals who own or study antiquities acquired during the colonial era. They can also include anybody who has garnered knowledge or insight into the ancient world throughout the lens of colonial perspectives. Most people living in modern settler-colonial countries would struggle to not fall into this category.

Historically, the onus has been on descendant communities to initiate reform in the antiquities market. [39] But colonial collections and colonial collecting practices are undoubtedly problems to be addressed by the beneficiaries of colonialism. Thus, this thesis shifts the responsibility of initiating ethical action from "source" countries actors, instead placing the burden of improving normative standards on the market participants in "demand" countries.[40] This methodology is

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2013, pp. 125 – 41; and South, N. J., "Green Criminology: Reflections, Connections, Horizons," *International Journal for Crime, Justice and Social Democracy* 3 (2014), pp. 5–20.

[37] Colonial complicity is the subject of 1.1.d. and 3.1.5.i.

[38] Land, C., *Decolonizing Solidarity. Dilemmas and Directions for Supporters of Indigenous Struggles.* London: Zed Books, 2015.

[39] According to Chip Colwell-Chanthapohn and T. J. Ferguson, the term descendant communities encapsulates the groups who are linked to archaeological heritages due to their cultural, social, and historical affinities. Colwell-Chanthaphonh, C. and Ferguson, T. J., *Collaboration in Archaeological Practice: Engaging Descendant Communities.* Plymouth, UK: Altamira Press, 2008. The use of this term is necessary when discussing the modern antiquities market and its relevant stakeholders, as traditionally used terms – such as countries of origin or source countries – do not capture the distinctions between all peoples. See also: Colwell, C., "Collaborative Archaeologies and Descendant Communities" *Annual Review of Anthropology* 45.1 (2016), pp. 113 – 127; Jameson, J. H., "Introduction: The Critical Junctures of Archaeology, Heritage, and Communities," in in J. H. Jameson and S. Musteaţă, *Transforming Heritage Practice in the 21st Century: Contributions from Community Archaeology.* Cham: Springer, 2019. pp. 1 – 12; and San Miguel, B. and House, M., "Promoting Descendant Communities in Urban Community Archaeology: A Study in Canberra, Australia," in J. H. Jameson and S. Musteaţă, *Transforming Heritage Practice in the 21st Century: Contributions from Community Archaeology.* Cham: Springer, 2019. pp. 231 – 249.

[40] The difference between source and demand countries and the role they play in the modern antiquities will be explored in section 2.1.2.

not based in the belief that source countries and descendant communities are not vital stakeholders in cultural heritage discourses (because they irrevocably are). But rather, emerges from a space where colonial institutions and systems – such as the antiquities market and ancient world studies – are dismantled by those who built and reap benefits from them.

Responding to these issues in the antiquities market and ancient world studies with an ethical framework is not an entirely novel approach. As will be discussed throughout the thesis, collecting and academic institutions, and professional associations proximate to the antiquities market have developed and implemented their own codes of conduct. What sets the approach in the "Framework" apart is this focus on colonial complicity and broader ideas of harm beyond legal frameworks. Existing policy responses to the antiquities market are largely informed by the legislative context, which will be discussed at length in section 2.2.4, which is limited in its application to colonial-era looting (the subject of section 1.1.1). The "Framework" set forth in Chapter 3.1 supports this mandate of reckoning with colonial complicity by placing the burden of responsibility for action and critical reflection on colonial institutions and beneficiaries of colonialism. Further, "the Framework" is unique in its scope of applicability – it is not designed to only be used in a professional context, but also in the personal lives of antiquities market participants, ancient world studies researchers and educators, and even the general public.

4. Outline –

This thesis is divided into three parts. The first part establishes the theoretical and historical context for this project by highlighting the relationship between antiquities collecting, colonialism, conflict, and crime. Chapter 1.1 situates the modern antiquities market within its political and economic landscape: the era of European exploration and colonialisation. The first half of this chapter is dedicated to defining the key concepts of colonialism and neocolonialism, which have influenced both the nature of the modern antiquities market and our ontologies of the past. Informed by the works of Aimé Césaire and Frantz Fanon,[41] this examination of colonialism emphasises the dispossession and violence experienced by Indigenous peoples, which has manifested in intergenerational trauma and poverty.

The second half of this chapter examines how these colonial and neocolonial attitudes have manifested in the plunder and destruction of cultural heritage during periods of conflict from

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[41] Césaire, A., *Discours sur le colonialisme.* Paris: Éditions Réclame, 1951. Trans. Pinkham, J. New York: NYU Press, 2000, and Fanon, F., *Les Damnés de la Terre.* Paris: Éditions François Maspero, 1961.

antiquity to the present. This focus on plunder intersects with the previous section on colonialism and neocolonialism, as colonialism itself is a form of ongoing conflict. Once this foundation is established, Chapter 1.2 explores how these colonial and imperial discourses have manifested in the history of collecting from antiquity to the present. This includes a discussion of Orientalism and additional modes of "othering" are applied to the modern antiquities market and collecting practices. Finally, Chapter 1.3 sets out the criminological frameworks necessary for understanding illicit marketplaces, which includes defining what is meant by illicitness and how this concept manifests in markets. This chapter thus outlines the shape and nature of cultural heritage crime, which groups together the illicit practices germane to the modern and historic antiquities market. It also includes an overview of the history of e-commerce and how the internet has been used to facilitate crime.

With this foundation in place, Part 2 of the thesis is devoted to exploring how these theoretical and historical contexts have manifested in the modern antiquities market and ancient world studies. Chapter 2.1 is a case study of the illicit antiquities market, including the establishment of the origins of the markets; the relationship between supply and demand for antiquities, and the trafficking networks which connect them; the relevant legal frameworks and the enforcement of these frameworks; and how the market has adapted to the internet and taken advantage of the opportunities provided by e-commerce. This case study reveals that the antiquities market is undeniably a product of colonialism and is embedded in criminal practices. Yet, the regulatory mechanisms which are designed to respond to this market by both methods of punishment and persuasion are failing to stem the flow of illicit antiquities. Ultimately, these challenges with the legal frameworks explored in Chapter 2.1 highlight the need for different approaches to these problems.

Next, Chapter 2.2 is dedicated to the ways in which academic individuals and institutions who work in ancient world studies interact with the antiquities market. The choice to highlight the role of scholarship in this thesis was twofold: first, because the ways in which academia facilitates the antiquities market has been well-demonstrated;[42] and second, because academic

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[42] As a starting point see, Brodie, N., "Congenial Bedfellows? The academy and the antiquities trade," *Journal of Contemporary Justice* 27 (2011), pp. 411 – 440 and "The Market in Iraqi Antiquities 1980-2009 and Academic Involvement in the Marketing Process," in S. Manacorda and D. Chappell (eds.), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property.* New York: Springer, 2011. pp. 117 – 130; Dundler, L., "#antiquitiesdealers – The construction and use of "dealer persona" in the internet market for antiquities," in D. Yates and N. Oosterman (eds), *Crime and Art: Sociological and criminological perspectives of crimes in the art world.* Springer, forthcoming; and Prescott, C. and Munch Rasmussen, J., "Exploring the "Cozy Cabal of Academics, Dealers and Collectors through the Schøyen Collection," *Heritage* 3.1 (2020), pp. 68 – 97.

institutions and individuals provide a vital role in the education of the wider public about cultural heritage issues and how we can ethically respond to them. This chapter thus examines the ethical and legal issues involved in these interactions between academia and the antiquities market. It also problematises existing attempts to respond to these concerns, primarily through the development and implementation of ethics policies and industry codes.

The "Framework for Ethical Engagement with and Consumption of the Ancient World", which is presented in the third and final part of this thesis. It is a response to the wider historical and theoretical context in Part 1 and the specific ethical quandaries established in Part 2. Based on the recognition of the global nature of the modern antiquities market, Chapter 3.1 presents the "Framework" in a decontextualised fashion. This approach was selected to allow the "Framework" to have maximum impact in the transnational antiquities market, however, it is intended that the guidelines be modified as appropriate when applied to specific jurisdictions. Chapter 3.1 is broken into three sections. The first sets the legal and theoretical foundations which inform the "Framework", and the other two deal with guidelines for ethical engagement with and consumption of the ancient world respectively. Whilst there are some guidelines which are applicable to all stakeholders, including the wider public, there are others which are targeted to specific market participants. The guidelines introduced are also presented in the Appendix in schematic form, to guide the reading of the "Framework".

Finally, the proposed "Framework for Ethical Engagement with and Consumption of the Ancient World" is then applied to Australia as a model for future use in Chapter 3.2, entitled "Local Problems: Application to the Australian Context". Australia was selected as a case study for potential implementation for two reasons: firstly, its unique colonial history has seen the development of both Australian collection of antiquities and the exploitation of the heritages of Australia's First Nation peoples; and secondly, because reckoning with colonial complicity requires acknowledging one's own backyard and the local problems "not just faraway problems."[43] In the context of this thesis, these local problems include Australia's (neo)colonial relationship with the past, which is manifested in our collecting and educational institutions.

Ultimately, this thesis is an attempt to recreate the challenge first presented to me by Dr Rachel Yuen-Collingridge in "Historiography and Ancient History". It is a challenge to our dominant, Eurocentric ontologies of history which privilege the worldviews of rich, white men. It is a

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[43] Land, *Decolonizing Solidarity,* p. 247.

challenge to the voyeuristic and paternalistic relationship between ancient world studies and the peoples we study, both living and deceased. It is a challenge to the unethical and often illegal ways we access the antiquity through collections of antiquities and the antiquities market. Finally, and most importantly, this thesis is a challenge to those of us in the present to put ourselves in the service to the past: to show the same respect and ethical responsibility to the dead and their remains – tangible and intangible – as we do the living.

PART 1. HISTORICAL AND THEORETICAL CONTEXT:

COLONIALISM, CONQUEST, CULTURAL HERITAGE CRIME,

AND COLLECTING

"Whoever has emerged victorious participates to this day in the triumphal procession in which the present rulers step over those who are lying prostrate. According to traditional practice, the spoils are carried along in the procession. They are called cultural treasures, and a historical materialist views them with cautious detachment. For without exception the cultural treasures he surveys have an origin which he cannot contemplate without horror. They owe their existence not only to the great minds and talents who have created them, but also to the anonymous toil of their contemporaries. There is no document of civilization which is not at the same time a document of barbarism. And just as such a document is not free of barbarism, barbarism taints also the manner in which it was transmitted from one owner to another."

(Walter Benjamin)[44]

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[44] Benjamin, W. *Illuminations*. Frankfurt: Surkhamp Verlag, 1955. Trans. H. Zohn. New York: Schocken Books. 1968. p. 256.

1.1. THE SPOILS CARRIED ALONG IN THE PROCESSION:

COLONIALISM AND CONQUEST

That was the way I was introduced to the danger of not having your own stories. There is that great proverb – that until the lions have their own historians, the history of the hunt will always glorify the hunter. That did not come to me until much later. Once I realized that, I had to be a writer. I had to be that historian. It's not one man's job. It's not one person's job. But it is something we have to do, so that the story of the hunt will also reflect the agony, the travail – the bravery, even, of the lions. (Chinua Achebe)[45]

Introduction –

Since antiquity, objects of cultural significance have been acquired as trophies by conquering armies, to be displayed in public monuments or triumphal parades as a symbol of military victory and political domination. War booty has also been used as a way to supplement the income of soldiers, or to fund further conflicts and invasions. However, the "spoils" of war only form part of this narrative. Destroying, vandalising, or otherwise defacing the material culture of the defeated has always been a part of war, invasion, and genocide.[46] These violent acts were often situated within broader attempts to erase the identities of individuals and peoples: a domination of the tangible and the symbolic.

Not only were these practices commonplace in the ancient world, they were often perceived as the moral or divine right of the victors to the extent that they were enshrined in law.[47] Modern

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[45] Achebe, B., in interview with J. Brooks, "The Art of Fiction No. 139," *The Paris Review* 133, Winter 1994. Accessed 15 March 2021. https://www.theparisreview.org/interviews/1720/the-art-of-fiction-no-139-chinua-achebe

[46] Hardy, S., "Iconoclasm: Religious and Political Motivations for Destroying Art," in S. Hufnagel and D. Chappell. *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. pp. 641 – 659. For a discussion of the responsibilities of States to protect cultural heritage and prevent cultural genocide, see Nafziger, J. A. R., "The Responsibilities to Protect Cultural Heritage and Prevent Cultural Genocide," in F. Francioini and A. F. Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law.* Oxford, UK: Oxford University Press, 2020. pp. 121 – 144,

[47] Miles, M. M., *Art as Plunder. The Ancient Origins of Debate about Cultural Property.* Cambridge: Cambridge University Press, 2008.

collections of antiquities, the so-called "hallmarks of civilisation",[48] are built on these legacies of colonial violence and the dispossession of peoples from their lands and the (attempted) erasure of their identities. It is necessary then to frame this thesis within this broader political landscape: one which is shaped by colonialist forces and imperial domination. This chapter is thus divided into two sections which inform each other, the first dedicated to identifying the historical and theoretical context for colonialism and the second an analysis into how colonialism manifests in the looting and plunder of cultural heritage during conflict and invasion.

The first half of this chapter begins with establishing the theoretical framework for colonialism which informs the direction of this thesis. Starting with a definition of colonialism and a discussion of the socio-political impacts on colonised peoples, communities, and individuals, a clear connection is drawn between imperial domination and the subjugation of the colonised. After exploring these "hideous butcheries",[49] the differences between sub-forms of colonialism are identified. Whilst there are many variations in how colonialist rule manifested in different locations and at different times, this section will focus on two of the forms of colonialism which are particularly relevant to the study of the antiquities market: settler colonialism and exploitation colonialism. Then, the first part of this chapter ends with an examination of 20th century neocolonialism, which remains an influence on the antiquities market, ancient world studies, and our wider engagement with the past.

Elaborating on the ideas and issues explored in the first half of the chapter, the second half turns to the issue of looting and plunder as a central component of conquest. It starts by defining the terms loot and plunder, drawing the connections between acquiring objects of cultural significance as an act of imperial domination. After demonstrating how the modern-day antiquities market fits into this narrative of imperial acquisition, the phenomena of iconoclasm and other types of cultural heritage destruction are discussed. Whilst presented separately in this chapter, it is important to note that cultural plunder and destruction are not mutually exclusive acts. Often, they occur simultaneously within the same conflict or invasion when antiquities and cultural objects are financially exploited as conflict resources. This chapter thus ends with an examination of the financial exploitation of resources, including antiquities, during conflict.

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[48] "We know we are a species obsessed with itself and its own past and origins. We know we are capable of removing the sanctuary of the earth shards and fragments, gently placing them in museums. Great museums in great cities – the hallmarks of civilisation." Jamie, K., *Sightlines*. New York: The Experiment, 2013.
[49] Césaire, A., *Discours sur le colonialisme*. Paris: Éditions Réclame, 1951. Trans. Pinkham, J. New York: NYU Press, 2000. p. 41.

Collectively, this overview of the exploitation and mistreatment of the cultural heritage of colonised and oppressed peoples highlight how the past has not only been placed in service to the present, but exclusively to its conquerors.

1. Colonialism –

a. Defining Colonialism –

In its simplest terms, colonialism is the practice or policy of a country or nation extending or retaining dominance – in the form of political and/or economic control – over other people or territories.[50] It is a practice that can be observed in antiquity and throughout the middle ages, but is undeniably a product of the "Age of Discovery", with the Spanish conquest of the Americas seen as the instigator of the legitimisation of military conquest as a means of facilitating the "conversion and salvation of indigenous peoples."[51] Over the centuries many European countries engaged in the practice of colonialism and this so-called "civilising mission", forming colonies in conquered territories throughout the African, Asian, American, and European continents, and the Oceania region.

Historical accounts from both the perspectives of the colonisers and colonised depict what Aimé Césaire in his seminal essay *Discours sur le colonialisme* identified as "hideous butcheries", which ultimately prove how colonisation:

> dehumanizes even the most civilized man; that colonial activity, colonial enterprise, colonial conquest, which is based on contempt for the native and justified by that contempt, inevitably tends to change him who undertakes it; that the colonizer, who in order to ease his conscience into the habit of seeing the other man as *an animal,* accustoms to treating him like an animal, and tends objectively to transform *himself into* an animal.[52]

It would be impossible in the context of this chapter, or even this entire thesis, to adequately reflect the dehumanising impacts of colonialism introduced in Césaire's essay, and in other seminal early postcolonial works, such as Frantz Fanon's *Les Damnés de la Terre.* [53] Throughout the course of this thesis the ways in which colonialism has shaped consumption and collecting practices in the markets for antiquities will always return to the experience of the people dispossessed and dehumanised by colonialism and white supremacy. However, this is

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[50] Horvath, R. J., "A Definition of Colonialism," *Current Anthropology* 13.1 (1972), pp. 45 – 57.
[51] Stanford Encyclopaedia of Philosophy, "Colonialism". First published 9 May 2006. Revised 29 August 2017. Accessed 28 August 2020. https://plato.stanford.edu/entries/coloialism/#NatLawAgeDis
[52] Césaire, *Discours sur le colonialisme.* p. 41. NB: Author's original italics.
[53] Fanon, F., *Les Damnés de la Terre.* Paris: Éditions François Maspero, 1961.

not the whole picture and it is always important to regard the forces of colonialism within a broader framework of intergenerational trauma caused by the systematic dispossession of colonised peoples from their lands, families, economies, languages, traditions, identities, and heritages.[54]

Colonialism and imperialism are often seen as synonymous, as they both involve political and economic control over a dependent territory. The key differences between these interrelated terms have etymological roots, with the Latin words *colonus* ("farmer") and *imperium* ("to command") serving as the origins of colonialism and imperialism respectively.[55] Colonialism thus involves both the domination and exploitation of a territory, often involving the transferring of a permanent population of "settlers" to the new territory.[56] Imperialism refers to the ways in which one country or nation exercises power over a territory or people, "whether through settlement, sovereignty, or indirect mechanisms of control."[57]

They are both forms of "intergroup domination", according to Ronald Horvath, but the key difference is on the number of permanent settlers which migrate from the "imperial homeland" to the "colony" which separates colonialism and imperialism.[58] Despite these differences, it is important to recognise that the two terms and associated policies are inherently linked. Historian Archibald P. Thornton, for example, defines colonialism as "imperialism seen from below" and "a view of the controllers which is held by the controlled".[59] Within Thornton's framework, colonialism is the experience of invaded territories and conquered peoples, whilst imperialism is situated within the power held by European nations as they expanded their empires.[60]

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[54] This belief has been especially informed by the following texts: Atkinson, J., *Trauma Trails, Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia.* Melbourne, VIC: Spinifex Press, 2002; Heiss, A. (ed), *Growing Up Aboriginal in Australia.* Carlton, VIC: Black Inc., 2018; Land, C., *Decolonizing Solidarity. Dilemmas and Directions for Supporters of Indigenous Struggles.* London: Zed Books, 2015; McKenna, M., "Moment of Truth. History and Australia's Future," *Quarterly Essay 69.* Carlton, VIC: Black Inc., 2015; Moreton-Robinson, A*., Talkin' Up To The White Woman. Indigenous Women and Feminism.* St Lucia, QLD: Queensland University Press, 2000, and Tagala, T., *All Our Relations. Indigenous Trauma in the Shadow of Colonialism.* Melbourne and London: Scribe, 2020. I also note the formative influence of the following novels Adichie, C. N., *Half of a Yellow Sun.* London: HarperCollins, 2017; Coetzee, J. M., *Disgrace.* Vintage: London, 1999; Coleman, C. G., *Terra Nullius.* Sydney: Hachette, 2017; Fugard, A., *Tsotsi.* New York: Grove Press, 2006; Lucashenko, M., *Too Much Lip.* St Lucia, QLD: Queensland University Press, 2018; Roy, A., *The God of Small Things.* London: HarperCollins, 1997; Rushdie, S., *Midnight's Children.* London: Jonathan Cape, 1981; and Winch, T. J., *The Yield.* Melbourne, VIC: Penguin Random House Australia, 2019.
[55] Stanford Encyclopaedia of Philosophy, "Colonialism".
[56] Horvath, "A Definition of Colonialism," p. 47.
[57] Stanford Encyclopaedia of Philosophy, "Colonialism".
[58] Horvath, "A Definition of Colonialism," p. 47.
[59] Thornton, A. P., "Colonialism," *International Journal* 17.4 (1962), p. 342.
[60] Thornton, "Colonialism".

One of the key debates surrounding colonialism since the sixteenth century has been the legitimacy of colonial rule. Countries who engaged in the practice of colonialism sought to legitimise their violent domination over territories and peoples through religious and political discourses which makes colonialism distinct from other types of foreign rule.[61] Despite the inherent relationship between colonialism and imperialism, Thornton argues that the two policies were defended differently by their practitioners. Imperialism, whilst "classified as immoral" was still seen as a legitimate form of foreign rule with imperialists "insisting on their sense of mission and declaring their faith in the future."[62] The legitimacy of colonialism, on the other hand, was questioned even within the context of European colonisation of the world:

> […] no one admits to the title of colonialist. The word is too abusive; and if colonialism ever had a school, its alumni are careful to conceal its whereabouts. To be a colonialist is to be an exploiter.[63]

Central to this dynamic of colonisation as exploitation is the acquisition and appropriation of cultural heritage. Whilst the relationship between colonial exploitation and antiquities collections will be explored in more detail in sections 1.1.2.f. and 1.2.3., it is worthwhile discussing here briefly. Antiquities and other objects of cultural significance belonging to colonised and/or oppressed peoples have long been reduced to trophies of colonial powers. Objects – from the sacred to the everyday – were taken from conquered lands to be studied and displayed in colonial institutions, including universities and museums.[64] Many of these objects still remain in colonial collections across the world, despite requests for their repatriation. However, modern antiquities market participants have not only inherited the legacies of these colonial collections, but also the beliefs and practices which underpin contemporary antiquities collecting. In other words, engaging in the antiquities market can be viewed as an act of neocolonial exploitation.

b. Settler Colonialism and Exploitation Colonialism –

The two types of colonialism relevant to this study of the antiquities market are settler colonialism and exploitation colonialism.[65] The former is a form of colonialism which seeks to

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[61] Rao, B. S., "Disrobing Colonialism, and Making Sense of It," *Social Scientist* 38.7/8 (2010), pp. 15 – 28.
[62] Thornton, "Colonialism," p. 335.
[63] Thornton, "Colonialism," p. 335.
[64] Procter, A., *The Whole Picture. The colonial story of the art in our museums & why we need to talk about it.* London: Cassell, 2020.
[65] The other two classic forms of colonialism are surrogate colonialism (which involves a settlement project in which the permanent settlers do not originate from the locus of colonial power) and internal colonialism (which reflects uneven internal power structures within a state).

replace, or dilute to the level of impotency, the existing population of the territory with colonial settlers.[66] The latter involves the domination of a territory with the aim of exploiting the natural resources and labour of the colonised peoples.[67] Both terms can be used to described a single colonised territory, as colonialism motivated with the intent of exploiting natural resources and manual labour of Indigenous populations often resulted in the establishment of settler colonies also. There are additional distinctions to be made between forms of settler colonialism. Historian Lorenzo Verancini draws a distinction between two forms of settler colonialism in a number of his works.[68] The first form of settler colonialism is characterised by "attempts to permanently dominate indigenous constituencies while ruling them from a metropolitan center (as for example, Britain's rule in India and Nigeria)", whilst the other form involves "efforts to erase indigenous peoples for the purpose of replacing them with another socio-political body".[69]

These colonies were "settled" on lands which had been occupied for thousands of years – more than 65,000 years in the case of Australia.[70] The struggles of Indigenous peoples in settler nations, such as Aotearoa New Zealand, Australia, Brazil, Canada, South Africa, Sweden, and the United States, date to the time of "territorial invasion, specifically from the moments it became apparent that invaders were there to stay and intended to gain exclusive access to

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[66] The term "settler colonialism" was made popular in the 1990s in the work of postcolonial scholar Patrick Wolfe. See: Wolfe, P., *Settler Colonialism and the Transformation of Anthropology. The Politics and Poetics of an Ethnographic Event.* London: Cassell, 1999 and "Settler Colonialism and the Elimination of the Native," *Journal of Genocidal Research* 8.4 (2006), pp. 387 – 409; See also: Cavanagh, E. and Verancini, L. (eds), *The Routledge Handbook of the History of Settler Colonialism.* New York: Routledge, 2017 and Elkins, C. and Pedersen, S. (eds), *Settler Colonialism in the Twentieth Century: Projects, Practices, Legacies.* New York: Taylor & Francis, 2005.

[67] Exploitation colonialism sits within the broader framework of imperialism as the final stage of capitalist development, as put forward by Vladimir Lenin in the early 20th century. In this critique of imperialism, Lenin synthesises Karl Marx's and John Hobson's existing conceptualisations of imperialism and capitalism to argue that European countries relied on the capital exploited from conquered territories in order to stave of economic crisis in the 19th century. Lenin's essay was first published in Russian (Владимир Ленин *Империализм, как Высшая Стадия Капитализма*. Петроград: Жизнь и Знание, 1917), translated into French in 1925 (Lénine, V. *L'Impéralisme dernière étape du Capitalisme.* Paris: Libraire de l'Humanite, 1925) and in English as *Imperialism, the Highest Stage of Capitalism* (Lenin, V. *Imperialism, the Highest Stage of Capitalism.* London: Lawrence and Wishart, 1948).

[68] Verancini, L., *Settler Colonialism – A Theoretical Overview.* London: Palgrave Macmillan UK, 2010 and "The Other Shift: Settler Colonialism, Israel, and the Occupation," *Journal of Palestine Studies* 42.2 (2013), pp. 26 – 42.

[69] Verancini, "The Other Shift", p. 27.

[70] This is the current accepted dating of Aboriginal occupation of Australia, based off the dating of rock art at the western Arnhem site of Madjedbebe. See Allen, J. and O'Connell, J. F., "Both half right: Updating the evidence for dating the first human arrivals in Sahul," *Australian Archaeology* 79 (2014), pp. 86 – 108; Clarkson, C. et al., "Human occupation of Australia by 65,000 years," *Nature* 547 (2017), pp. 306 – 310; May, S. K. et al., "The rock art of Madjedbebe (Malakunanja II)," in B. D. Paul et al. (eds), *The Archaeology of Rock Art in Western Arnhem Land Australia.* Acton ACT: ANU Press, 2017. Accessed 2 April 2021. http://press-files.anu.edu.au/downloads/press/n3991/html/ch05.xhtml ; Roberts, R. G., Jones, R. and Smith, M. A., "Thermoluminescence dating of a 50,000-year-old human occupation site in northern Australia," *Nature* 345 (1990), pp. 153 – 156; and Roberts, R. et al., "Single-aliquot and single-grain optical dating confirm thermoluminescence age estimate at Malakunanja II rock shelter in northern Australia," *Ancient TL* 16 (1998), pp. 19 – 24.

land."[71] Confrontations between Indigenous peoples and settler colonists over land resulted in the significant decline of Indigenous populations from disease and violence.[72] First Nations people were systematically dispossessed from their lands, families, cultural heritages (both tangible and intangible) and identities, and existing economic and agricultural systems, experiencing unspeakable atrocities in the process;[73] unspeakable in the sense that they have been widely neglected from historical accounts which document the forging of these modern nations.[74] This idea is well-reflected in the words of anthropologist W. E. H. Stanner, who described the treatment of Aboriginal Australian history as part of a "cult of forgetfulness practiced on a national scale."[75]

The impact of exploitation colonialism on colonised territories is equally harmful and destructive. European exploitation of the populations and natural resources of dominated territories resulted in slavery, violence, dispossession, the theft and destruction of cultural heritage, and generational impoverishment which have had lasting impacts on colonised peoples today.[76] Such practices evolved into the modern market for human trafficking, exploitation in the form of "sweatshop labour",[77] and resources used for conflict and terrorist

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[71] Land, *Decolonizing Solidarity,* p. 81.

[72] For context: […] it is estimated that there were 11,500 Indigenous people in Victoria at the time land was taken up at Port Phillip, but 100 years later the population was only 800; 93 per cent had been killed or displaced (Rowley 1972b:5). Similar stories and statistics can be produced for other states. It is estimated that approximately 100,000 Indigenous people lived in Queensland in the late 1700s, but by 1901 the population had been reduced to 26,670." Moreton-Robinson, *Talkin' Up,* pp. 5, paraphrasing Rowley, C. D., *Outcasts in white Australia.* Ringwood, VIC: Penguin Books Australia, 1972.

[73] For further information about the experience of Aboriginal and Torres Strait Islander peoples in Australia since 1788, see: Broome, R., *Aboriginal Australians: a history since 1788* (5th ed.). Sydney: Allen & Unwin, 2019; Goodall, H., *Invasion to embassy: land in Aboriginal politics in New South Wales, 1770-1972.* Sydney: Sydney University Press, 2008; Lee, J. and Burgmann, V. (eds), *Staining the wattle: a people's history of Australia since 1788.* Fitzroy, VIC: McPhee Gribble/Penguin, 1988; Moreton-Robinson, *Talkin' Up,* pp. 4 – 15; Morris, B., *Domesticating Resistance – The Dhan-Gadi Aborigines and the Australian State.* Oxford: Berg, 1989; Reynolds, H., *The Other Side of the Frontier – Aboriginal resistance in the European invasion of Australia.* Townsville, QLD: James Cook University Press, 1981 and *Dispossession – Black Australians and white invaders.* St Leonards, NSW: Allen & Unwin, 1989; Rowley, *Outcasts in white Australia;* Ryan, L., *The Tasmanian Aborigines: a history since 1803.* Sydney: Allen & Unwin, 2012; and Stanner, W. E. H., *White Man Got No Dreaming.* Canberra, ACT: Australian National University Press, 1979.

[74] For further discussion of the erasure of First Nations Australian history, and attempts to challenge this viewpoint, see: Byrne, D., "The Ethos of Return: Erasure and Reinstatement of Aboriginal Visibility in the Australian Landscape," *Historical Archaeology* 37 (2003), pp. 73 – 86; Griffiths, B. *Deep Time Dreaming – Uncovering Ancient Australia.* Carlton, VIC: Black Inc. Books, 2018, and Reynolds, H., *Truth-Telling: History, sovereignty and the Uluru Statement.* Randwick, NSW: NewSouth Books, 2021.

[75] Stanner, W. E. H., *After the Dreaming: The Boyer Lectures.* Sydney: Australian Broadcasting Corporation, 1968.

[76] Ferguson, J., *Global Shadows – Africa in the Neoliberal World Order.* Durham, NC: Duke University Press, 2006; Michalopoulos, S. and Papaioannou, E., *The Long Economic and Political Shadow of History, Volume 1.* CEPR Press, 2017. Accessed 30 September 2020 https://voxeu.org/content/long-economic-and-political-shadow-history-volume-1 ; Rodney, W., *How Europe Underdeveloped Africa.* London: Bogle-L'Ouverture Publications, 1972; and Thompson, W., *Work, Sex and Power. The Forces that Shaped Our History.* London: Pluto Press, 2015.

[77] An umbrella term which includes forced labour (Varley, P., "The sweatshop quandary: corporate responsibility on the global frontier," Investor Responsibility Research Center, Washington, 1998, and Bernstein, A., "A world of sweatshops," *Business Week* 52, 6 November 2000) and child labour (Lopez-Calva, L., "Child labor: myths,

financing – an issue which will be discussed in section 1.1.2.f. In addition to the harm done to colonised peoples through the implementation of exploitative colonialist policies, we cannot ignore the devastating effects these practices have had on natural environments. The extraction of natural resources from colonised territories have been devastating for traditional economic and agricultural systems, as well as having broader ramifications for global ecological diversity and climate change.[78]

c. Neocolonialism –

In the twentieth century, colonial governments were dismantled across the world. Instigated by growing resistance – in the form of revolutions, political negotiations, and other types of challenges – against colonial rule, many Indigenous populations in colonised territories were extended the right to self-determination.[79] Decolonisation, however, is not synonymous with the end of colonialism. In the words of postcolonial scholar Patrick Wolfe: "invasion is a structure not an event."[80] Settler colonists did not return to the imperial homeland, allowing Indigenous peoples to reclaim stolen territories. Former colonial powers maintained their control over Indigenous peoples, including the implementation of economic, political, and educational foreign policies which are still in place in the 21st century.

Collectively these practices have been described using the term neocolonialism, first coined by Jean-Paul Sartre in 1964,[81] and famously used by former president of Ghana, Kwame Nkrumah,

theories and facts," *Journal of International Affairs* 55 (2001) pp. 59 – 73), sexual abuse (Varley, P. "The sweatshop quandary"), and withholding of wages (Bearak, B., "Lives held cheap in Bangladesh sweatshops," *New York Times,* 15 April 2001). Snyder, J. C., "Needs Exploitation, *Ethical Theory and Moral Practice* 11.4 (2008), pp. 389 – 405. For more recent discussions of "sweatshop labour", see: Coakley, M. and Kates, M., "The Ethical and Economic Case for Sweatshop Regulation," *Journal of Business Ethics* 117.3 (2013), pp. 553 – 558; Powell, B. and Zwolinksi, M., "The Ethical and Economic Case Against Sweatshop Labor: A Critical Assessment," *Journal of Business Ethics* 107.4 (2012), pp. 449 – 472; Ross, R. J. S., *Slaves to Fashion. Poverty and Abuse in New Sweatshops.* Ann Arbor, MI: University of Michigan Press, 2004; Snyder, J., "Exploitation and Sweatshop Labor: Perspectives and Issues," *Business Ethics Quarterly* 20.2 (2010), pp. 187 – 213; and Zwolinski, M., "Sweatshops, Choice, and Exploitation," *Business Ethics Quarterly* 17.4 (2007), pp. 689 – 727.
[78] For discussion of the colonial exploitation of the environment and climate change, see: Adams, W. M., "Nature and the colonial mind," in W. M. Adams and M. Mulligan (eds). *Decolonizing Nature.* Sterling, VA: Earthscan, 2003. pp. 16 – 50; Agarwal, A. and Narain, S., "Global warming in an unequal world: a case of environmental colonialism," New Delhi: Centre for Science and Environment, 1991. Accessed 30 September 2020. https://www.osti.gov/etdeweb/biblio/6842576 ; Drayton, R., *Nature's Government – Science, Imperial Britain, and the 'Improvement' of the World.* New Haven: Yale University Press, 2000; and Voskoboynik, D. M., *The Memory We Could Be – Overcoming Fear to Create our Ecological Future.* Gabriola Island, BC: New Society Publishers, 2018.
[79] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution/adopted by the General Assembly,* 2 October 2007, A/RES/61/295.
[80] Wolfe, "Settler colonialism," pp. 388.
[81] Sartre coined the term neocolonialism in his seminal critique of French colonial policies in Algeria. Sartre, J-P., *Colonialism and Neocolonialism.* 1964. Trans. Brewer, S., Haddour, A. and McWilliams. Oxfordshire: Taylor & Francis, 2001.

in the context of the decolonisation of African countries during the 1960s.[82] Neocolonialism, Nkrumah argued, replaced colonialism as "the main instrument of imperialism" in the twentieth century.[83] Broadly speaking, neocolonialism refers to the "remnant features and agents of the colonial era in a given society."[84] Whilst much of the literature on neocolonialism has emphasised the (ab)use of economic control and conditional aid by colonial powers, it is important to recognise that formerly colonised nations and peoples experience the lingering influences of colonialism in every aspect of their lives. Overall it is these "influences, their agents and effects" which "constitute the subject matter of neocolonialism."[85] Of particular relevance to this project is the continued use of neocolonial rhetoric by former colonial powers and their supporters, which seek to legitimise colonial practices including the theft and destruction of Indigenous heritages, and the continued occupation of stolen land. These neocolonial discourses are a common barrier to attempts to repatriate stolen cultural objects and ancestral remains to descendant communities.[86]

2. Conquest –

d. Plunder –

Since antiquity, the plunder of cultural objects has been synonymous with military conquest and imperialist domination. Nowadays, the practice of plunder, or pillage, is prohibited by customary international law recognised in the Lieber Code,[87] the Brussels Declaration,[88] and the Oxford Manual.[89] It is also prohibited under the Hague Regulations,[90] and constitutes a war crime in international armed conflicts under the Statute of the International Criminal Court.[91] Plunder, according to Black's Law Dictionary, is "the forcible taking of private property by an invading or conquering army from the enemy's subjects."[92] Further, the Elements of Crime of

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[82] Nkrumah, K., *Neo-Colonialism, the Last Stage of Imperialism.* London: Thomas Nelson & Sons, Ltd., 1965.
[83] Nkrumah, *Neo-Colonialism,* p. ix.
[84] Internet Encyclopedia of Philosophy, "Neocolonialism". Accessed 2 September 2020. https://iep.utm.edu/neocolon/#H2
[85] Internet Encyclopedia of Philosophy, "Neocolonialism".
[86] Mackenzie, S. and Yates, D., "Collectors on Illicit Collecting: Higher Loyalties and Other Techniques of Neutralization in the Unlawful Collecting of Rare and Precious Orchids and Antiquities," *Theoretical Criminology* 20.3 (2016), pp. 340 – 357.
[87] *Instructions for the Government of Armies of the United States in the Field (Lieber Code).* 24 April 1863. Art. 44. Henceforth referred to as the Lieber Code.
[88] *Project of an International Declaration concerning Laws and Customs of Law. Brussels, 27 August 1874.* Art. 18 and Art. 39.
[89] Institute of International Law, *The Laws of War on Land,* Oxford, 9 September 1880. Art. 32.
[90] *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws on Customs of War on Land. The Hague, 18 October 1907.* Art 28. Henceforth cited as the Hague Conventions of 1899 and 1907.
[91] International Criminal Court, *Rome Statute of the International Criminal Court.* Rome, 17 July 1998. A/CONF.183/9. Art. 8.2.b.xvi. Henceforth cited as the Rome Statute.
[92] Gardner, B. A (ed.), *Black's Law Dictionary,* 5th ed. St Paul, MN: West Publishing, 1979. p. 1033.

the Statute of the International Criminal Court specifies that plunder must be done "for private or personal use."[93] Whilst the plunder of cultural heritage motivated by economic drivers is of great significance to this discussion of conquest,[94] this section will focus on the ways in which the property of defeated armies and peoples was "seized, appropriated, and collected by a stronger authority."[95] In other words, this form of plunder is motivated by a desire to form private and public collections: tangible representations of the victory of the conquerors over the conquered.

There are antecedents for this type of plunder in the ancient Near East and in the Greek Bronze Age,[96] however it is in the classical Mediterranean period that this practice emerged properly. Parades, triumphs, and dedications which celebrated the military successes of the ancient Greeks and Romans regularly featured both looted artefacts and native animals belonging to the conquered territory – the so-called "spoils of war".[97] Art and cultural objects that had been acquired during military campaigns became part of the general's *manubiae* to be used for public benefit at their discretion.[98] These looted artefacts were often dedicated to public monuments, like sanctuaries and temples, where they were displayed as a symbol of the military and political prowess of the state or empire, as well as the individual who offered the "manubial

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[93] International Criminal Court, *Elements of Crimes*. The Hague, 2011. Art. 8.2.b.xvi; e.v.

[94] Such discussions take place in section 1.1.2.f.

[95] Miles, *Art as Plunder,* p. 1.

[96] Miles, *Art as Plunder,* pp. 16 – 30. For more information on Near Eastern plundering in antiquity see: Cline, E., *Jerusalem Besieged.* Ann Arbor, MI: University of Michigan Press, 2004, and Weitzman, S., *Surviving Sacrilege. Cultural Persistence in Jewish Antiquity.* Cambridge, MA: Harvard University Press, 2005. For further reading on cultural plunder during the Greek Bronze Age see: Anderson, M. J., *The Fall of Troy in Greek Poetry and Art.* Oxford: Clarendon Press, 1999. pp. 17 – 20; Boardman, J. and Vafopoulou-Richardson, C. E., "Diomedes I," *Lexicon Iconographicum Mythologiae Classicae* 3 (1986), pp. 396 – 409; Faraone, C. A., *Talismans & Trojan Horses.* Oxford: Oxford University Press, 1992. pp. 6 – 7, and Roscher III.I (1897 – 1909), pp. 1301 – 1309, s.v. "Palladian", (Wörner, E.) (all of which discuss the Palladion, the small, wooden, armed statue of Athena that protected the city of Troy and was stolen by the Greeks); de Souza, P., *Piracy in the Greco-Roman World.* Cambridge: Cambridge University Press, 1999; Pritchett, W. K., *The Greek Statue at War. Part V.* Berkley and Oxford: University of California Press, 1991. pp. 312 – 363 (for discussions of piracy and raids during the period).

[97] Miles, *Art as Plunder,* pp. 55 – 73. For further reading on the Triumph, see: Holliday. P. J., *The Origins of Roman Historical Commemoration in the Visual Arts.* Cambridge: Cambridge University Press, 2002. pp. 22 – 62; Künzl, E., *Der römische Triumph.* Munich: Beck, 1988; and Versnel, H. S., *Triumphus.* Leiden: Brill, 1970.

[98] The *maniubae* were a subset of *praeda* or *spolia* (terms which generally apply to war booty) reserved for the general in command; the "general's spoils" from a successful military conquest. These were looted funds and valuables which were to be used for public benefit, and were often distributed to soldiers and colleagues of the general for political gain. Miles, *Art as Plunder,* pp. 53– 55. For further discussion of maniubae and the general's authority of the spoils of war, see: Churchill, J. B., "*Ex qua quod vellent facerent:* Roman Magistrates' Authority over *Praeda* and *Manibuae,*" *The American Philological Association* 129 (1999), pp. 85 – 116; Orlin, E., *Temples, Religion and Politics in the Roman Republic.* Leiden: Brill, 1997. pp. 117 – 161; Shatzman, I., "The Roman General's Authority over Booty," *Historia* 21 (1972), pp. 177 – 205; and Ziolkowski, A., "*Urbs direpta,* or how the Romans Sacked Cities," in J. Rich and G. Shipley (eds), *War and Society in the Roman World.* London and New York: Routledge, 1993. pp. 69 – 91.

dedication".[99] According to historian Anthony Snodgrass, even the earliest sanctuaries and temples were associated with warfare:

> [m]any Greek sanctuaries were in a real sense war museums. Not only were the portable dedications of arms and armour usually a tithe of the spoils taken from defeated enemies, or else personal offerings of their own equipment by grateful victors; but sometimes the temples themselves were built with the proceeds of successful campaigns.[100]

This plunder of cultural property and its economic and socio-political role in society developed over time and space in the ancient world. Archaeologist and historian Margaret Miles explores "evolving attitudes and expectations about what should happen to this category of enemy's property during and after battle" within the context of the Ancient Mediterranean.[101] Throughout her comprehensive examination of what she identifies as the origins of "art as cultural property" and ancient debates about the ownership of this property, Miles returns to a famous example of plunder for private gain: the prosecution of Roman governor Gaius Verres (c. 115 – 43 BC) by Marcus Tullius Cicero. Whilst Cicero's case against Verres addressed a number of examples demonstrating the man's misgovernment of Sicily, the following section of his oration is of particular relevance to this historical context:

> This same man while praetor plundered and stripped those most ancient monuments, some erected by wealthy monarchs and intended by them as ornaments for their cities; some, too, the work of our own generals, which they either gave or restored as conquerors to the different states in Sicily. And he did this not only in the case of public statues and ornaments, but he also plundered all the temples consecrated in the deepest religious peoples. He did not leave, in short, one god to the Sicilians which appeared to him to be made in a tolerably workmanlike manner, and with any of the skill of the ancients.[102]

What emerges from Cicero's portrait of Verres is a man motivated by an "excessive passion for acquiring art."[103] However, for Miles, and the wider study of art and cultural heritage crime, the

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[99] See Aberson, M., *Temples votifs et butin de guerre dans la Rome républicaine.* Rome: Institut suisse de Rome, 1994; Orlin, *Temples, Religion and Politics,* pp. 127 – 139; Pietlä-Castrén, L., Magnificentia publica: *The Victory Monuments of the Roman Generals in the Era of the Punic Wars.* Helsinki: Societas Scientiarum Finnica, 1987; Weigel, R. D., "Roman Generals and the Vowing of Temples, 500–100 B.C.," *C&M* 49 (1998), pp. 119 – 142; and Ziolkowski, A., *The Temples of Mid-Republican Rome and Their Historical and Topographial Context.* Rome: "L'Erma" di Bretschneider, 1992.
[100] Snodgrass, A., *Archaic Greece: The Age of Experiment.* London: J. M. Dent, 1980. pp. 63 – 64.
[101] Miles, *Art as Plunder,* p. 1.
[102] Cicero, *In Verrem,* 1.1.14. In *The Orations of Marcus Tullius Cicero.* Trans. C. D. Yonge. London: George Bell & Sons, 1903.
[103] Miles, *Art as Plunder,* p. 12.

case against Verres offers a framework for debate about the acquisition and ownership of art which remains relevant today. In fact, Miles directly traces the origins of the modern definitions of "cultural property" to Cicero's preserved writings, due to the authority of Cicero in 18th and early 19th century England and France.[104] Verres has also been used as a model for what constitutes acceptable and unacceptable acts of plunder during times of military conquest. Again, this is a framework provided by Cicero in his oration against Verres where he details the Governor's thefts for personal gain, such as the statue of Diana (Artemis) from the Temple of Segesta, in Sicily.[105]

Throughout his oration, Cicero offers detailed descriptions of the art collected by Verres which emphasise their symbolic qualities – such as religious associations, age, monetary value, attribution, previous ownership, and aesthetics. These descriptions were designed to "convey the value attached to these items by the Sicilians that would elicit empathy in his audience of Romans, who would realize that the possessions meant far more to their owners than just comfortable goods."[106] During his scathing commentary on Verres, however, Cicero is careful to distance the man's action from both other Roman generals and Roman imperial policy. Individuals like Scipio Aemilanus, Aemilius Paulus, and L. Mummius provide counterparts to Verres, as they "all brought into Rome massive booty but brought to their houses nothing except lasting memories of their fame."[107] This distinction between the acquisition of cultural objects for personal gain versus the provision of "war booty" for the nation is pervasive throughout the history of warfare and conquest. For example, Miles highlights how both Napoleon Bonaparte and Lord Elgin were "excoriated in print for behaving like Verres."[108]

From Shishak's sacking of Jerusalem in the 10th century BCE,[109] to the deliberate destruction of museums, libraries, churches and other sites of cultural significance during the Russian invasion of Ukraine,[110] cultural heritage has been plundered during times of military occupation and

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[104] Miles, *Art as Plunder,* p. 8.
[105] Miles, *Art as Plunder,* pp. 178 – 179.
[106] Miles, *Art as Plunder,* p. 163.
[107] Miles, *Art as Plunder,* pp. 89 – 90.
[108] Miles, *Art as Plunder,* p. 8. Napoleon and his Egyptian expedition are discussed in the context of Egyptomania in section 2.1.4.i. and the Parthenon Marbles are the subject of a discussion on the repatriation movement at section 1.2.4.
[109] According to the Hebrew bible Shishak, an Egyptian pharaoh, sacked the city of Jerusalem in the 10th century BCE: "When Shishak king of Egypt attacked Jerusalem, he carried off the treasures of the temple of the Lord and the treasures of the royal palace. He took everything, including the gold shields Soloman had made." 2 Chronicles 12:9, Holy Bible: NIV.
[110] For discussion of the destruction and theft of cultural heritage during the Russian invasion of Ukraine, see: Gedeon, J., "Destruction of cultural sites in Ukraine puts country's identity at risk," *Politico,* 3 May 2022. Accessed 18 July 2022. https://www.politico.com/news/2022/05/03/destruction-cultural-sites-ukraine-00029655 ; Gettleman, J. and Chubko, O., "Ukraine says Russia looted ancient gold artifacts from a museum," *The New York*

invasion since the ancient world. These objects remain on display in collecting institutions worldwide, sold or "gifted" by the looters themselves and entirely disconnected from the cultural and national identities which forged their very existence. Objects which were never intended to leave the sacred sites they have inhabited for thousands of years are displayed in glass cabinets all over the world; often so geographically disparate from their original context that descendant communities may never personally see them first-hand. The impact of this loss sits within the broader context of the violent dispossession and genocide experienced by colonised individuals, communities, peoples, and nations.

e. Destruction and Iconoclasm –

Since antiquity sites and objects of cultural significance have been the target of religious or politically motivated destruction. In his analysis of the intentional destruction of cultural heritage, Federico Lenzerini cites no less than thirteen examples ranging from the destruction of the Temple of Serapis in Alexandria in Egypt in 391 CE to the Roman city of Palmyra in 2015 and 2017.[111] The "minimum common denominator" of these examples and most other instances of cultural heritage destruction

> rests in the discriminatory intent of the perpetrators, who do not pursue the goal of destroying the cultural heritage as such but rather that of annihilating the communities for which the latter is of special importance and by which it is perceived as an essential element of their own life, cultural identity and distinctiveness.[112]

Times, 30 April 2022. Accessed 18 July 2022. https://www.nytimes.com/2022/04/30/world/europe/ukraine-scythia-gold-museum-russia.html?fbclid=IwAR2molmKFq6OZp9Yn2eu4sfHjsOgsYKxt2vHY_vmJPbTEM3ZtRNX5WztPRo ; Pevny, O. Z., "Ukraine's cultural heritage faces destruction as Russian bombing continues," *The Conversation,* 9 March 2022. Accessed 18 July 2022. https://theconversation.com/ukraines-cultural-heritage-faces-destruction-as-russian-bombing-continues-178563 ; Scherer, J., "Cultural heritage is being destroyed by Russian forces in Ukraine. Residents armed with new technology are trying to save it," *SBS News,* 4 Juny 2022. Accessed 18 July 2022. https://www.sbs.com.au/news/dateline/article/cultural-heritage-is-being-destroyed-by-russian-forces-in-ukraine-residents-armed-with-new-technology-are-trying-to-save-it/mij6br1iq ; Smithurst, M. and Kesteven, S., "Precious art and artefacts are being destroyed in Ukraine. These experts are helping to save them," *ABC News,* 19 May 2022. Accessed 18 July 2022. https://www.abc.net.au/news/2022-05-19/salvaging-art-and-culture-amid-bombs-and-gunfire-in-ukraine/101045912 ; Ukrinform, "Ukraine at UN: Russia deliberately destroying cultural heritage throughout country," *Ukrinform,* 16 July 2022. Accessed 18 July 2022. https://www.ukrinform.net/rubric-ato/3530234-ukraine-at-un-russia-deliberately-destroying-cultural-heritage-throughout-country.html ; UNESCO, "Damaged cultural sites in Ukraine verified by UNESCO," *UNESCO News,* 12 July 2022. Accessed 18 July 2022. https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco ; and UN News, "Cultural destruction in Ukraine by Russian forces will reverberate for years, UN expert warns," *UN News,* 25 May 2022. Accessed 18 July 2022. https://news.un.org/en/story/2022/05/1119052 .

[111] Lenzerini, F., "Intentional Destruction of Cultural Heritage," in F. Francioini and A. F. Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law.* Oxford, UK: Oxford University Press, 2020. pp. 75 – 76.

[112] Lenzerini, "Intentional Destruction of Cultural Heritage," p. 76.

The destruction of cultural heritage can also occur simultaneously with other cultural heritage crimes in "precisely orchestrated, parallel programmes of destruction and appropriation".[113] Often this involves the practice of iconoclasm, which includes the destruction, vandalism, or other form of attack against objects and images.[114] Other definitions highlight the "spiritual power or sacred significance" which is worshipped "in the place of the "true" God",[115] and the common belief that the "presence or power" – which is imbued in the object or image – is annihilated when the physical representation is destroyed.[116] In his discussion of the political and religious motivations for iconoclasm, Sam Hardy emphasises that we cannot always apply the term iconoclasm to the practice of cultural heritage destruction:

> Not every breaking of an image is an act of iconoclasm. Even when art is 'iconoclastic', it is not 'iconoclasm'. Not every act of iconoclasm involves the breaking of an image. Power can be destroyed through transformation, subordination and humiliation.[117]

Motivations for Destruction and Iconoclasm –

Throughout history, countless buildings, objects, and texts of cultural significance were lost to deliberate acts of destruction and iconoclasm. These practices were deeply embedded in Abrahamic religious beliefs, including Islamic, Christian and Jewish theologies.[118]

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[113] Hardy, S., "Iconoclasm," p. 626.

[114] Kila, "Iconoclasm and Cultural Heritage Destruction," p. 654. See Khan Academy, "Iconoclastic controversies." Khan Academy. Accessed 9 September 2020. https://www.khanacademy.org/humanities/medieval-world/byzantine1/constantinople-east/a/the-origins-of-byzantine-architecture , and Rutelli, F., "The Return of Iconoclasm: Barbarian Ideology and Destruction by ISIS as a Challenge for Modern Culture, Not Only for Islam," in N. Charney (ed.), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves.* London; Palgrave Macmillan, 2016. pp. 143 – 149.

[115] Noyes, J. R., *The politics of iconoclasm: Religion, violence and the culture of image-breaking in Christianity and Islam.* London: I. B. Tauris, 2016. pp. 3 – 4.

[116] May, N. N., "Iconoclasm and text destruction in the Ancient Near East," in N. N. May (ed). *Iconoclasm and text destruction in the Ancient Near East and beyond.* Chicago: The Oriental Institute of the University of Chicago, 2012. p. 6.

[117] Hardy, S., "Iconoclasm," p. 625. See also Flood, F. B., "Between cult and culture: Bamiyan, Islamic iconoclasm, and the museum," *The Art Bulletin* 84.4 (2002), pp. 641 – 659.

[118] For examinations of iconoclasm in Islamic, Christian, and Jewish traditions, see: Adler, W., "Abraham and the burning of the temple of idols: Jubilees' traditions in Christian chronography," *The Jewish Quarterly Review* 77.2/3 (1986 – 1987), pp. 95 – 117; van Asselt, P. van Geest, P, Müller, D., and Salemink, T. (eds), *Iconclasm and iconoclasj: Struggle for religious identity.* Leiden: Brill, 2007; Blidestein, G., "Nullification of idolatry in Rabbinic Law," *Proceedings of the American Academy for Jewish Research* 41.2 (1973 – 1974), pp. 1 – 44; Hahn, J., Emmel, S. and Gotter, U. (eds), *From temple to church: Destruction and renewal of local cultic topography in Late Antiquity.* Brill: Leiden, 2008; Hardy, "Iconoclasm"; Katsumata, E., "Abraham the iconoclast: Different interpretations in the literature of the Second Temple period, the texts of Rabbic Judiasim, and the Quran," *Journal of the Interdisciplinary Study of Monotheistic Religions* 8 (2012), pp. 37 – 58; Kristensen, T. M., "Embodied imagies: Christian response and destruction in Late Antique Egypt," *Journal of Late Antiquity* 2.2 (2009), pp. 224 – 250 and "Religious conflict in Late Antique Alexandria: Christian responses to "pagan" statues in the fourth and fifth centuries CE," in G. Hinge and J. A. Krasilnikoff (eds), *Alexandria – A cultural and religious melting pot.* Aarhus: Aarhus University Press, 2015. pp. 321 – 346; May, N. N. (ed.), *Iconoclasm and text destruction in the Ancient Near East and beyond.* Chicago: The Oriental Institute of the University of Chicago, 2012, and Noyes, *The politics of iconoclasm.*

The influence of religion on these acts were so profound, that the term iconoclasm itself is a product of early modern Western Christian image-breaking: "adapted from 'iconoclasts', which had been borrowed from a rare and unrepresentative term for iconophobes during a medieval Eastern Christian struggle over images."[119] Whilst clearly influential, religious ideologies are not the sole instigator for cultural heritage destruction and iconoclasm. Joris Kila, in his examination of the "return" of iconoclasm in the 20th and 21st century, argues that there are a number of motivations involved. These include a desire for the "historical obliteration" of a cultural group – *damnatio memoriae* (condemnation of memory)[120] – which can "lead to damage or eradication of identity"[121]; as a reaction to "idolatry and profane depictions of human figures";[122] as a protest to political power; and or out of anger or fear.[123]

Regardless of the motivation, iconoclasm is always harmful to the victims of this practice. Kila argues that the destruction of cultural heritage can "lead to damage or eradication of identity", classifying identity as including: "national identities, local identities, individual identities, religious identities, cultural identities, racial identities and professional identities."[124] As discussed above, iconoclasm is often contextualised within other harmful acts directed at a cultural group, such as the deliberate genocide of the Jewish people carried out prior to and during the Second World War by the Nazis;[125] the cultural cleansing of Chinese, Muslim, and Vietnamese Cambodians conducted by the Khmer Rouge in the 1970s;[126]

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[119] Hardy, "Iconoclasm," p. 629.

[120] Hardy, "Iconoclasm," p. 633.

[121] Kila, "Iconoclasm and Cultural Heritage Destruction," p. 654.

[122] Kila, "Iconoclasm and Cultural Heritage Destruction," p. 655.

[123] Kila, "Iconoclasm and Cultural Heritage Destruction," p. 655. See also Kila, "From crimes against art to crimes against cultural property," p. 172.

[124] Kila, "Iconoclasm and Cultural Heritage Destruction," p. 654.

[125] There is a diverse corpus of scholarship devoted to the looting, plunder and destruction of cultural heritage during the Second World War. As a starting point, see: Edsel, R. M. and Witter, B., *The Monuments Men: Allied Heroes, Nazi Thieves, and the Greatest Treasure Hunt in History.* New York: Center Street, 2009; Edsel, R. M., *Saving Italy. The Race to Rescue a Nation's Treasures from the Nazis.* New York: Norton, 2013; Esterow, M., *The art stealers.* New York: Macmillan, 1966; Nicholas, *The Rape of Europa*; O'Connor, A-M., *The Lady in Gold. The Extraordinary Tale of Gustav Klimt's Masterpiece Portrait of Adele Bloch-Bauer.* New York; Random House Group, 2016; Petropolous, J., "Art Dealer Networks in the Third Reich and in the Postwar Period," *Journal of Contemporary History* 52.3 (2017), pp. 546 – 565 and *Goering's Man in Paris: The Story of a Nazi Art Plunderer and His World.* New Haven, CT: Yale University Press, 2021; and Roxan, D., Wantstall, K. and Mazal Holocaust Collection, *The rape of art: The story of Hitler's plunder of the great masterpieces of Europe.* New York: Coward-McCann, 1965.

[126] For information about the looting of Cambodian heritage during and after the civil war, see: Davis, T. and Mackenzie, S., "Crime and conflict: Temple looting in Cambodia," in J. Kila and M. Balcells (eds), *Cultural property crimes: An overview of protecting the world's heritage.* Leiden: Brill, 2014. pp. 292 – 306; Davis, T. and Mackenzie, S., "International Politics of Cultural Heritage Crime in Cambodia: Past, Present and Future," in Hufnagel and D. Chappell. *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. pp. 751 – 767; Ehlert, C., *Prosecuting the Destruction of Cultural Property in International Criminal Law: With a case study on the Khmer Rouge's Destruction of Cambodia's Heritage.* Leiden: Brill, 2013; Frulli, M., "International and Criminal Law and the Protection of Cultural Heritage," in F. Francioini and A. F. Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law.* Oxford, UK: Oxford University Press, 2020. pp. 100 – 120; and

and the actions of organised terrorist groups operating in Middle Eastern and North African regions, including the obliteration of the Bamiyan Buddhas by the Taliban in 2001,[127] and the destruction of the ancient city of Palmyra by the Islamic State.[128]

Further, the looting of sacred, archaeological, and heritage sites during periods of military occupation often occurs simultaneously to iconoclastic practices. The Nazis did not only destroy Jewish cultural heritage; they plundered it, exporting what they labelled "degenerate art", and ultimately profiting from that export.[129] The political and civil unrest instigated by the Khmer Rouge provided opportunities not only for the government to profit from cultural trafficking, but also foreigners like antiquities collector Douglas Latchford – a "one man supply-and-demand" for Cambodian plunder –[130] who died in 2020 escaping "justice for [alleged] crimes in the Cambodian Killing Fields."[131] And, whilst the exact figure of profits is still disputed, it is now accepted that the Islamic State have been trafficking looted Iraqi and Syrian antiquities to finance their operations.[132]

Mackenzie, S. and Davis, T., "Temple looting in Cambodia. Anatomy of a statue trafficking network," *British Journal of Criminology* 54 (2014), pp. 722 – 740.

[127] The Bamiyan Buddhas were two 6th century monumental statues carved into a cliffside in the Bamiyan valley, located in central Afghanistan, which were destroyed by the Taliban in March 2001. See: Flood, "Between cult and culture"; Francioni, F. and Lenzerini, F., "The Destruction of the Buddhas of Bamiyan in International Law," *European Journal of International Law* 14.4 (2003), pp. 619 – 651; Kila, J., "From crimes against art to crimes against cultural property: New perspectives and dimensions related to art crime," in J. Kila and M. Balcells (eds), *Cultural property Crime.* Leiden: Brill, 2015. p. 176; and Kornegay, K. D., "Destroying the Shrines of Unbelievers. The Challenge of Iconoclasm to the International Framework for the Protection of Cultural Property," *Military Law Review* 221 (1014), p. 154.

[128] For a report on the extent of the destruction conducted between 2012 and 2015, see Cheikhmous, A., "Palmyra: Heritage Adrift – Detailed report on all damage done to the archaeological site between February 2012 and June 2015." Report for the Association for the Protection of Syrian Archaeology and The American Schools of Oriental Research Cultural Heritage Initiatives, 2015. Accessed 14 October 2020. http://www.asor-syrianheritage.org/wp-content/uploads/2015/06/Palmyra_Heritage_Adrift.pdf
See also: Hill, C. V., "Killing a Culture: The Intentional Destruction of Cultural Heritage in Iraq and Syria under International Law," *Georgia Journal of International and Comparative Law* 45 (2016), pp. 193 – 220 and Tugendhaft, A., *The Idols of ISIS. From Assyria to the Internet.* Chicago, IL: The University of Chicago Press, 2020.

[129] Hardy, "Iconoclasm," p. 627.

[130] Executive director of the Antiquities Coalition Tess Davis provides this description in interview with Stoilas, H. and Noce, V., "Federal charges could lead to deeper scrutiny of Cambodian art in the US," *The Art Newspaper,* 1 January 2020. Accessed 9 September 2020. https://www.theartnewspaper.com/news/federal-charges-could-lead-to-deeper-scrutiny-of-cambodian-art-in-the-us

[131] Davis, T., "Douglas Latchford: The Man Who Pillaged Cambodia," *The Diplomat,* 21 August 2020. Accessed 9 September 2020. https://thediplomat.com/2020/08/douglas-latchford-the-man-who-pillaged-cambodia/ , In July 2021 the United States Attorney for the Southern District of New York filed a complaint for a forfeiture of a 10th century Cambodian sandstone sculpture. The claim alleged that Latchford had sourced looted antiquities directly from members of the Khmer Rouge. *United States of America v. A 10th Century Cambodian Sandstone Sculpture Depicting Skanda on a Peacock.* 1:21-cv-06065. (S.D.N.Y) (15 Jul., 2021).

[132] When it comes to the profits from antiquities trafficking for the Islamic State, figures vary substantially, including claims these practices account for a total of 15-20% of their overall revenue sources (Martinez, J-L., *Report on the protection of heritage in situations of armed conflict.* Paris: *Ministère de la Culture,* November, 2015). As of 2016, proposed amounts of revenue ranged from less than US$1 million to US$7 billion. See Rose-Greenland, F., "How Much Money Has ISIS Made Selling Antiquities? More Than Enough to Fund Its Attacks, "*Washington Post,* 3 June 2016. Accessed 29 October 2020.

For Hardy, there is no "ultimate contradiction" between the acts of iconoclasm and the financial exploitation of cultural heritage conducted by the Nazis, Khmer Rouge, and Islamic State. Collectively, these examples highlight the complementary relationships between trafficking and destruction, and between religious, political, and economic motivations. According to Hardy, the correlation between "destruction and appropriation" occurs via a vicious cycle:

> Destruction advertises the existence of the commodity; increases its scarcity value; and excuses the commission of unethical and even illegal acts (on top of the immediate act of buying stolen property), by the supposedly ethical buyer, for the purpose of 'rescuing' the antiquities.[133]

Legal Frameworks –

Similar to the ancient customs that limited plunder discussed in section 1.1.2.d., laws which prohibited or allowed for certain types of cultural heritage destruction and iconoclasm have existed throughout history. During the 20th century, contextualised within the broader emergence of international law, these legal frameworks were globalised and formally codified.[134] However, precedent for international laws which prohibit the destruction of cultural heritage can be found in examples of national laws, including the Lieber Code. [135] Prepared by German-American legal scholar and political philosopher Franz Lieber, the *Instructions for the Government of Armies of the United States in the Field* contains provisions for martial law, military jurisdiction, military necessity, and retaliation. The Code states that buildings of cultural significance – including museums of the fine arts and science – should not be destroyed during armed conflict and

> classical works of art, libraries, scientific collections, or precious instruments […], as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.[136]

https://www.washingtonpost.com/posteverything/wp/2016/06/03/how-much-money-has-isis-made-selling-antiquities-more-than-enough-to-fund-its-attacks/

[133] Hardy, "Iconoclasm," p. 644. See also Hardy, S. A., "Antiquities rescue or ransom? The cost of buying back stolen cultural property," in B. Öztürk (ed.), *Proceedings of the 5 International Conference of Experts on the Return of Cultural Property, Nevşehir, Turkey, 18 – 22 October 2015*. Ankara: Republic of Cultural Property, Nevşehir, Turkey (under review).

[134] Vrdoljak, A. F., *International Law, Museums and the Return of Cultural Objects*. Cambridge: Cambridge University Press, 2006. pp. 63 – 67.

[135] Lieber Code.

[136] Lieber Code. Art. 35.

Whilst influential during the American Civil War, the Lieber Code guided the negotiations which resulted in the Hague Conventions of 1899 and 1907.[137] However, many of these laws were broken during the First and Second World Wars,[138] including those which prohibited the destruction and plunder of cultural property.[139]

Following the "systematic pillage of cultural property" during the Second World War, the *First Protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* was signed in May 1954.[140] As the first international treaty which focused exclusively on the issue of cultural heritage during armed conflict, however, it was guided by existing principles concerning the protection of cultural property during armed conflict, including the Hague Conventions of 1899 and 1907. The preamble of the First Protocol of the Hague Convention recognises that

> cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is increasing danger of destruction.[141]

The need for international protection is also justified in the preamble, as "damage to cultural property" constitutes "damage to the cultural heritage of all mankind".[142] However, the limitations of the 1954 Hague Convention "became manifest during the Yugoslav conflicts of the 1990s when cultural property was deliberately targeted by the combatants."[143]

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[137] Hague Conventions of 1899 and 1907.

[138] For example, poison gas was used by all the forces in the First World War, violating both the 1899 and 1907 Hague Conventions. See: George, C., *Trial by gas. The British Army at the Second Battle of Ypres.* Washington: Potomac Books, 2014 and Vec, M., "Challenging the Laws of War By Technology, Blazing Nationalism and Militarism: Debating Chemical Warfare Before and After Ypres, 1899 – 1925," in B. Friedrich et al. (eds), *One Hundred Years of Chemical Warfare: Research, Deployment, Consequences.* Cham: Springer, 2017. pp. 105 – 134.

[139] Such as the destruction of cultural heritage in Belgium and France during WWI, particularly the burning of the medieval library at Leuven/Louvain (Derez, M., "Furore Teutonico. A Library Set Ablaze," *Tijdschrift Voor Filosofie* 76.4 (2014), pp. 655 – 713; Garner, J. W., "Destruction of Towns and Institutions Devoted to Religion, Education, Science and Art, as Punitive Measures," *American Journal of International Law* 9.1. (1915), pp. 101 – 112; and Williams, J. P., "The Flames of Louvain: Total War and the Destruction of European High Culture in Belgium by German Occupying Forces in August 1914," in F. Rash and C. Declercq (eds), *The Great War in Belgium and the Netherlands. Beyond Flanders Fields.* Cham: Palgrave Macmillan, 2018. pp. 35 – 47.) and the destruction of the cathedral of Rheims (Garner, "Destruction of Towns and Institutions"; Lindgren, J. M., ""The Blow Which Civilization has Suffered": American Preservationists and the Great War, 1914–1919," *The Public Historian* 27.3 (2005), pp. 27 – 56; and Perris, G. H., "The Total Destruction of Rheims," *Current History (New York)* 8.1. (1918), p. 485.), and the Third Reich's industrial-level acquisition and destruction of European cultural heritage during WWII (Nicholas, L. H., *The Rape of Europa. The Fate of Europe's Treasures in the Third Reich and the Second World War.* New York: Vintage Books, 1995.).

[140] UNESCO, *First Protocol of the Convention for the Protection of Cultural Property in the Event of Armed Conflict.* The Hague, 14 May 1954. Hereafter: First Protocol of the 1954 Hague Convention.

[141] First Protocol of the 1954 Hague Convention.

[142] First Protocol of the 1954 Hague Convention.

[143] Vrdoljak, A. F. and Meskell, L., "Intellectual Cooperation, Organisation, UNESCO, and the Culture Conventions," in F. Francioini and A. F. Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law.* Oxford, UK: Oxford University Press, 2020. p. 28. To read more about the destruction of cultural heritage during the Yugoslav conflicts, see: Rieldlmayer, A. J., *Destruction of Cultural Heritage in Bosnia-Herzegovina,*

Following a review launched by UNESCO, in 1999 the Second Protocol of the Hague Convention was introduced in order to supplement the provisions of the First Protocol and to reinforce its implementation.[144] The preamble of the Second Protocol acknowledges that the Parties were

> **conscious** of the need to improve the protection of cultural property in the event of armed conflict and to establish an enhanced system of protection for specifically designated cultural property.[145]

Examples of these enhancements include the Enhanced Protection System: a mechanism designed to ensure "full and effective protection of specifically designated cultural property during international or non-international armed conflicts."[146] In order for cultural property to be granted enhanced protection by the Committee for the Protection of Cultural Property in the Event of Armed Conflict, it must meet the three criteria outlined in the Second Protocol.[147] Cultural property which is granted enhanced protection is recorded in UNESCO's "List of Cultural Property Under Enhanced Protection", which currently includes *inter alia* the Tomb of Askia in Mali and the Neolithic settlement of Choirokoitia in Cyprus.[148] Cultural property on

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1992 – 1996: A Post-War Survey for the Selected Municipalities. Report to the International War Crimes Tribunal for the former Yugoslavia, 2002, and Walasek, H., *Bosnia and the Destruction of Cultural Heritage.* London, UK: Routledge, 2015.

[144] UNESCO, *Second Protocol of the Convention for the Protection of Cultural Property in the Event of Armed Conflict.* The Hague, 26 March 1999. Henceforth cited as the Second Protocol of the 1954 Hague Convention. For additional commentary the protocols of the 1954 Hague Convention, see: For commentary on the Hague Convention and its implementation, see: Chamberlain, K., *War and Cultural Heritage: an analysis of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols.* Builth Wells, UK: Institute of Art and Law, 2013; Gerstenblith, P., "Beyond the 1954 Hague Convention," in R. Albro and B. Ivey (eds), *Cultural Awareness in the Military: Developments and Implications for Future Humanitarian Cooperation.* London: Palgrave Macmillan, 2014. pp. 83 – 99; Kila, J. D., *Heritage under Siege. Military implementation of cultural property prosecution following the 1954 Hague Convention.* Leiden: Brill, 2012; O'Keefe, R., *The Protection of Cultural Property in Armed Conflict.* Cambridge: Cambridge University Press, 2006; Rush, L.W., "Blue Shield Protection of Cultural Property: A Perspective from the Field," in S. Hufnagel and D. Chappell (eds). *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. pp. 607 – 623; Toman, J., *The Protection of Cultural Property in the Event of Armed Conflict.* Brookfield, CT: Dartmouth Publishing Company, 1996, and *Cultural Property in War: Improvement in Protection: Commentary on the 1999 Second Protocol in the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.* Paris: UNESCO Publishing, 2009.

[145] Second Protocol of the 1954 Hague Convention. NB: Bold emphasis is in the original text.

[146] UNESCO, *Cultural Property under Enhanced Protection.* Accessed 15 May 2021. http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/EnhancedProtection_EN_compressed_02.pdf

[147] Article 13 of the Second Protocol of the 1954 Hague Convention states "Cultural property may be placed under enhanced protection provided it meets the following three conditions: a. It is cultural heritage of the greatest importance for humanity; b. It is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protect; c. It is not use for military purposes or to shield military sites and a declaration has been made by the Party which has control over the cultural property, confirming it will not be so used."

[148] UNESCO, "List of Cultural Property under Enhanced Protection". Accessed 15 May 2021. http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/lists/enhanced-protection/

this list benefits from a higher level of immunity, as individuals who make such property the object of attack face criminal sanctions.[149]

The Second Protocol of the Hague Convention is now considered the "most effective tool for pursuing war crimes against cultural property".[150] However, it is not the only international legal instrument which protects cultural heritage during conflict. For example, under the provisions of the Rome Statue of the International Criminal Court,[151] individuals can be prosecuted as responsible for deliberate destruction of cultural property.[152] The Rome Statute allowed for the successful conviction of Ahmad Al Faqi Al Mahdi. During the Malian Civil War,[153] Al Mahdi, an alleged member of Ansar Eddine, was charged as a co-perpetrator of intentionally directing attacks against historic monuments and buildings dedicated to religion, including nine mausoleums and one mosque in Timbuktu, Mali in 2012.[154] After entering a plea of guilty, Al Mahdi was sentenced to 9 years at the International Criminal Court in 2016.[155]

f. Financial Exploitation and Conflict Resources –

Building upon the previous section and Hardy's theory of the complementary relationship of trafficking and destruction, the financial exploitation of conquered peoples and territories is germane to modern and historic military conquest. Financial exploitation as part of conquest involves the extraction and (mis)use of resources belonging to the invaded and occupied

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[149] Second Protocol of the Hague Convention.

[150] Kila, J. D., "Iconoclasm and Cultural Heritage Destruction During Contemporary Armed Conflicts," in S. Hufnagel and D. Chappell. *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. p. 654. See also Frulli, M., "The criminalization of offences against cultural heritage in times of armed conflict. The quest for consistency," *The European Journal of International Law* 22.1 (2011), pp. 203 – 217.

[151] Rome Statute.

[152] For discussion of the role of the *Rome Statute of the International Criminal Court* in the protection of cultural heritage, see: Ellis, M. S., "The ICC's Role in Combatting the Destruction of Cultural Heritage," *Case Western Reserve Journal of International Law* 49 (2017), pp. 23 – 62, and Frulli, "International and Criminal Law and the Protection of Cultural Heritage."

[153] For an account of looting and destructing of cultural property during the Malian Civil War, see: Bamidele, S., Oladele, Idowu, O, and Ajisafe, D., "Securing world heritage sites: insurgency and the destruction of UNESCO's world heritage sites in Timbuktu, Mali," *GeoJournal* (2021), https://doi.org/10.1007/s10708-021-10383-9 ; English, C., *The Book Smugglers of Timbuktu.* London: William Collins, 2017; and Human Rights Watch, *Mali Conflict and Aftermath. Compendium of Human Rights Watch Reporting, 2012 – 2017.* United States of America, 2017. For further context on the looting of Malian heritage, which had been occurring long before the jihadist invasion in 2012, see: Brent, M., "The rape of Mali," *Archaeology* 47.3 (1994), pp. 261 – 35; Dembélé, M. and van der Waals, J. D., "Looting the antiquities of Mali," *Antiquity* 65 (1991), pp. 904 – 905; McIntosh, R. J., Diaby, B. and Tongola, T., "Mali's many shields of its past," *Nonrenewable Resources* 6.2 (1997), pp. 111 – 129; Sanogo, K., "The looting of cultural material in Mali," *Culture without Context* 4 (1999), pp. 21 – 25; Sidibé, S., "The Pillage of archaeological sites in Mali," *African Arts* XXVIII.4 (1995), pp. 52 – 55; and Togola, T. "The rape of Mali's only resource," in N. Brodie and K. Walker Tubb, *Illicit Antiquities – The theft of culture and the extinction of archaeology.* London and New York: Routledge, 2002. pp. 250 – 256.

[154] *Situation in the Republic of Mali: The Prosecutor V. Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15 (2016).

[155] *Situation in the Republic of Mali: The Prosecutor V. Ahmad Al Faqi Al Mahdi: Judgement and Sentence,* ICC-01/12-01/15-171 (2016).

territories. These resources include natural resources, cultural resources, agricultural systems, wildlife specimens, and the forced labour of the conquered people. Further, it is a process which is always enforced by violence or the threat of violence.[156]

In his 2015 book, *Work, Sex and Power: Forces that Shaped Our History,* historian Willie Thompson discusses the relationship between organised violence and financial exploitation.[157] His examination of different forms of economic exploitation – which include coercive labour manifested through slavery, debt bondage, wage labour, and tribute (all of which rely on the coercion of the exploited) – highlights a continuity of exploitation colonialism from the ancient world to the 20th century. According to Thompson, the most common strategy of coercion is institutionalised, organised violence, which ranges from "penal sanctions […] to armed invasion with full-scale military apparatus" and even the "unofficial extermination of aboriginal people by private groups of settlers, supplemented, when required, by the official military."[158]

In his discussion of "exploitation and rule", Sagar Sanyal argues within a Marxist framework of exploitation that the financial exploitation of the conquered is a necessary part of war financing and state-building:

> Merchant capital plundered foreign lands to add to the wealth of the nation, and forced open new markets for national product. Productive capital systematically innovated in intensification and organisation of work, as well as in labour-saving technology. In turn, state forces were crucial to the development of these forms of capital. Loans to finance war were repaid by the spoils of conquest.[159]

In other words, armies invade territories to gain control over natural and cultural resources, and manual labour. Control over occupied regions is then maintained using institutional, organised violence and military force. The capital gained through this exploitation is what finances the costs associated with the initial conquest and ongoing domination of the conquered peoples. And the need for more capital in order to maintain control over financially exploited regions is a potential motivation for the conquest of new territories.

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[156] Thompson, *Work, Sex and Power,* pp. 78 – 99.
[157] Thompson, *Work, Sex and Power.* pp. 78 – 99.
[158] Thompson, *Work, Sex and Power,* p. 91.
[159] Sanyal, S., "Exploitation and Rule," *Social Scientist* 44.9/10 (2016), p. 25.

The 1990s saw a growing global awareness about the use of natural resources, especially diamonds, in funding conflict on a wide scale. This practice became known as the trade for conflict resources or conflict goods, which are:

> non-military materials, knowledge, animals or humans whose trade, taxation or protection is exploited to finance or otherwise maintain the war economies of contemporary conflicts. Trade can take place by direct import or export from the conflict zone or on behalf of military factions (both government and non-government) by outside supporters. Conflict goods do not include arms, military aid or the services of mercenaries, although these may be paid for in kind with goods or concessions to trade in products which would then become conflict goods.[160]

The trade of conflict resources has been associated with a number of controversies, including human rights violations, government corruption, the role of mercenaries and private armies, and the changing nature of regional peacekeeping mechanisms.[161] A rising awareness of the proliferation of conflict resources has been of great concern to international security. Not only has the size and scale of operations been alarming, but also the opportunistic approach taken by the market:

> the range of conflict goods used to finance local war economies seems to be limited only by opportunity and invention with actors trading anything from illegal passports to rare animals.[162]

Like many other illicit commodities, the modern antiquities market has been linked to both conflict and terrorist financing, resulting in the coining of the terms "conflict antiquities" and "blood antiquities". [163] As discussed throughout section 1.1.2., the past two decades in particular have seen an influx of trafficked antiquities from the Middle East into the market: a mixture of industrial and opportunistic looting practices.[164] In response to the systemic looting in the region, the United Nations Security Council unanimously adopted Resolution 2199.[165] This Security Council Resolution addresses the issue of terrorist financing broadly, with a

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[160] Cooper, N., "Conflict Goods: The Challenges for Peacekeeping and Conflict Prevention," *International Peacekeeping* 8.3 (2001), p. 27.

[161] Alao, A., "Diamonds Are Forever … but So Also Are the Controversies: Diamonds and the Actors in Sierra Leone's Civil War," *Civil Wars* 2.3 (1999), p. 44.

[162] Cooper, "Conflict Goods", p. 24.

[163] The term "conflict antiquities" was coined by Samuel Hardy, who has written extensively on the issue. See: Hardy, S. A., "The conflict antiquities trade: A historical overview," in F. Desmarais (ed.), *Countering the Illicit Traffic in cultural goods: The global challenge of protecting the world's heritage.* Paris: ICOM, 2015. pp. 21 – 31. The term "blood antiquities" is a variation of "conflict antiquities", following the "example of diamonds linked to armed conflicts and atrocity crimes". Vlasic, M. V. and Turku, A., "'Blood Antiquities': Protecting Cultural Heritage beyond Criminalization," *Journal of International Criminal Justice* 14.5 (2016), pp. 1175 – 1197. See also: Antiquities Coalition, "Blood Antiquities". 1 February 2016. Accessed 15 May 2021. https://theantiquitiescoalition.org/blood-antiquities/

[164] The influx of looted antiquities from the Middle East will be explored further in Chapters 2.1 and 2.2.

[165] UN Security Council, *Resolution 2199 (2015)*. S/RES/2199 (2015).

section dedicated to cultural heritage, which both condemns the destruction of cultural heritage in Iraq and Syria and

> *Notes with concern* that ISIL, ANF and other individuals and groups, undertakings and entities associated with Al-Qaida, are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks;[166]

The resolution prohibited *inter alia* the trade in cultural property from Iraq and Syria. However, some countries which permit the legal trade of antiquities have yet to implement Resolution 2199 into their domestic legislation, limiting the effectiveness of the instrument.[167]

This issue is compounded by the use of neutralisation techniques and other shared denial narratives (which will be discussed in section 2.1.2.e.) by market participants to justify their acquisitions of antiquities which are clearly looted from conflict zones. In addition to existing neocolonial arguments that cultural objects are "safer" in Western countries,[168] collectors and dealers maintain that they are "saving" cultural heritage from modern conflict zones.[169] However, as highlighted by Leila Amindeddoleh, this

> reasoning is facetious because removing antiquities from their historical contexts and into private collections without proper archaeological research contributes nothing to the historical record or the public.[170]

Deconstructing these arguments and narratives is essential in the improvement of the consumption practices of the modern antiquities market. It is also necessary to challenge the neocolonial frameworks which inform our wider ontologies of the past, as they underpin these justifications for supporting an illicit market. Consumer education is thus central to the proposed "Framework for Ethical Engagement with and Consumption of the Ancient World", which will be presented in Chapter 3.1.

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[166] UN Security Council, *Resolution 2199 (2015)*.
[167] Kaci, L., "We must punish the looters, but also the buyers," *The UNESCO Courier,* April 2020. Accessed 15 May 2021. https://en.unesco.org/courier/2020-4/we-must-punish-looters-also-buyers
[168] Mackenzie and Yates "Collectors on Illicit Collecting".
[169] Dundler, L., "Still covered in sand.looked very old." – Legal Obligations in the Internet Market for Antiquities," *Heritage* 2.3 (2019), pp. 2311 – 2326.
[170] Amineddoleh, L., "How western art collectors are helping to fund Isis," *The Guardian,* 27 February 2016. Accessed 15 May 2021. https://www.theguardian.com/artanddesign/2016/feb/26/western-art-funding-terrorism-isis-middle-east

Conclusion –

From ancient Roman triumphs to the looting and destruction of heritage sites in the Ukraine, objects of cultural significance have been reduced to targets and trophies. However, this theft, appropriation, and outright destruction of cultural heritage fits within a much broader narrative of conquest and oppression. In other words, these objects are not in danger of being targeted or becoming trophies for no reason. In fact, it is *because* they are significant to a group of people – for religious or political or scientific or historical or social or otherwise cultural reasons – that they are under threat.

The purpose of this chapter for the "Framework for Ethical Engagement with and Consumption of the Ancient World" is two-fold. First, it provides the historical and theoretical context from which the modern-day antiquities marker emerged. This analysis is essential in understanding how the illicit trade of antiquities operates and why it is been so difficult to combat the trafficking of cultural objects. Neocolonial justifications for the ownership of objects belonging to past peoples have limited the effectiveness of attempts to regulate the market, as well as efforts to repatriate stolen cultural heritage to descendant communities. The second purpose of this chapter is to highlight the injustices committed against living and past peoples in the name of colonialism and imperialism. Not only has this chapter surveyed the theft and destruction of objects of cultural significance, but it has also explored the experiences of peoples oppressed by colonialism more broadly. These harms of colonialism will be explored further throughout this thesis, but especially within the context of the examination of the antiquities market in Chapter 2.1 and ancient world studies in Chapter 2.2.

One of the key components of the "Framework for Ethical Engagement with and Consumption of the Ancient World" is the argument that the modern regulatory environment is insufficient to address the illegal and unethical actions of antiquities market participants. Whilst this statement speaks to the overall failure of regulatory regimes to stem the flow of illicit trafficking, it also refers to the issue of reckoning with colonial complicity. By this I mean the fact that the legal frameworks which protect cultural heritage and restrict the trade of antiquities are not retroactive. They were introduced after many countries had been "decolonised", meaning that they cannot address colonial-era looting. The "Framework for Ethical Engagement with and Consumption of the Ancient World" thus encourages market participants and the wider public to move beyond their legal obligations, and consider how their existing collections of antiquities and their collecting practices may cause harm to the living and deceased.

1.2. THE CONTINUITY OF COLLECTING:

FROM ANTIQUITY TO THE PRESENT

"Objects came my way, and some of them unquestionably, it seems to me, because they had to do so. It is as though, imbued with the spirit of their creator, they came to me because they knew I would love them, understand them, would give them back their identity and supply them with a context in keeping with their essence, relating them to their likes." (George Ortiz)[171]

Introduction –

The modern antiquities market is located within a complex and continuous historical context, stretching from pre-historic object hoards to the sales pages of eBay. It is a marketplace that has involved, and continues to reflect, the diverse perspectives of different nations, communities, peoples, individuals, and institutions. It is also a marketplace shaped by centuries of consumption practices and value-making processes which continue to dictate our relationships with objects.[172] This chapter situates the antiquities market within this broader history of collecting. Humans have long had complex relationships with objects. Collecting, however, is distinct from mere acts of accumulation. Thus, it is necessary to establish these differences, as well as the psychosocial and cultural motivators for collecting.

The first part of this chapter is dedicated to defining collecting and collections of objects, and identifying some of the theories of motivations for collecting. Once this theoretical understanding of collecting is established, a broad overview of the history of collecting is provided. This will involve drawing connections between ancient classical art objects and their cultural value, with later periods of European history including Renaissance, post-Renaissance, early modernist and classical modernist phases of collecting. In doing so this chapter will demonstrate that there is continuity between classical values and the modern consumption of the past. It will also reinforce the message disseminated in Chapter 1.1: that antiquities

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[171] Ortiz, G., "Overview and assessment after fifty years of collecting in a changing world," in: E. Robson, L. Treadell and C. Gosden (eds), *Who Owns Objects: The Ethics and Politics of Collecting Cultural Artefacts*. Oxford: Oxbow, 2006. p. 20.

[172] Referencing the four value-making processes established by cultural theorist Jean Baudrillard, which outline the four ways an object obtains value. See: Baudrillard, *Le système des objets*.

collecting and the antiquities market is deeply embedded within the history of European colonialism and imperialism.

The third part of this chapter brings together the theoretical and historical contexts established in Chapter 1.1 by applying a post-colonial lens to the "culture" of antiquities collecting. By this I mean both the shared values and practices of antiquities collectors and collecting institutions – their community "culture" – and the material culture of peoples that are consumed and commodified in the antiquities market. This discussion is framed by the work of postcolonial scholar, Edward Said and his theory of Orientalism: the Western imperialist tradition of imitating or depicting the Eastern world. In the context of this study of the antiquities market, Orientalism provides an explanation for contemporary neocolonial collecting practices, which is influenced by a festishisation of "otherness".

The fourth and final part of this chapter is an examination of post-colonial antiquities collecting and the decolonisation of collections. Of particular focus in this discussion is the role of collecting institutions, especially museums, in repatriation and decolonising processes. This section provides an outline of the repatriation and decolonisation movement, and considers both the benefits and risks involved in these processes. Reckoning with colonial complicity is necessary for all beneficiaries of colonialism and colonial institutions and decolonising collections is part of this journey. However, if not embedded in a culturally safe methodologies, there is the danger of (re)traumatisation and causing further harm to descendant and source communities.

1. What is Collecting?

In order to best encapsulate the nature of the modern antiquities market, it is necessary to establish a broader understanding of collecting as a phenomenon. In her exploration of the European tradition of collecting, Susan Pearce acknowledges that collecting and collections represents the "dynamic relationship" between humans and the "material world".[173] All object groupings are capable of reflecting the "essentially mysterious workings of the communal and individual imagination," however, Pearce argues that for an object group to constitute a "collection" it must have been formed as a "special accumulation".[174] So what makes the act of accumulation special? Why is it significant for collectors to distinguish between

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[173] Pearce, *On Collecting,* p. 33.
[174] Pearce, *On Collecting,* p. 33.

"connoisseurship and mere accumulation"?[175] And why do we collect some objects, and not others?

Our understanding of collections has changed significantly over time and across sociocultural contexts. A number of writers have sought to define collecting and collections, and otherwise distinguish these processes from other types of object groupings. One of the earliest modern perspectives come from Walter Durost's work on children's collecting activities.[176] Durost introduced the idea that collections are distinct from other object groupings as they are "essentially composed of objects which bear an intrinsic relationship to each other in a sequential or representative sense, rather than each being valued for its own qualities."[177] Within this framework, collecting is serialised and fails to acknowledge objects which clearly have "qualities of their own", such as artworks, manuscripts, and pictures.[178]

Later discussions of collecting, and how it differs from "accumulating" and "hoarding", emerged within the context of psychological studies which sought to understand consumption behaviours in the 1980s. According to Pearce, it is within this context that the idea of the "collector" as having a "rational" purpose which drives collecting practices emerged, whilst a "miser/accumulator/hoarder" does not.[179] In other words, collecting is always a systematic and organised process which contains an inherent logic. These definitions, however, do not capture what Pearce calls the "subjective side" of collecting which is reflected in more contemporary understandings of the phenomenon. In 1990 experts in consumer behaviour, Russel Belk and his colleagues, offered a definition which emphasised the idea that collecting is "interrelated" and that a collection is "somehow more than the sum of its parts".[180] They argue collecting is

> selective, active, and longitudinal acquisition, possession and disposition of an interrelated set of differentiated objects (material things, ideas, beings, or experiences) that contribute to and derive extraordinary meaning from the entity (the collection) that this set is perceived to constitute.[181]

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[175] "Such developments take cognizance of the historical difference between connoisseurship and mere accumulation." Muensterberger, *Collecting,* p. 53.

[176] Durost, W. N., *Children's collecting activity related to social factors.* New York: Teachers College, Columbia University, 1932.

[177] Pearce, *On Collecting,* p. 20.

[178] Pearce, *On Collecting,* p. 21.

[179] Pearce, *On Collecting,* p. 21.

[180] Pearce, *On Collecting,* p. 21.

[181] Belk et al., "Collecting in a Consumer Culture," p. 8.

For Pearce, however, it is essential to consider a collection not as an outcome but as a process. It is a process involving selection, separateness, and the act of sacrifice which transforms the collected object "from the profane – the secular world of mundane, ordinary commodity – to the sacred, taken to be extraordinary, special, and capable of generating reverence."[182] This collecting process outlined is deeply connected to the historical context in which collecting developed – ranging from the classical world to the periods of European colonisation and the post-industrial age. But before delving into this history of collecting, it is worth exploring some of the interpretations of collective and individual motivations to form collections.

2. Motivations for Collecting –

This chapter is preceded by a quote from prolific antiquities collector, George Ortiz. Born in Paris in 1927, Ortiz discovered his passion for the ancient world during a trip to Greece in 1949.[183] The George Ortiz collection is one of the largest privately-owned collection of antiquities existing today; a collection which, in Ortiz's words, is "proof that the past is in all of us and we will be in all that comes after us."[184] Here Ortiz is embodying one of the common motivations for the collection of antiquities – as a form of structuring our relationship with the distant past in ways which are informed by socio-cultural values and geopolitical factors.

When reflecting on his collecting practices, Ortiz also highlights another recurring trait in antiquities collectors: a capacity for harbouring intimate, and even erotic, connections with objects from the ancient world. Erin Thompson's examination of the history of private collectors devotes an entire chapter to exploring the intimate and erotic aspects of antiquities collecting,[185] commencing with a reference to the myth of Pygmalion.[186] Throughout this

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[182] Pearce, *On Collecting,* p. 24. Here Pearce is paraphrasing Belk, R. et al., "Collectors and Collecting," *Advances in Consumer Research* (1988), pp. 548 – 553, and the work of Hubert, H. and Mauss, M., "Magic, Technology and Science," in E. A. Tiryakian (ed), *On the Margin of the Visible: Sociology, the Esoteric and the Occult.* New York: John Wiley & Sons, 1974. pp. 237 – 41.

[183] This narrative resembles 17th and 18th century Grand Tours, which will be discussed in section 1.2.3.c.

[184] Ortiz, G., "Why do you collect?" The George Ortiz Collection, 2004. Accessed 5 August 2020. https://www.georgeortiz.com/about/

[185] Thompson, E., *Possession. The Curious History of Private Collectors from Antiquity to the Present.* New Haven & London: Yale University Press, 2016. pp. 86 – 110.

[186] Pygmalion was a Greek sculptor who fell in love with a statue of a woman he had carved into a statue, most famously depicted in book 10 of Ovid's *Metamorphoses.* In Ovid's interpretation, Pygmalion made offerings at the altar of Aphrodite during the goddess's festival, wishing for a bride that would be the living likeness of his beloved statue. Aphrodite granted his wish, and Pygmalion married his living statue, who bore him a daughter. Ovid, *Metamorphoseon,* X.243-297. Trans. A. S. Kline. A complete English translation and Mythological Index. Charlottesville, Virginia: University of Virginia Library, 2000. Accessed 5 August 2020. https://ovid.lib.virginia.edu/trans/Metamorph10.htm
Since then Pygmalion has been (re)imagined in fiction as a representation of human connections between art, beauty, love, and sexuality.

chapter Thompson explores the sensual appeal of classical art objects, which has long been attractive to "a certain type of collector": a "lover of antiquities" who

> both seeks to control, the object of his love and believes that he (and it is almost always he) has special powers to understand and interpret his beloved.[187]

This argument that collecting is an intimate and individualised experience is supported by psychoanalyst Werner Muensterberger.[188] His work is based on the assumption that "the passion for collecting is closely linked to a deep attachment to objects which substitute for, and quite often supplant, people."[189] Collecting within his psychoanalytic framework is motivated by deeply intimate and personal factors, which inform not only what an individual collects, but also how they collect.[190] Whilst Muensterberger does acknowledge that variations in collected objects may be informed by the "historical period," or "fashion and social environment",[191] he maintains that collecting is largely driven by one's individual preferences and remains based on their personality structure.

Within Munsterberger's psychoanalytic framework the drivers of collecting remain largely consistent. Collecting provides individuals with the means to alleviate the anxiety caused by "early traumata" or disillusionment: an "escape hatch for feelings of danger and the reexperience of loss" which is felt as a "source of pleasure and wish fulfilment."[192] Collected objects can also provide the collector with "fantasized omnipotence" and a "protective narcissistic shield."[193] This interpretation aligns with Belk's framing of consumer behaviour and human relationships with material possessions, one which is shaped by processes of self-

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[187] Thompson, *Possession,* p. 87. For further discussion of collecting as a manifestation of an erotic relationship with the past, see Pearce, *On Collecting,* pp. 245 – 247 and Sontag, S., *On Photography,* London: Penguin Books, 1979. pp. 23 – 4.

[188] Muensterberger, *Collecting.*

[189] Muensterberger, *Collecting,* p. 25. Muensterberger reaches this conclusion through an assessment of attachment theory which sees the need for "symbolic substitutes" emerging in early childhood, where objects become capable of not only fulfilling the need for emotional support but also provide children with a sense of protection, control, and mastery. Within this analysis he refers to a Freudian representation of ownership and control in early childhood, and Otto Feinchel's associations of "cupidity and collecting mania" with an infantile attachment to faeces. See Muensterberger, *Collecting,* pp. 14 – 24; Feinchel, O., *The Psychoanalytic Theory of Neurosis.* New York: W. W. Norton, 1945, and Freud, S., "Beyond the Pleasure Principle" (1920), in S. Freud, *Standard Edition,* vol. 18. London: Hogarth Press, 1955. pp. 14 – 16.

[190] Muensterberger, *Collecting,* p. 25.

[191] Muensterberger, *Collecting,* p. 25.

[192] Muensterberger, *Collecting,* p. 47.

[193] "Collecting is one of those defences that promises temporary relief and bring new vitality because every new object effectively gives the notion of fantasized omnipotence […]. Even such casual remarks indicate how ownership of objects and the pride and pleasure in their possession has more than one function: the object becomes a countermeasure to insecurity and thus a protective narcissistic shield. It also conveys the owner's covert need to hear pronouncements of praise and admiration: "Admire the shell, which is me," he is really saying by displaying his collection." Muensterberger, *Collecting,* p. 254.

extension.[194] According to Belk, our possessions are a reflection of our identities and "an important component of sense of self."[195] Thus, the objects in a collection are the "extended self" of the collector.

Whilst acknowledging the individual psychological factors which drive an individual to collect, Pearce emphasises a social constructivist approach to collecting. To her, collecting itself is a deeply social interaction steeped in principles of "the mechanisms of inheritance" and will thus always be shaped by both wider cultural and more intimate family practices.[196] Social structures – "like family relationships, notions of surplus and prestige, and religious practices" – are thus reflected in historic and contemporary collecting processes, in both private and, especially, public collections.[197] Inheritance is a particularly important social dynamic within the context of collecting, as both collections and collecting practices are often passed down for generations within families.

This mechanism of inheritance is also observable in the drive to collect classical objects, which are capable of symbolising the birth of Western civilisation. According to cultural theorist Jean Baudrillard, it is this element which gives ancient objects a "double meaning" in a modern context.[198] To quote Baudrillard, the

> object no longer has any practical application, its role merely to *signify*. It is astructural, it refuses structure, it is the extreme case of disavowal of the primary functions. Yet it is not afunctional, nor purely 'decorative', for it has a very specific function within the system, namely the signifying of time.[199]

The function of the ancient object within Baudrillard's theories of consumption is multi-faceted. Not only do antiquities signify a historical period, thus mediating our relationship with antiquity, but collections of antiquities are capable of representing the dominance of one society over another. They become a physical manifestation of the coloniser possessing the colonised; of the conqueror owning the conquered. Section 1.1.2.d. explored this phenomenon, which has manifested in the war museums of Ancient Greeks and the display of artefacts belonging to colonised peoples in European collecting institutions. These examples will be returned to again

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[194] Belk, R. W., "Possessions and the Extended Self," *Journal of Consumer Research* 15.2 (1988), pp. 139 – 168.
[195] Belk, "Possessions," p. 139
[196] Pearce, *On Collecting,* p. 159.
[197] Pearce, *On Collecting,* p. 28.
[198] Baudrillard, *Le système des objets,* pp. 77 – 78.
[199] Baudrillard, *Le système des objets,* pp. 77 – 78. NB: Author's own italics.

in Parts 2 and 3 of this thesis, but briefly here it is necessary to identify colonialist and imperialist discourses as a motivator for collecting.

In his 1920 essay, "The Souls of White Folk," W.E.B. Du Bois reflected on the question: "[b]ut what on earth is whiteness that one should so desire it?" His response was that "whiteness is the ownership of the earth, forever and ever, Amen!"[200] Nearly a century later Goenpul scholar Aileen Moreton-Robinson interrogated this relationship between race, sovereignty, and possession, ultimately arguing that settler colonies are "socially and culturally constructed as a white possession."[201] According to Moreton-Robinson this idea of possession is a product of the sixteenth century "episteme of Western culture" in which the conceptual schemata of "race and gender divided humans into three categories: owning property, becoming propertyless, and being property."[202] This logic presented by Moreton-Robinson can be easily applied to the markets for antiquities. These are objects which are owned, and their ownership is capable of signifying both a connection to the past and imperial domination. When these objects are taken from colonised or otherwise oppressed peoples, they become propertyless and disconnected from their cultural identities. Finally, in the case of the market for human remains, individuals quite literally become property which can be purchased and sold.[203]

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[200] Du Bois, W.E.B. "The Souls of White Folk" in *W.E.B. Du Bois Writings.* New York: Library of America, 1987. p. 924.

[201] Moreton-Robinson, A., *The White Possessive. Property, Power and Indigenous Sovereignty.* Minneapolis, MN: University of Minnesota Press, 2015.

[202] Moreton-Robinson, *The White Possessive,* p. xxiii-xxiv.

[203] The market for human remains is a unique subset of the antiquities market. While elements of the market will be discussed in Chapter 3.2 in relation to the Australian context, a more detailed the market for human remains falls outside of the scope of this thesis. For further information about the market for human remains and collections of human remains, see: Carney, S., *The Red Market. On The Trail of the World's Organ Brokers, Bone Traffickers, Blood Farmers, and Child Traffickers.* New York: HarperCollins, 2011; Choi, C. Q., "NY Mummy Smugglers Reveal Vast Antiquities Black Market," *Live Science,* 26 July 2011. Accessed 26 August 2020. https://www.livescience.com/15234-ny-mummy-smugglers-reveal-vast-antiquities- black-market.html (NB: This link depicts an image of mummified human remains); Davis, S., "Meet the Living People Who Collect Dead Human Remains," *Vice,* 14 July 2015. Accessed 25 August 2020. https://www.vice.com/en_us/article/wd7jd5/meet-the-living-people-who-collect-human-remains-713 ; Fabian, A., *The Skull Collectors: Race, Science, and America's Unburied Dead.* Chicago: University of Chicago Press, 2020; Gambino, P. (ed), *Morbid Curiousities: Collections of the Uncommon and Bizarre.* London: Laurence King Publishing, 2016; Halling, C. L. and Seidemann, R. M., "They Sells Skulls Online?! A Review of Internet Sales of Human Skulls on Ebay and the Laws in Place to Restrict Sales," *Journal of Forensic Sciences* 61.5 (2016), pp. 1322 – 1326; Huffer, D. and Chappell, D., "The Mainly Nameless and Faceless Dead: An Exploratory Study of the Illicit Traffic in Archaeological and Ethnographic Human Remains," *Crime, Law and Social Change* 62 (2014), pp. 131 – 153; Huffer, D. and Graham, S., "The Insta-Dead: The Rhetoric of the Human Remains Trade on Instagram Internet Archaeology," *Internet Archaeology* 45 (2017). https://doi.org/10.11141/ia/45.5 ; Huxley, A. K. and Finnegan, M., "Human Remains Sold to the Highest Bidder! A Snapshot of the Buying and Selling of Human Skeletal Remains on Ebay, an Internet Auction Site," *Journal of Forensic Science* 49.1 (2004), pp. 17 - 20; Kubiczek, P. A. and Mellen, P. F., "Commentary on: Huxley, A.K. and Finnegan, M. (2004) Human Remains Sold to the Highest Bidder! A Snapshot of the Buying and Selling of Human Skeletal Remains on Ebay, an Internet Auction Site. Journal of Forensic Science 49(1), 17 – 20," *Journal of Forensic Science* 5.1 (2004), p. 1; MacDonald, H. P., *Human Remains: Episodes in Human Dissection.* Carlton, VIC: Melbourne University Press, 2005; and Redman, S., *Bone Rooms. From Scientific Racism to Human Prehistory in Museums.* Harvard: Harvard University Press, 2016.

3. The History of Collecting –

Collecting is both an intimate and individual activity which reflects a psychological need to control and connect with the material world, and a social practice which is informed by cultural traditions and geopolitical factors. Based on this belief it is necessary to examine the history of collecting which has shaped the modern antiquities market, as well as our broader relationship with the tangible remains of antiquity. The following overview of the historical development of collecting is broadly from a European perspective. This is not to say that Europeans are the only peoples who collect objects of cultural significance; but rather an acknowledgement that the modern antiquities market is irrevocably a product of European colonialism and centuries of colonial collecting practices.

a. Ancient Mediterranean Influences –

Evidence of object grouping and collecting is observable in pre-historical burial hoards.[204] However, it is in the context of the ancient Mediterranean that the modern antiquities market finds its true origins. Public collections of art and cultural objects, often acquired through the conquest of enemy armies or oppressed peoples, were observable from the Greek Bronze Age to the Roman Imperial Period.[205] During the period of Late Republican to Early Imperial Rome, private collections were also established and displayed by wealthy individuals to signify their social status.[206] Of particular value within these collections were pieces of Greek art, sought after by the Romans because they were "seen as the product of a different, past culture."[207]

It is also in this context that the foundations of the modern-day museum can be observed, originating from the Greek word μουσεῖον (*mouseion),* which translates to "the shrine or home of the muses". Whilst it could be used to describe an actual shrine or holy place, the word was commonly used by Athenian writers in a "metaphorical sense to imply the home of music and poetry."[208] According to Pearce, the relationship of the *mouseion* to the collecting process is a

> tangential one, which results in part from the way in which the classical world and its institutions were adopted by the world of the Renaissance a thousand years later.[209]

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[204] Pearce, *On Collecting,* pp. 57 – 86.
[205] The acquisition of art and cultural objects belonging to "conquered" will be explored further in the next part of this chapter. See also, Miles, *Art as Plunder*; Pearce, *On Collecting,* pp. 88 – 92; Snodgrass, *Archaic Greece;* and Thompson, *Possession,* pp. 7 – 10.
[206] Thompson, *Possession,* pp. 10 – 13.
[207] Thompson, *Possession,* p. 9.
[208] Pearce, *On Collecting,* p. 96.
[209] Pearce, *On Collecting,* p. 97.

The most famous example of this was the Μουσεῖον τῆς Ἀλεξανδρείας (*Musaeum or Mouseion of Alexandria*. Believed to be founded in the late third century BCE by Ptolemy I Soter, the Alexandrian Museum – which included the famous Library of Alexandria – was actually a scholarly rather than collecting institution.[210]

Further, the market for art in the ancient Mediterranean was associated with the establishment of industries to facilitate consumer demand. According to Thompson, by the Late Republican Period "Rome had a busy art market, complete with professional dealers, restorers, appraisers, and forgers."[211] The demand from Roman collectors for Greek art was so great that it encouraged living Greek artists to set up workshops throughout Italy where they created contemporary works, and there were also professional copyists "who turned out thousands of re-creations of the most well-known Greek sculptures".[212] Collecting practices in the Ancient Mediterranean saw the emergence of a number of traditional market values that are still observable in the modern antiquities market. These include the practice of plundering the cultural heritage of conquered peoples and nations; the association between social status – or what would now be identified as cultural capital[213] – and the acquisition and display of cultural objects in both public buildings and private households; the erotic and intimate relationships forged between collector and collection; the festishisation of the "other"; and the emergence of an industry of experts and labourers to support the market.

b. Christian Collecting –

The emergence of Christianity in the ancient world influenced significant developments in collecting processes which continue to inform the motivations and behaviours of antiquities collectors today. Whilst there was some continuity between classical and early Christian collecting, Christianity forged new, and long-lasting, directions for the collecting of culturally significant objects. Further, due to the suspicions Early Christians directed at non-Christian culture, including artistic styles, the existing marketplace required significant changes in order to survive. For example, Christian artists had to adapt certain classical techniques and styles of

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[210] See Findlen, P., "The Museum: Its Classical Entomology and its Renaissance Genealogy," *Journal of History of Collections* 1 (1989), pp. 59 – 78.

[211] Thompson, Possession, p. 10.

[212] Thompson, Possession, p. 11.

[213] Pierre Bourdieu's theory of "cultural capital" refers to the social assets formed accumulated by an individual which dictates social order. Within this framework, the more cultural capital – embodied, objectified, and institutionalised – possessed by an individual, the more powerful position they adopt in society. Cultural capital is always contextual, and reliant on and reflective of the contemporary sociocultural and geopolitical values. See: Bourdieu, P., "The Forms of Capital," in J. Richardson (ed.), *Handbook of Theory and Research for the Sociology of Education.* Westport, CT: Greenwood, 1986. pp. 241 – 258.

art "for their own purposes", such as "conveying the authority of Christ by showing him wearing the robes and sitting on the throne of a Roman emperor."[214]

However, existing collections of non-Christian artworks, especially statues of deities, were not so easily adopted into emerging Christian society. Thompson argues that existing beliefs of the Greeks and Romans that statues were capable of embodying the divine were not abandoned by Christians, but rather that they "shifted their divine alliances" away from non-Christian deities:

> [The Christians] regarded Greek and Roman statues as inhabited not by gods but by demons. These demons had some powers, but, of course, nothing compared to those of the Christian God. The best way to avoid these demons was to ignore them. Thus, after some early and limited periods of active destruction, the Early Christians simply left most pagan statues alone.[215]

Suspicions that ancient art objects possessed demonic powers remained pervasive from the Byzantine to the early Renaissance period. Even those who collected and admired classical art acknowledged the "potential harm in possessing or over-appreciating classical art."[216] Ancient art objects, however, were collected by religious authorities and displayed in medieval and early modern churches for similar reasons that the ancient Greeks and Romans acquired objects during their military conquests: as a means of "measuring Christianity's competition, and victory over" non-Christian antiquity.[217]

By far the most important evolution in collecting practices which developed in the early Christian period was the acquisition and display of holy relics belonging to Christian saints and martyrs. Holy relics, or *reliquiae,*[218] include all aspects of the material remains of the dead where the soul is believed to be incorporated in flesh, bones, hair, and nails, and hair. Other remains, such as crosses and shrouds, belonging to the holy figures were also sought after and enshrined in early Christian churches.[219] Like the statues capable of being embodied by deities,

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[214] Thompson, *Possession,* p. 13.
[215] Thompson, *Possession,* pp. 13-14. See also Mango, C., "Antique Statuary and the Byzantine Beholder," *Dumbarton Oaks Papers* 17 (1963), p. 56.
[216] Thompson, *Possession,* p. 16.
[217] Thompson, *Possession,* p. 18.
[218] *Reliqiuae* meaning "remains", from the verb *relinquere:* "to leave behind, abandon".
[219] Further, in Catholic theology the distinctions between holy objects are clearly defined and classified into three classes: first-class relics, which include items which were associated with the life of Jesus Christ or the physical remains of a saint; second-class relics, which are items that belonged to a saint; and third-class relics, which include any other object that has been in contact with first- or second-class relics. Internet searches reveal guides for how to acquire and care for different types of relics, and even how to "make" a third-class relic with posts on Catholic Answers Forum (forums.catholic.com) and the r/Catholicism subreddit which has 99k members as of August 2020.

these objects were seen as a "magic tie between body and soul, and consequently between the mundane and spiritual."[220] From the fourth century CE the belief that both the relics and locus of these relics belonging to Christian holy figures were of significance to the living was well-established,[221] with texts from the time stressing "that the remnants of saints and martyrs had *dynamis* [δύναμις] (from the Greek *force),* and thus ownership of relics as a reservoir was introduced" or rather, re-introduced and appropriated from existing non-Christian traditions.[222]

In her history of collecting, Pearce emphasises that the significance placed on sites where relics were buried or enshrined were more than just the locus of the act of remembrance. But rather a tangible space which mediated between God and men: "where Heaven and Earth touched, where this world and the Otherworld met."[223] Similar to antiquities and other objects of cultural significance, the remains of saints and martyrs undergo a transformative process when collected. However, an additional transformation is also involved which is distinct: the transformation of death which turns the living, a subject, into a thing, an object.

Further, the belief that the corporeal remains, and especially the skulls, of saints possessed deep spiritual significance resulted in what Muensterberger calls a "manic demand for holy relics" which could not be satisfied by "entirely spiritual pursuits."[224] To support his claim, he refers to the murder of St. Romuald,[225] and the death of St. Elisabeth of Thuringia in 1231, whose hair, nails, fingers, ears, and nipples were removed by impassioned townspeople in the city of Marburg not long after she died.[226] For Muensterberger, these were more "than symbolic acts": instead

> [t]hey characterize the plasticity of emotions found in this period. Love and affection often merge with passionate violence, and occasionally culminate in outbursts of religious intoxication.[227]

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[220] Muensterberger, *Collecting,* p. 63.
[221] Pearce, *On Collecting,* pp. 98 – 102.
[222] Muensterberger, *Collecting,* p. 62.
[223] Pearce, *On Collecting,* p. 98 – 99.
[224] Muensterberger, *Collecting,* p. 70.
[225] A "holy hermit" who "let it be known that he intended to leave his Umbrian village, the people in his parish made secret plans to take his life so that they would not be deprived of his sanctified remains." Muensterberger, *Collecting,* p. 70. See also Fichtenau, H., "Zum Reliquienwesen im frühen Mittelalter," *Mitteilungen des Instituts für Oesterreichische Geshichtsforshung* 60 (1952), p. 75.
[226] Muensterberger, *Collecting,* p. 70. This description comes from Caesarius von Heisterbach (ca. 1180 – ca. 1240), a prior of a Cistercian monastery who was best known for his compilation of a book of hagiography, *Dialogus miracolum* (ca. 1219-1223). For further discussion see Huyskens, S., *Quellenstudien zur Geschichte der Heiligen Elisabeth.* Marburg: Verlag Elwerth, 1908, and Busse-Wilson, E., *Das Leben der Heiligen Elisabeth.* Munich: C. H. Beck, 1931.
[227] Muensterberger, *Collecting,* p. 70.

These traditions and ideas which emerged during the period of early Christianity have been remarkably pervasive over time, with the early Medieval churches particularly known for its "immensely impressive" collections of "holy treasures".[228] Like antiquities, holy relics have been collected both publicly and privately since antiquity. In the 21st century, the internet provides new opportunities for Christians to experience spiritual relationships with the tangible remains of holy figures, although at a risk of acquiring an inauthentic relic. Forgeries of holy relics are not a new phenomenon either, with the trade of fake religious relics existing since the demand for these objects in the early Medieval period. Well known forgeries, like the Shroud of Turin,[229] are still sites of pilgrimage for Christians today which further demonstrates the complicated and continuous relationships between individual and institutional religious faith and the tangible remains of early Christianity.

c. Renaissance Collecting –

Again, like the period of Christian collecting discussed above, collecting processes between the 15th and 17th centuries built on the foundations of existing collecting traditions, albeit reshaped and refined by the social and cultural mores of the time. It is in this context, however, that a number of new traditions and practices emerged which would re-define collecting in ways that remain especially relevant in the modern antiquities market. It is in this period of European history that collecting became a veritable cultural pursuit and obsessive passion, which was influenced by nascent modernist principles. These beliefs translated into practices and values which are germane in the contemporary antiquities market.

Throughout the Renaissance period, a number of words were used to describe the accumulation of specific objects, which were valued and grouped together in ways which "stressed perceived similarities between particular and remarkable things"[230]. These objects, often referred to as "wonders" or "curiousities", were housed in private and public collections in ways that are consistent with how modern antiquities collectors and collecting institutions interact with the remains of the ancient world today. For example, in German, the word *Kammer* ("room" or "chamber") would be added to *Wunder* ("wonder"), *Kunst* ("art"), or *Schatz* ("treasure")

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[228] Pearce, *On Collecting,* pp. 98 – 102.
[229] Although the authenticity of the Shroud of Turin continues to be discussed in academic and religious discourse even in 2020. For further discussion of the Shroud of Turin and its historical and modern reception, see Kemp, M., *Christ to Coke: How Image Becomes Icon.* Oxford: Oxford University Press, 2011; McCrone, W., *Judgement Day for the Shroud of Turin.* Chicago: Microscope Publications, 1996; and Oxley, M., *The Challenge of the Shroud: History, Science, and the Shroud of Turin.* Milton Keynes, UK: AuthorHouse, 2011.
[230] Pearce, *On Collecting,* p. 111.

depending on the context,[231] whilst in Italian the commonly used terms were *studio, studiolo, galleria,* and *museo*.[232] In English, the word "cabinet" was used to refer to "the small room in which the whole collection was housed, or the cupboards which held it, or the collection itself",[233] or the entire assemblage as a "cabinet of curiousities" or "cabinet of rarities".

It is in this context that a "specialised trade in curiosities" emerged, facilitated by specialist shops throughout Europe, travels to foreign countries, and traders operating cargo ships.[234] According to Ken Arnold, the processes involved in the acquisition of objects for display in curiousity cabinets was dependent upon "the social standing of the collector":

> For the aristocracy and nobility, the combination and urge to possess and the wealth to acquire, or alternatively the power to reward those who might offer gifts, was in itself enough to guarantee that their cabinets filled up with what Robert Burton described as "exotick toys".[235]

Throughout the European Renaissance, wealthy individuals acquired large accumulations of objects to display in these "cabinets" which had been collected throughout earlier periods of history – including antiquities, sculptures, artworks, war "trophies", and manuscripts – combined with natural materials – "like coral, scientific instruments, material from the natural worlds of animal, vegetable and mineral, and things which were monstrous, misshapen, especially large or particularly small."[236] These objects were organised and displayed according to contextual beliefs about (European) man's mastery of the natural world. For example, in his description of the Prague-based collections of Rudolf II (1552-1612), Thomas Kaufmann identified "a carefully organized content based on the system of correspondences" which reflected "Rudolf's possession of the world in microcosm in his *Kunstkammer* as an expression of his symbolic mastery of the greater world."[237] Over time the collection of figures like Rudolf II and other "princes and men of the middling sort" provided the framework for Renaissance collecting which was replicated throughout the 16th and 17th centuries.[238]

The Renaissance is also the period which we can associate with the birth of the modern museum. Large and prominent private Renaissance collections housed in "royal residences and

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[231] Pearce, *On Collecting,* p. 109.
[232] Hooper-Greenhill, E., *Museums and the Shaping of Knowledge.* London: Routledge, 1992. p. 88.
[233] Pearce, *On Collecting,* p. 109.
[234] Arnold, *Cabinets for the Curious: Looking Back at Early English Museums.* Aldershot, UK: Taylor & Francis Ltd, 2006. pp. 112 – 115.
[235] Arnold, *Cabinets for the Curious,* p. 112
[236] Pearce, *On Collecting,* p. 112.
[237] Kaufmann, T. D., "Remarks on the Collections of Rudolf II: The *Kuntskammer* as a *Form of Representatio,"* Art Journal 38.1 (1978), p. 27.
[238] Pearce, *On Collecting,* pp. 112 – 113.

aristocratic homes" often developed into public collecting institutions,[239] whose existence represented the early modernist view that studying art and history contained both moral and didactic purpose.[240] For example, the collection of John Woodward, totalling 9,400 specimens acquired between the years 1688 and 1724, was deposited in what became the Sedgwick Museum of Earth Sciences[241] – a public collecting institution located in Cambridge which opened in 1904 and remains open today.[242] In his will Woodward stipulated that his collection should always be accessible "to all such curious and intelligent persons as shall desire a view of [it] for their information and instruction".[243] It is within this context that institutions which have consistently shaped both European historical narratives and scientific scholarship emerged, including the foundation of the Royal Society in 1660, which is still in operation today.[244]

The perceived social and political value of objects which were collected during the Renaissance period led to a supply and demand dynamic similar to what can be observed during the modern market for antiquities. Like the unsustainable consumption practices of the classical Mediterranean, Renaissance Europe set the standard for what Thompson calls "unscrupulous collectors" who would go to extreme, and often illegal, lengths in order to acquire the objects of their desire.[245] Using the collecting practices of individuals like Lorenzo de' Medici (1449 – 1492)[246] and Isabella d'Este (1474 – 1539),[247] Thompson outlines how Renaissance collectors negotiated relationships based on political favour with other collectors and antiquities dealers, whilst flouting "the regulations established by […] governments without showing any conscience."[248]

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[239] Procter, *The Whole Picture,* p. 21

[240] Pearce, *On Collecting,* pp. 114 – 121.

[241] Price, D., "John Woodward and a Surviving British Geological Collection of the Early Eighteenth Century," *Journal of History of Collections* 1 (1989), pp. 79 – 85.

[242] Sedgwick Museum of Earth Sciences, "History". Accessed 25 August 2020. http://www.sedgwickmuseum.org/index.php?page=top_history

[243] Sedgwick Museum of Earth Sciences, "History".

[244] Royal Society, "About us – History". Accessed 27 August 2020. https://royalsociety.org/about-us/history/. For discussions of the Royal Society's "repository", see: Hunter, M., "Between Cabinet of Curiosities and Research Collection," in M. Hunter, *Establishing the New Science.* Woodbridge, Suffolk: Boydell, 1989. pp. 123 – 244.

[245] Thompson, *Possession,* pp. 140 – 159.

[246] Lorenzo de' Medici was an Italian statesman and de factor ruler of the Florentine Republic (1469 – 1492), as well as being a powerful and influential patron of Renaissance culture in Italy. For discussion of his collecting practices, see: Fusco, L. S., *Lorenzo de' Medici: Collector and Antiquarian.* Cambridge: Cambridge University Press, 2006.

[247] Isabella d'Este was the Marchioness of Mantua, who served as the regent of Mantua during the absence of her husband, Franceso II Gonzaga. She is regarded as one of the most important art patrons during the Renaissance. For discussion of her antiquities collection, see: Brown, C. M., "*Lo insaciabile desiderio nostro de cose antique:* New Documents on Isabella d'Este's Collection of Antiquities," in C. H. Clough (ed), *Cultural Aspects of the Italian Renaissance: Essays in Honour of Paul Oskar Kristeller.* Manchester: Manchester University Press, 1976. pp. 324 – 353; Chambers, D. and Martineau, J. (eds), *Splendours of the Gonzaga.* London: British Museum, 1981; and Brown, C. M., *Per Dare Qualche Speldare a la Gloriosa Cita de Mantua: Documents for the Antiquarian Collection of Isabella d'Este.* Rome: Bulzoni, 2002.

[248] Thompson, *Possession,* p. 145.

Later, during the Grand Tours of the 17th and 18th centuries,[249] collectors and dealers developed strategies to bypass papal antiquities laws including having sculptures inspect before being cleaned or restored in order to conceal their true value and shipping pieces of sculpture separately in order to obtain a lower valuation by the authorities.[250] Dealers also bribed officials to receive export licenses, a practice which was so commonplace that the cost of the bribes were seen as "matter-of-fact business expenses."[251] It is worth noting that these practices which developed during the Grand Tours of the 17th and 18th centuries are remarkably consistent with the laundering processes of modern day antiquities looters and traffickers. It is also in this context that the prevailing antiquities market values of discretion and confidentiality between buyers and dealers was established – an idea which will be discussed in further detail in Chapter 2.1.

There were a number of philosophical and geopolitical factors which drove European individuals, institutions, and nations to form collections between the 15th and 17th centuries. Whilst motivations to collect varied depending on the immediate context of the collection, Ken Arnold has argued in a number of works that there was a pervasive belief amongst Renaissance collectors, especially in the 17th century, that objects could "speak".[252] According to Arnold, there are three distinct methodologies used by collectors that make objects speak: first, a "narrative approach" in which "objects bore witness to true stories"; second, a "utilitarian strategy" which highlights the economic value of an object; and third, a "classificatory enquiry" which places objects in a systematic order.[253]

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[249] The traditional "coming-of-age" trip through Europe undertaken by young European men as part of their education which emerged during the mid-to-late 17th century was a customer rite-of-passage which sought to expose individuals to art, culture, and the origins of Western civilisation. See: Black, J., *The British and the Grand Tour.* London: Routledge, 1985; Chaney, E., "The Grand Tour and Beyond: British and American Travellers in Southern Italy, 1745-1960," in H. Acton, E. Chaney and N. Ritchie (eds), *Oxford, China and Italy: Writings in Honour of Sir Harold Acton.* London: Thames and Hudson, 1984. pp. 133 – 160; Hornsby, C. (ed.), *The Impact of Italy: The Grand Tour and Beyond.* London: British School of Rome, 2000; Hunt. J. D., "The British Garden and the Grand Tour," in National Gallery of Art, *Studies in the History of Art* 25*:* "The Fashioning and Functioning of the British Country House," Symposium Papers X (1989), pp. 333 – 351; and Wilton, A. and Bignamini (eds), *Grand Tour: The Lure of Italy in the Eighteenth Century. Exhibition Catalogue.* London: Tate Gallery Publishing, 1996.
[250] Thompson, *Possession,* pp. 148 – 151. For further discussion of the limitations of Papal edicts in control the trade of Greek and Roman antiquities, see: Mannoni, C., "'Ordinary', 'insignificant' and 'useless' artefacts from Rome and Athens: Trading antiquities and reshaping scholarship in the long nineteenth century," *Journal of the History of Collections* (2021), doi:10.1093/jhc/fhab014
[251] Thompson, *Possession,* p. 150.
[252] See Arnold, K., "Mysterious Museums and Curious Curators," *Museums Journal* 93.4 (1993), pp. 20 –22, and *Cabinets for the Curious.*
[253] Pearce, *On Collecting,* p. 114, paraphrasing Arnold, "Museums and Curious Curators".

Accepting Arnold's argument that certain objects were collected, classified, and displayed because of their ability to "speak", it is worth exploring briefly what Renaissance collectors heard, or sought to hear, from their assemblages. Of particular relevance to this study of the modern antiquities market is the emergence of Renaissance classicism, an intellectual movement which drew influences from the literature, rhetoric, art, and philosophy of the classical past,[254] providing the basis of 18th and 19th century neoclassicism.[255] Observing Renaissance collecting, Muensterberger emphasises the humanist influences which drove individuals and nations to "search for the source of man's past and particularly for evidence of his Latin origins and ultimately his Greek heritage."[256] This idealisation of the ancient past during Renaissance Europe is well-established, however Muensterberger emphasises that this pursuit was more than "mere intellectual inquiry". He argues there was also a "practical side expressed in the vital pleasure taken in the possession of worldly goods."[257] In other words, Renaissance collectors who sought to forge connections with antiquity seemingly did so not only through possessing the tangible remains of the classical world, but by emulating the collecting processes and principles of the ancient Mediterranean.

d. Modern Collecting –

The final period of collecting which will be discussed in this chapter encapsulates the mid-eighteenth century to the first half of the twentieth century.[258] In her history of collecting, Pearce identifies this period as "classic modernist collecting" which is distinct from Renaissance era collecting due to the rise of consumerist culture, influenced by the Industrial Revolution and European Romanticism.[259] This section explores how consumer culture and collecting practices were informed by emerging sociocultural and philosophical beliefs, combined with traditional collecting methodologies and discourses from the centuries previously discussed.

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[254] For discussions of Renaissance classicism, see: Kristeller, P. O., *Renaissance Thought: The Classic, Scholastic, and Humanist Strains.* New York: Harper, 1961, and Nauert, C. G., *Humanism and the Culture of Renaissance Europe (*2nd ed.). Cambridge: Cambridge University Press, 2006.
[255] Neoclassicism is a cultural movement involving decorative and visual arts, literature, theatre, music, and architecture that drew inspiration from classical antiquity. For a general overview of Neoclassicism see: Irwin, D., *Neoclassicism.* London: Phaidon, 1997, and Praz, M., *On Neoclassicism.* London: Thames & Hudson, 1969. For specific discussion of the influence of neoclassicism on the 18th and 19th century antiquities market, see: Haskell, F. and Penny, N., *Taste and the Antique: The Lure of Classical Sculpture, 1500-1900.* New Haven: Yale University Press, 1981, and Howard, S., "The Antiquarian Market in Rome and the Rise of Neoclassicism. A Basis for Canova's New Classics," *Studies on Voltaire and the Eighteenth Century* 153 (1976), pp. 1057 – 1068.
[256] Muensterberger, *Collecting,* p. 227.
[257] Muensterberger, *Collecting,* p. 227.
[258] More contemporary discussions of collecting as a sociocultural phenomenon will take place in Chapter 2.1.
[259] Pearce, *On Collecting,* pp. 122 – 139.

Between the mid-eighteenth century and the first half of the twentieth century, there are two dominant influences which informed nascent consumerism and redefined collecting practices: The Industrial Revolution and European Romanticism. Whilst these two sociocultural movements have lasting impacts on our broader relationships with the material world, they have been particularly significant in shaping how modern audiences interact with antiquity and the tangible remains of history. In other words, this period (re)defined our ways of consuming the past. In his *Le Système des objets,* Baudrillard distinguishes between the passive processes of "absorption and appropriation" which cannot truly be identified as "consumption", and the "active form of relationship (not only to objects, but also to society and to the word), a mode of systematic activity and global response which founds our entire system."[260] He goes on to say that we cannot understand consumption as "material practice" nor as a "phenomenology of 'affluence'". Instead

> consumption is *the virtual totality of all objects and messages readily-constituted as a more or less coherent discourse.* If it has any meaning at all, consumption means *an activity consisting of the systematic manipulation of signs.*[261]

These ideas are clearly reflected in the collecting culture of Europeans between the mid-eighteenth and early-twentieth centuries. Emphasis on individual experience which emerged during the Romantic Age resulted in "the desire to extend sensation" through the formation of collections of objects – including exotic specimens and "primitive" materials – which were capable of representing a "world within a world."[262] The Romantic desire for individual experience and sensationalism also led to changes in how the past was conceptualised:

> [o]bjects which were already seen to be 'true relics' by reason of their 'real relationship' with past people and events were transformed by the romantic eye into a sensation of knowing the past, of resurrecting the body of the past intact so that it might be experienced in the present.[263]

Building on the collection of natural materials which emerged during the Renaissance, European collecting from the mid-eighteenth century saw the rise of both natural history and ethnographic collections. It is important to distinguish between the Renaissance collecting of "rare and strange" natural specimens, and the Romantic collecting which "concentrated upon measurement and distinction, and upon notions of classification as the explanatory paradigm,

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[260] Baudrillard, *Le système des objets,* p. 217.
[261] Baudrillard, *Le système des objets,* p. 218. NB: Author's original italics.
[262] Pearce, *On Collecting,* pp. 130 – 131.
[263] Pearce, *On Collecting,* p. 131.

the elements which Foucault selects as characteristic of his classical paradigm."[264] Here, and elsewhere in her work, Pearce refers to philosopher Michel Foucault's term *épistémè*. Introduced in his seminal book *Les mots et les choses: Une archéologie des sciences humaines,*[265] the Foucauldian *épistémè* distinguished between the *épistémè* of the Renaissance, which is characterised by resemblance and similitude, and the classical *épistémè* observable during the mid-18th century onward. Within his framework, the concept of "man" is an epistemological construct that had not been defined within the classical *épistémè*: "there was no epistemological consciousness of man as such."[266] It is in this context that clear distinctions between *artificialia* and *naturalia* were drawn, and then objects were classified further into sub-categories of modern and classical art, and natural specimens into animal, vegetable, and mineral.[267]

These systems of classification were also applied to people and groups of people: "creating the arbitrary and fictional lines of race and nationality, 'civilized' versus 'savage'."[268] This racialisation of historical narratives and scientific theory was not only expressed through collections of objects (and even humans), but also through the ways in which collecting was conceptualised by Europeans in this period. In his exploration of Australian antiquarianism in the 18th and 19th centuries, Tom Griffiths highlights the connections between the classification and collection of objects for study and display, and the "refined" hunting culture of Europeans (which was contrasted with the hunting practices of non-Europeans).[269] To quote Griffiths:

> [c]ollecting was a form of hunting. […] Naturalists and antiquarians, whether they were in pursuit of nature or culture, were inspired by the thrill of the chase and the identification and possession of new specimen.[270]

This hunting-as-collecting rhetoric, which was pervasive throughout the Romantic Age, remains commonplace in the accounts of modern-day collectors.[271] These narratives are also interwoven with (neo)colonial discourses and the fetishisation of the other.

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[264] Pearce, *On Collecting,* p. 123.
[265] Foucault, M., *Les mots et les choses: Une archéologie des sciences humaines.* Paris: Éditions Gallimard, 1966. Translated as *The Order of Things,* Trans. A. Sheridan. New York: Vintage, 1973.
[266] Foucault, *The Order of Things,* p. 309.
[267] Pearce, *On Collecting,* p. 123.
[268] Procter, *The Whole Picture,* p. 75.
[269] Griffiths, T., *Hunters and Collectors. The Antiquarian Imagination in Australia.* Cambridge: Cambridge University Press,1996. pp. 9 – 27.
[270] Griffiths, *Hunters and Collectors,* p. 19.
[271] Procter, *The Whole Picture.*

3. Collecting "Culture" and the Fetishisation of the Other –

This section is devoted to the collecting "culture" of antiquities market participants. By this I mean both the shared values and practices of antiquities collectors and collecting institutions – their community "culture" – and the material culture of peoples that are consumed and commodified in the antiquities market. This discussion is framed by the work of postcolonial scholar, Edward Said and his theory of Orientalism: the Western imperialist tradition of imitating or depicting the Eastern world. In the context of this study of the antiquities market, Orientalism provides an explanation for contemporary neocolonial collecting practices, which is influenced by a festishisation of "otherness".

e. Orientalism –

In 1978, the founder of postcolonial studies Edward Said published his seminal work *Orientalism,* in which he surveyed the history and nature of Western attitudes towards the East.[272] The first chapter introduces Said's critical concept of "*Orientalism*", which can be understood as:

> a way of coming to terms with the Orient that is based on the Orient's special place in European experience. [...] The Orient is an integral part of European *material* civilization and culture. Orientalism expresses and represents that part culturally and even ideologically as a mode of discourse with supporting institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracies and colonial styles.[273]

Throughout *Orientalism,* and his later book *Culture & Imperialism,*[274] Said elaborates on this key thesis of the "Orient" as the "other", applying this poststructuralist framework to Western culture from Homer to the media coverage of the Gulf War. Within his writings, Said returns to a number of ideas which have direct application to this examination of the historic and modern antiquities market, and the wider phenomenon of European collecting practices.

These are, first, that the contrast of Europe or the Western world and the "Orient" is reliant on the "collective notion" of contrasting "'us' Europeans' against all 'those' non-Europeans", resulting in structural dichotomies which position the "idea of European identity as a superior one in comparison with all the non-European peoples and cultures."[275] This European superiority/non-European inferiority dynamic has been consistently used as a political

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[272] Said, *Orientalism.*
[273] Said, *Orientalism,* pp. 1 – 2.
[274] Said, E., *Culture & Imperialism.* London: Random House, 1994.
[275] Said, *Orientalism,* p. 7.

instrument by the West to justify their political, cultural, economic, and ideological dominance of the rest of the world.[276] This belief is evident in the narratives of antiquities market participants who assert that the "shared cultural heritage" of the past belong in the safe and culturally sophisticated collection institutions throughout Europe.[277]

Second, that Orientalism has defined the "general knowledge of the Orient" since the end of the eighteenth century.[278] This has manifested in an image of "the East" that has been pervasive in academic research and scholarly thought (including the field of ancient world studies), in colonial and postcolonial geopolitical landscapes, and in representations of the non-European world in all forms of media. Within this framework, non-Europeans are depicted as physically and psychologically weak compared to the strong, resilient and masculine West, as well as being culturally and technologically primitive, irrational, violent, mysterious and ultimately unknowable. By proxy, "Eastern" culture in all its forms is inferior to the legacies of Western civilisation.

And finally, that the political and physical conquest of the non-European world is also enacted through forms of intellectual domination, involving the appropriation of tangible and intangible culture and traditions belonging to the "Orient".[279] The knowledges and experiences belonging to non-Europeans became European intellectual property, ultimately used by the conquerors to represent and (re)imagine the histories of the conquered. Whilst Said acknowledges that history is filled with narratives of cultural exchange and borrowings ("Cultures are not impermeable"[280]), it is in the context of "cultural exchange between partners of inequality that the people suffer".[281] Said argues that in the modern world discussing cultural exchange cannot avoid discussions of domination, imperialism, and "forcible appropriation: someone loses, someone gains."[282]

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[276] Said, *Orientalism.*
[277] For a discussion of this argument being used by antiquities collectors and dealers as a form of neutralisation technique, see Mackenzie and Yates, "Collectors on Illicit Collecting".
[278] Said, *Orientalism,* p. 7. Said argues throughout *Orientalism* that the concept of "the Orient" was developed by French and English Orientalists during the 18th century, and this framework was adopted by American Orientalists during the 20th century.
[279] Said, *Orientalism* and *Culture & Imperialism,*
[280] Said, *Culture & Imperialism,* p. 261.
[281] Said, *Culture & Imperialism,* p. 235.
[282] Said, *Culture & Imperialism,* p. 235.

f. Collecting the "other" –

Said's Orientalism and ideas of forcible cultural appropriation are ideal for exploring one of the key issues in European collecting processes: the fetishisation of "otherness" evident in the traditional and modern markets for antiquities, human remains, and wildlife specimens. The desire to collect the culture of the "other" can be traced to antiquity, especially notable in the context of Roman collectors of Greek art and artefacts.[283] In her history of European collecting, Susan Pearce devotes an entire chapter to exploring not only how and why European individuals and institutions sought to acquire the objects of the "other", but specifically to "the notion of the past Other."[284] It is within this context that the idea of collecting "exotic" specimens – including antiquities and artworks, animals and their derivatives, human remains – is explored. Pearce offers the following description of what she terms exotic collections, which evoke a "powerful yet relaxing feeling of comfort and reassurance" from those who view them.[285]

These collections, Pearce and others argue, reflect the "Western agendas which are written into the construction of material narratives drawn from Western ideas of the exotic and how these support European notion of themselves."[286] In other words, these collections – from national collecting institutions to the private assemblages of individual collectors – represent a Eurocentric worldview, in which European identity and culture is forged in contrast to the identities and cultures of non-Europeans. Australian Aboriginal skulls were collected by British and Europeans during the 19th century to be studied and displayed, in order to prove the primitiveness of Indigenous peoples.[287] Objects – from the sacred to the everyday – were acquired during scientific and military expeditions throughout the Americas, Africa, Asia, Oceania and the Mediterranean to form ethnographic collections.[288] Ultimately, these "exotic collections" represent the European conquest and colonisation of the non-European world.

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[283] Muensterberger, *Collecting*, and Thompson, *Possession,* pp. 7 – 13.
[284] Pearce, *On Collecting,* pp. 327 – 351.
[285] Unless, of course, the viewer is aware of the colonialist and imperialist contexts from which "exotic collections" emerged.
[286] Pearce, *On Collecting,* p. 330. See also: Clifford, J., *The Predicament of Culture.* Cambridge, MA: Harvard University Press, 1988, and Clifford, J. and Marcus, G. (eds)., *Writing Culture; The Poetics and Politics of Ethnography.* Berkeley, CA: University of California Press, 1986.
[287] MacDonald, *Human Remains,* and Redman, *Bone Rooms.*
[288] Procter, *The Whole Picture.*

4. Post-colonial collecting and Decolonising collections –

In November 2017, during a visit to the capital of Burkina Faso, French President Emmanuel Macron gave a two-hour speech to an audience of students at the University of Ougadougou. Burkina Faso's official language is French, having previously been the French colony of the Upper Volta, established in March 1919 and only gaining full independence in August 1960.[289] In his speech, President Macron announced that the return of African cultural property to former French colonies would be a "top priority" for France over the next five years.[290] "I cannot accept," said Macron

> that a large share of several African countries' cultural heritage be kept in France. There are historical explanations for it, but there is no valid and unconditional justification. African heritage cannot solely exist in private collections and European museums. […] Within five years I want the conditions to exist for temporary or permanent returns of African heritage to Africa.[291]

The global audience of Macron's speech were shocked by this declaration. Whilst the discussion of repatriating and returning heritage objects acquired during periods of colonial invasion was not a new issue in 2017, it was momentous to hear a world leader making such a public statement towards decolonising European collections. The reception of this speech by other former colonial powers is worth noting also. For example, director general at Belgium's Africa Museum Guido Gryseels said at the press preview of the museum's reopening in 2018:

> I fully agree with President Macron that it is not normal that 80% of African art is in Europe. […] We are open to constructive dialogue. We are willing to consider requests for restitution.[292]

However, within two years of President Macron's announcement in Burkina Faso little tangible action had taken place. After his dramatic speech, Macron hired two academics to advise on how the returns process should proceed, resulting in a report published in 2018 offering the verdict that France should permanently and immediately repatriate all African heritage taken

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[289] Meredith, M., *The State of Africa – A History of Fifty Years of Independence.* London: Free Press; Simon & Schuster, 2005. pp. 177 – 178, 187, 218, 410.

[290] Codrea-Rado, A., "Emmanuel Macron Says Return of African Artifacts Is a Top Priority," *The New York Times,* 29 November 2017. Accessed 1 October 2020. https://www.nytimes.com/2017/11/29/arts/emmanuel-macron-africa.html

[291] Macron, E., "Speech at the University of Ouagadougou," 28 November 2017. Accessed 1 October 2020. https://www.elysee.fr/emmanuel-macron/2017/11/28/emmanuel-macrons-speech-at-the-university-of-ouagadougou.en

[292] Chernick, K., "'We're Coming Late to the Matter Here': Belgian Museums Continue to Struggle With a Flurry of Restitution Claims," *Artnet News,* 13 December 2019. Accessed 14 October 2020. https://news.artnet.com/art-world/belgium-art-restitution-1731726

"without consent".[293] Following the report, Macron announced that France would be permanently returning 26 artefacts to Benin "without delay".[294]

But as of late 2019 only one object of the 900,000 objects of sub-Saharan origin in French national collecting institutions– a 19th-century saber returned to Senegal in November 2019 – had been returned by France.[295] In late 2020, French legislature unanimously passed a landmark bill that would allow for the return of 27 artefacts looted from Benin and Senegal, as the previous French law prohibited the removal of objects from French museum collections.[296] According to a senate committee report, the new legislation is "strictly exceptional, ad hoc and limited [in] character" and would decidedly not implement the other recommendations of the report.[297]

The day after the passing of the draft law through the French National Assembly, the Netherlands released a special report advised that injustice be recognised and that "any cultural objects looted from former Dutch colonies if the source country so requests."[298] Later, in 2021 Germany announced their intent to address the colonial origins of their collections and return the Benin Bronzes by 2022.[299] This ongoing story sits within a much broader narrative – the struggle to decolonise public collections worldwide; a struggle described as the necessary work

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[293] Sarr, F. and Savoy, B., *The Restitution of African Cultural Heritage. Toward a New Relational Ethics.* Trans. Drew S. Burk. Paris: Ministère de la Culture, November 2018. Accessed 14 October 2020. http://restitutionreport2018.com/sarr_savoy_en.pdf

[294] Rea, N., "On the Heels of a Dramatic Restitution Report, France is Returning 26 Artifacts to Benin. Will Other Countries Follow Suit?" *Artnet News,* 26 November 2018. Accessed 14 October 2020. https://news.artnet.com/art-world/macron-26-benin-bronzes-restitution-1402570

[295] Rea, N., "France Returns to Senegal a 19th-century Saber That It Looted During the Colonial Period," *Artnet News,* 18 November 2019. Accessed 14 October 2020. https://news.artnet.com/art-world/france-restitutes-senegal-saber-1707042, and "France Released a Groundbreaking Report on the Restitution of African Art One Year Ago. Has Anything Actually Changed?" *Artnet News,* 11 December 2019. Accessed 14 October 2020. https://news.artnet.com/art-world/french-restitution-report-global-1728216

[296] McGirven, H., "French senate votes unanimously for restitution to Benin and Senegal in 'act of friendship and trust'," *The Art Newspaper,* 5th November 2020. Accessed 6 May 2021. https://www.theartnewspaper.com/news/french-senate-backs-bill-to-return-colonial-era-objects-to-benin-and-senegal

[297] McGivern, "French senate votes unanimously for restitution to Benin and Senegal".

[298] Packard, C., "After Years of Repatriation Debates, France's Benin Restitution Bill Approved," *Hyperallergic,* 10 November 2020. Accessed 6 May 2021. https://hyperallergic.com/598752/restitution-france-benin-bronze-bill/

[299] Brown, K., "In a 'Historic Milestone,' Germany Will Begin to Return Benin Bronzes From Its Public Collections to Nigeria in 2022," *Artnet,* 29 April 2021. Accessed 6 May 2021. https://news.artnet.com/art-world/nigeria-germany-benin-bronzes-1963143?utm_content=from_artnetnews&utm_source=Sailthru&utm_medium=email&utm_campaign=EU%20Apr%2030%20AM&utm_term=EUR%20Daily%20Newsletter%20%5BMORNING%5D

The National Museum of Ireland announced their intention to return 21 Benin bronzes from their collection, but have not demonstrated how this process will be realised in a formal plan. See: Shorthall, E., "National Museum of Ireland," *The Times,* 11 April 2021. Accessed 6 May 2021. https://www.thetimes.co.uk/article/national-museum-ireland-plan-return-looted-benin-bronzes-rmx7rdtpk?fbclid=IwAR0sHDK4WiKXAvyww2qJ6FUaVviSDtQf7ktdgs_RUydkvKQMUBCVoseV-44

of contemporary museums which exists inside the wider "movement toward more critically reflective representations of empire within 'the master's house'."[300]

Requests for the return of cultural objects can be contextualised within a wider "independence/postcolonial universe."[301] However, the idea of returning looted cultural heritage originally emerged within the wider context of post-war reparations following the Second World War.[302] The development of restitution policies concerning looted works of art took place over a number of years. It also involved the participation of the Allied Nations, who reached a general agreement that all property "taken to Germany during the occupation would be presumed to have been transferred under duress and accordingly treated as looted property."[303]

In the decades following the Second World War, requests for the return of cultural objects looted during periods of occupation have been formally and informally made by a number of nations. These claims are situated within the broader "interlinked histories of denazification and decolonization" which mark the second half of the 20th century and the 21st century to date.[304] Of the many requests for repatriation made by source countries and descendant communities, some more than others have captured the attention of the media. Such examples include the the requested return: of the Parthenon Marbles from the British Museum;[305]

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[300] Giblin, G., Ramos, I. and Grout, N., "Dismantling the Master's House – Thoughts on Representing Empire and Decolonising Museums and Public Spaces in Practice. An Introduction," *Third Text* 33.4-5: Exhibiting the Experience of Empire: Decolonising Object, Images, Materials and Words (2019), p. 471.

[301] Hoffman, B. T., "Exploring and Establishing Links for a Balanced Art and Cultural Heritage Policy," in B. T. Hoffman (ed.), *Art and Cultural Heritage Policy*. New York: Cambridge University Press, 2009. p. 4.

[302] See Nicholas, *The Rape of Europa,* p. 323, 369 – 372, 383 – 405 and Cœuré, S. "Cultural Looting and Restitution at the Dawn of the Cold War: The French Recovery Missions in Europe," *Journal of Contemporary History* 52.3 (2017), pp. 508 – 606.

[303] National Archives, Washington D.C., Record Group 239/38, Harvey to Kefauver, July 18, 1944 in Nicholas, *The Rape of Europa,* p. 323.

[304] Gaudenzi, B. and Swenson, A., "Looted Art and Restitution in the Twentieth Century – Towards a Global Perspective," *Journal of Contemporary History* 52.3 (2017), p. 491.

[305] Whilst serving as ambassador to the Ottomon Empire (1799 – 1803), Thomas Bruce, the 7th Early of Elgin and the 11th Earl of Kincardine (1766 – 1841), removed substantial portions of marble sculptural decoration from the Athenian Parthenon (Hunt, P. and Smith, A. H., "Lord Elgin and His Collection," *Journal of Hellenic Studies* 36 (1916), pp. 163 – 372; Neils, J., *The Parthenon Frieze.* Cambridge: Cambridge University Press, 2006, and St. Clair, W., *Lord Elgin and the Marbles.* Oxford: Oxford University Press, 1983). The Marbles were transported by sea to Britain, with Elgin later claiming he had obtained an official firman in 1801 from the Ottoman Empire. However, the veracity of this document has been disputed (Bizos, G., "A Legal and Moral Issue – Was A Valid Firman Issued?" *Global Colloquy on the Reunification of the Parthenon Marbles, London, 19 – 20 June 2012.* Accessed 17 September 2020. https://www.parthenonuk.com/latest-news/26-articles-and-research/76-george-bizos-sc; Merryman, J. H., "Thinking About the Elgin Marbles," *Michigan Law Review* 83.8 (1985), pp. 1880 – 1923; Rosenbaum, L., "Elgin's Shaky Grounds: How Firm Was the Firman?" *CultureGrrl,* 13 August 2009. Accessed 17 September 2020. https://www.artsjournal.com/culturegrrl/2009/08/deciphering_elgins_firman_is_t.hml ; Rudestine, A., "A tale of three documents: Lord Elgin and the missing historic 1801 Ottoman document," *Cardozo Law Review* 22 (2001),

the Benin Bronzes from numerous European and British collections,[306] and the Rosetta Stone from the British Museum.[307]

There are a number of words used to describe cultural heritage returns, including repatriation, restitution, recovery, and the word return itself.[308] Each word comes with its own ideological baggage, and is also used beyond the realms of cultural heritage law. The term repatriation, for example, does not only apply to cultural objects, but can also be used to describe the process of returning a person to their country of origin or citizenship. Likewise, restitution, which generally encompasses the act of restoration, has varying applications in different areas of the law. Further, in his overview of practical, legal, and moral issues with the modern antiquities market, Maxwell Anderson argues both restitution and repatriation are "politically charged" terms, with the former related to the "return of an antiquity to its probable nation of modern discovery" which "comes about through successful legal claim," or

pp. 1853 – 1883; and Williams, D., "Lord Elgin's *firman," Journal of the History of Collections* (2009), pp. 1 – 29). Following an investigation conducted by a Parliamentary Select Committee, which deemed the acquisition to be legal (*Report from the Select Committee on the Earl of Elgin's Collection of Sculptured Marbles; etc.* London: J. Murray, 1816), the Parthenon Marbles entered the public collection of the British Museum by an Act of Parliament passed in 1816. After regaining their independence from the Ottoman Empire in the 1830s, the Greek state expressed a desire to see the Marbles returned to Athens. In 1983 Greece made a formal request for the return of the Parthenon Sculptures, but at the time of writing they remain on display in the British Museum (British Museum, "About Us – The British Museum Story – The Parthenon Sculptures," *The British Museum.* Accessed 17 September 2020. https://www.britishmuseum.org/about-us/british-museum-story/objects-news/parthenon-sculptures)

[306] The Benin bronzes were a group of more than a thousand metal plaques and sculptures that decorated the royal palace of the Kingdom of Benin, located in modern-day Nigeria. They were removed by British soldiers in 1897 during a punitive expedition in the area, which aimed to consolidate imperial control of Southern Nigeria. Two hundred pieces of the looted bronzes were given to the British Museum, where they remain today, and the rest were purchased by other European collecting institutions. There have been public requests made by the Nigerian government to return the collection since the 1970s. See: Brodie, N. "Problematizing the encyclopedic museum: the Benin bronzes and ivories in historical context," in B. Effros and G. Lai (eds), *Unmasking Ideologies: The Vocabulary and Symbols of Colonial Archaeology.* Los Angeles: Cotsen Institute, 2018. pp. 61 – 82; Coombes, A. E. "Ethnography, Popular Culture, and Institutional Power: Narratives of Benin Culture in the British Museum, 1897 – 1992," *Studies in the History of Art* 47 (1996), pp. 142 – 157; Hicks, D., *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution.* London: Pluto Press, 2020; Marshall, A. "This Art Was Looted 123 Years Ago. Will it Ever Be Returned?" *The New York Times,* 23 January 2020. Accessed 14 October 2020. https://www.nytimes.com/2020/01/23/arts/design/benin-bronzes.html; and Phillips, B., *Loot: Britain and the Benin Bronzes.* London: Oneworld Publications, 2021.

[307] The Rosetta Stone is a stelite composed of grandodiorite which has three different ancient languages inscribed onto its surface. On July 1799, a group of French soldiers discovered the stone slab, making it the first Ancient Egyptian bilingual text known to the contemporary European audience. When Napoleon was defeated, the stone and other antiquities acquired by the French during their campaign became the property of the British under the Treaty of Alexandria (1801). In July 1802 King George III presented it to the British Museum, where it remains to this day. For a general history of the Rosetta Stone see: Andrews, C., *The British Museum book of the Rosetta Stone.* New York: Peter Broderick Books, 1985; Budge, E. A. W., *The Rosetta Stone.* London: The British Museum, 1913, and Waxman, S., *Loot. The Battle Over the Stolen Treasures of the Ancient World.* New York: Times Books, 2008. pp. 32 – 61.

[308] For discussion of the differences between the use of these terms see: Hoffman, "Exploring and Establishing Links", pp. 4 – 8, and Kowalski, W. W., "Claims for Works of Art and their Legal Nature in Resolution of Cultural Property Disputes," *Hague Peace Papers,* 2004.

as a result of compelling evidence that the work was stolen or illegally exported."[309] Repatriation on the other hand is more morally charged than other terms, with the word "widely used to signify restitution, but, by means of the same root word in *patriotism,* to justify the return of objects on moral grounds."[310]

There are a number of benefits and opportunities for descendant and source communities within the repatriation movement. As will be demonstrated in the Return of Cultural Heritage Initiative case study, there is immense potential for postcolonial healing and reconciliation in the repatriation process.[311] Many representatives from colonised nations and peoples have highlighted the harm caused by the ongoing disconnection from their cultural heritage, exacerbated by the reality that the objects of significance created by their ancestors remain in the possession of their colonisers. To quote researcher Sumaya Kassim "[b]ehind every beautiful object and historically important building or monument is trauma."[312] There is also the loss of generational cultural identity through the absence of "cultural reference points" caused by heritage material being in overseas collections, where many individuals and communities cannot freely access them.[313]

The return of cultural heritage and ancestral remains can be the source of comfort, celebration, and justice, and contribute to the cultural renewal, nation-building, and self-determination of colonised peoples. But reconciliation is not a one-sided process and repatriation can also be an opportunity for former colonial powers to redefine their relationships with source and descendant communities. In the words of the former Director-General of UNESCO, Amadaou-Mahtar M'Bow:

> [t]he return of a work of art or record to the country which created it enables a people to recover part of its memory and identity, and proves that the long dialogue between civilisations which shapes the history of the world is still continuing in an atmosphere of mutual respect between nations.[314]

As will be discussed throughout this thesis, reckoning with colonial complicity is a necessary

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[309] Anderson, M., *Antiquities. What Everyone Needs to Know.* New York: Oxford University Press, 2017. p. 155
[310] Anderson, *Antiquities,* p. 155.
[311] Refer to section 3.2.6.l.
[312] Kassim, S., "The museum will not be decolonised," *Media Diversified,* 15 November 2017. Accessed 18 July 2022. https://mediadiversified.org/2017/11/15/the-museum-will-not-be-decolonised/
[313] Ehikhamenor, V., "Give Us Back What Our Ancestors Made," *The New York Times,* 28 January 2020. Accessed 17 September 2020. https://www.nytimes.com/2020/01/28/opinion/looted-benin- bronzes.html. See also M'Bow, A.-M., "A Plea for the Return of an Irreplaceable Heritage to those Who Created It: An Appeal by the Director-General of UNESCO," *Museum* 31.58 (1979), p. 58.
[314] M'Bow, "A Plea for the Return of an Irreplaceable Heritage," p. 58.

step in forging more ethical relationships with the ancient world. This belief has informed the "Framework for Ethical Engagement with and Consumption of the Ancient World," and thus a number of the guidelines in Chapter 3.1 encourage market participants to consider their involvement in the repatriation process.

Cultural heritage also has an economic value to play in modern society. Although sometimes deemed to be a controversial opinion,[315] heritage is a "cultural 'resource'" which is capable of producing forms of economic and cultural capital for modern nations.[316] In nations which have been impoverished through generations of colonial dispossession and neocolonial regimes, the access to and control of cultural heritage is thus of vital significance in the rebuilding of economies. Museums and sites of cultural significance play vital roles in the modern tourism industry,[317] whilst the study and publication of research on cultural objects contributes to the professional success of academic individuals and institutions.[367] Whilst it can be difficult to ascertain for methodological reasons,[318] the loss of cultural heritage to looting, trafficking, and other destructive acts can have disastrous financial impacts for nations and communities.

Cultural heritage also performs an important role in the function of national and community identities, especially those who have been subjected to colonial violence and other forms of conflict. To quote anthropologist and archaeologist, Laurie Rush: "[h]eritage is an essential fiber in the woven fabric of a healthy society and the foundation of its identity."[319] Whilst supporters of the antiquities market often argue that cultural objects are not appreciated, or cared for, by modern descendants in source countries,[320] in reality this is far from the truth. Throughout history, both conflicts and natural disasters which have exposed cultural heritage to risk of destruction and theft, highlight the commitment of nations, communities, and individuals to the preservation of their cultural patrimony. Some recent examples include the actions taken by curators and librarians of the manuscript collections of Timbuktu during the Malian Civil

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[315] See Mackenzie, S. and Yates, D. "Collectors on Illicit Collecting".

[316] Vrdoljak, *International Law, Museums and the Return of Cultural Objects,* p. 6.

[317] For a discussion of the advantages and challenges of heritage-based tourism, see ICOMOS, "Heritage at Risk from Tourism". Accessed 22 October 2020. https://www.icomos.org/risk/2001/tourism.htm ; Loulanski, T. and Loulanski, V., "The sustainable integration of cultural heritage and tourism: a meta-study," *Journal of Sustainable Tourism* 19.7 (2011), pp. 837 – 862; Nuryanti, W., "Heritage and postmodern tourism," *Annals of Tourism Research* 23.2 (1996), pp. 249 – 260; Timothy, D. J., *Cultural heritage and tourism: An Introduction.* Bristol, Buffalo and Toronto: Channel View Publications, 2011, and "Contemporary Cultural Heritage and Tourism: Development Issues and Emerging Trends," *Public Archaeology* 13 (2014), pp. 30 – 47.

[318] Balcells, M., "One Looter, Two Looters, Three Looters … The Discipline of Cultural Heritage Crime Within Criminology and its Inherent Measurement Problems," in S. Hufnagel and D. Chappell (eds), *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. pp. 33 – 54.

[319] Rush, L. W., "Looting of Antiquities: Tearing the Fabric of Society," in Charney, N. (ed.), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves.* London: Palgrave Macmillan, 2016. p. 132.

[320] See Mackenzie, and Yates, "Collectors on Illicit Collecting".

War;[321] the deaths of Rikuzentakata City Museum staff during the 2011 tsunami;[322] and the beheading of Syrian archaeologist Khaled Al-Asaad in 2015.[323] During periods of instability, people routinely put their lives at risk to protect museum collections, historic buildings, sacred structures, and archaeological sites because of what these sites and objects represent: a symbol of what has been lost and what has been saved; a symbol of hope "that they might recover not just as individuals, but also as a community."[324]

However, there are always complex ethical tensions at play in these discussions, and repatriation also has the potential to cause further colonial harm and trauma.[325] It is important to recognise that not all descendant and source communities wish to participate in the repatriation process for various reasons. The repatriation process is complicated, time and resource consuming, and emotionally fraught. And if the repatriation is successful, there is also the financial cost of long-term secure storage and conservation to consider. This is why upon reflecting on his experience in the repatriation process, senior curator of anthropology at Melbourne Museum Philip Batty concludes "repatriation is more about white redemption and the alleviation of guilt."[326] While this argument does neglect the positive benefits and opportunities for repatriation discussed above and returned to in Chapter 3.2, it is an important point to keep in mind when examining the repatriation movement. Repatriation does have the potential to promote healing and reconciliation (as we will see in the Return of Cultural Heritage Initiative case study in Chapter 3.2). But if not done in a culturally safe way it does risk causing further harm and trauma to source and descendant communities.

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[321] As discussed in section 1.1.2.e.

[322] Corkill, E., "Tsunami-struck museum starts recovering collection," *The Japan Times,* 8 June 2011. Accessed 20 October 2020. https://www.japantimes.co.jp/news/2011/06/08/national/tsunami-struck-museum-starts- recovering-collection/ ; Masaru, K., "After the Tsunami: Rescuing Relics of Rikuzentakata's History and Culture," *Nippon.com,* 11 March 2015. Accessed 20 October 2020. https://www.nippon.com/en/currents/d00168/ ; and Pitt Rivers Museum, "Surviving Tsunami. Photographs in the Aftermath of the Great East Japan Earthquake. 8 October 2013 – 30 March 2014 (extended to 27 April 2014) Long Gallery". Accessed 20 October 2020. https://www.prm.ox.ac.uk/event/surviving-tsunami

[323] Leriche, P., "Khaleed al-Asaad, the martyr of Palmyra," *The Conversation,* 1 September 2015. Accessed 20 October 2020. https://theconversation.com/khaled-al-asaad-the-martyr-of-palmyra-46787 ; Shaheen, K. and Black, I., "Beheaded Syrian scholar refused to lead Isis to hidden Palmyra antiquities," *The Guardian,* 19 August 2015. Accessed 20 October 2020. https://www.theguardian.com/world/2015/aug/18/isis-beheads- archaeologist-syria ; and UNESCO, "Director-General Irina Bokova deplores the loss of two leading scholars of Syrian antiquity," *UNESCO News Release.* Accessed 20 October 2020. https://en.unesco.org/news/director- general-irina-bokova-deplores-loss-two-leading-scholars-syrian-antiquity

[324] Rush, "Looting of Antiquities," p. 137.

[325] I credit Examiner 2 for their insights on repatriation which have reshaped and nuanced the following discussion.

[326] Batty, P., "White Redemption Rituals: Repatriating Aboriginal Secret-sacred Objects," *Arena Journal* 23 (2005), p. 34.

Due to the nature of colonial acquisitions, there are instances of contested ownership and custodianship to contend with, such as the water drum and forty other artefacts that were given by a Canadian museum to an American Anishinaabe that had no connection to the family or community connections to the collection.[327] Further, descendant communities and source countries may not necessarily agree amongst themselves about if a repatriation should occur or how it should be handled. For example, the custodians of the Willandra Lakes region – the Barkindji, Mutthi Mutthi and Ngiyampaa peoples – debated amongst themselves for decades about the repatriation process for 108 ancestral remains. The formal Aboriginal advisory body for the area supported the reburial of the remains, while other traditional owners preferred the remains be kept in a Keeping Place for future generations and further scientific testing.[328] When the reburial of the most well-known of the remains, Mungo Man and Mungo Lady,[329] did take place, Mutthi Mutthi man said it "caused immense cultural harm" for himself and fellow Traditional Owners.[330]

[327] Matthews, M., *Naamiwan's Drum: A Story of Contested Repatriation of Anishinaabe Artefacts.* Toronto, CA: University of Toronto Press, 2016.

[328] See: Crabtree, R., Cole, H., and Gregory, X., "Mungo Man, Mungo Lady reburials postponed as elders challenge treatment of ancient remains," *ABC News,* 24 May 2022. Accessed 13 July 2022. https://www.abc.net.au/news/2022-05-24/mungo-man-reburial-stopped/101093462 ; Jenkins, K., "Ancient remains to reburied at Lake Mungo, ending decades-long campaign," *The Point,* 11 April 2022. Accessed 13 July 2022. https://www.sbs.com.au/nitv/article/2022/04/11/ancient-remains-be-reburied-lake-mungo-ending-decades-long-campaign-1 ; Latimore, J., "Traditional owners challenge federal environment minister over Mungo Man reburial," *The Age,* 18 April 2022. Accessed 13 July 2022. https://www.theage.com.au/national/victoria/traditional-owners-challenge-federal-environment-minister-over-mungo-man-reburial-20220416-p5adxi.html ; and Westaway, M., Williams, D., and Kelly, J., "Mungo ancestral remains reburial proposal disrespects the Elders' original vision," *The Conversation,* 4 August 2021. Accessed 13 July 2022. https://theconversation.com/mungo-ancestral-remains-reburial-proposal-disrespects-the-elders-original-vision-164854

[329] The remains of Mungo Lady and Mungo Man were found in Lake Mungo in south-western New South Wales in 1969 and 1974 respectively by geologist Jim Bowler. They are considered the most significant human remains ever found in Australia due to their age and the fact that Mungo Lady is the oldest known cremation in the world. NSW Office of Environment and Heritage, "Visit Mungo: Mungo Lady and Mungo Man." Accessed 13 July 2022. http://www.visitmungo.com.au/mungo-lady-mungo-man . See also: Barbetti, M. and Allen, H., "Prehistoric Man at Lake Mungo, Australia, by 32,000 years BP," *Nature* 240 (1972), pp. 46 – 48; Bowler, J. M., et al., "Pleistocene human remains from Australia: A living site and human cremation from Lake Mungo, Western New South Wales," *World Archaeology* 2 (1970), pp. 39 – 60; Bowler, J. M., et al., "New ages for human occupation and climatic change at Lake Mungo, Australia," *Nature* 421 (2003), pp. 837 – 840; Bowler, J. M. and Magee, J. W., "Redating of Australia's oldest human remains: a sceptic's view," *Journal of Human Evolution* 38.5 (2000), pp. 719 – 726; Bowler, J. M. and Thorne, A. G., "Human remains from Lake Mungo: discovery and excavation of Lake Mungo III," in R. L. Kirk and A. G. Thorne (eds), *The Origin of the Australians.* Canberra, ACT: Australian Institute of Aboriginal Studies, 1976. pp. 127 – 138; Gillepsie, R. and Roberts, R. G., "On the reliability of age estimates for human remains at Lake Mungo," *Journal of Human Evolution* 38.5 (2000), pp. 727 – 732; and Thorne, A., et al., "Australia's oldest human remains: age of the Lake Mungo 3 skeleton," *Journal of Human Evolution* 36.6 (1999), pp. 591 – 612.

[330] Quoted in Wahlquist, C., "Indigenous groups angered at reburial of 42,000-year old Lake Mungo remains despite promise," *The Guardian Australia,* 27 May 2022. Accessed 13 July 2022. https://www.theguardian.com/australia-news/2022/may/27/indigenous-groups-angered-at-reburial-of-42000-year-old-lake-mungo-remains-despite-promise

The removal and return of cultural heritage and ancestral remains should not be viewed "merely as physical acts […] in isolation."[331] Repatriation is just one part of the necessary work of decolonising collections and collecting practices. This argument is central to the "Framework", especially when considering the role of the collecting institutions, such as museums and art galleries. In her analysis of art history and colonial collections, Alice Procter identifies emphasises the decolonising potential of modern museums even if they are not involved in processes of repatriation.[332] It is within the context of 20th century postmodernism and postcolonialism that museums and other cultural spaces are able to draw together and rework influences from the colonial and neo-colonial history of collecting and collections discussed above.

A recent illustration of decolonisation without repatriation in practice is the "Colonial Countryside – Youth-Led History" project.[333] The project, started in 2018, aims to elucidate the origins of the National Trust houses' collections whilst also inspiring a "new generation of young advocates for black British history."[334] Using 10 country houses in the United Kingdom as case studies, the child-led initiative examined and researched these colonial collection which generate a "picture of stately homes' colonial links" and "tells stories about slave produced wealth."[335] The majority of children involved in the project are of Caribbean or South Asian heritage and were encouraged to "think of themselves as public figures who will reshape the national narrative and make this history widely known."

The children involved in the project were required to craft new writing and present it to live, print and digital audiences, including a conference during the Literary Leicester festival held in November 2018. Examples of the personal responses to the material included personal essays, social media campaigns and creative writing, such as the following poem from 11-year-old Fatima:

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[331] Vrdoljak, *International Law, Museums and the Return of Cultural Objects,* p. xiii.
[332] Procter, *The Whole Picture*, pp. 189 – 190.
[333] National Trust UK, "New 'What a World!' exhibition takes an honest look at Penrhyn Castle's collection and the culture of colonialism." 24 February 2020. Accessed 28 July 2020.
https://www.nationaltrust.org.uk/penrhyn- castle/news/new-what-a-world-exhibition-takes-an-honest-look-at-penrhyn-castles-collection-and-the- culture-of-colonialism.
[334] Colonial Countryside, "Colonial Countryside – Youth-led History". Accessed 29 April 2021.
https://colonialcountryside.wordpress.com/
[335] Colonial Countryside, "Colonial Countryside".

Roedd ganddo bres/Roedd gen i hanes

He had money/and I had history.

Prynodd ft hanes/â'i bres.

His money/bought my history.[336]

However, there is the threat museums and collecting institutions could cause further colonial trauma in their decolonisation efforts because the "contemporary museum both participates in and helps sustain a psychosocial regime."[337] In other words, even if attempts to reckon with their colonial complicity are deemed successful, the museum and other collecting institutions remain products of colonialism and imperialism. Collections and exhibitions which featured looted antiquities and colonial objects are particularly problematic, as they are "interpellated through the museum into material evidence of the supremacy and worthiness of the colonisers."[338] Further, as identified by Sumaya Kassim, decolonisation in the museum context requires "complex processes, space, money, and time." If collecting institutions are not prepared to undertake this work and sacrifice the resources

> there is a danger (some may argue an inevitability) that the museum will exhibit decoloniality in much the same way they display/ed black and brown bodies as part of the Empire's "collection".[339]

Awareness of these issues have led to modern museums and galleries have facing backlash for failing to ensure the cultural safety of exhibitions and collections.[340] For example in 2014, the Australian Museum for Modern and New Art (MONA) was criticised for a controversial exhibition by Swiss artist Christoph Buchel which included "a stand offering DNA testing with a sign that read: "Are you of Aboriginal descent?""[341] Concerns about the ethics of the

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[336] Fatima's poem was displayed at the University of Leicester's Colonial Countryside Exhibition, Castell Penrhyn Castle in Gynedd, North Wales between 7 March and 1 November, 2020. National Trust UK, "New 'What a World!'

[337] Walsh, M. and Kokoli, A., "Trauma and repair in the museum: an introduction," *Psychoanalysis, Culture & Society* 27 (2022), p 6.

[338] Walsh and Kokoli," Trauma and repair." p. 6.

[339] Kassim, "The museum will not be decolonised".

[340] The term cultural safety originated in the work of Maori nurses in New Zealand and can be defined as: [a]n environment that is safe for people: there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience of learning, living and working together with dignity and truly listening. Williams, R., "Cultural Safety – what does it mean for our work practice?" *Australian and New Zealand Journal of Public Health* 23.2 (1999), p. 213.

[341] ABC News, "MONA removes Aboriginal DNA test exhibit from art installation," *ABC News,* 25 Jun 2014. Accessed 1 April 2021. https://www.abc.net.au/news/2014-06-25/mona-removes-aboriginal-dna-test-exhibit/5548838

exhibition were raised by Aboriginal Elders, and the Tasmanian Aboriginal Centre expressed their disappointment at not being consulted by MONA prior to the exhibition taking place.

More recently, the institution faced backlash to its call-out for "First Nations blood" as part of a performance by Spanish artist Santiago Sierra. The request was met with immediate criticism and the call, led by Trawloolway and Plengarmairenner Paka visual artist and dancer, to denounce the project and boycott MONA. [342] Whilst some defended the performance as an anti-colonial statement, many Aboriginal and Torres Strait Islander people were disturbed by the request.[343] Noongar woman Cass Lynch described it as an arrogant artwork that conceptually failed in its attempts of truth-telling:

> it doesn't contain an Indigenous voice or testimony, it has no nuance. On its own, it leans into the glorification of the gore and violence of colonisation.[344]

MONA initially defended the project, but by the following day it was cancelled and an apology from David Walsh was issued.[345] The controversy highlighted a number of serious concerns around the neo-colonial curatorial practices of Australian institutions, leading Wemba-Wemba and Gunditjmara woman Paola Balla to ask: "how was this allowed to be programmed in the first place? And what structures support white curators to speak of Black traumas?"[346] Balla and other First Nations commentators argued that this incident spoke to a much larger issue in Australian museums and galleries – a lack of "Black curators who work from community standpoints."[347]

Recognising and memorialising First Nations grief is a necessary part of truth-telling and healing processes, however this can only occur if the work involves "Aboriginal led and self-determined decisions." [348] It can also only be achieved if collecting institutions approach this

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[342] Burke, K., "'We made a mistake': Dark Mofo pulls the plug on 'deeply harmful' Indigenous blood work," *The Guardian,* 23 Marc 2021. Accessed 1 April 2021. https://www.theguardian.com/culture/2021/mar/23/we-made-a-mistake-dark-mofo-pulls-the-plug-on-deeply-harmful-indigenous-blood-work

[343] Blakkarily, J., "Dark Mofo criticised after requesting First Nations blood for 'abusive, re-traumatising' art project," *SBS News,* 22 March 2021. Accessed 1 April 2021. https://www.sbs.com.au/news/dark-mofo-criticised-after-requesting-first-nations-blood-for-abusive-re-traumatising-art-project

[344] Lynch, C., "Asking for our blood," *Overland,* 22 March 21. Accessed 1 April 2021. https://overland.org.au/2021/03/asking-for-our-blood/

[345] Walsh, D., "David's response to Union Flag," *MONA blog,* 23 March 2021. Accessed 1 April 2021. https://mona.net.au/blog/2021/03/davids-response-to-union-flag

[346] Balla, P., "Dark Mofo doesn't deserve our blood. Australia must invest in First Nations curators and artists," *The Conversation,* 24 March 2021. Accessed 1 April 2021. https://theconversation.com/dark-mofo-doesnt-deserve-our-blood-australia-must-invest-in-first-nations-curators-and-artists-157677

[347] Balla, "Dark Mofo doesn't deserve our blood".

[348] Balla, "Dark Mofo doesn't deserve our blood".

work in a culturally safe way.[349] Increasingly there are calls for museums and galleries to understand and implement trauma-informed practices for both visitors and employees into their exhibitions, especially when exhibitions commemorate traumatic experiences and events.[350] Advocacy for the trauma-informed museum is based on the argument that while museums offer opportunities for healing and truth-telling, they risk "negative outcomes" in the form of "deep emotional response [which] may include unearthing negative emotions and remembering negative experiences, thoughts or ideas."[351]

Whilst this is a danger for all potential visitors, volunteers and museum staff, it is especially hazardous for trauma survivors, including those experiencing intergenerational trauma. If we consider this in the context of the harm caused by museums and other collecting institutions in a (neo)colonial context discussed throughout this and the previous chapter, the need for trauma-informed practice is even more apparent. To quote Jackie Armstrong, the trauma-informed museum or gallery:

> does more than acknowledge trauma, it recognizes it. It works to connect people to a shared humanity and fosters cultural humbleness, refrains from othering, avoids retraumatization and puts the physical, emotional and mental well-being of people above all else.[352]

Conclusion –

Collecting, public and private, is a process informed by both our individual preferences and shared sociocultural trends. Whilst this statement can be applied to any type of collecting, it is particularly apt for describing the processes of the modern antiquities market. Fitting within the

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[349] Recognising that it may not be ever possible to make a colonial institution like museums and galleries or exhibitions about trauma and grief safe. This is why Mark Katrikh of the Museum of Tolerance, located in Los Angeles, California, advocate for making the museum environment "safer". See, Katrikh, M., "Creating Safe(r) Spaces for Visitors and Staff in Museums," *Journal of Museum Education* 43.1 (2018), pp. 7 – 15.

[350] For work on trauma, museums and trauma-informed practice, see: Aaron Price, C., et al., "Exploring Trauma Responsive Educational Practices in a Museum," *Journal of Museum Education* 47.2 (2022), pp. 113 – 124; Armstrong, J., "Museums Must Become More Trauma Informed," *Art Museum Teaching,* 3 August 2020. Accessed 25 July 2022. https://artmuseumteaching.com/2020/08/03/museums-must-become-more-trauma-informed/#:~:text=A%20trauma%20informed%20art%20museum,of%20people%20above%20all%20else.; Armstrong, J., et al., "Weaving Trauma Awareness into Museum Education," *Journal of Museum Education* 45 (2021), pp. 454 – 466; Brown, P., "Trauma, Musuems and the Future of Pedagogy," *Third Text* 18.4 (2004), pp. 247 – 259; Cowan, B., Laird, R., and McKeown, J., *Museum Objects, Health and Wellbeing. The Relationship between Exhibitions and Wellness.* London and New York: Routledge, 2020; and Zalut, L., "Interpreting Trauma, Memory, and Lived Experience in Museums and Historic Sites," *Journal of Museum Education* 43.1 (2018), pp. 4 – 6.

[351] Chatterjee, H. J. and Noble, G., "Object Therapy: A Student-Selected Component Exploring the Potential of Musuem Object Handling as an Enrichment Activity for Patients in Hospital," *Global Journal of Health Science* 1.2 (2009), p. 50.

[352] Armstrong, "Museus Must Become More Trauma Informed".

broader phenomena of consuming and commodifying objects, modern antiquities collecting is a manifestation of traditional practices and 20th and 21st century anxieties about authenticity and originality.[353] These traditional practises include the processes of collecting established and shaped throughout history, from antiquity to the Renaissance beyond.

Despite the differences between the ancient and modern (especially the post-industrial and digital) worlds, we can observe consistent themes throughout these phases in the history of collecting. Greek marble sculptures, holy relics belonging to Christian saints and martyrs, specimens of exotic animals and plants, and even human remains are still sought after by modern-day collectors. However, if we return to Baudrillard's theory of consumption, we are reminded that collectors do not merely collect objects: they collect what these objects signify. These objects – from the sacred to the mundane – represent both the past and the "other", and their display in collections is almost always a physical manifestation of the triumph and dominance.[354] And in the case of collections maintained by former colonial powers and settler colonial governments, these collections are a tangible representation of the ownership of First Nations lands.

The relationship with the past outlined in this chapter is deeply voyeuristic. As put forward by Susan Pearce:

> there is an unquestioned element of the peep-show in our strained relationship with the objects of the past, and the way in which we feel that these things can open doors to hidden places is one measure of our fascination with them.[355]

Further, this voyeurism fits in with the asymmetric power dynamics between past and living peoples discussed in the introduction to this thesis. Since the Age of Enlightenment, the past has been in service to the present, reflected in processes of antiquities collecting, discourses of ancient world studies, and our wider consumption and depictions of antiquity. Ultimately, it is this unequal relationship between past and present which the "Framework for Ethical Engagement with and Consumption of the Ancient World" seeks to address.

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[353] Baudrillard, *Le système des objets.*
[354] The same statement can be applied to collection of natural specimens, which are capable of symbolising man's dominance over the natural world.
[355] Pearce, *On Collecting,* p. 248.

1.3. CULTURAL HERITAGE CRIME

"I don't know that law enforcement benefits that much from new technology. Tools that comes into our hands comes into theirs too. Not that you can go back. Or that you'd even want to."

(Cormac McCarthy)[356]

Introduction –

Art and cultural heritage crime are not recent phenomena. As examined in Chapters 1.1 and 1.2 of this thesis, these practices and the values which inform them are steeped in well-established philosophies and political belief systems. However, the terms art and cultural heritage crime are products of the 20th century. The mass looting of cultural heritage during the Second World War and the ongoing plunder of archaeological sites throughout the twentieth century resulted in a growing body of scholarship devoted to the question posed by Bonnie Burnham: whether it was "indeed possible to buy art without getting involved in the vicious circle of pillage and destruction."[357] Whilst international organisations, national governments, archaeologists, like Clemency C. Coggins,[358] legal scholars including John H. Merryman,[359] and other stakeholders had been discussing these ethical, legal, and moral issues for nearly two decades, criminologists did not enter the fold until the 1990s.[360]

Nowadays, art crime is a widely known term which conjures imagery of elaborate heists popularised by films and television series.[361] Cultural heritage crime is lesser known, but again, due to media depictions of antiquities at risk of plunder and destruction in film and video game franchises, the general public has some awareness of these issues.[362] Such representations,

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[356] McCarthy, C., *No Country for Old Men.* London: Picador, 2005. p. 62.

[357] Burnham, B., *The art crisis.* London: Collins, 1975. p. 16.

[358] Clemency C. Coggins published a seminal article in 1969 which addressed the illicit trafficking of Pre-Columbian antiquities. It is the first example of research attempting to quantify the scope of archaeological looting and the role that antiquities market participants play in the illicit trade. Coggins, C. C., "Illicit Traffic of Pre-Columbian Antiquities," *Art Journal* 29.1 (1969), pp. 94 – 98; 114.

[359] John H. Merryman's 1986 article is often cited as codifying the pervasive Nationalist/Universalist dichotomies of cultural property discourses – an idea which will be explored in greater detail in chapter 2.1. Merryman, J. H., "Two ways of thinking of thinking about cultural property," *American Journal of International Law* 80 (1986), pp. 831 – 853.

[360] The generally accepted "birth" of art crime was the publication of John Conklin's *Art crime* in 1994. Conklin, J. E., *Art crime.* Westport, CT: Praeger, 1994.

[361] Durney, M. and Proulx, B., "Art crime: a brief introduction," *Crime, Law, and Social Change* 56 (2011), p. 115.

[362] Lixinski, L., "Moral, legal and archaeological relics of the past: portrayals of international cultural heritage law in cinema," *London Review of International Law* 4.3 (2016), pp. 421 – 437, and "Indiana Jones and International

however, fail to encapsulate the true nature of crimes committed against objects of cultural significance. The goal of this chapter is not only to define what cultural heritage crime is and what specific criminal acts are involved when invoking this term, but also to emphasise the ethical issues which often fall outside of legislation and regulatory frameworks. Embodying principles from the subfield of postcolonial criminology, this chapter reframes cultural heritage crime to include more than acts of law-breaking within modern legal jurisdictions. Instead it examines examples of looting, smuggling, and destruction of antiquities which have caused harm to the peoples of antiquity and their living descendants.

Before this examination of cultural heritage crime can take place, it is necessary to contextualise the illicit antiquities market within the broader phenomenon of illicitness and illicit marketplaces. The modern and historic antiquities trade is transnational in nature, and thus requires an understanding of crime which moves beyond traditional ideas of legality and illegality. This first section is therefore devoted to the "many shades of grey" which create illicitness and illicit marketplaces,[363] including the notion of social legitimacy and the process identified by criminologist Marc Bacells as the evolution from tolerance to criminalisation.[364] Once this understanding of illicitness is established, the next part of this chapter explores the operations of illicit markets post-globalisation and the technological revolution, including an overview of the role of the internet and e-commerce. The final part of section 1.3.1. briefly examines the legal responses to illicit marketplaces, reflecting on how these regulatory frameworks have largely failed to stem the flow of illicit goods.

The focus then returns to the illicit antiquities market and cultural heritage crime. This part of the chapter starts by defining the parameters of cultural heritage crime. It also identifies the key evolutions in terminology involved in the study of illicit antiquities looting, trafficking and destruction. This analysis is supplemented with an overview of the specific crimes involved in the modern antiquities trade: looting from archaeological or heritage sites; the trafficking of antiquities from source to market; the creation and dissemination of fake and forged antiquities;

Law: Hero or Looter? – A re-view by Lucas Lixinski," *Centre de droit international. Université Libre de Bruxelles,* 3 Feburary 2016. Accessed 13 May 2021, and Paul, K. A., "Pop-Cultural Heritage: The Daily Show, ISIS, and Looted Antiquities," *HuffPost,* 1 October 2015. Accessed 12 February 2021. https://www.huffpost.com/entry/popcultural-heritage-the-_b_8227456 and "The Pop-Cultural Heritage of Terrorism, Treasure Hunters, and Trafficking: Entertainment versus Reality," *Heritage Daily,* 7 December 2017. Accessed 12 February 2021. https://www.heritagedaily.com/2017/12/pop-cultural-heritage-terrorism-treasure-hunters-trafficking-entertainment-versus-reality/117047#click=https://t.co/eloXSfS98U

[363] Mayntz, R., "Illegal Markets – Boundaries and Interfaces between Legality and Illegality," in J. Beckert and M. Dewey (eds), *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy.* Oxford: Oxford University Press, 2017. p. 46.

[364] Balcells, "One Looter, Two Looters, Three Looters … "

the destruction of cultural objects and sites through acts of vandalism and iconoclasm, and a final category which includes crimes which are not necessarily specific to the illicit antiquities market, but are germane in facilitating illicit flows of cultural objects such as corruption, tax evasion, money laundering, and the forgery or falsification of documents.

Following this analysis will be a discussion of the emergent field of postcolonial criminology. Principles from this framework will be applied to the overall understanding of the illicit antiquities market in this thesis, informing the guidelines presented in Chapter 3.1 for facilitating ethical relationships with the past. The final part of this chapter is devoted to market greyness – a term which is often used to describe the modern antiquities market. Overall, this examination of illicitness and its intersections with cultural heritage will be used as a foundation for the examination of the antiquities market and its intersections with academia in Chapters 2.1 and 2.2.

1. Illicitness and Illicit Marketplaces –

a. Defining Illicitness –

In the modern world, illicit markets seem to exist in parallel with legal, licit economic activity. But upon closer interrogation the perceived boundaries between the two are ill-defined and murky. It is necessary, then, to consider illicit markets within the context of broader economic activity. Despite the level of media coverage dedicated to them, these markets are poorly understood by the general public and commentators alike. Particularly confusing are the perceived boundaries between legality and illegality, and the licit and illicit. In her discussion of boundaries and interfaces between legality and illegality, German sociologist Renate Mayntz acknowledges the shifting nature of these boundaries and the role of the interfaces between legality and illegality.[365] For Mayntz, boundaries of social object categories are established by definitions.[366] The first task at hand, then, is to define what is meant by the terms (il)legal, (il)licit, and (il)legitimate, and how they manifest in marketplaces.

(Il)Legality –

Markets are arenas for voluntary exchange of goods or services for money under conditions of competition.[367] So, in its simplest terms, an illegal market is a market consisting of illegal

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[365] Mayntz, "Illegal Markets".
[366] Mayntz, "Illegal Markets", p. 38.
[367] Beckert, A. and Aspers, P., *The Worth of Goods – Valuation and Pricing in the Economy.* Oxford: Oxford University Press, 2008.

market practices. This can involve the exchange of goods or services in which the "product itself or its production, exchange, or consumption violate legal stipulations."[368] However, in their contribution to an economic sociology of illegality and the economy, Jens Beckert and Matías Dewey remind us that not all elements in the market are necessarily illegal. For "illegal aspects may be embedded in perfectly legal organizations" and can "take place within legal market structures" stemming "from otherwise legally operating actors."[369] This dynamic can result in otherwise law-abiding citizens unintentionally participating in illegal action systems.[370]

The distinction between illegal and legal is neither "homogenous nor static".[371] Laws change over time, differ across legal jurisdictions, and are subject to the role of social norms which shape the intersection between legality and illegality, and illegality and legitimacy.[372] In response to this phenomenon, Josiah Heyman argues for the "thinking of legalization and illegalization as processes (in particular as socio-political projects), rather than as states of being."[373] Balcells explores this process in his study of cultural heritage crime, describing it as an evolution from tolerance to criminalisation.[374] Whilst this description can be applied to many different types of crime it is especially true if we consider the trade of antiquities – characterised by its pervasive practices and values which run counter to twentieth century cultural property laws. Thus, statements of illegality must be considered in reference to specific legal, social, and historic contexts.

(Il)Licitness –

Distinguishing between legality and illegality invites challenges for policymakers and law enforcement. It also creates confusion for market actors and the wider public, who may lack the specialist knowledge required to determine what constitutes as law-abiding in certain jurisdictions. In response to the difficulty in distinguishing between legality and illegality, Itty Abraham and Willem van Schendel propose a different approach. They argue "conceptualising

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[368] Beckert, J. and Dewey, M., *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality and the Economy.* Oxford: Oxford University Press, 2017, paraphrasing Beckert, J. and Wehinger, F., "In the Shadow: Illegal Markets and Economic Sociology," *Socio-Economic Review* 11 (2012), pp. 5 – 30.
[369] Beckert and Dewey, *The Architecture of Illegal Markets,* p. 2.
[370] Mayntz, "Illegal Markets", p. 41.
[371] Beckert and Dewey, *The Architecture of Illegal Markets,* p. 6.
[372] One recent and notable example is the legalisation of the medical marijuana market in certain jurisdictions where non-medical marijuana use remains illegal. See Diuon, C., "Making the Medical Marijuana Market," in J. Beckert and M. Dewey (eds), *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy.* Oxford: Oxford University Press, 2017. pp. 159 – 176.
[373] Heyman, J. M., "The Study of Illegality and Legality: Which Way Forward?" *Political and Legal Anthropology Review* 36.2 (2013), p. 304.
[374] Balcells, "One Looter, Two Looters, Three Looters … "

'illegal' transnational linkages" requires a radically different framework, especially "if we are to understand the persistence of these flows over time and space."[375]

Instead, a more "subtle approach" to the relationship between legality and illegality is favoured, building upon a distinction between what states consider to be legitimate or "legal" and what actors involved in transnational networks consider to be legitimate or "licit".[376] In this context illegality is understood in reference to formal legal rules and norms, whereas illicitness is a broader term which includes broader notions of harm. Commenting on this framework, Heyman argues that whilst Abraham and van Schendel's licit-legal and illicit-illegal distinctions have been helpful in understanding legality and illegality, we still need a "more careful classification and analysis of symbols and meanings, wider ideologies and moralities, and the production and receipt of such discourses."[377]

Describing the modern antiquities market as an illicit marketplace is particularly useful if we consider the jurisdictional issues which make it difficult to draw clear lines of legality and illegality. As will be explored in Chapter 2.1 looted and stolen antiquities are commonly routed through "transit ports" or "portals" – locations with weaker or non-existent cultural property regulation, poor staff training and resources, or officials vulnerable to corruption.[378] When moved through these portals:

> illicit items mingle with licit items and often gain paperwork, a false back story, and a degree of legitimacy which will allow the item to be moved to a location with a stricter import/export regime where they gain more paperwork and more legitimacy.[379]

This movement is not only physical, but also involves the trafficked antiquities undergoing a conceptual transformation: from "looted and illegal antiquity" to a "legal commodity".[380]

(Il)Legitimacy –

The other distinction that needs to be considered is the one between legitimacy and illegitimacy. Legitimacy is the tolerance, acceptance, or moral rejection associated with specific

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[375] Abraham, I. and van Schendel, W., "Introduction – the Making of Illicitness," in I. Abraham and W. van Schendel (eds), *Illicit Flows and Criminal Things – States, Borders, and the Other Side of Globalization.* Bloomington: Indiana University Press, 2005. p. 4
[376] Abraham and van Schendel, "The Making of Illicitness", p. 4.
[377] Heyman, "The Study of Illegality and Legality", p. 305.
[378] Mackenzie, S. et al. *Trafficking Culture. New Directions in Researching the Global Market in Illicit Antiquities.* Abingdon and New York: Routledge, 2020. p. 9, and Polk, K., "The Antiquities Trade Viewed as a Criminal Market," *Hong Kong Lawyer* (2000), pp. 82 – 92.
[379] Mackenzie et al., *Trafficking Culture,* p. 9.
[380] Mackenzie et al., *Trafficking Culture,* p. 1.

products or services offered illegally.[381] This differs from legality and legal norms, which are defined as a sub-set of formal rules including laws, regulations, charters, statute set by bodies authorised to do so by law, convention or agreement, and are typically supported by sanctions.[382] Mayntz suggests there is no actual conceptual ambiguity about a distinction between legal and illegal as properties of action "if we define legal action as action in conformity with a legal norm, and illegal action as action that violates a legal norm."[383] There is, however, a conceptual distinction between formal legality and social legitimacy which is empirically relevant where not everything formally legal is deemed to be legitimate by "rule takers".[384]

For example, in a context where formal rules are issued by a competent authority, actions formally defined as illegal can be considered to be legitimate or appropriate by a community. Formal legality and social legitimacy diverge

> if the legitimacy of a political authority is contested, or if a political authority cannot impose threatened sanctions, illegality is only formal. Where formal legality and social legitimacy diverge, legitimate illegality flourishes.[385]

In the context of illicit markets, legitimacy must be considered in relation to the "legal gaps"[386] or the "interfaces"[387] where the legal and illegal, or illegal and illegitimate intersect[388]. To quote Beckert and Dewey:

> On one hand, we designate an action as legal if that action shows compliance with sanctioned norms. But on the other hand, an action could be legal not because it shows compliance with existing rules, but because it does not violate any state-sanctioned norms. In other words, it exposes a gap in regulation.[389]

The social acceptance of formally illegal markets can vary considerably. For example, in social contexts of contested legality, where "the law" is not considered legitimate, the legal/illegal boundary is only "weakly drawn" and what is formally illegal may become accepted practice within the context of social norms. Mayntz suggests, "the more diffused the perceived legitimacy of formally illegal acts, the less is the felt need to hide them."[390]

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[381] Beckert & Dewey, *The Architecture of Illegal Market,* p. 12.
[382] Manytz, "Illegal Markets," p. 38.
[383] Manytz, "Illegal Markets," p. 38.
[384] Manytz, "Illegal Markets," p. 40.
[385] Manytz, "Illegal Markets", p. 40.
[386] Beckert & Dewey, *The Architecture of Illegal Market,* p. 11-12.
[387] Manytz, "Illegal Markets".
[388] Beckert & Dewey, *The Architecture of Illegal Market*, p. 12
[389] Beckert & Dewey, *The Architecture of Illegal Market*, p. 11.
[390] Manytz, "Illegal Markets", p. 42.

The application of legitimacy is of utmost importance in political theory where it is used in relation to authority and authority relations, where "some authors judge the legitimacy of a regime by its conformity to or violation of theoretically derived normative standards."[391] This concept of legitimacy stems from the work of sociologist and political economist Max Weber.[392] For Weber, legitimacy is not an objective property, but a subjective belief "that a given social order or practice is exemplary and binding."[393] This applies not only to legal norms, but also practices based on tradition, custom, or convention.[394] Further, there is a conceptual overlap with Weberian legitimacy and what March and Olsen call "appropriate" and define as behaviour that is "expected and seen as natural for members of a given collectivity playing a specific role in a given situation."[395] Again, this dynamic has serious implications for transnational illicit markets. The modern antiquities trade, for example, combines many different ideas of appropriateness intersecting with international and domestic legal frameworks.[396]

Ultimately, (il)legality, (il)licitness, and (il)legitimacy are all fluid sociological concepts, which respond to their unique socio-political contexts and may exist in contradiction to the same concepts according to the law. They are also subject to the influence of an array of interdisciplinary perspectives: another demarcation of their dynamism. And, much like the legal and licit economy, there has been a significant change in the conceptualisations of these markets in an increasingly international post-globalisation world. All of these terms can be used to describe parts of the modern illicit antiquities market. There are acts which contribute to the modern trade which are illegal within certain legal contexts (such as looting or theft), which may not be seen as consistently illegal in other jurisdictions. To complicate matters further there are also practices germane to the modern market which are now deemed illegal or illegitimate, that were previously legal or socially legitimate.

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[391] Manytz, "Illegal Markets", p. 39.
[392] The concept of legitimacy is explored by Weber in the following collected and translated works: Weber, M., *Economy and Society – An Outline of Interpretive Sociology*. G. Roth and C. Wittich (eds). Berkeley: University of California, 1978, and Weber, M., "The Three Types of Legitimate Rule," trans. H. H. Gerth. *Berkeley Publications in Society and Institutions* VI.1 (1958), pp. 267 – 359.
[393] Mayntz paraphrasing Weber (Weber, M., *Wirtschaft und Gesellschaft*. München: C. H. Beck, 1959. p. 256) See Mayntz, "Illegal Markets," p. 39 – 40.
[394] Mayntz paraphrasing Weber. Mayntz, "Illegal Markets", p. 39.
[395] March, J. G. & Olsen, J. G., "The logic of appropriateness," in M. Rein, M. Moran and R. E. Goodin (eds), *Handbook of Public Policy*. Oxford, Oxford University Press. 2006. pp. 689 –708, and Mayntz, "Illegal markets," p. 40.
[396] Balcells, "One Looter, Two Looters, Three Looters … "

b. Illicit Market Operations –

Since the 1990s there has been a dramatic shift away from the fixed hierarchies of traditional crime operations, with movement toward decentralised networks:

> away from controlling leaders and toward multiple, loosely linked, dispersed agents and cells; away from rigid lines of control and exchange and toward constantly shifting transactions as opportunities dictate.[397]

Not only did these traditional structures become obsolete, but also the assumption that different traffickers specialised in different types of merchandise. New economic and technological possibilities emerged from globalisation which made it significantly easier than ever for traders to combine cargos or shift from one to another.[398] To quote Maureen Baginski, the FBI deputy director from 2003 to 2005:

> the specialization became the network itself, and its ability to procure, transport, and deliver illegal merchandise across countries. What the merchandise was became almost irrelevant.[399]

Whilst the goods or services traded within illicit markets can differ greatly, there are a number of general operational traits that are somewhat consistent across market activity. Like all markets, illicit markets are driven by the basic economic model of supply and demand.[400] However, specific conditions must be met within this model in order for illicit markets to develop. Wehinger and Beckert argue that on the demand side, "either a legal market will not exist or the goods illegally offered will be cheaper than the ones offered legally" simultaneously requiring the purchaser to discount any "moral codes" and "(potential) risks" associated with the illegal transaction.[401] On the supply side, illegal markets are dependent on "their expected profitability for the supplier" and, like purchasers, suppliers are required to overcome any internal moral objections related to their illegal behaviours.[402] The relationship between the supply/demand model and market participants is of great significance to the modern market for antiquities.[403]

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[397] Naim, M., *Illicit – How Smugglers, Traffickers, and Copycats are Hijacking the Global Economy.* New York: Anchor Books, 2005. p. 7.
[398] Naím, *Illicit,* p. 32.
[399] Maureen Baginski quoted by Naím. See Naím, *Illicit,* p. 32.
[400] Beckert & Wehinger, "In the shadow".
[401] Beckert & Wehinger, "In the shadow", p. 7.
[402] Beckert & Wehinger, "In the shadow", p. 7.
[403] This dynamic of supply/demand in the market for antiquities will be examined in Chapters 2.1.

Jens Beckert also proposes a model of illegal market coordination problems, which reflects commonalities across varied illicit markets.[404] Beckert's coordination problems are "anchored in the postulation that for markets to operate, uncertainty in market transactions must be reduced",[405] as market actors require "stable worlds"[406] or "calculability"[407] in order for role sets to be reproduced. These problems are identified by Beckert as the value problem: the constitution of actor preferences that assigns value to goods, which stresses the demand side of the market;[408] the cooperation problem: the social risks that market actors incur due to their incomplete knowledge of the intentions of their exchange partners and the quality of the product they wish to purchase;[409] and the competition problem: the paradox that while perfect markets are efficient in market equilibrium, profit is only possible when the market is in a state of disequilibrium.[410] In the case of illegal markets, the absence of legally enforceable regulations on standards results in problems emerging where "asymmetric distribution of information play a much larger role in illegal transactions", ultimately increasing risks for the purchaser.[411]

These risks include, but are not limited to, difficulties in quality assessment, the threat of prosecution, the possible non-fulfilment of contracts, and the inability to secure property rights through the legal system.[412] The combination of these factors lead Beckert and Dewey to conclude "illegal markets are limited in their capacity to develop institutional trust."[413] To reduce transaction risks, market participants must resort to "instruments which are archaic compared with those in the legal economy."[414] Such measures include the latent threat of violence, the use of secrecy and market fragmentation, and trust-generating mechanisms that rely on reputation through personal networks. In his examination of the illegal trade of human organs,[415] Phillipe Steiner considers the effective or potential use of violence and the

[404] Beckert, J., "The Social Order of Markets," *Theoretical Sociology* 38 (2009), pp. 245 – 269.
[405] Beckert & Wehinger, "In the shadow", p. 12.
[406] Fligstein, N., *The Architecture of Markets: An Economic Sociology of Twenty-First Capitalist Societies.* Princeton: Princeton University Press, 2002.
[407] Weber, *Wirtschaft Und Gellschaft.*
[408] Beckert, "The social order of markets", p. 253.
[409] Beckert, "The social order of markets", p. 253.
[410] Beckert, "The social order of markets", p. 258.
[411] Beckert & Dewey, *The Architecture of Illegal Markets,* p. 19.
[412] Beckert & Dewey, *The Architecture of Illegal Markets,* pp. 19 – 20.
[413] Beckert & Dewey, *The Architecture of Illegal Markets,* p. 20.
[414] Beckert & Dewey, *The Architecture of Illegal Markets,* p. 19.
[415] Steiner, P., "Secrecy and Frontiers in Illegal Organ Transplantation," in J. Beckert and M. Dewey (eds), *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality and the Economy.* Oxford: Oxford University Press, 2017. pp. 51 – 69.

management of secrecy to be the hallmarks of illegal transactions.[416] These elements are what separate illegal transactions from legal market transactions, otherwise characterised by

> *peaceful, anonymous competition*, for the control of economic opportunities […] where the *ability* to pay plays the central part and where disputes are settled by *law*.[417]

In contrast, illegal markets are regulated by "the use or the threat of violence" and require "secrecy" to transgress the boundaries between "illegal and legal worlds."[418]

Illicit markets and their associated international trafficking networks are both varied in their form, structure and the ways in which we conceptualise them from legal, economic, and criminological perspectives. But there are still threads of affiliation between different markets, legal contexts and spatial-geographic contexts. Across different illicit markets, there are consistencies in the use of violence, secrecy, and trust management are consistent, even though they may vary in scale. There are further parallels evident in the recent changes to criminal organisations, which have shifted away from traditional, hierarchical structures that specialise in specific illicit products to decentralised networks capable of trafficking a vast array of illicit objects and services.

c. E-Commerce and Illicit Internet Marketplaces –

In the late 1990s and early 2000s, the opportunities of electronic commerce, or e-commerce – commercial transactions conducted via the internet – were widely celebrated.[419] The term e-commerce encompasses not only the buying and selling of goods, but also the wider processes of "sharing of business information, maintaining business relationships, and conducting business transactions by means of telecommunications networks."[420] Using the internet to buy and sell goods and services removed many of the limitations of traditional brick-and-mortar retail. Consumers could buy from businesses (B2C e-commerce) or other consumers (C2C e-commerce) regardless of their geographic location, and businesses could maintain large

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[416] Steiner, "Secrecy and Frontiers," p. 55.
[417] Steiner, "Secrecy and Frontiers," p. 59. NB: Author's own italics.
[418] Steiner, "Secrecy and Frontiers," p. 59.
[419] U.S. Department of Commerce, "Digital Economy 2000," *Economics and Statistics Administration. Office of Policy Development,* June 2000. Accessed 23 September 2020. https://www.commerce.gov/sites/default/files/migrated/reports/digital_0.pdf
[420] Zwass, V., "Electronic commerce: structure and issues," *International Journal of Electronics and Communications* 1.1 (1996), p. 3; See also Applegate, L. M. et al., "Electronic commerce: building blocks of new business opportunity," *Journal of Organizational Computing and Electronic Commerce* 6.1 (1996), pp. 1 – 10; Kalakota, R. and Whinston, A. B., *Frontiers of Electronic Commerce.* Reading, MA: Addison-Wesley, 1996; and Riggins, F. J. and Rhee, H-S., "Toward a Unified View of Electronic Commerce," *Communications of the ACM* 41.10 (1998), pp. 88 – 95.

amounts of stock in warehouses rather than maintaining a costly physical retail space.[421] Further there were many options for both consumers and businesses provided by different styles of e-commerce including online retailing (consumers buy goods and services directly from a seller over the internet using a web browser), electronic markets (also known as electronic hubs or e-hubs)[422], and online auctions (auctions held over the internet).

However, from early on in the history of e-commerce, there were concerns about the legal regulation, governance, security, and trustworthiness, and ethics of digital economies.[423] Commentators have often described the internet as a "Wild West" – an unregulated space which defied the restrictions of more traditional forms of commerce creating problems related to *inter alia* privacy and security, financial reporting, and intellectual property rights.[424] The internet and the ways in which businesses and consumers used the internet seemed to develop so rapidly that legal and regulatory systems could not keep up, creating a legal and/or ethical "lag".[425] Questions around the "equality" of the internet were also asked, with some highlighting the "challenge of access" in the digital economy as an area of inequality and potential economic injustice.[426] In their article on the potential benefits and issues with e-commerce, Patricia Buckley and Sabrina Montes argue that this access is a "necessary precondition for the diffusion of e-commerce" however, this "access is limited in many countries by either inadequate communications infrastructure, by relatively higher costs, or both."[427] Further, it was becoming increasingly apparent that e-commerce was being utilised by individuals and groups to conduct a vast array of criminal activities.

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[421] U.S. Department of Commerce, "Digital Economy".
[422] For further reading on electronic marketplaces or e-hubs, see: Alt, R. and Klein, S., "Twenty Years of Electronic Markets Research – Looking Backwards towards the Future," *Electronic Markets* 21.1 (2011), pp. 41 – 51; Kaplan, S. and Sawhney, M., "E-Hubs: The New B2B Marketplaces," *Harvard Business Review* 78.3 (2000), pp. 97 – 103; and Malone, T. W., Yates, J., and Benjamin, R. I., "Electronic Marketplaces and Electronic Hierarchies," *Communications of the ACM* 30.6 (1987), pp. 484 – 497.
[423] See Baldwin, L. P. and Currie, W. L., "Key Issues in Electronic Commerce in Today's Global Information Infrastructure," *Cognition, Technology & Work* 2 (2000), pp. 27 – 34; Buckley, P. and Montes, S., "The Promise and challenge of E-Commerce," *Georgetown Journal of International Affairs* 1.2 (2000), pp. 29 – 35; Kracher, B. and Corritore, C. L., "Is There a Special E-Commerce Ethics?" *Business Ethics Quarterly* 14.1 (2004), pp. 71 – 94; Maury, M. D. and Kleiner, D. S., "E-Commerce, Ethical Commerce?" *Journal of Business Ethics* 36.1/2 (2002), pp. 21 – 31; Ruppel, C., Underwood-Queen, L. and Harrington, S. J., "e-Commerce: The Roles of Trust, Security, and Type of e-Commerce Involvement," *e-Service Journal* 2.2 (2003), pp. 25 – 45; Satapathy, C., "Legal Framework for E-Commerce," *Economic and Political Weekly* 33.29/30 (1998), pp. 1906 – 1907; and Sunu, H. W., Norman, R. P. Kamen, K. S., Schiffer, L. P. and Perri, A. B., "Recent Developments in E-Commerce," *Torts & Insurance Law Journal* 37.2 (2002), pp. 345 – 368.
[424] Maury and Kleiner, "E-Commerce, Ethical Commerce?"
[425] Kracher and Corritore, "Is There a Special E-Commerce Ethics?"
[426] Buckley and Montes, "The Promise and challenge", p. 32.
[427] Buckley and Montes, "The Promise and challenge", p. 32.

Crime and the Internet –

The earliest recorded internet transaction was used to facilitate the trade of illicit goods. In the 1970s the Advanced Research Projects Agency Network – a precursor to the internet – was used by students at the Stanford Artificial Intelligence Laboratory and Massachusetts Institute of Technology to facilitate a sale of cannabis. Journalist John Markoff, in his book *What the Dormouse Said,* described this transaction as "the seminal act of e-commerce."[428] Nowadays, illicit marketplaces facilitated by the internet and the wider phenomenon of cybercrime is well known, albeit not always well understood by the wider public. Cybercrime can be broadly defined as any criminal activity carried out using computers or the internet.[429] Different legal jurisdictions offer varied definitions of what constitutes cybercrime, for example in Australia the term describes both "crimes directed at computers or other information communications technologies (ICTs)" and "crimes where computers or ICTs are an integral part of the offence".[430]

Cybercrime encompasses a vast range of criminal activities, including emergent crimes which have evolved from the unique conditions of anonymity, ease of access, and global nature of the internet. The speed at which criminal individuals and networks innovate almost always surpasses the pace that legal systems and governance operates, rendering it difficult to regulate, police, and monitor cybercrime.[431] Crime has also been found in all corners of digital spaces from the encrypted Dark Net to the public pages of Facebook. Research since the early 2000s have identified a number of psychosocial factors which contribute to the prevalence of cybercrime.

According to cyberpsychologist John Suler, there are six factors which interact with each other to create what he calls an "online disinhibition effect",[432] allowing people who operate online to

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[428] Markoff, J., *What the Dormouse Said: How the Sixties Counterculture Shaped the Personal Computer Industry.* New York City: Viking Press, 2005. p. 109.

[429] Wall, D. S., *Cybercrime: The transformation of crime in the information age.* Cambridge: Polity, 2007.

[430] Specific cybercrime offenses, including computer intrusions, unauthorised modification of data, unauthorised impairment of electronic communications, the creation and distribution of malicious software and dishonestly obtaining or dealing in personal financial information, are found in Australian Commonwealth legislation within parts 10.7 and 10.8 of the Criminal Code Act (*Criminal Code Act 1995).* Australian Federal Police, "Crime types – Cyber crime." Accessed 1 October 2020. https://www.afp.gov.au/what-we-do/crime-types/cyber-crime

[431] Jewkes, Y. (ed.), *Crime online: Committing, policing and regulating cybercrime.* Cullompton, UK: Willian, 2006.

[432] Suler first used this phrase in a 2004 article (Suler, J., "The Online Disinhibition Effect," *CyberPsychology & Behavior,* 7.3 (2004), pp. 321 – 326), updating it with more contemporary theories and data in 2015 in his book *Psychology of the Digital Age.* See: Suler, J., *Psychology of the Digital Age – Humans Become Electric.* Cambridge: Cambridge University Press, 2015. pp. 95 – 111.

"self-disclose or act out more frequently or intensely then they would in person."[433] Interacting to create a "complex and amplified form of disinhibition",[434] these six factors identified by Suler include: dissociative anonymity, which is made possible by the ability to conceal one's online identity and is the "principle" factor in formulating the disinhibition effect;[435] physical invisibility created by the fact that in "many online environments people cannot see each other";[436] asynchronous communication, which removes the "continuous feedback loop that reinforces some behaviors and extinguishes others";[437] solipsistic introjection, defined by Suler as "[r]eading another person's message […] as a voice within one's head, as if that person's psychological presence has been internalized or interjected into one's psyche";[438] dissociative imagination, which allows internet users to "split or dissociate online fiction from offline fact";[439] attenuated status and authority working to negate the social position of authority figures, who would usually deter people from acting or speaking in a certain way out of fear of punishment or disapproval;[440] and finally, the individual differences which determine "when and how people become disinhibited."[441] Collectively these factors work to create the conditions which allow individuals to engage in online activities that they would not necessarily participate in the "offline world", including crime.

Cryptomarkets –

Cryptomarkets, commonly known as the Dark Net, or Dark Web, are encrypted markets which act as facilitators and brokers in illegal internet activity, offering transaction infrastructure for dealers and buyers of drugs, weapons, stolen goods, and other illegal products and services.[442] Criminologist James Martin defines cryptomarkets as "an online forum where goods and

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[433] Suler, "The Online Disinhibition Effect," (2004), p. 321.
[434] Suler, J., "The Online Disinhibition Effect," *International Journal of Applied Psychoanalytic Studies* 2.2 (2005), p. 184.
[435] Suler, "The Online Disinhibition Effect," (2005), pp. 184 – 185.
[436] Suler, "The Online Disinhibition Effect," (2005), p. 185.
[437] Suler, "The Online Disinhibition Effect," (2005), p. 185.
[438] Suler, "The Online Disinhibition Effect," (2005), p. 186.
[439] Suler, "The Online Disinhibition Effect," (2005), p. 187.
[440] Suler, "The Online Disinhibition Effect," (2005), pp. 187 – 188.
[441] Suler, "The Online Disinhibition Effect," (2005), p. 188.
[442] Martin, J., *Drugs On the Dark Net: How Cryptomarkets Are Transforming the Global Trade in Illicit Drugs.* Bassingstoke, UK: Palgrave Macmillan, 2014. p. 3. For further definitions and examinations of cryptomarkets and the Dark Net, see Barratt, M. J., Ferris, J. A. and Winstock, A. R., "Use of Silk Road, the online drug marketplace, in the United Kingdom, Australia and the United States," *Addiction* 109.5 (2014), pp. 774 – 783; Bartlett, J., *The Dark Net.* London: Windmill Books, 2015; Buxton, J. and Bingham, T., "The rise and challenge of dark net drug markets," *Policy Brief 7.* Swansea, UK: Global Drug Policy Observatory, 2015; Easttom, C., "Conducting Investigations on the Dark Web," *Journal of Information Warfare* 17.4 (2018), pp. 26 – 37; Jeffray, C. and Feakin, T., "Underground web: The cybercrime challenge," *International Cyber Policy Centre.* Canberra, ACT: Australian Strategic Policy Institute, 2015; and Owen, G. and Savage, N., "Chapter Four: The TOR Dark Net," in G. Owen and N. Savage, *Cyber Security in a Volatile World.* Waterloo, ON: Centre for International Governance Innovation, 2017. pp. 51 – 62.

services are exchanged between parties who use digital encryption to conceal their identities."[443] The decentralisation, distance and anonymity inherent to cryptomarkets contribute to their flexibility, durability, and overall success.[444] To quote Martin:

> Decentralised exchange networks are able to expand rapidly, connecting as many users as the site infrastructure can handle. The idiosyncrasies of encrypted online exchange also make cryptomarkets extraordinarily difficult targets for law enforcement agencies which have more organisational experience and expertise in prosecuting in-person forms of illicit exchange.[445]"

The Dark Net has been the subject of sensationalist and misinformed media coverage, resulting in the depictions of cryptomarkets as lawless, spaces where "anything goes".[446] In reality, the majority of cryptomarkets have their own forms of governance, while some "strictly prohibit the sale of the most overtly and unambiguously harmful goods (such as child pornography and contract killing)".[447] There is also the misconception that illicit marketplaces are confined to the Dark Net. In a 2016 study, Joseph Harrison and colleagues sought to provide a baseline of illegal wildlife trade on the Dark Net, based on concerns that increased scrutiny of the illegal wildlife trade would lead to the online market shifting to the Dark Net.[448] Interestingly, they found little evidence of illegal wildlife trade in their search, with the single exception being San Pedro Cactus – a species listed on the International Union for Conservation of Nature Red Least as the lowest level of concern.[449]

The surprising lack of wildlife contraband throughout the Dark Net rightly led the authors to consider why this would be the case. Whilst they acknowledged the possibility that the keywords used in the search might have been inappropriate, or the scope of their search fell outside the sites on the Dark Net where wildlife trade takes place, they conclude that the lack of trade is likely indicative of enforcement strategies. Acknowledging the majority of the trade on the Dark Net consists of more "traditionally" illegal items, like drugs, arms, and certain types of

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[443] Martin, J., "Lost on the Silk Road: Online drug distribution and the 'cryptomarket'," *Criminology and Criminal Justice* 14.3 (2013), p. 356.
[444] Martin, *Drugs On the Dark Net,* p. 3.
[445] Martin, *Drugs On the Dark Net,* p. 3. See also: Christin, N., "Traveling the Silk Road: Measurement Analysis of a Large Anonymous Online Marketplace," *Proceedings of the 22nd international conference on the World Wide Web, 30 June 2012.* International World Wide Web Conferences Steering Committee, 2013, and Martin, 'Lost on the Silk Road'.
[446] Lumby, A., "Porn, Drugs, Hitmen, Hackers: This is the Deep Web," *Fiscal Times,* 15 October 2013. Accessed 24 September 2020. https://www.thefiscaltimes.com/Articles/2013/10/15/Porn-Drugs-Hitmen-Hackers-Deep-Web
[447] Martin, *Drugs On the Dark Net,* p. 6.
[448] Harrison, J. R., Roberts, D. L. and Hernandez-Castro, J., "Assessing the Extent and Nature of Wildlife Trade on the Dark Web." *Conservation Biology* 30.4 (2016), pp. 900 – 904.
[449] Ostalaza, C., Caceres, F. and J. Roque., "*Echinopsis Pachanoi*," in *The IUCN red list of threatened species 2013*. http://dx.doi.org/10.2305/IUCN.UK.2013-1.RLTS.T152445A637592.en, 2013.

pornographic images,[450] which are all "highly scrutinized by law enforcement."[451] The online illicit wildlife trade, however, is not as strictly enforced in comparison and "[c]urrently, criminals appear to be able to sell their illegal wildlife relatively openly without apparent interference from law enforcement."[452] Ultimately, the authors conclude that a lack of enforcement suggests "there is little need for the community to cross the technological threshold and move onto the dark web because increased anonymity does not appear to be required."[453] In other words, illicit marketplaces that do not experience the same degree of scrutiny from law enforcement are able to operate freely on the Surface Web.

The Surface Web –

The Surface Web is the portion of the internet accessible to the general public and searchable with standard web search engines. Increasingly researchers and government agencies have been highlighting the phenomenon of cybercrime occurring openly on the Surface Web, often in plain sight of platform moderators or law enforcement officials. The market for illicit antiquities has been found on the Surface Web, with no evidence suggesting sales activity is facilitated by the Dark Net. Much like the market for illicit wildlife commodities, the internet market for antiquities is poorly regulated thus allowing criminal individuals and organisations to operate in legitimate marketplaces without fear of consequences; an issue which will be explored in greater detail in Chapter 2.1. Whilst the shadowy underworld of the Silk Road and other cryptomarkets are the standard settings for modern cybercrime narratives, in reality the Surface Web, including social media platforms, are associated with markets for illicit drugs,[454]

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[450] Sui, D., Caverlee, J. and Rudesill, D. S., "The Deep Web and the Darknet: A Look inside the Internet's Massive Black Box," STIP 03. Washington, DC: Woodrow Wilson International Center for Scholars, 2015.

[451] Harrison, "Wildlife Trade on the Dark Web", p. 903.

[452] Harrison, "Wildlife Trade on the Dark Web", p. 903, and Hernandez-Castro, J., and Roberts, D. L., "Automatic Detection of Potentially Illegal Online Sales of Elephant Ivory Via Data Mining," *PeerJ Computer Science* 1 (2015), pp. 1 – 10.

[453] Harrison, "Wildlife Trade on the Dark Web", p. 903.

[454] For research on the prevalence and nature of illicit drug sales on social media see: Bright, D. A., Hughes, C. E. and Chalmers, J., "Illuminating dark network: A social networking analysis of Australian drug trafficking syndicate," *Crime, Law and Social Change* 57.2 (2011), pp. 151 – 176; Mackey, T. K. and Liang, B. A., "Global Reach of Direct-to-Consumer Advertising Using Social Media for Illicit Online Drug Sales," *Journal of Medical Internet Research* 15.5 (2013), e105; Moeller, K., Munksgaard, R. and Demant, J., "Illicit drug prices and quantity discounts: A comparison between a cryptomarket, social media, and police data," *International Journal of Drug Policy* (2020), https://doi.org/10.1016/j.drugpo.2020.102969; Moyle, L. et al., "#Drugsforsale: An exploration of the use of social media and encrypted messaging apps to supply and access drugs," *International Journal of Drug Policy* 63 (2019), pp. 101 – 110; and Watters, P. A. and Phair, N., "Detecting Illicit Drugs on Social Media Using Automated Social Media Intelligence Analysis (ASMIA)," in Y. Xiang, J. Lopez, CC. J. Kuo and W. Zhou (eds), *Cyberspace Safety and Security. CSS 2012. Lecture Notes in Computer Sciences,* vol. 7672. Berlin and Heidelberg: Springer, 2012. https://doi.org/10.1007/978-3-642-35362-8_7

weapons,[455] child sexual abuse imagery,[456] and even human trafficking.[457]

In addition to the online disinhibition effect discussed above, the prevalence of crime on the Surface Web is also caused by the ongoing failure to regulate digital spaces. Whilst these issues will be discussed at length in relation to the illicit antiquities market in Chapter 2.1, they can be briefly summarised as relating to three key issues. First, the wider challenges faced by regulators in applying basic principles of international law to the global online marketplace.[458] Second, the inability of platforms to develop and enforce their own internal policies restricting illicit market activity based on a lack of resources (mainly time and trained personnel) and the political will of the platforms themselves. And finally, the speed at which criminal practice innovates and evolves compared to the slower pace of developing and enacting legislation, which rarely allow law enforcement and platform moderators to respond to illicit marketplaces proactively.

Major Platforms in Illicit Internet Marketplaces –

There are a number of internet and social media platforms which have been identified as facilitating illicit marketplaces. The following section will briefly introduce the major platforms involved in the illicit trade of antiquities, as well as other illicit goods and services.

eBay –

eBay Inc. is a global commerce company that "connects millions of buyers and sellers around the world" by facilitating consumer-to-consumer and business-to-consumer sales through its

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[455] Goel, V. and Isaac, M., "New Facebook policy bans talk of private gun sales, applies to Instagram." *The New York Times,* 30 January 2016. Accessed 16 September 2020. http://www.nytimes.com/2016/01/30/technology/facebook-gun-sales-ban.html?_r=0

[456] For information about the distribution of child sexual abuse imagery on the Surface Web and social media, see: BBC News, "Facebook removes 11.6 million child abuse posts," *BBC News,* 13 November 2019. Accessed 5 November 2020. https://www.bbc.com/news/technology-50404812 ; Burszstein, E. et al., "Rethinking the Detection of Child Sexual Abuse Imagery on the Internet," *The World Wide Web Conference,* May 2019. https://doi.org/10.1145/3308558.3313482 ; Farid, H., "Facebook's Encryption Makes it Harder to Detect Child Abuse," *Wired,* 25 October 2019. Accessed 5 November 2020. https://www.wired.com/story/facebooks-encryption-makes-it-harder-to-detect-child-abuse/ ; and Lyons, K., "As platforms get better at detecting child abuse videos, they're finding more of them," *The Verge,* 7 February 2020. Accessed 5 November 2020. https://www.theverge.com/2020/2/7/21128223/child-abuse-videos-report-facebook-twitter-snap-google-microsoft

[457] Lillie, M., "Gang involvement in human trafficking," *Human Trafficking Search,* 2013. Accessed 16 September 2020. http://humantraffickingsearch.net/wp1/gang-involvement-with-human-trafficking/ , and Mangione, K., "Human trafficking charges laid after victim contacted over Instagram," *CTV News,* 20 October 2015. Accessed 16 September 2020. http://toronto.ctvnews.ca/human-trafficking-charges-laid-after-victim-contacted-overinstagram-police-1.2618784

[458] For a discussion of this issue in the context of the illicit wildlife trade, see: Beardsley, E. R., "Poachers with PCs: The United States' Potential Obligations and Ability to Enforce Endangered Wildlife Trading Prohibitions against Foreign Traders Who Advertise on eBay," *UCLA Journal of Environmental Law & Policy* 25.1 (2007), pp. 1 – 40.

website, eBay.[459] eBay is an online auction and shopping website that facilitates the sales of goods and services listed by individuals and businesses. Founded in 1995, eBay Inc. now operates in 32 countries.[460] Sales on eBay take place through publicly posted auction-listings (for which sellers are charged a fee) via "proxy bidding" – a system developed by eBay to make bidding "more convenient and less-time consuming for buyers."[461] Over time the website has evolved to include "Buy It Now" shopping; an online storefront directory called eBay stores; online classified advertisements; and other services.[462]

During its initial years, eBay was largely unregulated. But as the site grew, location-specific restrictions were introduced to prohibit listings for various items including *inter alia* alcohol, drugs, firearms and ammunition, and child sexual abuse imagery.[463] Of particular relevance to this project are the policies which prohibit the sales of antiquities which have been removed from their likely country of origin prior to the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.[464] However, the exact wording, visibility, and internal enforcement of these restrictions vary largely across legal jurisdictions.[465]

Facebook –

Facebook Inc. is an American social media conglomerate founded in 2004.[466] Its flagship service is Facebook, a social media and social networking service which allows registered users to create a profile of themselves, where they can share text, photos and other multimedia with

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[459] eBay Inc., "Our Company". Accessed 24 September 2020. https://www.ebayinc.com/company/

[460] eBay Inc., "eBay Annual Report 2019," *United States Securities and Exchange Commission.* Washington, D.C., 20549, 2019. Accessed 23 September 2020. https://ebay.q4cdn.com/610426115/files/doc_financials/2019/ar/2019-Annual-Report-(3).pdf

[461] eBay, "Proxy Bidding." Accessed 23 September 2020. https://web.archive.org/web/20031203092720/http://pages.ebay.com/help/buy/proxy-bidding.html

[462] eBay Inc., "Our History". Accessed 24 September 2020. https://www.ebayinc.com/company/our-history/

[463] For some of the prohibited and restricted guidelines by country see eBay Australia, "Prohibited and restricted items". Accessed 24 September 2020. https://www.ebay.com.au/help/policies/prohibited-restricted-items/prohibited-restricted-items?id=4207; eBay UK, "Prohibited and restricted items – Overview". Accessed 24 September 2020. https://pages.ebay.com/uk/help/policies/items-ov.html ; and eBay U.S., "Prohibited and restricted items". Accessed 24 September 2020. https://www.ebay.com/help/policies/prohibited-restricted-items/prohibited-restricted-items?id=4207

[464] UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property.* Paris, 14 November 1970.

[465] For an analysis of these differences in the context of the internet antiquities market see Brodie, N., "How to Control the Internet Market in Antiquities? The Need for Regulation and Monitoring," *The Antiquities Coalition Policy Brief 3,* July 2017.

[466] The founding of Facebook has been surrounded by controversy and dispute as to who the "true" founders are. See Carlson, N., "At Last – The Full Story of How Facebook Was Founded," *Business Insider,* 5 March 2010. Accessed 24 September 2020. https://www.businessinsider.com.au/how-facebook-was-founded-2010-3?r=US&IR=T#we-can-talk-about-that-after-i-get-all-the-basic-functionality-up-tomorrow-night-1

other users.[467] Since 2016 Facebook users also have access to the Facebook Marketplace, which allows buyers and potential buyers to search for goods and services filtering their results by location, category and price.[468] In addition to its social networking platform, Facebook, Facebook Inc. owns photo and video sharing service, Instagram, and WhatsApp Messenger, a freeware, cross-platform messaging and Voice over IP (VoIP) service.

All three platforms have been associated with controversy, including *inter alia* the Cambridge Analytica data scandal, a data breach in early 2018 in which millions of Facebook users' personal data was harvested, without their consent, by political firm Cambridge Analytica,[469] the use of Facebook by military officials to incite genocide against the Muslim Rohingya minority in Myanmar,[470] and both Facebook and Instagram failing to keep footage of the 2019 Christchurch mosque massacre off their platforms, with the former originally being used by the shooter to livestream the terrorist attack.[471] Like eBay, Facebook Inc. has a number of internal user policies which restrict the types of goods and services that can be offered for sale on the platform. However, these restrictions have not stopped researchers and law enforcement agencies identifying an alarming amount of illegal sales activity occurring on the site. Antiquities have been listed for sale on the Marketplace despite policies which prevent such sales.[472] Sales of prohibited goods and services also occur in private Facebook groups – a

[467] Facebook Inc., "About fb – Technologies – Facebook app". Accessed 24 September 2020. https://about.fb.com/technologies/facebook-app/

[468] Ku, M., "Introducing Marketplace: Buy and Sell With Your Local Community," *Facebook Newsroom,* 3 October 2016. Accessed 24 September 2020. https://about.fb.com/news/2016/10/introducing-marketplace-buy-and-sell-with-your-local-community/

[469] The story of the Facebook-Cambridge Analytica scandal was broken by the New York Times in March 2018: Rosenberg, M., Confessore, N. and Cadwalladr, C., "How Trump Consultants Exploited the Facebook Data of Millions," *New York Times,* 17 March 2018. Accessed 29 September 2020. https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html
 For further information about the Cambridge Analytica data breach, see: Granville, K., "Facebook and Cambridge Analytica: What You Need to Know as Fallout Widens," *New York Times,* 19 March 2018. Accessed 29 September 2020. https://www.nytimes.com/2018/03/19/technology/facebook-cambridge-analytica-explained.html ; The Guardian, "The Cambridge Analytica Files". Accessed 29 September 2020. https://www.theguardian.com/news/series/cambridge-analytica-files
 and Wired, "The Cambridge Analytica Story, Explained". Accessed 29 September 2020. https://www.wired.com/amp-stories/cambridge-analytica-explainer/

[470] Mozur, P., "A Genocide Incited on Facebook, With Posts from Myanmar's Military," *New York Times,* 15 October 2018. Accessed 29 September 2020. https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html?auth=linked-google

[471] Asher Hamilton, I., "Facebook and Instagram are still struggling to shut down videos of the Christchurch mosque massacre," *Business Insider,* 3 May 2019. Accessed 29 September 2020. https://www.businessinsider.com.au/facebook-and-instagram-still-hosting-videos-of-christchurch-massacre-2019-5?r=US&IR=T

[472] The ongoing work of the Alliance to Counter Crime Online, a group of experts dedicated to battling injustice and illegality on the internet, and its NGO partners highlight how "due to outdated regulation, social media is infested with a breathtaking amount of criminal activity, ranging from huge online markets for endangered species, drugs, counterfeit goods, and stolen antiquities, to child sex abuse content, human trafficking and various forms of fraud." Alliance to Counter Crime Online, "Countering Crime". Accessed 1 October 2020. https://www.counteringcrime.org

community space which can be set up to have open or closed membership – and public Facebook pages – a public profile usually used by an organisation or business.[473]

WeChat –

WeChat is a Chinese multi-purpose messaging, social media, and mobile payment app developed by Chinese multinational conglomerate Tencent Holdings Ltd. The app was released in 2011, currently boasts over a billion monthly users, and has been associated with a number of controversies including state surveillance and intelligence gathering, privacy issues, and censorship.[474] Subsequently it was banned in India and the United States in 2020,[475] and previously banned in Russia.[476] It has been identified by law enforcement agencies, researchers, and NGOs as the "grim heart" of the illegal wildlife trade, along with Facebook, WhatsApp, Instagram, and Zalo (a Vietnamese messaging app more commonly used in Vietnam).[477]

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[473] For example, the use of private Facebook groups to buy and sell looted antiquities, and even to commission the looting of antiquities from their archaeological context made apparent in the ongoing research output by the ATHAR Project. See: Al-Azm, A. and Paul, K. A., "Facebook's Black Market in Antiquities. Trafficking, Terrorism, and War Crimes," *ATHAR Report June 2019.* Accessed 1 October 2020. http://atharproject.org/report2019/

[474] Chen, L., "Why China's tech-savvy millennials are quitting WeChat," *South China Morning Post,* 22 July 2018. Accessed 1 October 2020. https://www.scmp.com/news/china/society/article/2156297/how-growing-privacy-fears-china-are-driving-wechat-users-away ; Feng, E., "China Intercepts WeChat Texts from U.S. and Abroad, Researchers Say," *NPR,* 29 August 2019. Accessed 1 October 2020. https://www.npr.org/2019/08/29/751116338/china-intercepts-wechat-texts-from-u-s-and-abroad-researcher-says ; Knockel, J. et al., "WeChat, They Watch. How International Users Unwittingly Build up WeChat's Chinese Censorship Apparatus," *The Citizen Lab Report,* 7 May 2020. Accessed 1 October 2020. https://citizenlab.ca/2020/05/we-chat-they-watch/ ; Leung, H., "The U.S.-China Trade War and #MeToo Were Among the Most Censored Topics on China's WeChat, Report Finds," *Time Magazine,* 13 February 2019. Accessed 1 October 2020. https://time.com/5528362/china-wechat-censorship-wechatscope/ ; Lim, S., "WeChat's new privacy controls: what does it mean users and advertisers," *The Drum,* 13 April 2020. Accessed 1 October 2020. https://www.thedrum.com/news/2020/04/13/wechats-new-privacy-controls-what-does-it-mean-users-and-advertisers ; and McDonell, S., "China social media: WeChat and the Surveillance State," *BBC News,* 7 June 2019. Accessed 1 October 2020. https://www.bbc.com/news/blogs-china-blog-48552907

[475] For information about India's ban of WeChat, see: Deng, I., "Tencent's WeChat cuts off service in India amid the country's ban on Chinese apps," *South China Morning Post,* 27 July 2020. Accessed 29 September 2020. https://www.scmp.com/tech/apps-social/article/3094834/tencents-wechat-cuts-service-india-amid-countrys-ban-chinese-apps , and ET Bureau, "India bans 59 Chinese apps including TikTok, WeChat, Helo," *The Economic Times,* 29 July 2020. Accessed 29 September 2020. https://economictimes.indiatimes.com/tech/software/india-bans-59-chinese-apps-including-tiktok-helo-wechat/articleshow/76694814.cms. For information regarding the US ban of WeChat, see: Ross, W., "Commerce Department Prohibits WeChat and TikTok Transactions to Protect the National Security of the United States," *U.S. Department of Commerce Press Release,* 18 September 2020. Accessed 29 September 2020. https://www.commerce.gov/news/press-releases/2020/09/commerce-department-prohibits-wechat-and-tiktok-transactions-protect , and Swanson, A., McCabe, D. and Nicas, J., "Trump Administration to Ban TikTok and WeChat from U.S. App Stores," *The New York Times,* 18 September 2020. Accessed 29 September 2020. https://www.nytimes.com/2020/09/18/business/trump-tik-tok-wechat-ban.html

[476] Xin, Z., "Russia unblocks China social media app WeChat," *South China Morning Post,* 11 May 2017. Accessed 29 September 2020. https://www.scmp.com/news/china/diplomacy-defence/article/2094004/russia-unblocks-china-social-media-app-wechat

[477] Yeung, P., "How China's WeChat became a grim heart of illegal animal trading," *Wired,* 11 March 2019. Accessed 29 September 2020. https://www.wired.co.uk/article/illegal-animal-sales-trade-laos-wechat . See also: Standaert, M., "Illegal wildlife trade goes online as China shuts down markets," *Aljazeera,* 24 March 2020. Accessed 29 September 2020. https://www.aljazeera.com/economy/2020/03/24/illegal-wildlife-trade-goes-online-as-china-shuts-down-markets/?gb=true; TRAFFIC, "Combating Wildlife Crime linked to the internet," *TRAFFIC,*

Etsy –

Etsy is an American e-commerce website founded in 2005 that focuses on handmade or vintage objects and craft supplies.[478] All vintage items must be at least twenty years old, and may include jewellery, clothing, fashion accessories, home décor and furniture, art, and even antiquities.[479] The platform has become known for its diverse offerings, from crocheted blankets to animal skulls, with the site administrators leaning into their buyer and sellers macabre interests in an "Odd finds" section.[480] Inspired by traditional open craft fairs or art shows, Etsy provides sellers their own storefronts where they list goods for sale for a small fee per listing.[481]

Online Auction Houses –

There are a number of additional online auction houses relevant to this study of the illicit antiquities market, including Live Auctioneers,[482] invaluable.com,[483] and 1stdibs.[484] Further, most of the established auction houses who facilitate the sales of antiquities have web presences where they present lots for bidding (either online, via phone, or in-person) and archive previous

20 August 2019. Accessed 29 September 2020. https://www.traffic.org/publications/reports/combating-wildlife-crime-linked-to-the-internet/ ; Xiao, Y. and Wang, J., "Moving Targets: Tracking Online Sales of Illegal Wildlife Products in China," *TRAFFIC Briefing,* February 2015. Accessed 29 September 2020. https://www.traffic.org/site/assets/files/2536/moving_targets_china-monitoring-report.pdf , and Xin, W. and Xiao, Y., "Wildlife Cybercrime trends in China," *TRAFFIC,* March 2019. Accessed 29 September 2020 https://www.traffic.org/publications/reports/wildlife-cybercrime-trends-in-china/

[478] Erskine, B., "The untold truth of Etsy," *The List,* 31 March 2020. Accessed 29 September 2020. https://www.thelist.com/197941/the-untold-truth-of-etsy/

[479] Dundler, "Still covered in sand".

[480] Etsy.com, "Market – Odd finds". Accessed 29 September 2020. https://www.etsy.com/market/odd_finds

[481] Walker, R., "Handmade 2.0," *New York Times Magazine,* 16 December 2007. Accessed 14 October 2020. https://www.nytimes.com/2007/12/16/magazine/16Crafts-t.html?_r=2&oref=slogin&ref=magazine&pagewanted=all NB: In February 2020, Etsy announced a new advertising scheme involving paid advertising via Google Ads, Facebook, Instagram, Pinterest, and Bing which all Etsy sellers were automatically enrolled into, resulting in a 20% fee for all sales listings. Etsy Staff, "Introducing Etsy's Risk-Free Advertising Service," *Etsy Site Updates,* 26 February 2020. Accessed 29 September 2020. https://www.etsy.com/seller-handbook/article/introducing-etsys-risk-free-advertising/729663416588 . For an analysis of the backlash to the advertising scheme, see: Yeo, A., "Etsy sellers are furious over new mandatory ad fees," *MashableAustralia,* 27 February 2020. Accessed 29 September 2020. https://mashable.com/article/etsy-offsite-ads-program-sellers-backlash/

[482] Live Auctioneers is an online auction house specialising in art, antiques, jewellery and collectables. The New York City-based company emerged from a partnership with eBay in 2002 and claims to be the "Web's leading auction-related site, with millions of bidders." LiveAuctioneers, "About". Accessed 30 September 2020. https://www.liveauctioneers.com/about

[483] Invaluable.com is a Boston-based online auction house which launched in 2009 and has global offices in the UK, France, Belgium, Germany and Australia. It considers itself the "world's leading online marketplace for fine art, antiques and collectibles." Invaluable.com, "About us". Accessed 30 September 2020. https://www.invaluable.com/invaluable/about.cfm

[484] 1stdibs is a New York-based online auction house founded in 2001, inspired by the "magic of the Paris flea markets." It facilitates the sales of vintage, antique, and contemporary furniture, home décor, fine jewellery, watches, art and fashion, and claims to be the "world's leading marketplaces for extraordinary design." 1stdibs, "About". Accessed 30 September 2020. https://www.1stdibs.com/about/

auction results. International auction-house Sotheby's also uses eBay as a platform to operate live auctions, describing the service as providing "the classic Sotheby's experience, with an innovative twist."[485]

d. Regulatory Responses to Illicit Marketplaces –

Regulating and policing illegal market activity has proven to be immensely challenging, especially when dealing with trade networks that cross borders and legal jurisdictions. Any attempts to intervene with transnational illicit criminal activity need to occur both an international and domestic stage, which brings into question the effectiveness of state control in the modern world, especially post-globalisation. Political scientist and international relations scholar Peter Andreas has noted some thematic links in the various accounts of illicit globalisation presented by scholars, policy-makers, pundits, and journalists.[486] According to Andreas, illicit traffickers are presented as

> increasingly agile, sophisticated, and technologically savvy. Governments, in sharp contrast, are increasingly besieged, out-smarted, poorly equipped, clumsy, and even incompetent in dealing with this illicit side of globalization. In this view, the state necessarily weakens as the clandestine world strengthens.[487]

Andreas has issues with this perspective for a number of reasons: first, he rightly highlights that the dimensions and magnitude of illicit globalisation are difficult to quantify through empirical research, due to the inherent secretive nature of prohibited trade, and yet it has "not inhibited sweeping statistical claims."[488] An example of such can be observed in the illicit antiquities trade intersecting with terrorist financing, discussed in section 1.1.2.f. Since the world became aware of the Islamic State (also known as ISIS, ISIL, and by its Arabic name Daesh) engaging in antiquities looting and selling as a means of generating income, reports have varied wildly about the exact dollar amount of this enterprise.[489] Ultimately, Andreas does concede that the conventional account of illicit globalisation growing substantially in volume in the past few decades may be true, but this is simply because illicit activities keep pace with the licit economy.[490] However, "this does not mean that illicit flows have necessarily increased as an

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[485] Sotheby's, "About." Accessed 23 September 2020. https://pages.ebay.com/sothebys/about.html
[486] Andreas, P., "Illicit Globalization: Myths, Misconceptions, and Historical Lessons," *Political Science Quarterly* 126.3 (2011), pp. 403 – 426.
[487] Andreas, "Illicit Globalization," p. 404.
[488] Andreas, "Illicit Globalization," p. 407
[489] Rose-Greenland, "How Much Money Has ISIS Made Selling Antiquities?"
[490] Andreas, "Illicit Globalization."

overall percentage of global economic transactions", and the suggestion that the illicit economy has eclipsed the licit economy is immensely problematic.[491]

Second, Andreas rejects the dominant account of illicit globalisation as one of markets trumping states. Unlike many commentators who argue that illicit globalisation is beyond control, he reminds us of the power still possessed by states: they still "define what economic activities are illicit in the first place. States monopolize the power to criminalise and define criminality."[492] This power cannot be overlooked or neglected, especially when we consider the flexible nature of legality and illegality, as previously discussed. Markets which were once legal can become illicit, and conversely, illicit markets can become legalised as we have recently seen in the case of the rising medical and recreational marijuana market.
Finally, Andreas points out that the dominant account that has rendered national borders as "increasingly irrelevant" is anachronistic and naïve. Post-globalisation borders are routinely crossed without authorisation, but this happened before globalisation also: "[n]ostalgic calls to "regain control" of borders falsely imply that borders were never truly "under control." […] There was never a "golden age" of state control."[493]

Further, suggesting that borders could possibly be obsolete runs counterintuitive to how borders and illicit flows are understood to operate. Traditionally borders are seen as "spatial fixtures, lines in the landscape, separators of societies – the passive and pre-given ground on which events take place."[494] However, the field of border studies have recently addressed this misunderstanding by rediscovering the "historicity of social space". From this perspective, spatiality is understood as "an aspect of social relations that is continually being reconfigured", and in this context borders become much more significant and dynamic.[495] For historian, anthropologist, and sociologist Willem van Schendel, it is in this context

> that the strategy of state territorially is dramatized and state sovereignty is paraded. It is also here that many countervailing strategies contesting state territorially are clustered. The struggle between these strategies continually reproduces, reconstructs, or undermines borders. In other words, there is nothing passive about borders.[496]

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[491] Andreas, "Illicit Globalization," p. 406.
[492] Andreas, "Illicit Globalization," p. 409.
[493] Andreas, "Illicit Globalization," p. 410.
[494] van Schendel, W., "Spaces of Engagement: How Borderlands, Illicit Flows, and Territorial States Interlock," W. van Schendel and I. Abraham (eds), *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization.* Bloomington, IN: Indiana University Press, 2005. p. 45
[495] van Schendel, "Spaces of Engagement", p. 45
[496] van Schendel, "Spaces of Engagement", pp. 45-6.

The issue of borders is naturally closely related to the discussion of legal jurisdiction and state sovereignty, both of which are significant when discussing the effectiveness of state control. But what of the role of the international stage when examining the response to illicit markets and networks? For almost every illicit market of a certain size and scale, there is at least one international treaty created and implemented in response to the unique issues of the market. Some conventions, like the *2000 United Nations Convention against Transnational Organized Crime* (UNTOC), addresses the diverse nature of illicit trade and encompasses numerous markets.[497] In its associated protocols, UNTOC responds to issues of human trafficking, the smuggling of migrants by land, sea, and air, and the illicit trade in firearms. As was discussed in Chapter 1.1, and will be the subject of further discussion in Chapter 2.1, the protection of antiquities against illicit trafficking and destruction has been regulated in numerous conventions, including the First and Second protocols of the Hague Convention,[498] the 1970 UNESCO Convention,[499] and the *1995 UNIDROIT Convention Stolen or Illegally Exported Cultural Objects*.[500]

Thus, the question is not whether international law has responded to illicit market activity, but whether this response has been effective in achieving its aims. The question of state control and the effectiveness of international law often revolves around the issue of enforceability and other implementation challenges. Whilst these discussions can often be alarmist and condemn the control of a state, or the value of international law, a more nuanced approach can lead to more fruitful lines of inquiry. As established in section 1.3.1a., the relationship between legality and legitimacy is a valuable tool for understanding the perceived success or failure of legal responses to illicit activities. Throughout the world we can see numerous examples of such a phenomenon in practice, which demonstrate how and why high expectations as to the enforceability and implementation of policy may be unrealistic in certain contexts.

For example, in her research into the trade of rhinoceros horn, criminologist Annette Hübschle argues banning economic exchange is not a "straightforward political decision but a protracted

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[497] UNTOC, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto.* Palermo, 15 November 2000.
[498] First Protocol of the Hague Convention and Second Protocol of the Hague Convention.
[499] 1970 UNESCO Convention.
[500] UNIDROIT, *Convention on Stolen or Illegally Exported Cultural Objects.* Rome, 24 June 1995.

process".[501] Such "hurdles" faced on the path to effective implementation and enforcement of regulation emerged from uneven diffusion of the prohibition which "lacked social and cultural legitimacy among key actors".[502] These factors contribute to her identifying the market as one of "contested illegality". According to Hübschle, "contested illegality" arises when important market actors justify their participation in illicit economic action based on perceived illegitimacy of prohibition.[503] The "blurring" of legality and illegality becomes more complicated when dealing with transnational flows, as

> once an economic exchange moves beyond the political boundaries of the state (the exchange may occur between actors located across several different states), issues of jurisdiction muddy the waters.[504]

The modern antiquities market must be observed within the much broader context of illicit marketplaces. This involves engaging with a series of interrelated and overlapping dichotomies: legal and illegal, licit and illicit, and legitimate and illegitimate. These are not static terms. They must always be regarded in response to the socio-political contexts which include the regulatory responses to illicit marketplaces, technological and cultural revolutions, perceptions of social legitimacy of illicit or illegal practices, and how these factors develop over time. Further, these transformations in socio-political contexts is especially relevant when considering the historic nature of cultural heritage crime and the illicit antiquities market.

2. Cultural Heritage Crime –

e. Defining Cultural Heritage Crime –

Cultural heritage has long been the target of criminal activity. In 1994 this was formally acknowledged in criminological frameworks when John Conklin first used the term "art crime" to describe a range of criminal practices involving works of art including forgery, theft, smuggling, and vandalism.[505] Crimes involving antiquities were, and still are, covered by this broader term. More recently, there has been a shift in terminology in recognition that the "label 'art crime' does not cover both the current reality of the situation and its perception."[506] In his

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[501] Hübschle, A., "Contested Illegality – Processing the Trade Prohibition of Rhino Horn," in J. Beckert and M. Dewey (eds), *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy.* Oxford: Oxford University Press, 2016. p. 177.
[502] Hübschle, "Contested Illegality", p. 177.
[503] Hübschle, "Contested Illegality", p. 178.
[504] Hübschle, "Contested Illegality", p. 178.
[505] Conklin, *Art Crime.*
[506] Balcells, "One Looter, Two Looters, Three Looters …" p. 34.

discussion of cultural heritage crime within a criminological framework, Marc Balcells argues that there are two main reasons that have contributed to the shift from "art crime" to "cultural heritage crime" and/or "cultural property crime".[507] This transition has been influenced, first, by wider debates about what should be considered "art", and second, an acknowledgement that cultural heritage includes objects which are not "art" "but also objects that per se are loaded with historical significance, value or symbolism."[508] It is based on this reasoning that this project will refer to crimes involving antiquities as "cultural heritage crime".

Before discussing the specific criminal activities that constitute cultural heritage crime, it is necessary to acknowledge that some of these practices have not always been considered illegal within certain contexts. Changes in legal frameworks and cultural attitudes must be contextualised when discussing a market with longstanding traditions and values, like the antiquities trade. Balcells calls these changes over time a transition "from tolerance to criminalization."[509] Applying this model to the antiquities trade, this is a process that has seen the regulation and criminalisation of such activities, which for centuries were first permitted and deemed acceptable, and then over time still tolerated. To quote Balcells, "[i]n other words, cultural heritage crimes are not a new phenomenon […]: it is their criminalization and relating legal frameworks that are recent."[510]

In his discussion of the process from tolerance to criminalisation he refers to the looting of archaeological and heritage sites in Italy, where *tombalori* (tomb raiders) are responsible for unauthorised archaeological excavations in particular Italian regions. The perception of Italian tomb raiders has varied considerably over time, and is still variable across different regions of modern Italy. However due to the efforts of the Italian law enforcement agencies this attitude of acceptance towards looting is less observable as such acts are investigated extensively and prosecuted when possible by the Carabinieri's Tutela Patrimonio Culturale.[511] This process from tolerance to criminalisation is also reflected in other countries which are central in the modern illicit antiquities trade.

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[507] A discussion of the distinction between "cultural property" and "cultural heritage" can be found in Chapter 2.1.
[508] Balcells, "One Looter, Two Looters, Three Looters…" p. 34. Here Balcells is paraphrasing Kila, "From crimes against art to crimes against cultural property".
[509] Balcells, "One Looter, Two Looters, Three Looters…" pp. 35 – 39.
[510] Balcells, "One Looter, Two Looters, Three Looters…" p. 35.
[511] Balcells, "One Looter, Two Looters, Three Looters…" p. 37. See also Greenland, F., *Ruling Culture – Art Police, Tomb Robbers, and the Rise of Cultural Power in Italy*. Chicago, IL: University of Chicago Press, 2021.

f. The Nature of Cultural Heritage Crime –

There are a number of criminal activities which involve antiquities and facilitate the illicit antiquities market. It is important to recognise, as discussed above, that these practices have not always been considered illegal, nor are they all currently universally illegal across contemporary legal jurisdictions. Regardless of their current or historic legal status, the following practices including looting, trafficking, the creation and dissemination of fakes and forgeries, and cultural heritage destruction can be seen as causing varying degrees of harm to countries, peoples, communities, institutions, and individuals.

f. i. Looting –

The most recent and relevant definition of antiquities looting comes from the 2020 publication which represents the cumulative expertise of the disciplinary (re)defining Trafficking Culture research consortium.[512] The authors identify two key elements in their definition, which presents looting as the extraction of an antiquity first from an archaeological site performed without the use of "proper archaeological methods of excavation and recording"; and second, in violation of local or international policy or law.[513] It is also a process often motivated by the expectation of financial gain.[514] In their words, looting "is excavation outside of these established norms", being archaeological methods and legal frameworks. The impact of looting is the loss of archaeological context, which can never be recovered even if the object is recovered. In addition to the damage done to the archaeological context, antiquities which are not removed during the looting process "may also have been damaged or destroyed. The looting of an archaeological site is always destructive."[515]

Whilst antiquities can, and are, looted in any environment, research has long demonstrated the links between social, geopolitical and economic pressures and increased amounts of antiquities looting.[516] Examples of this phenomenon include the looting of the Kuwait National Museum and other heritage sites during the 1990 Iraqi Invasion,[517] and of the Iraq National Museum in

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[512] Mackenzie et al., *Trafficking Culture.*
[513] Mackenzie et al., *Trafficking Culture,* p. 3.
[514] Mackenzie et al., *Trafficking Culture,* p. 3.
[515] Mackenzie et al., *Trafficking Culture,* p. 3.
[516] See Cruickshank, D. and Vincent, D., *People, Places, and Treasures under Fire in Afghanistan, Iraq and Israel.* London: BBC Books, 2000, and Serwer, D. et al., *Culture in Crisis: Preserving Cultural Heritage in Conflict Zones.* California: CreateSpace Independent Publishing Platform, 2017.
[517] See Chulov, M., "Kuwait's lost treasures: how stolen riches remain central to rift with Iraq," *The Guardian,* 22 June 2020. Accessed 10 November 2020. https://www.theguardian.com/world/2010/jun/21/kuwait-lost-treasures-stolen-riches-rift-iraq ; Drogin, B., "In 7 Months, Iraqis Stole 'the Very Soul' of Kuwait: Culture: Museums were looted, zoo animals were killed. And what wasn't taken was destroyed," *LA Times,* 11 March 1991. Accessed 10 November 2020. https://www.latimes.com/archives/la-xpm-1991-03-11-mn-145-story.html ; France-Press, A.,

2003 following the U.S. invasion of Iraq;[518] the increase in Egyptian antiquities circulating in the market attributed to illegal looting and trafficking during and after the Arab Spring;[519] and the increase in subsistence digging and widespread destruction of heritage sites in Timbuktu during the Malian Civil War.[520] The escalation in the looting of archaeological sites is not limited to regions affected by conflict and political upheaval. During the 2020 COVID-19 global pandemic there was a significant increase in both the looting of archaeological sites across the world and other art crimes, including the high-profile theft of artworks from European collecting institutions.[521] What these examples collectively demonstrate is that in times of pressure – economic, political, social – cultural heritage is often the victim.

"Kuwait Museum Loot," *The New York Times,* 19 August 2004. Accessed 10 November 2020. https://www.nytimes.com/2004/08/19/world/kuwait-museum-loot.html ; Gill, D., "Donny George and Kuwait," *Looting Matters,* 12 August 2010. Accessed 10 November 2020. https://lootingmatters.blogspot.com/2010/08/donny-george-and-kuwait.html ; Norman, K., "The Retrieval of Kuwait National Museum's Collections from Iraq: An Assessment of the Operation and Lessons Learned," *Journal of the American Institute for Conservation,* 39.1 (2000), pp. 135 – 146; and Riding, A., "Aftereffects: Art Objects; In Kuwait, Lost Items And a Blackened Museum Are Effects of Earlier War," *The New York Times,* 11 May 2003. Accessed 10 November 2020. https://www.nytimes.com/2003/05/11/world/aftereffects-art-objects-kuwait-lost-items-blackened-museum-are-effects-earlier.html

[518] For insight into the looting of the Iraq National Museum, see Bogdanos, M., *Thieves of Baghdad: One Marine's Passion to Recover the World's Greatest Stolen Treasures.* New York: Bloomsbury, 2005 and "The Casualties of War: The Truth About the Iraq Museum," *American Journal of Archaeology* 109.3 (2005), pp. 477 – 526; Rothfield, L. (ed.), *Antiquities Under Siege: Cultural Heritage Protection after the Iraq War.* California: AltaMira Press, 2008 and *The Rape of Mesopotamia: Behind the Looting of the Iraq Museum.* Chicago: University of Chicago Press, 2009.

[519] For research demonstrating the intensification of looting in Egypt during Arab Spring, see: Hanna, M., "Documenting looting activities in post-2011 Egypt," in F. Desmarais (ed.), *Countering illicit traffic in cultural goods: The global challenge of protecting the world's heritage.* Paris: ICOM, 2015, pp. 47 – 63, and Parcak, S. et al., "Satellite evidence of archaeological site looting in Egypt: 2002-2013," *Antiquity* 90.349 (2016), pp. 188 – 205. On the aftereffects of this period of looting, see: Paul, K. A., "Repatriating the Past: Filling the Holes in Egypt's History Left by Looting," *Heritage Daily,* 20 November 2016. Accessed 15 October 2020. https://www.heritagedaily.com/2016/12/repatriating-the-past-filling-the-holes-in-egypts-history-left-by-looting-katie-a-paul-the-antiquities-coalition/113660?platform=hootsuite

[520] See English, *The Book Smugglers of Timbuktu.*

[521] See Arutz Sheva Staff, "Antiquities thieves operate with impunity during coronavirus crisis," *Arutz Sheva,* 22 April 2020. Accessed 6 August 2020. http://www.israelnationalnews.com/News/News.aspx/279055 ; Latza Nadeau, B. and Mortensen, A., "'Tomb raiders': The pandemic is making it easier than ever to loot ancient Roman treasures," *CNN,* 5 June 2021. Accessed 23 June 2021. https://edition.cnn.com/style/article/roman-artifacts-covid-looting/index.html?fbclid=IwAR20aG22Pz0Ueaa5zLD0Ltxm2MFmdCyG38aCDyZf8JVeOoWOfDP7wfBES9Y ; Paul, K. A., "Facebook Antiquities Looters Remain Active as Pandemic Rages On," *Alliance to Counter Crime Medium Blogpost,* 7 April 2020. Accessed 11 August 2020. https://medium.com/alliance-to-counter-crime-online/facebook-antiquities-looters-remain-active-as-pandemic-rages-on-8a6a8e296988; Porterfield, C., "Van Gogh Heist Footage Shows Thief Breaking Into Museum During Coronavirus Shutdown," *Forbes* 22 April 2020. Accessed 11 August 2020. https://www.forbes.com/sites/carlieporterfield/2020/04/22/van-gogh-heist-video-footage-shows-thief-breaking-into-museum-during-coronavirus-shutdown/#71f737cd85a6 ; Rea, N., "Thieves Have Stolen Three Old Master Paintings Valued at $12 Million from an Oxford College's Gallery," *Artnet News,* 16 March 2020. Accessed 11 August 2020. https://news.artnet.com/art-world/oxford-heist-christ-church-1805349 ; and Sharpe, E., "Online antiquities smugglers are taking advantage of the coronavirus crisis," *The Art Newspaper,* 29 April 2020. Accessed 11 August 2020. https://www.theartnewspaper.com/news/increase-in-online-trade-of-illicit-antiquities-during-the-coronavirus-crisis

f. ii. Trafficking –

Trafficking involves the movement of contraband from source to market. It is not a modern criminal practice, nor is it restricted to the antiquities market. The researchers of the Trafficking Culture project identify the "physical and transcendental function" of trafficking.[522] Antiquities trafficking involves the movement of the looted object from source to market, or from supply to their final destination, and it is during this movement that the antiquity itself undergoes a transformation from "illegal market contraband to culturally acceptable, publicly tradable, elite commodities."[523] This transformation is dependent on the physical and temporal distance from the act of looting or theft, allowing for the development of "plausible deniability and a discourse of justification" in the marketplace.

For example, a common narrative expressed by destination market actors is that the act of looting has already occurred long before they interacted with the looted object.[524] In other words, the perceived harm and illegality of looting is disconnected from the acquisition and appreciation of the antiquity. The transit routes used by market actors who move antiquities from source to their final destination is also carefully developed in order to create this perceived distance. They also manufacture a sense of legitimacy that allow looted antiquities to be sold in legitimate marketplaces.[525]

f. iii. The Creation and Dissemination of Fakes and Forgeries –

Fakes and forgeries have circulated in the antiquities market since antiquity itself. There has also been an equally pervasive market for copies or replicas of "legitimate" artefacts, and it is always important to draw distinctions between these two categories of inauthentic antiquities. Throughout this project the definition for fakery and forgery in the context of cultural heritage crime comes from the collaborative work of Duncan Chappell and Kenneth Polk.[526] In their exploration of the problem of fraud in the contemporary art market, Chappell and Polk problematise the loose and liberal use of the terms "forgery" and "fakery", and how basic legal principles interact – and counteract – with these words. Forgery, for example, is commonly used by commentators and even legal writers to describe all acts of art fraud, when in the context of English common law the term only applies to forging of documents or writing.[527]

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[522] Mackenzie et al., *Trafficking Culture,* p. 10.
[523] Mackenzie et al., *Trafficking Culture,* p. 10.
[524] See Mackenzie and Yates, "Collectors on Illicit Collecting".
[525] This process will be discussed in further detail in Chapter 2.1.
[526] Chappell, D. and Polk, K., "Fakers and Forgers, Deception and Dishonesty: An Exploration of the Murky World of Art Fraud," *Current Issues in Criminal Justice* 20.3 (2009), pp. 393 – 412.
[527] Chappell and Polk, "Fakers and Forgers, Deception and Dishonesty," p. 399.

Whilst the application of the use of the word forgery to works of art, such as statues or paintings, has long been debated in legal discourse it is important to recognise that art fraud cases often involve forgery through the creation of false documents, such as provenance.[528]

The use and misuse of the words "fake", "faker", and "fakery" on the other hand are not so much problematic from a legal perspective, but rather from the "tendency to use the term where it may not be appropriate, or exactly fit properly into the discussion."[529] Whether an object is a fake or not is dependent not only on whether it is authentic or not, but also that "it had been intentionally produced to deceive."[530] This is important to remember in the context of the antiquities market where copies and replicas of genuine antiquities are manufactured and sold. These objects may re-enter the marketplace after the initial sale as a replica or copy as an authentic antiquity if the seller does not recognise the object is a replica or copy.

In terms of a broader conception of art fraud, including antiquities, Chappell and Polk highlight four common evidentiary issues and elements which recur across jurisdictions that must be "present before any fraud or prosecution can proceed". These issues and elements include that the defendant has acted with deception; the deceptive act has caused some form of harm; there is a victim who was deceived; and there was "some level of knowledge, intent, or dishonesty on the part of the defendant."[531] According to Chappell and Polk, potential

> precise charge(s) which may flow from any fraud investigation will depend very much upon the evidentiary mix surrounding these four elements, and the peculiarities of fraud law in any given jurisdiction.[532]

f. iv. Destruction –

The destruction of cultural objects is both a crime in itself, and a by-product of other cultural heritage crimes. Such destruction takes place in a number of forms, and as outlined by Joris Kila in his description of iconoclasm and cultural heritage destruction, these acts often occur "simultaneously and [are] overlapping".[533] It is in this context that Kila offers a typography of cultural heritage destruction including forms of iconoclasm, vandalism, looting, and plunder.[534]

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[528] Chappell and Polk, "Fakers and Forgers, Deception and Dishonesty," p. 400.
[529] Chappell and Polk, "Fakers and Forgers, Deception and Dishonesty," p. 400.
[530] Chappell and Polk, "Fakers and Forgers, Deception and Dishonesty," p. 400.
[531] Chappell and Polk, "Fakers and Forgers, Deception and Dishonesty," p. 394.
[532] Chappell and Polk, "Fakers and Forgers, Deception and Dishonesty," p. 394.
[533] Kila, "Iconoclasm and Cultural Heritage Destruction," p. 657.
[534] Kila, "Iconoclasm and Cultural Heritage Destruction," p. 657.

All of these examples of cultural heritage destruction can occur during both war and peace time, and may involve deliberate or accidental destruction. Vandalism of cultural sites and objects, for example, has been linked to campaigns of ethnic cleansing,[535] or links to conspiracy theorists.[536] Regardless of motivation, vandalism is always a destructive act, however, it can be argued that the moment of destruction itself is also a creation of heritage. After all, "every act of creation begins with the act of destruction."[537]

Looting, too, is always a destructive process. Not only is archaeological context lost in the process of antiquities looting, but objects that are perceived as being of lesser economic or cultural value are often harmed in search of more valuable pieces.[538] The trafficking process also exposes vulnerable objects to potential harm. It is also a known technique of smugglers to separate pieces of larger antiquities, such as statues, to cross borders without detection.[539] Further, section 1.1.2.e. discussed examples of deliberate cultural heritage destruction during periods of conflict and colonial invasion. Whilst, heritage sites and objects are often the target of iconoclastic attacks, there are also many examples of accidental or incidental destruction which have occurred during war or natural disasters.[540]

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[535] Bevan, R., "The role of cultural vandalism in genocide warning," *Cultural Heritage Protection in Times of Risk: Challenges and Opportunities,* Yildiz Technical University, Istanbul, 15 – 17 November 2012.

[536] During the COVID-19 pandemic there was the deliberate attack on at least 70 artworks and antiquities in three galleries located on Berlin's Museum Island in October 2020. Eddy, M., "Vandals Deface Dozens of Artworks in Berlin Museums," *New York Times,* 21 October 2020. Accessed 4 November 2020. https://www.nytimes.com/2020/10/21/arts/design/berlin-museums-vandalism.html

[537] Often misattributed to Spanish artist Pablo Picasso (1881 – 1873), this quote has also been expressed as "The urge to destroy is also a creative urge." The quote actually originates from the 1842 essay of anarchist philosopher Mikhail Bakunin, "Die Reaktion in Deutschland" in Lehning, A. (ed.), *Mikhail Bakunin: Selected Writings.* London: Cape, 1973.

[538] Mackenzie et al., *Trafficking Culture,* p. 3.

[539] A famous example of this practice is the Cult Statue of a Goddess, also known as the Morgantina Venus and the Getty Aphrodite. The limestone and marble statue dated to the 5th century BCE, is thought to have been illegally excavated in the late 1970s in Sicily. It was deliberately broken into three parts by smugglers to facilitate its movement from Italy to Switzerland. See: Felch, J. and Frammolino, R., *Chasing Aphrodite. The Hunt for Looted Antiquities and the World's Richest Museum.* Boston and New York: Houghton Mifflin Harcourt, 2007.

[540] For discussion of the risk and vulnerability of cultural heritage during natural disasters, as well as strategies for protection and preservation, see: Bartolini, G., "Cultural Heritage and Disasters," in F. Francioini and A. F. Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law.* Oxford, UK: Oxford University Press, 2020. pp. 145 – 168; ICOMOS, "Cultural Heritage and Natural Disasters. Risk Preparedness and the Limits of Prevention," *Heritage at Risk Special Edition,* 2007. Accessed 10 November 2020. https://www.icomos.org/images/Cultural_Heritage_and_Natural_Disasters.pdf ; Jones, B. G. (ed.), *Protecting Historic Architecture and Museum Collections from Natural Disasters.* Oxford: Butterworth-Heinemann, 1986; Stovel, H., "Risk preparedness: a management manual for World Cultural Heritage," ICCROM and UNESCO, Rome, 1998; Taboroff, J., "Cultural Heritage and Natural Disasters: Incentives for Risk Management and Mitigation," in A. Kreimer and M. Arnold (eds), *Managing disaster risk in emerging economies.* Washington, D.C.: World Bank, 2000. pp. 71 – 79; and World Heritage Convention, "Reducing Disaster Risk at World Heritage Properties". Accessed 10 November 2020. https://whc.unesco.org/en/disaster-risk-reduction/

f. v. Other Crimes –

There are a number of crimes which, whilst not exclusive to the modern antiquities market, are often involved in facilitating cultural heritage crime. Such examples include corruption, tax evasion and money laundering, and the forgery or falsification of documents. First, as is the case in many illicit trades,[541] the corruption of politicians, law enforcement, customs agents, and other people in a position of public trust is a common occurrence in the illicit antiquities market. These individuals or groups of individuals are identified by the Trafficking Culture team as actors who facilitate the trade by:

> way of their privileged position, [they] may look the other way while sites are looted; neglect to inspect certain homes or vehicles; issue spurious excavation or export permits; or otherwise knowingly allow source-end antiquities looting and transport to take place in violation of the law.[542]

Second, antiquities, like many other valuable commodities, have been used by individuals and organisations to commit tax evasion and money laundering. Not only are looted antiquities laundered through "duty-free" countries, a process which will be explored in more detail in Chapter 2.1, in order to be sold in the legitimate market, but antiquities and artworks are popular vehicles for laundering large sums of money in general. Professional gambler and owner of Australian's Museum of Modern and New Art, describes such a process in his memoir:

> Walsh suggests he began collecting by accident. A business partner in South Africa was unable to take a sum of money out of the country and Walsh suggested he buy a carved Yoruba palace door that had once caught his eye instead.[543]

Finally, in order for antiquities dealers and traffickers to successfully move antiquities from source to their final destination, the creation and use of false provenance is necessary. For example, in September 2020 two antiquities dealers, Edal Dere, the owner and operator of

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[541] See, for example, the relationship between corruption and the illicit wildlife trade explored by green criminologist Tanya Wyatt and colleagues: Wyatt, T., and Cao, A., "Corruption and Wildlife Trafficking," Bergen: U4 Anti-Corruption Resource Centre Issue Paper, 2015, and Wyatt, T., K. et al., "Corruption and Wildlife Trafficking: Three Cases Involving Asia," *Asian Criminology* 13 (2017), pp. 35 – 55. For more general information about corruption, illicit trades, and organised crime see: Doig, A. and Theobald, R., "Introduction: why corruption?" in A. Doig and R. Theobald (eds), *Corruption and democratisation.* Portland, OR: Frank Cass, 2003. pp. 1 – 12; Holmes, L., *Rotten States? Corruption, Post-Communism, and Neo-Liberalism.* Durham, NC: Duke University Press, 2006; and Passas, N., "A structural analysis of corruption: The role of criminogenic asymmetries," *Transnational Organized Crime* 4 (1998), pp. 42 – 55.
[542] Mackenzie et al., *Trafficking Culture,* p. 7.
[543] Anderson, P., "Review: A Bone of Fact by David Walsh, Picador, $55," *The Sydney Morning Herald,* 22 November 2014. Accessed 4 November 2020. https://www.smh.com.au/entertainment/books/review-a-bone-of-fact-20141114-11mmon.html

Manhattan-based antiquities gallery Fortuna Fine Arts Ltd., and his long-time business associate and co-conspirator, Faisal Khan, were charged with "engaging with a years-long scheme to defraud buyers and brokers in the antiquities market by using false provenances to offer and sell antiquities."[544] Dere was also charged with "aggravated identity theft for his misappropriation of the identities of deceased collectors who were falsely represented to be the prior owners of antiquities."[545] Both men were charged in the indictment with a wire fraud conspiracy and wire fraud, whilst Dere faces the additional charges of aggravated identity theft.

Commenting on the alleged crimes, Acting U.S. Attorney Audrey Strauss said:

> The integrity of the legitimate market in antiquities rests on the accuracy of the provenance provided by antiquities dealers, which prevents the sale of stolen and looted antiquities that lack any legitimate provenance. As alleged, Erdal Dere and Faisal Khan compromised that integrity, and defrauded buyers and brokers of the antiquities they sold, by fabricating the provenance of those antiquities, and concealing their true history.[546]

The same process is also used by antiquities forgers and fakers, like Shaun Greenhalgh who would locate a slightly obscure catalogue from a past auction and select a lot which was described in vague terms, like "Late Etruscan Vase".[547] Greenhalgh would then create a new antiquity to match the existing provenance. On at least one occasion this was enough to convince experts at Christie's, Sotheby's, and the British Museum.[548]

Whilst these different forms of cultural heritage crimes have been presented as discrete categories here, it is important to recognise that they are activities which are often dependent upon each other. Antiquities cannot be moved from the site of looting to the final destination market without being trafficked. Successfully trafficking cultural objects is often dependent on the commission of other crimes, including bribery and corruption, and the falsification of documents. In order for forged and fake antiquities to be successfully sold as genuine artefacts, they must be presented as real antiquities which also requires the same laundering process. And all of these acts are destructive in their own way: looting irreversibly destroys archaeological context and often damages other objects of cultural significance in the process; antiquities can

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[544] Department of Justice, U.S. Attorney's Office, "Antiquities Dealers Arrested for Fraud Scheme". 22 September 2020. Accessed 4 November 2020. https://www.justice.gov/usao-sdny/pr/antiquities-dealers-arrested-fraud-scheme
[545] Department of Justice, "Antiquities Dealers Arrested for Fraud Scheme".
[546] Department of Justice, "Antiquities Dealers Arrested for Fraud Scheme".
[547] Charney, N., *The Art of Forgery*. London and New York: Phaidon, 2015. pp. 108 – 114.
[548] Charney, *The Art of Forgery,* pp. 108 – 114. See also Shaun Greenhalgh's memoir: Greenhalgh, S., *A Forger's Tale. Confessions of the Bolton Forger*. London: Atlantic Books, 2015.

be accidentally or deliberately damaged whilst being moved from source to destination; and some forgeries and fake antiquities can be constructed using existing antiquities, a process which is simultaneously creative and destructive.

g. Market Greyness –

Criminologists often refer to the modern antiquities market as a "grey market".[549] According to criminologist Jessica Dietzler, "grey markets" are identified by

> the confusing mix of both licit and illicit items on the market in conjunction with the constantly shifting legal status of those items from supply/source country to demand/destination location.[550]

While market greyness is not unique to the illicit antiquities market, criminologist Blythe A. Bowman argues it is a "peculiar example of a transnational grey market" which requires antiquities to undergo "transformation in legal status".[551] These markets develop when dealers and collectors acquire cultural objects without provenance – a record of the object's modern origin including excavation details, known as provenience, and subsequent sales history and ownership.[552] Ideally, provenance should be capable of acting as legal testimony for the ancient object in the modern world. Without clear provenance, stolen and illegally traded objects are mixed in with legitimate, legal ones. According to Bowman, this lack of documentation creates ambiguity and allows illicitly acquired antiquities to "make their way to the open market under the guise of "accidental finds" or masquerading as unprovenanced "grey" antiquities whose licit status is debatable."[553] Unfortunately, this greyness makes it nearly impossible for a potential good-faith buyer to ascertain the legal status of an antiquity.[554]

Recently, certain scholars have begun to interrogate the use of the term "grey market". Contributions from criminologists Simon Mackenzie and Donna Yates, for instance, provide a definitive explanation of the meanings and implications of "greyness".[555] Mackenzie and Yates critique the "fairly liberal" application of this term to the antiquities market, warning it is in

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[549] Defined by Mackenzie and Yates as a "term used to suggest a liminal or hard to assess zone between two poles." Mackenzie, S. and Yates, D., "What is Grey About the "Grey Market" in Antiquities?" in J. Beckert and M. Dewey (eds), *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy.* Oxford: Oxford University Press, 2016. p. 70.

[550] Dietzler, J., "On 'Organized Crime' in the Illicit Antiquities Trade: Moving Beyond the Definitional Debate," *Trends in Organised Crime* 16.3 (2013), p. 332.

[551] Bowman, B. A., "Transnational Crimes Against Culture: looting at Archaeological Sites and the "Grey" Market in Antiquities," *Journal of Contemporary Criminal Justice* 24.3 (2008), p. 226. This argument has also been made by Mackenzie et al., *Trafficking Culture.*

[552] Provenance and its role in the antiquities market is the subject of section 2.1.1.

[553] Bowman, "Transnational Crimes Against Culture," p. 226.

[554] Brodie, N., Doole, J. and Watson, P., "Stealing History: The Illicit Trade in Cultural Material," Cambridge: McDonald Institute, 2000. p. 29.

[555] Mackenzie and Yates, "What is Grey about the "Grey Market" in Antiquities", pp. 70 – 86.

"danger of becoming a generic, but unrefined synonym for the interface between certain illicit practices in excavation and the public antiquities trade."[556] In reference to Mayntz's work on legitimacy, Mackenzie and Yates identify "grey" areas existing between poles of legality and illegality; morality and immorality; and appropriate and inappropriate. To quote Mackenzie and Yates,

> [g]rey can thus mean "neither one thing nor the other" in the context of mixed origins of constituent parts, or in the context of residing in a social realm that is neither fully public nor private.[557]

Further, they note the use of the term within an economic context where grey markets are a "parallel market" which are not actually illegal, but

> the objects they move are unauthorized for sale in a particular jurisdiction by their manufacturers, who have developed different versions of the product for different global markets.[558]

Thus, the use of the term "grey market" in reference to the antiquities trade is "at odds with the usual use of the term in the literature on international trade form the perspective of the disciplines taught in business schools."[559]

Mackenzie and Yates subsequently offer a "threefold distinction" for greyness in the international antiquities market, arguing for "illegality at each stage of the market"[560]:

1. uncertainty or contest in the ethical, legal, or normative construction of the issue;
2. practical mixing of licit and illicit chains of supply; and
3. changing social/market and legal classification of individual artefacts as they are laundered through multiple transactions and jurisdictions over time.

Ultimately, they conclude that a closer analysis of greyness in the antiquities market reveals many layers of meaning, "which allude to the multiple ways in which the interface between il/legal, il/licit il/legitimate, and in/appropriate works to produce a marketplace that has so far successfully resisted most of the ethical and legal scrutiny directed at it."[561] Moving forward, this will be how "greyness" will be conceptualised throughout this study of the market for antiquities.

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[556] Mackenzie and Yates, "What is Grey about the "Grey Market" in Antiquities", p. 70.
[557] Mackenzie and Yates, "What is Grey about the "Grey Market" in Antiquities", p. 71.
[558] Mackenzie and Yates, "What is Grey about the "Grey Market" in Antiquities", p. 71.
[559] Mackenzie and Yates, "What is Grey about the "Grey Market" in Antiquities", p. 71.
[560] Mackenzie and Yates, "What is Grey about the "Grey Market" in Antiquities", p. 72.
[561] Mackenzie and Yates, "What is Grey about the "Grey Market" in Antiquities", p. 84.

h. (Post)colonial Criminology –

In a 2004 article Nigerian criminologist Biko Agozino argued that criminology, more so than any other social science (including anthropology, sociology, and political science), has been a direct benefactor of colonialism.[562] In his postcolonial critique of the discipline,[563] Agozino outlines how the discipline of criminology largely emerged in the "centers of colonialist power." [564] Citing Africa as an example, Agozino postulates how

> one would need to explain why the field of criminology is dominated by scholars in former colonial centers of authority and how such colonialist domination of the field leads to theoretical underdevelopment through the concealment of the bloody legacy of colonialist criminology.[565]

This critique of criminology as a "imperialist science for the control of others" existed within a broader context of criminologists addressing the harms and injustices that the colonial model inflicted on subjugated peoples. However, it was Agozino who first systematically identified criminology as a product of imperialism, calling for challenges to existing criminological theory "with the evidence from colonial and post-colonial history and thereby develop a new criminological theory of post-colonial authority and social control."[566]

Since the early 2000s, the question of whether criminology can be decolonised has been explored extensively. In 2011, criminologist Chris Cuneen put forward that postcolonialism is a

> *perspective* that can significantly enhance the vision of criminology. […] a perspective that demands we recognize the ongoing and enduring effects of colonialism on both the colonized and the colonizers.[567]

He proposes that a postcolonial perspective for criminology offers both "theoretical insight and grounded policy analysis" and should always "proceed from a critical and reflexive framework that questions the centrality western understanding of crime and control."[568]

Summarising postcolonial criminological approaches in 2019, Kwan-Lamar Blount-Hill identifies four primary critiques of traditional criminological theory. First, a failure to acknowledge the crimes of the colonial state, instead focusing on crimes committed by

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[562] Agozino, B., "Imperialism, crime and criminology: Towards the decolonisation of criminology," *Crime, Law & Social Change* 41 (2004), pp. 343 – 358.
[563] Agozini, B., *Counter-Colonial Criminology. A Critique of Imperialist Reason.* London: Pluto Press, 2003.
[564] Agozini, "Imperialism, crime and criminology", p. 350.
[565] Agozini, "Imperialism, crime and criminology", p. 350.
[566] Agozini, "Imperialism, crime and criminology", p. 353.
[567] Cuneen, C., "Postcolonial Perspectives for Criminology," in M. Bosworth and C. Hoyle, *What is Criminology?* Oxford: Oxford University Press, 2011. p. 249.
[568] Cuneen, "Postcolonial Perspectives for Criminology," p. 252.

individuals in the service of colonial governments. Second, a failure to adapt theoretical frameworks to the varied and unique experiences of Indigenous peoples. Third, a refusal to acknowledge the impact of the colonial histories on the present. And finally, that the discipline cannot adequately reflect the experience of Indigenous peoples because there is a lack of First Nations voices in the discipline.[569]

In the same year, Harry Blagg and Thalia Anthony published their "exploratory exercise" in decolonising criminology.[570] Of particular relevance to this study of the historic and contemporary crimes which facilitate the modern antiquities trade is the second chapter of their book, entitled "Postcolonial Criminology: "The Past Isn't Over…""[571] The chapter challenges existing approaches in criminology which neglect the experiences of Indigenous peoples during periods of colonial subjugation and neo-colonial control. Postcolonial criminology, they claim:

> disputes the view that colonisation is a thing of the past. Rather, it is an ongoing process and lived experience that defies hollow state gestures towards reconciliation and "closure". […] When Indigenous peoples witness and experience the various acts of violence, abuse and neglect perpetrated against them by white settlers and the settler state, they see a functioning, unbroken chain of repression and institutional racial violence. This chain remains largely unchanged since the dawn of colonisation and is not just a string of unrelated "incidents".[572]

Applying this core tenet of postcolonial criminology put forward by Blagg and Anthony to the trade in antiquities and human remains challenges the very notion that there is a "legitimate" antiquities market. This idea will be explored in depth in Chapters 2.2 and 3.1, but briefly there is a shared belief maintained by market participants including collectors, dealers, researchers and museum professionals that antiquities exported from their country of likely origin prior to the 1970 UNESCO Convention can be consumed ethically. The postcolonial criminologist perspective instead sees the market as existing on a continuum of colonial violence and theft (which was discussed throughout Chapters 1.1 and 1.2), drawing a clear and unbroken chain between colonial acquisitions of antiquities and human remains and modern collecting practices.

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[569] Blount-Hill, K-L., "Postcolonial Criminology," in *The Encyclopedia of Women and Crime.* Wiley Online Library, 23 August 2019. Accessed 6 November 2020. https://doi.org/10.1002/9781118929803.ewac0408
[570] Blagg, H. and Anthony, T., *Decolonising Criminology. Imagining Justice in a Postcolonial World.* London: Palgrave Macmillan UK, 2019.
[571] Blagg and Anthony, *Decolonising Criminology,* pp. 31 – 54.
[572] Blagg and Anthony, *Decolonising Criminology,* pp. 31 – 32.

Postcolonial criminology, however, is not always successful in its attempts to critique and redefine existing criminological theory and methodology. In her review of Blagg and Anthony's *Decolonising Criminology,* Tharawal woman and criminologist Robyn Oxley problematises the research methodologies and approach taken by the authors.[573] First, Oxley challenges the very idea of postcolonial criminology ("who ever said we were postcolonial?"), which is built on the notion that the existing criminal justice system can be decolonised; a notion that Oxley, and others, find paradoxical as the system is the "epitome of colonisation".[574] Second, that postcolonial criminology is failing to adequately critique the criminal justice system that "seeks to marginalise, oppress and dispossess",[575] and instead is still focusing on Indigenous people as if they are the ones who need to be "helped" or "fixed". And finally, that postcolonial criminologists, including Blagg and Anthony, are guilty of the very same critiques they direct at traditional criminology: neglecting the voices of First Nations peoples. "A close examination of whose voices are the dominant feature" Oxley concludes:

> reveals an area which is yet to be decolonised, which is centring the experience and knowledge of Indigenous scholars above that of non-Indigenous scholars, particular when the topic is centred around Indigenous peoples.[576]

Conclusion –

The illicit antiquities market is a product of present-day and historic crime; of conflict zones and colonial invasions. Nowadays, there is a wide understanding that the practices outlined in this chapter that can be broadly termed as cultural heritage crime are harmful and destructive. However, this attitude towards the looting, smuggling, forgery, and deliberate destruction of cultural heritage is not universally held by modern day stakeholders. As will be explored in Chapters 2.1 and 2.2, and again throughout the third part of this thesis, market actors rely on a series of "shared denial narratives"[577] to justify their participation in the buying, selling and ownership of cultural property.

Such narratives include there is a parallel "legitimate" – legal and licit – antiquities market; that the ownership and consumption of antiquities in destination countries are geographically and temporally distant to the crimes which take place in source and transit nations; and that

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[573] Oxley, R., "Review of *Decolonising Criminology: Imagining Justice in a Postcolonial World* by Harry Blagg and Thalia Anthony," *International Journal of Crime, Justice and Social Democracy* 9.3 (2020), pp. 180 – 182.
[574] Oxley, R. "Review of *Decolonising Criminology*", p. 180.
[575] Oxley, R. "Review of *Decolonising Criminology*", p. 181.
[576] Oxley, R. "Review of *Decolonising Criminology*", p. 182.
[577] Mackenzie, "Transnational Crime, Local Denial".

antiquities will be safer in the hands of Western collectors and collections.[578] Ultimately, these narratives are designed to negate the harms caused to the nations impacted by cultural looting and plunder. To quote Marc Balcells:

> these are not harmless crimes: to begin with, the loss of cultural heritage goes beyond a mere tangible one. The destroyed items are finite and irreplaceable, and they also have an identity component: cultural heritage plays a fundamental role in the formation and perpetuation of national identity and self-image.[579]

The construction and dissemination of such narratives are possible because of the nature of the modern antiquities market, and also the nature of illicit marketplaces more broadly. In the same way that traffickers and smugglers take advantage of regulatory loopholes and corruptible officials, supporters of the antiquities market use the spaces which exist between the poles of legality and illegality. These belief systems are also the vestiges of earlier historical periods in which owning the sacred or otherwise significant cultural objects was not only socially acceptable, but celebrated under certain conditions. Over time these views have been challenged by postcolonial theorists, First Nations peoples, and the introduction of legal frameworks which restrict the export of cultural property. In order to counter these defences of the antiquities market – entrenched in the tenets of neocolonialism and Orientalism discussed in Chapters 1.1 and 1.2 – it is necessary to construct counter-narratives which highlight the ethical, legal, and moral issues inherent in the private ownership of cultural objects. Herein lies one of the primary goals of this thesis: to challenge and problematise these harmful ways of consuming and engaging with the ancient world.

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[578] Mackenzie and Yates, "Collectors on Illicit Collecting".
[579] Balcells, "One Looter, Two Looters, Three Looters …" pp. 34 – 35.

PART 2. THE ANTIQUITIES MARKET AND ANCIENT WORLD STUDIES

"To articulate the past historically does not mean to recognize it "the way it really was" (Ranke). It means to seize hold of a memory as it flashes up at a moment of danger. Historical materialism wishes to retain that image of the past which unexpectedly appears to man singled out by history at a moment of danger. The danger affects both the content of the tradition and its receivers. The same threat hangs over both: that of becoming a tool of the ruling classes. […] Only the historian will have the gift of fanning the spark of hope in the past who is firmly convinced that *even the dead* will not be safe from the enemy if he wins. And this enemy has not ceased to be victorious." (Walter Benjamin)[580]

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[580] Benjamin, *Illuminations,* 255.

2.1. THE ANTIQUITIES MARKET

"There are unfortunately a few vocal extremists in the archaeological community who oppose the very idea of private possession of antiquities. They apparently believe that only they should be able to handle ancient objects. These people frequently suggest that much of the material on the market is looted and illegally exported from the country of origin. This is used as an argument for forbidding the trade and private possession of antiquities.

We believe that the amount of looted material on the market is greatly exaggerated. As shown above the market is largely supplied by the vast amounts of legally acquired antiquities collected over the last 300 years."[581]

"Still covered in sand.looked very old. You can see in the pictures."[582]

Introduction –

The illicit trade of antiquities is not a modern issue. Nor is it one that has evaded scholarly attention. For long we have been aware of the legal, ethical, and socio-political issues with the collection of objects of cultural significance, especially when these objects originated from colonial and conflict-based contexts. Despite this context, the modern trade in antiquities is a marketplace which involves numerous stakeholders who defend their rights to privately own, sell, study, and display cultural objects. Since the 1990s, the internet and social media platforms have become facilitators of these unethical and illicit consumption practices, which has had the effect of exacerbating existing barriers to regulating the antiquities market.

This chapter is dedicated to exploring the nature of the modern antiquities market. In order to accurately examine the legal and ethical issues germane to the antiquities trade, it is necessary to establish an understanding of key market mechanisms. Thus, this chapter begins with an examination of the role of provenance in the modern antiquities market, building upon the exploration of the history of antiquities collecting presented in Part 1 of this thesis. Once this understanding of provenance is established, the next section will elaborate on the understanding of cultural heritage crime established in section 1.3.2. This will involve an examination of the

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[581] An excerpt from an internet antiquities dealer website, in response to the (potential) question "But isn't there a lot of looted material on the market?". For further analysis of this quote, see Dundler, L., "Still covered in sand".
[582] This references the sales description for a cuneiform tablet sold on eBay in July 2018. For further discussion of this sale, see Dundler, "Still covered in sand".

complex relationships between source and market or destination nations, and the transnational trafficking networks which connect the two.

Additionally, this analysis of the shape and nature of the illicit antiquities trade explores three key aspects of the historic and modern market which create and enforce market greyness including jurisdictional issues and the shared denial narratives of market participants. Following this broader discussion of the illicit antiquities trade is a focused investigation of its most recent incarnation: the internet antiquities market. Situated within the broader context of e-commerce established in section 1.3.1.c., the internet antiquities market is a relatively recent phenomenon which has created new challenges and concerns for combatting the illicit flow of cultural property. This section is thus devoted to the nuances of the 21st century antiquities trade including online auction-and-sales-hosting websites, the role of social media, and how traditional authenticity discourses have translated to the internet antiquities market.

The first half of this chapter identifies the shape and nature of the modern antiquities market, contextualised within its broader historical context. The second half, then, is dedicated to exploring how legislators, governments, law enforcement, and non-government organisations (NGOs) have responded to the numerous legal and ethical issues germane to this market. First, this involves an examination of the relevant legal frameworks, including international conventions and agreements, domestic legislation, and soft law approaches designed to combat the illicit antiquities trade. Next is an exploration of how these legal frameworks are enforced at an international and domestic level, including a discussion of the role NGOs perform in this process. Finally, this chapter ends with an analysis of the attempts to regulate the internet antiquities market – an ongoing struggle for those attempting to police and monitor the illicit trafficking of antiquities. Ultimately, this chapter highlights the failure of existing regulatory frameworks to stem the flow of trafficked antiquities which promotes the need for new approaches to changing the behaviours and practices of market actors. An example of a potential approach is presented in the "Framework for Ethical Engagement with and Consumption of the Ancient World".

1. How Forthcoming is Provenance?

Many contemporary discussions about the illicit antiquities market circulate around the issue of provenance. It is fitting, then, to start with provenance in an examination of the antiquities trade. The word provenance originates from the French *provenir,* meaning to come from/forth, and before this the Latin *provenire:* with the prefix *pro* combined with *venire,* the present active

infinitive "to come". In its simplest terms, provenance is commonly understood as the original findspot of an object, also known as its provenience, and its subsequent sales or ownership history.

The term provenance first appeared during the Age of Enlightenment, where a growing interest with the biographies of works of art in France can be observed. In 1729, the first volume of the so-called *Recueil Crozat* was published, a bound compendium of engravings, reproduced paintings and drawings in royal and private collections.[583] Whilst many illustrated volumes of French collections of palaces, gardens, tapestries, pictures, and sculptures were already in existence, the novelty of the collection could be found in its unique scholarly approach, which systematically recorded the provenances of each piece.[584] This history of the engraved paintings and of the drawings included the successive ownership of each piece tracing back as far as possible to the very first owner.

The motivation behind this documentation of owners' names is not explicit within the compendium itself. However, it was made apparent in an announcement in the *Mercure de France*, a few months before the book's publication. In the French gazette and literary magazine, the author, Pierre Crozat, expresses that his goal was "to establish and certify their originality more authentically."[585] Three centuries later, this is still one of the primary functions of provenance: to act as an indicator of originality and authenticity. Yet the term has migrated beyond these confines and has been appropriated to more a generalised use, conveying the origins and the ownership/and or movement of an object.

In the antiquities market and ancient world studies, provenance has "a complex history and no generally accepted meaning."[586] According to Patty Gerstenblith and Rosemary Joyce, the application of the concept to archaeological material requires consideration not of the moment of creation and subsequent ownership history, but rather the time and place of "recovery."[587] To

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[583] *Recueil d'estampes d'après les plus beaux tableaux et d'après les plus beaux desseins qui sont France.* Paris: Imprimerie Royale, 1729. Los Angeles, Getty Research Institute, 1366 – 1334. Also known as the Recueil Crozat or the Cabinet Crozat.

[584] Huemer, C., "The Provenance of Provenances," in J. Milosch and N. Pearce (eds), *Collecting and Provenance – A Multidisciplinary Approach.* Lanham, Boulder, New York and London: Rowman & Littlefield, 2019. pp. 3 – 15.

[585] Quoted in Raux, S., "From Mariette to Joullian: Provenance and Value in Eighteenth-Century French Auction Catalogs," in G. Feigenbaum and I. Reist (eds), *Provenance: An Alternative History.* Los Angeles: Getty Publications, 2013. p. 92.

[586] Gerstenblith, P., "Provenances: Real, Fake, and Questionable," *International Journal of Cultural Property* 26.3 (2019), p. 287.

[587] Gerstenblith, "Provenances," p. 287, and Joyce, R. A., "From Place to Place: Provenience, Provenance, and Archaeology," in G. Feigenbaum and I. Reist (eds), *Provenance: An Alternate History of Art.* Los Angeles, CA: Getty Publications, 2012. P. 287.

address this distinction, the terms "provenance" and "provenience" are often used, the former referring to the ownership history of an antiquity, and the latter to the find-spot. To quote Joyce:

> [T]his distinction illuminates the reason between these two concepts promote such different understandings: provenience is a fixed point, while provenance can be considered an itinerary that an object follows as it moves from hand to hand. Where the two concepts intersect is the place that the archaeological provenience singles out as the only important location in this itinerary, the find site.[588]

While these will be the preferred terms used throughout this thesis, primarily due to their standardised use in ancient world studies and the antiquities market, it is necessary to acknowledge that other scholars reject the use of the terms provenance and provenience, instead proposing alternate terms to codify this distinction. For example, David Gill has recommended the terms "collecting history" and "archaeology" be used instead of provenance and provenience.[589] Meanwhile, ancient art historian Elizabeth Marlowe advocates for the use of the terms "grounded" and "ungrounded" as an indicator of whether an objects findspot is known or unknown.[590]

Antiquities are often identified as "unprovenanced" by dealers, museums, and academics alike. Clichéd references to possible origins – "bought on the London market" – and anonymous previous owners – "the property of a gentleman" – are "worse than useless" as they "engender a feeling of certainty, a feeling that something is known about a piece when, in reality, it is not."[591] However, it is important to remember that many antiquities without provenance are not truly "unprovenanced". They usually have a provenance that has been deliberately withheld from the public gaze.[592]

This practice has been shaped by deeply entrenched cultural behaviours and practices. The withholding of provenance is a manifestation of the market values of anonymity and dealer discretion, which can be traced to Enlightenment and post-Enlightenment views of class, wealth, and discretion.[593] Within this context

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[588] Joyce, "From Place to Place," p. 48.
[589] Gill, D. W. J., "Thinking about Collecting Histories: A Response to Marlowe," *International Journal of Cultural Property* 23 (2016), p. 237.
[590] Marlowe, E., *Shaky Ground: Context, Connoisseurship and the History of Roman Art*. London, UK: Bloomsbury Academic, 2013. p. 4.
[591] Brodie, J. Doole, J. and Watson, P., "Stealing History", p. 10
[592] Brodie, Doole and Watson, "Stealing History".
[593] Mackenzie et al., *Trafficking Culture,* p. 11

assurances of anonymity in the market allowed cash-strapped gentry to unload the family collection without a public declaration of financial insolvency, just as it allowed more moneyed buyers to purchase antiquities for sale without appearing vulgar.[594]

In other words, provenance – and its ability to mitigate buyer risk through demonstrating authenticity and legality – was neglected in favour of dealer discretion which allowed the marketplace to exist without the burden of certain social stigmas. The issue was compounded further in the first half of the 20th century when increased scrutiny of the market led to changes to legal frameworks which regulated the private ownership of antiquities. Art crime scholar, Erin Thompson, notes that these changes in the legal setting did not successfully promote changes in market transparency. But instead resulted in a "growing secrecy" that "cloaked the source of antiquities" with dealers becoming even more reluctant to speak publicly about the provenance of antiquities.[595]

Nowadays antiquities are routinely sold without verifiable provenance due to these inherited values and practices.[596] The result of these "systematic recurrences of inadequate provenance certitude"[597] is a marketplace where it is impossible for a "potential good-faith buyer" to ascertain the legal status of an antiquity.[598] Poor provenance standards and an overall lack of transparency contribute to the "greyness" of the modern antiquities market.[599] Ultimately, when engaging in a grey market it is all but impossible for good-faith participants to avoid facilitating illegal activities, including smuggling and looting, money laundering, and even terrorist financing. Further, the harmful impact of these practices is felt beyond the confines of the marketplace and have broader ramifications in ancient world scholarship. For example, the case

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[594] Mackenzie et al., *Trafficking Culture,* p. 11
[595] Thompson, *Possession,* p. 24.
[596] The sale and study of antiquities without provenance has been explored extensively in the past two decades. For example, see: Brodie, N., "Iraq 1990-2004 and the London Antiquities Market," in N. Brodie et al. (eds), *Archaeology, Cultural Heritage and the Antiquities Trade.* Gainsville: University Press of Florida, 2008. pp. 206 – 226 and "The Market in Iraqi Antiquities 1980-2009"; Brodie et al., "Stealing History"; Chippindale, C. and Gill, D. W., "Material Consequences of Contemporary Classical Collecting," *American Journal of Archaeology* 104.3 (2000), pp. 463 – 511; Levine, A. N., "Museum Salvage: A Case Study of Mesoamerican Artifacts in Museum Collections and on the Antiquities Market," *Journal of Field Archaeology* 38.3 (2013), pp. 264 – 276; Marlowe, *Shaky Ground* and "What We Talk about When We Talk about Provenance: A response to Chippindale and Gill," *International Journal of Cultural of Cultural Property* 23 (2016), pp. 217 – 36; and Yates, D. and Smith, E., "Antiquities Trafficking and the Provenance Problem," in J. Milosch and N. Pearce (eds), *Collecting and Provenance – A Multidisciplinary Approach.* Lanham, Boulder, New York and London: Rowman & Littlefield, 2019. pp. 385 – 394.
[597] Gerstenblith, "Provenances," p. 302.
[598] Brodie et al., "Stealing History," p. 29.
[599] For a discussion of market greyness and how it manifests in the modern antiquities market, see section 1.3.2.g.

of the so-called Gospel of Jesus' Wife highlighted the relationship between poor standards for provenance in papyrological research and the dissemination of papyrus forgeries.[600]

Controversies, such as the Gospel of Jesus' Wife, have resulted in increasing amounts of pressure on market participants to conduct thorough research into the provenance of existing collections and potential acquisitions, and refrain from engaging with antiquities without verifiable provenance. In other words, there is the obligation to develop more transparent practices and behaviours – an obligation which provides the foundation to the proposed "Framework for Ethical Engagement with and Consumption of the Ancient World". Whilst challenging due to the deeply entrenched market values and practices discussed, it is both possible and necessary to conduct detailed research in order to bring "more complete provenance narratives to academia, to the market, to repatriation efforts, and to criminal investigations."[601] Further, as a record of ownership and guardianship, provenance can illuminate the social, economic, and historic trends in which an object was created and collected.[602] This information is immensely valuable to researchers of the antiquities market, especially in the development of strategies targeted at reshaping values to encourage more ethical market practices.

2. Source, Market, and Transit Nations –

When examining the modern antiquities market, there is a pervading dichotomy that must be discussed: "source nations" and "market nations". Complementary to the nationalist and universalist dichotomies that have shaped legal responses to the trade and protection of cultural heritage from the mid-20th century onward, this framework has been particularly dominant in our understanding of market operations and confronting the question of ownership. In 1986, John. H. Merryman famously divided the contemporary antiquities market into source nations and market nations, and this division represents the supply and demand model of the trade. According to Merryman, source nations are countries where the "supply of desirable cultural

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[600] For more information about the Gospel of Jesus' Wife, see Sabar, A., *Veritas: A Harvard Professor, A Con Man and the Gospel of Jesus's Wife.* New York: Doubleday, 2020. For an analysis of provenance and how it factored into the reception of the Gospel of Jesus's Wife, see Choat, M., "Lessons from the "Gospel of Jesus' Wife" Affair," *Markers of Authenticity,* 19 June 2016. Accessed 5 August 2020. https://markersofauthenticity.com/2016/06/19/lessons-from-the-gospel-of-jesus-wife-affair/ . The Gospel of Jesus's Wife will be discussed further in Chapter 2.2.
[601] Yates and Smith, "Antiquities Trafficking and the Provenance Problem," p. 392.
[602] I credit this framing of provenance to Margie Borschke and the privilege of reading her book on popular music and copy culture prior to its publication in 2017. I also acknowledge the insight gained through our email exchanges and face-to-face discussions. See: Borschke, M., *This is Not A Remix. Piracy, Authenticity and Popular Music.* New York: Bloomsbury, 2017. See also: Milosch, J. and Pearce, N. (eds), *Collecting and Provenance – A Multidisciplinary Approach.* Lanham, Boulder, New York and London: Rowman & Littlefield, 2019.

property exceeds internal demand", including countries like Mexico, Peru, Egypt, Greece, and India.[603]

In comparison, market nations are countries whose demand for cultural objects encourages the export from source nations. In Merryman's words, the "demand exceeds the supply". Examples of market countries identified at the time were France, Germany, the Scandinavian nations, Switzerland, and the United States. Within this dynamic, restrictions on the market are essential in regulating the trade of antiquities, otherwise if source nations are "relatively poor and the market nation wealthy, an unrestricted market will encourage the net export of cultural property."[604] Commenting on the source/market dynamic more recently, legal scholar Derek Fincham argues "much of this import and export is illegal" as "most source nations in the less developed world restrict the export of cultural property."[605]

However, it is important to recognise that historically there has been a legal market for antiquities within source markets, even if the export and import of some cultural heritage material was legally restricted. For example, in Egypt, which had cultural patrimony laws prohibiting the export of antiquities since 1835, also had a legal antiquities market with licensed dealers. Antiquities could also be legally purchased from the Cairo Museum up until the 1970s. According to Patrizia Piacentini, the sale room of the museum sold

> objects judged saleable since they were "duplicates" of pieces already present in the collection, or "useless", as determined by Egyptologists who worked for the Antiquities Service between the end of the nineteenth century to the mid-twentieth century.[606]

It is also worth acknowledging that this division in the antiquities market between source and demand reflects broader geopolitical dichotomies. Many of the nations which can be identified as "sources" for the modern-day antiquities market have experienced some form of colonial invasion or exploitation. On the other hand, the countries which represent the destination market are largely the beneficiaries of colonialism or former colonial powers. This dynamic was encapsulated in the poem by 11-year-old Fatima who participated in the "Colonial

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[603] Merryman, "Two Ways of Thinking," p. 57.
[604] Merryman, "Two Ways of Thinking," p. 57.
[605] Fincham, D., "Why U.S. Federal Criminal Penalties Are Dealing in Illicit Cultural Property Are Ineffective, and a Pragmatic Alternative," *Cardozo Arts & Entertainment Law Journal* 25 (2007), p. 600.
[606] Piacentini, P., "Notes on the History of the Sale Room of the Egyptian Museum in Cairo," in J. Hembold-Doyé and T. Gertzen (eds), *Mosse im Museum.* Berlin: Hentrich & Hentrich, 2017; p. 75. For further discussion of legal antiquities markets, see also: Kersel, M. M., *License to sell: the legal trade of antiquities in Israel.* University of Cambridge, PhD Thesis. 2006.

Countryside" project discussed in section 1.2.4: "He had money and I had history. His money bought my history."[607]

The relationship between source nations and market nations is complicated and comprises the fundamental structure of the modern antiquities market. Criminologist Simon Mackenzie identifies three stages in the market, including the supply of antiquities emanating from source nations, the demand created by consumers in market nations, and the chain of transportation which links the two.[608] Mackenzie argues that the value of this "divisions of labour" framework is that it allows us to develop more targeted solutions to the problem of illicit antiquities trafficking – a more efficient and accurate method than considering the market as a whole.[609] When using such a model, however, it is important to recognise two things: first, that there are shifting factors of legality and legitimacy at each stage of the market contributing to "market greyness"; and second, that this framework is not designed to distance actors in the later stages of the market from the crime of looting and trafficking.

a. Supply from Source Nations –

Traditionally, antiquities market source nations have comparatively lower Gross National Incomes than the countries which drive market demand. However, looting can and does occur in wealthier source countries, as exploited archaeological sites are often located in economically poorer regions within those countries.[610] In source nations a lack of economic wealth is counterbalanced by rich material culture which is sought after by market participants in financially prosperous regions across the globe. The economic state of source nations is always important to remember when regarding motivations for looting. Poverty, political unrest, conflict, and other socio-political and economic pressures are all capable of driving individuals and groups to undertake excavation work which is illicit, or outright illegal, and often dangerous.[611] To quote the authors of *Trafficking Culture,* looting involves

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[607] Quoted in National Trust UK, "New 'What a World!'
[608] Mackenzie, S., "Regulating the Market in Illicit Antiquities," in *Trends & Issues in Crime and Justice.* Canberra: Australian Institute of Criminology, 2002. See also: Brodie, N., Kersel, M. M., and Tubb, K. W., "From the Ground to the Buyer: A Market Analysis of the Trade in Illegal Antiquities," in N. Brodie, M. M. Kersel, C. Luke and K. W. Tubb (eds), *Archaeology, Cultural Heritage, and the Antiquities Trade.* Gainsville, FL: University Press of Florida, 2006. pp. 188 – 205.
[609] Mackenzie, "Regulating the Market in Illicit Antiquities".
[610] Mackenzie et al., *Trafficking Culture*, p. 4.
[611] Mackenzie et al., *Trafficking Culture,* p. 4.

backbreaking labour coupled with the risk of injury or death. Added to this physical risk is a legal risk: looters face the possibility of arrest, fines, jail time, and even execution. It is from destination market funding that lootings at source find their motivation.[612]

Looters who act in response to economic pressures have long been identified as "subsistence diggers". Donna Yates and Neil Brodie define a "subsistence digger" as an individual who "engages in the illicit excavation of archaeological sites for saleable cultural objects due to extreme poverty. […] [T]hey are looting for survival, not profit."[613] The term was first used in 1993 in David Staley's report on what he termed the "subsistence diggers" of St Lawrence Island.[614] Locals are also known to participate in the looting of cultural sites, like the Iraq National Museum which was famously ransacked during the U.S. invasion of April 2003.[615] More recently there has been movement away from the use of terminology like "subsistence-digging" and instead to a

> concept of nested and related 'subsistence economies' in which looting antiquities might form part of a larger survival strategy including licit, illicit, and illegal activities.[616]

Whilst local individuals do profit immediately from engaging in subsistence economies, this short-term gain is in exchange for a permanent loss to the entire community. The gain is also substantially less than the economic value of the objects they obtain for antiquities dealers. Neil Brodie, in his study of the "Poor Middlemen" in the antiquities trade, concludes

> these figures reveal the simple truth of the illicit trade of antiquities – there are large sums of money to be made, more than by legitimate trading, and very little of the proceeds ever reach the original finders.[617]

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[612] Mackenzie et al., *Trafficking Culture*, p. 4.

[613] Brodie, N. and Yates, D., "Subsistence Digging," in *Trafficking Culture Encyclopedia,* 2012. Accessed 30 July 2020. https://traffickingculture.org/encyclopedia/terminology/subsistence-digging/

[614] Staley, D. P., "St Lawrence Island's Subsistence Diggers: A New Perspective on Human effects on Archaeological Sites," *Journal of Field Archaeology* 20 (1993), pp. 347 – 355. Staley's work built on the foundations laid by Dwight Heath in 1973 who, sympathising with impoverished locals in Costa Rica, preferred the phrase "commercial-archaeologist" to "grave-robber", and Frederick Lange who referred to this group of illicit looters in Costa Rica as "subsistence archaeologists" in 1996. See: Heath, D. B., "Economic Aspects of Commercial Archaeology in Costa Rica," *American Antiquity* 38 (1973), pp. 259 – 265, and Lange, F. W., "Costa Rica and the 'Subsistence Archaeologist'," *Current Anthropology* 17 (1974), pp. 305 – 307.

[615] For insight into the looting of the Iraq National Museum, see Bogdanos, *Thieves of Baghdad* and "The Casualties of War"; Rothfield, *Antiquities Under Siege* and *The Rape of Mesopotamia.*

[616] Mackenzie et al., *Trafficking Culture*, p. 4.

[617] Brodie, N., "Pity the Poor Middlemen," *Culture Without Context* 3 (1998), p. 9.

In a later contribution to the topic, Brodie explores the relationship between subsistence digging and economic justice, in his investigation of the economic value of cultural heritage.[618] Surveying more recent discussions of this topic, Brodie argues that subsistence diggers – who belong to "deprived communities" – should not be criminalised and should instead be regarded as legitimate stakeholders of their archaeological heritage.[619]

It is important to remember that some looters operating in source countries may not be experiencing financial hardship or "engaging in the market for survival."[620] These "white-collar" actors are individuals who typically "resist" being identified as looters. However, their actions undeniably constitute the definition of looting outlined above: the removal of artefacts from their original context in violation of relevant legal frameworks and archaeological conventions.[621] Within this category of looters are illegal metal detectorists: hobbyists who use metal detectors to find and extract metal artefacts "from archaeological sites in violation of local law, primarily but not exclusively in Europe."[622] Some countries, including the United Kingdom, do permit the use of metal detectors and extraction of artefacts, however, there are restrictions which dictate permissible locations, types of objects, and the ownership of antiquities.[623]

When it comes to providing empirical data about the exact size and scope of the illicit trade at a source level, criminologists are faced with a number of methodological issues.[624] Whilst caused by a number of factors – namely underreporting of looting and thefts, and the lack of specific databases and consistency across databases – this issue can be reduced to art and antiquities crime existing within "the dark figure of crime".[625] This is not a unique issue belonging to cultural heritage crime; compiling crime statistics is notoriously complicated as "crime is a social phenomenon difficult to trace as it is secretive per se."[626] Cultural heritage crimes, however, are unique in how they failed to be addressed by criminologists for a surprisingly long

[618] Brodie, N., "Archaeological Looting and Economic Justice," in P. M. Messenger and G. S. Smith (eds.), *Cultural Heritage Management, Policies and Issues in Global Perspectives.* Gainesville: University Press of Florida, 2010. pp. 261 – 277.
[619] Brodie, "Archaeological Looting and Economic Justice", p. 262.
[620] Mackenzie et al., *Trafficking Culture,* p. 5.
[621] Mackenzie et al., *Trafficking Culture,* p. 5.
[622] Mackenzie et al., *Trafficking Culture,* p. 5.
[623] In the case of the UK, this is purview of the 1996 Treasure Act and the Portable Antiquities Scheme, which dictate how archaeological discoveries must be notified to landowners, the local Finds Liason Officer and/or the British Museum. The PAS offer guidelines on how to accurately record and conserve finds, and offer a formal Code of Practice for Responsible Metal Detecting in England and Wales (2017).
[624] See Balcells, "One Looter, Two Looters, Three Looters …"
[625] Chappell, D. and Polk, K., "Art Theft: An Examination of its Various Forms," in S. Hufnagel and D. Chappell (eds), *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. p. 110
[626] Balcells, M., "One Looter, Two Looters, Three Looters …" p. 41

period of time. In fact, the earliest criminological examinations of the illicit antiquities market were actually conducted by archaeologists and historians.[627]

Although it is difficult to draw conclusions about the size and scale of antiquities looting, there are some reliable indicators. These include the otherwise inexplicable increase of certain types of archaeological material offered for sale in the global antiquities market, such as the surge of cuneiform objects in auction house sales during the Gulf Wars;[628] the successful seizure of trafficked antiquities by policing agencies; and the satellite imagery of specific sites, like Abu Sir Al Malaq in Egypt and Mari in Syria, which are capable of demonstrating the increase in the size and scale of looting over time.[629] It is also difficult to accurately discern the economic loss to industrial looting for similar reasons. For example, it is commonly cited by researchers and the media that illegal art transactions account for up to US$6 billion per annum worldwide. But, as acknowledged by Balcells in his exploration of the discipline of cultural heritage crime, many researchers in the field "acknowledge that this amount lacks any given substance" and the use of this "statistic" is an example of a "publicity stunt rather than factual information."[630]

What cannot be measured in percentages or dollar signs, but is of equal importance, is the symbolic and cultural loss felt by nations. Since World War II, cultural heritage has been recognised as a fundamental human right; both an expression of national patrimony, and a part of the shared, universal experience of all humans. The denial of access to cultural patrimony is especially problematic in impoverished source nations, which are also often in the process of decolonisation.[631] With the acquisition of so many cultural objects enmeshed with periods of colonialism and conflict, it must be recognised that the repatriation and return of cultural heritage to source countries can be an act of social justice; of righting historical wrongs. The repatriation movement, examined in Chapter 1.2, has been somewhat successful in drawing attention to these issues, and has seen the return of many stolen and looted antiquities to their source countries. However more often than not, once antiquities reach destination countries they tend to stay there.

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[627] For a discussion of the evolving trend of criminological research of cultural heritage crimes, refer back to section 1.3.2.3.

[628] Brodie, N., "The Market in Iraqi Antiquities 1980 – 2009".

[629] The Antiquities Coalition, "Documenting Cultural Racketeering – Using Satellite Imagery." Accessed 30 July 2020. https://theantiquitiescoalition.org/understanding-the-problem/documenting-cultural-racketeering/

[630] Balcells, "One Looter, Two Looters, Three Looters…" p. 43

[631] For discussion of decolonisation and the importance of cultural patrimony, see section 1.2.4.

b. Transnational Trafficking Networks and Transit Nations –

The networks which connect the supply from source markets to the demand in market states are complex and dynamic, and often difficult for researchers and regulators to comprehend. Whilst trafficking networks and the countries they pass through, also known as transit countries, are identified as key features in the movement of illicit contraband, it is important to recognise that there is often a nebulous relationship between transit and source, and transit and destination markets. In other words, at what point does the movement of an illicitly looted antiquity constitute its trafficking? This lack of clearly defined boundary between the different stages in the trafficking process make it difficult for both researchers and regulators alike to fully comprehend the transit phase of the antiquities trade.[632]

Key actors involved in the trafficking of antiquities are often involved with other stages of the illicit antiquities market who "seem to transcend boundaries at both ends"[633]. These individuals and groups often operate in ways that defy classifications "within existing models of crime" making it difficult not only to research their activities, but also to apply regulatory frameworks at a local level.[634] A popular example in the illicit antiquities trade are so-called "Janus figures", who facilitate non-violent and white-collar crimes as antiquities move closer to the destination market.[635] The Trafficking Culture team first applied this term to describe transit brokers who operate "at the cusp of the market phase, interacting with market sellers and buyer, as well as low level brokers, facilitators, transporters and even looters."[636] Their role is of fundamental importance in the transformation processes discussed above, which see cultural objects with archaeological significance transformed into illegal contraband and again into commodities which can be legally acquired in destination countries. Whilst aware and often exposed to the illegal realities of the modern antiquities market, Janus figures almost always operate a "publicly acceptable front business within the antiquities trade and may style themselves as antiquities collectors in their own right."[637]

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[632] Mackenzie et al., *Trafficking Culture,* p. 7. See also: Mackenzie and Davis, "Temple Looting in Cambodia", and Tijhuis, E. A. J. G., *Transnational Crime and the Interface between Legal and Illegal Actors: The Case of the Illicit Art and Antiquities Trade.* Nijmegen, Netherlands: Wolf Legal Publishers, 2006.
[633] Mackenzie et al., *Trafficking Culture,* p. 7.
[634] Mackenzie et al., *Trafficking Culture,* p. 7.
[635] Named for the Roman god Janus, who has "one face directed back at the past and the other towards the future, Janus figures see both the black market and the open market: the illicit, destructive, smuggling and organised end of the antiquities trafficking chain, and the culturally lauded, exclusive and elite end of the antiquities trafficking chain. They interact with each, they have one foot in each world." Mackenzie et al., *Trafficking Culture*, p. 8.
[636] Mackenzie et al., *Trafficking Culture,* p. 8
[637] Mackenzie et al., *Trafficking Culture,* p. 8

However, individuals and groups involved in the transit phase of the illicit antiquities market may not limit their operations to moving and facilitating the sales of looted artefacts. In his research, Simon Mackenzie has drawn connections between the structure of networks of transportation and distribution in the illicit market for drugs, diamonds, stolen vehicle parts, abalone, plastic payment cards, and antiquities. Due to the shared structure of these illicit networks and the nature of skills required to successfully navigate underground trading links, Mackenzie suggests "it is not unreasonable to ask whether the same personnel are involved in the movement of some or all of these illicit goods."[638] Such a claim aligns with what international policing experts have observed in the nature and structure of illicit trafficking networks post-globalisation, as discussed in section 1.3.1.b. Increasingly the industry of smuggling illicit goods is less about specialisation in a specific illicit product, but rather an emphasis on the building and maintenance of the smuggling network itself.

Once removed from their site of origin, antiquities are almost always smuggled illicitly across international borders. Rarely is this a swift process, with antiquities in particular taking a considerable time to move from the source nation to terminal market locations. According to criminologist Kenneth Polk, it may take months, even years, from the act of plunder to the ultimate sale of an antiquity.[639] Detailed criminological analyses of the market suggest this is caused by the diverse routes antiquities take when smuggled across international borders.[640] Antiquities are rarely moved directly from source to market nation, and instead are deliberately transported through different countries, creating space between the time and location of the act of looting and the final sale of the artefact. This strategy generates issues for law enforcement working within statues of limitations, as well as reinforcing the belief that the act of looting is geographically and temporally distant from the destination market.

c. Jurisdictional Issues –

Before moving to a discussion of demand markets, it is worth exploring the issue of jurisdiction in antiquities trafficking networks in greater depth. As established above, antiquities can be trafficked through multiple transit ports before reaching private and public collections in destination countries.[641] This is not by coincidence but rather a deliberate attempt to take

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[638] Mackenzie, S., "Organised Crime & Common Transit Networks," *Trends & Issues in Crime and Criminal Justice.* Canberra: Australian Institute of Criminology, 2002. p. 2.
[639] Polk, K., "Whither Criminology in the Study of Traffic in Illicit Antiquities?" in S. Mackenzie and P. Green (eds), *Criminology and Archaeology: Studies in Looted Antiquities.* Oxford: Hart Publishing, 2009. pp. 13 – 26.
[640] See Brodie, Kersel and Tubb, "From the Ground to the Buyer".
[641] Mackenzie et al., *Trafficking Culture,* p. 9.

advantage of the "legal differences between the multiple jurisdictions that an object may pass through." [642] Further, this is not unique to the antiquities trade, but rather a common strategy in the trafficking of other illicit commodities also, which relies on the interconnectedness of global marketplaces. [643] In addition to exploiting the differences in export and import controls, market actors involved in the trafficking process identify other "features of state export and import regimes", including poor staff training, inadequate staff numbers or resources, or corruptible officials. [644] Trafficking routes are thus designed to exploit the weaknesses of different jurisdictions. Polk identifies such locations as "transit[ition] ports" or "portals" which antiquities must pass through in order to "appear legitimate when they emerge on the floor of the gallery of a private dealer, or on the block at an auction house in the destination country." [645]

Certain countries are common in transit routes, including those with "free ports" or what Polk calls a "duty-free history."[646] In the famous Medici case, journalists Peter Watson and Cecilia Todeschini identified Geneva as serving this function in Giacomo Medici's transnational antiquities trafficking enterprise.[647] Recent legislative changes in Switzerland have sought to rectify the prevalence of what the industry calls "anonymous Swiss collections".[648] However, this has just seen the rise of Hong Kong and Dubai as the new free ports in the transnational antiquities market.[649] The purpose of such a route is the "appearance of legitimacy, in the form of export documents which allow the legal entry of the material into national sales centres."[650] In other words, in order for an illicit and illegitimate antiquity to be sold in licit and legitimate marketplaces, it must be criminally laundered.[651]

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[642] Mackenzie et al., *Trafficking Culture,* p. 9.
[643] See Harvey, *Smuggling.*
[644] Mackenzie et al., *Trafficking Culture,* p. 9
[645] Polk, "The Antiquities Trade".
[646] Polk, "Whither Criminology", p. 15.
[647] Watson, P. and Todeschini, C., *The Medici Conspiracy: The Illicit Journey of Looted Antiquities from Italy's Tomb Raiders to the World's Greatest Museums.* New York: Public Affairs, 2006.
[648] Beatty, E., "Switzerland to implement 1970 UNESCO Convention legislation on 1st June," *The Art Newspaper,* 31 May 2005. Accessed 19 November 2020. https://www.theartnewspaper.com/archive/switzerland-to-implement-1970-unesco-convention-legislation-on-1st-june ; Gerstenblith, P., "Implementation of the 1970 UNESCO Convention by the United States and other market nations," in J. Anderson and H. Geismar (eds), *The Routledge Companion to Cultural Property.* Abingdon, OX and New York: Routledge, 2017. pp. 70 – 88; Regazzoni, G., "Long the hub of the illicit antiquities trade, Switzerland is moving towards the ratification of the 1970 UNESCO Convention," *The Art Newspaper,* 30 June 2002. Accessed 19 November 2020. https://www.theartnewspaper.com/archive/long-the-hub-of-the-illicit-antiquities-trade-switzerland-is-moving-towards-ratification-of-the-1970-unesco-convention ; and Torsen Stech, M. A., "Fine Art in Dark Corners: Goals and Realities of International Cultural Property Protection as Switzerland Implements the 1970 UNESCO Convention," *Gonzaga Journal of International Law* 8 (2004), pp. 1 – 32.
[649] Mackenzie et al., *Trafficking Culture*, p. 9.
[650] Polk, "Whither Criminology", p. 15.
[651] For a definition of laundering which informed this understanding of the antiquities market, see: Horder, J., *Ashworth's Principles of Criminal Law,* 9th ed. Oxford: Oxford University Press, 2019. pp. 445 – 451.

A final issue to consider from a jurisdictional perspective is what the Trafficking Culture team identifies as "structural differences between jurisdictions."[652] Whilst states are not legally obliged to enforce the export restrictions of other jurisdictions, or to invest time and resources into identifying objects they do not consider illegal contraband, they may choose to cooperate in transnational investigations.[653] However, structural differences between jurisdictions can limit the effectiveness of any attempts to combat illicit trafficking. Such differences – including laws and policies, and even linguistic and socio-political – may impact on the ability of transit countries to cooperate with investigations, share information, or otherwise collaborate across international borders.[654] Even if transit countries wish to participate in attempts to combat illicit cultural trafficking, they may ultimately end up "bogged down" in the realities of transnational investigations.[655]

d. Demand from Market Nations –

Whilst antiquities often end up, via these trafficking networks, in market nations, one could argue that the global antiquities trade does not end in market nations. Instead, it is quite the opposite. The trade starts in these countries, due to the high-demand for antiquities which emerges from market nations. Ultimately, this demand-led dynamic has led commentators to identify collectors and collecting institutions as the "real looters".[656]

The source of this demand for antiquities has already been established in the first part of this thesis. Chapter 1.1 explored the colonialist and imperialist origins of the antiquities market, which framed collecting as a practice of symbolic conquest. Next, Chapter 1.2 examined the history of collecting, introducing Enlightenment principles of class and social status as a key influence on the demand to privately own antiquities. Chapter 1.2 also discussed the fetishisation of the "other" and the framework of Orientalism was established as the foundation for pervasive collecting values and behaviours. Together these chapters demonstrate how the modern consumption of the past and engagement with the antiquities market reflects traditional ideas of class, race, and hegemonic power. As summarised by the Trafficking Culture team, the

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[652] Mackenzie et al., *Trafficking Culture*, p. 10. See also Prott, L. V. and O'Keefe, P. J., *Law and the Cultural Heritage. Vol. 3. Movement.* London, UK: Butterworths, 1989.
[653] Mackenzie et al., *Trafficking Culture*, p. 10.
[654] Mackenzie et al., *Trafficking Culture*, p. 10.
[655] Mackenzie et al., *Trafficking Culture*, p. 10.
[656] These commentators include archaeologists Colin Renfrew (Renfrew, C., "Collectors are the Real Looters," *Archaeology* 46.3 (1993), pp. 16 – 17) and Elia Ricardo (Ricardo, E., "A seductive and troubling work," *Archaeology* 4.1 (1993), pp. 64 – 69), and legal scholar John H. Merryman (Stanford University, "Buying, selling, owning the past," *Stanford University News.* Accessed 1 June 2021. https://news.stanford.edu/news/multi/features/heritage/)

financial gain and the social standing gleaned from supplying the wealthy with antiquities or facilitating their antiquities consumption, can be seen as a key driver of other destination market actors and the continuation of the trade."[657]

This demand for antiquities from collectors and collecting institutions has also contributed creation of value in the modern world,[658] which in turn becomes a driver of further demand. For example, the development of commercial or economic value of antiquities, which has resulted in these objects being purchased as "tangible assets when they are bought as investments – bought solely on account that their monetary value will appreciate over time, whereupon they will be sold for profit."[659] According to Neil Brodie, this belief emerged in the 1970s "when it was thought tangible assets might hold their value better than traditional financial ones."[660] Famous examples of this practice include the British Rail Pension Fund starting to purchase range of art objects and antiquities in 1974 and the $32.3 million raised by Merrill Lynch between 1986 and 1988 to buy ancient coins.[661] Nowadays, internet antiquities dealers use their social media platforms to highlight the value of antiquities as investment pieces to appeal to a wider consumer base.[662]

There are three key groups of actors who operate in demand markets, however, these actors may play multiple roles within the market and throughout the supply chain.[663] The first group of actors are sellers of antiquities, including private and specialised antiquities dealers, auction houses, and e-commerce sales platforms. The second group are buyers, which includes private collectors, public collecting institutions, and private collecting institutions. The final group of key actors are identified as facilitators of the antiquities market, who either increase the value of the antiquity through their actions or expertise (for example professional restorers and academics) or protect the buyer from threats to their ownership of antiquities (for example lawyers and insurers).[664]

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[657] Mackenzie et al., *Trafficking Culture*, p. 19.
[658] See: Morphy, E. and McKenzie, R., *Museums, Societies and the Creation of Value.* New York and London: Routledge, 2021.
[659] Brodie, N., "The antiquities market: it's all in a price," *Heritage and Society* 7.1. (2014), pp. 36.
[660] Brodie, "it's all in a price," p. 36.
[661] Brodie, "it's all in a price," pp. 36 – 37 and Grimes, W., "The Antiquities Boom: Who Pays the Price?" *New York Times*, 16 July 1989.
[662] Dundler, "#antiquitiesdealers".
[663] Mackenzie et al., *Trafficking Culture*.
[664] Mackenzie et al., *Trafficking Culture*, pp. 16 – 17.

Like any market, the antiquities market is a trade motivated by profit and thus "the rate of looting should respond to the basic law of supply and demand."[665] Through extension of this logic, "if the collectors in the market nations refuse to buy undocumented artefacts, then incentives for the looting of artefacts will decrease."[666] Unfortunately, stakeholders from market nations, such as private collectors and public collecting institutions, actively deny the correlation between their desire to own antiquities and the widespread issue of looting and trafficking. The antiquities dealer quoted at the beginning of this chapter embodies these shared values. For example, they claim that the amount of looting is "greatly exaggerated" and the market is in fact facilitated by antiquities that have been legally acquired in the past 300 years. In reality, legal restrictions have existed at the domestic level since the early 20th century for most source nations, and, indeed, earlier in the case of Egypt.[667] These laws are further supported by both international bans and bilateral indictments on the illicit export of cultural heritage. But still, the collecting of antiquities is justified by individuals and institutions, and the buying and selling of antiquities continues in plain sight.

e. Denial Narratives and Neutralisation Techniques –

These arguments, and the others that support private and public collecting, constitute what Mackenzie calls "shared denial narratives".[668] In his study of the values and practices of antiquities collectors, Mackenzie identifies how collecting activities are supported by common narratives that frame collecting as: the "preservation" of cultural heritage; an act of "cultural edification"; and an extension of "private right".[669] The use of these narratives can also be applied to the practices and philosophies of public collecting institutions and those who otherwise professionally engage with antiquities. For example, interacting with undocumented cultural heritage is further justified as an acceptable pursuit for historians and archaeologists due to their right to academic freedom.[670] It is also common to suggest, whether implicit or otherwise, that source nations are incapable of protecting and preserving their own heritage and rely on the market to aid them; that antiquities are inherently "safer" in the hands of private collectors and public collecting institutions.[671] These arguments are pervasive and allow market participants to deny their complicity in the global illicit trade of antiquities. They also support,

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[665] Gerstenblith, P., "Controlling the International Market in Antiquities; Reducing Harm, Preserving the Past," *Chicago Journal of International Law* 8.1 (2007), p. 174.
[666] Gerstenblith, "Controlling the International Market in Antiquities," p. 174.
[667] Decree of 1835, *Banning the unauthorized removal of antiquities from the country,* 15 August 1835. Egypt.
[668] Mackenzie, "Transnational Crime, Local Denial".
[669] Mackenzie, "Transnational Crime, Local Denial", p. 120.
[670] Brodie, "Congenial bedfellows?" p. 428.
[671] Mackenzie and Yates, "Collectors on Illicit Collecting".

and are supported by, the neocolonial agendas of former colonial governments and the beneficiaries of colonialism which systematically undermine the rights of source communities and descendent communities.

Another way of understanding these "shared denial narratives" is through the theory of neutralisation techniques offered by David Matza and Gresham Sykes.[672] These mental strategies allow antiquities collectors and other market participants to distance themselves from the reality of looting and trafficking. Within their framework, Matza and Sykes argued for five major types of neutralisation techniques. Whilst all of these strategies are central to the factors that develop and sustain criminal behaviour, specific focus will now be paid to the techniques most salient to the values and practices of antiquities market participants. These techniques include the denial of responsibility; the denial of injury; the denial of the victim; and the appeal to higher loyalties. Simon Mackenzie and Donna Yates produced a study connecting these specific neutralisation techniques to the attitudes and practices of antiquities collectors.[673] They argue that appealing to higher loyalties provides the 'master narrative' for antiquities collectors, which are then supported by other subsidiary techniques of neutralisation. These techniques are used to create a robust "social story that repels criticism and casts this type of collecting as a 'good thing'."[674]

First, the denial of responsibility sees the wrongdoer as lacking responsibility for their deviant actions. This allows for the disapproval of self or others to be sharply reduced in effectiveness as a restraining influence.[675] According to Mackenzie and Yates, this technique is possible for antiquities collectors due to the geographical, and associated moral, distance of the act from "the scene of the crime".[676] A denial of responsibility in this context allows the collector to deny the causal link between "the market-end demand for […] antiquities […] and the destructive forces of archaeological looting."[677]

Second, the denial of injury centres specifically on the injury or harm involved in the act. In this context, wrongfulness may be contingent to the question of whether or not anyone has clearly

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[672] Sykes, G. M. and Matza, D., "Techniques of Neutralization: A Theory of Delinquency," *American Sociological Review* 22.6 (1957), pp. 664 – 670.
[673] Mackenzie and Yates, "Collectors on Illicit Collecting".
[674] Mackenzie and Yates, "Collectors on Illicit Collecting", p. 11.
[675] Matza and Sykes, "Techniques of Neutralization", p. 667.
[676] Mackenzie and Yates, "Collectors on Illicit Collecting", p. 12.
[677] Mackenzie and Yates, "Collectors on Illicit Collecting", p. 12.

been hurt by the deviant act – and this matter is open to a variety of interpretations.[678] In reference to the antiquities market, Yates and Mackenzie suggest that this strategy is evident in the narratives that the "harmful effects of the looting or unlawful taking of antiquities […] is considered over-stated."[679] For example, the dealer cited at the beginning of this chapter who claimed the levels of looting identified by archaeologists were exaggerated.

Third, the denial of the victim encompasses the process in which moral indignation of self and other may be neutralised by insistence that the injury is not wrong in the light of circumstances. Matza and Sykes connect this denial of victimhood into an extreme form of a phenomenon they have identified in delinquency: "namely, the delinquent's recognition of appropriate and inappropriate targets for his delinquent acts."[680] Mackenzie and Yates relate this strategy to the narratives presented by collectors about developing source countries. This allows collectors to frame source countries as "compromised in their victimization by their own failure to protect remote sites […] and this argument of a lack of adequate protection also features in arguments against repatriation of stolen artefacts […]".[681]

Finally, appeals to higher loyalties involve the neutralisation of internal and external social controls "by sacrificing the demands of the larger society for the demands of the smaller social groups to which the delinquent belongs."[682] According to Matza and Sykes, the most important point in regards to this particular strategy is that deviation from certain norms "may occur not because the norms are reject but because other norms, held to be more pressing or involving loyalties, are accorded precedence."[683] This specific technique is easily recognisable in the attitudes and behaviours of antiquities collectors. Most commonly, appeals to higher loyalties like preservation of the past, appreciation of aesthetic beauty and cultural edification are used to neutralise the force of law as a "guide to appropriate action".[684] While evident in the practices and values of traditional antiquities dealers and collectors, the use of these neutralisation techniques can be observed in the internet antiquities market also.[685]

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[678] Matza and Sykes, "Techniques of Neutralization", p. 667.
[679] Mackenzie and Yates, "Collectors on Illicit Collecting", p. 12.
[680] Matza and Sykes, "Techniques of Neutralization", p. 668.
[681] Mackenzie and Yates, "Collectors on Illicit Collecting", p. 12.
[682] Matza and Sykes, "Techniques of Neutralization", p. 669.
[683] Matza and Sykes, "Techniques of Neutralization", p. 669.
[684] Mackenzie and Yates, "Collectors on Illicit Collecting".
[685] Dundler, "Still covered in sand" at pp. 2322 – 2323.

3. *The Internet Market for Antiquities* –

Since the 1990s, the supply/demand dynamic of the modern antiquities market has changed considerably with the rise of e-commerce. Undeniably, the internet allows for the participation of collectors and dealers from a much broader range of socioeconomic backgrounds and geographic locations than the traditional market. It also allows dealers to store large inventories at low-cost locations "thus making it financially viable to trade in low-value and potentially high-volume material."[686] Within this broader context of thriving online economic activity, the internet antiquities market has emerged and flourished. In the words of Helen Lidington, the transition to e-commerce removed "the shackles of the saleroom" and allowed the antiquities trade to enter a "new, more democratic epoch".[687]

Nowadays, dealers take advantage of both auction and sales hosting websites like eBay, Invaluable, Etsy, and Live Auctioneers, as well as using their own websites to sell antiquities and advertise their businesses.[688] Antiquities sales are also facilitated beyond the traditional online marketplaces and on social media platforms, like Facebook and Instagram. In 2018, Amr Al-Azm and Katie A. Paul published a World Politics Review article detailing their ongoing research into the previously unknown digital antiquities trafficking network involving thousands of people utilising Facebook as a platform to buy, sell, and advertise looting-on-demand services.[689] They identified numerous Facebook groups dedicated to antiquities trafficking, which operate as global online marketplaces allowing looters to easily target material "with a previously unseen level of precision."[690]

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[686] Brodie, N., "The Internet Market in Antiquities," in F. Demarais (ed.) *Countering Illicit Traffic in Cultural Goods: The Global Challenge of Protecting the World's Heritage.* Paris: ICOM, 2015. p. 11.

[687] Lidington, H., "The role of the internet in removing the 'shackles of the saleroom': Anytime, anyplace, anything, anywhere," *Public Archaeology* 2.2 (2002), p. 67.

[688] Brodie, N., "The Internet Market in Precolumbian Antiquities," in J. Kila and M. Balcels, *Cultural Property Crime: An Overview and Analysis on Contemporary Perspectives and Trends.* Leiden: Brill, 2014. pp. 237 – 262, "The Internet Market in Antiquities" and "How to Control the Internet Market in Antiquities? The Need for Regulation and Monitoring," *The Antiquities Coalition Policy Brief 3,* July 2017; Chippindale, C. and Gill, D., "On-Line Auctions: A New Venue for the Antiquities Market," *Culture Without Context* 9 (2001), pp. 4 – 12; Dundler, "Still covered in sand"; Fay, E., "Virtual Artifacts: Ebay, Antiquities, and Authenticity," *Journal of Contemporary Criminal Justice* 27.4 (2011), pp. 449 – 464; van Ham, T. et al., *The Art of the Internet: A Study of Illegal Online Trading in Cultural Goods.* The Hague: Eleven International Publishing, 2011; and Lidington, "The role of the internet".

[689] Al-Azm, A. and Paul, K. A., "How Facebook Made It Easier Than Ever to Traffic Middle Eastern Antiquities," *World Politics Review,* 14 August 2018. Accessed 23 July 2020. https://www.worldpoliticsreview.com/insights/25532/how-facebook-made-it-easier-than-ever-to-traffic-middle-eastern-antiquities

[690] Al-Azm and Paul, "How Facebook Made It Easier". For more insight from Al-Azam and Paul of the ATHAR project, see their 2019 Report: Al-Azm Paul, "Facebook's Black Market in Antiquities".

Whilst not all antiquities sales that occur online are so explicitly illegal, the level of legal awareness demonstrated by internet market participants is generally quite poor. And even when internet antiquities dealers do display explicit understandings of their legal obligations when buying and selling cultural heritage, it does not necessarily correspond with positive dealer ethics – like providing provenance information alongside sales.[691] This insight led to the conclusion that we should consider legal obligations in a different light:

> not as a tool that operates as checks and balances of behaviour, but, rather, as an act of branding, a performance of values and ethics to support the dealer's reputation in the market.[692]

f. Authenticity Discourses and the Internet Antiquities Market –

The rise of the internet market has brought to light new lines of inquiry about the dissemination of fakes and forgeries in the modern antiquities trade. The discourse of authenticity has always been central to the antiquities market. But it has been employed in interesting ways in relation to the internet market for antiquities. Before considering the specifics of the internet market, it is worth dwelling on the value of authenticity in connection to antiquities more broadly.

The origin of this market value can be identified in the motivations of antiquities collectors, who seek to forge connections with the ancient world through these objects. Cultural theorist Jean Baudrillard dedicated a portion of *Le système des objets* to the unique value ancient objects possess in the modern world.[693] For Baudrillard, the modern status of ancient objects is intimately linked with our obsession with our own origins. In the case of ancient objects, the site of birth is in antiquity and the older an object is, the greater its symbolic value. This obsession with origins also extends to a fixation with authenticity, certainty, and the moment of creation that is particularly prominent in a post-industrial and increasingly digital world. To quote Baudrillard, "we are fascinated by what has been created, and is therefore unique, because the moment of creation cannot be reproduced."[694]

In a 2015 publication Donna Yates examines this intimate relationship between authenticity and value in the antiquities market. She argues that

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[691] Dundler, "Still covered in sand".
[692] Dundler, "Still covered in sand," pp. 2323 – 2324.
[693] Baudrillard, *Le système des objets.*
[694] Baudrillard, *Le système des objets,* p. 81.

while beauty, form, function, and rarity are important factors in determining the price of an artefact will fetch on the market, none of these matter to most buyers unless the object is 'real'. If the antiquity is not ancient, it loses its meaning to buyers: it is valueless.[695]

Authenticity is then intimately linked to value in the antiquities market as it is the authenticity of these objects that guarantees a connection with the past; with the ancient world. Collectors of antiquities collect the past through its tangible remains and thus seek this connection above all other qualities. A fake, even if it is beautiful and expertly crafted, lacks this connection with the ancient world and what Yates calls "past-based value".[696]

Paradoxically, most buyers of antiquities lack the expertise to accurately determine authenticity independently. These factors, combined with the desire for genuine antiquities, creates "an incomplete toolkit for determining authenticity."[697] Antiquities dealers are thus "tasked with quelling buyers' fears"[698] by proving the legitimacy of their wares, and this can involve a number of strategies which have developed to support the authentication process. Such strategies include authenticity photos (photographs given to potential buyers of the objects in-situ as it is being looted, covered in soil before conservation, or in a similar state that suggests the object is not modern[699]); expert and academic evaluation; scientific testing; verifiable provenance; and references to scholarly publications which feature the object in question. There are also the more unusual approaches, as employed by one of the internet antiquities dealers quoted in this chapter's introduction. The second quote, for example, is a sales description of a cuneiform tablet offered for sale via eBay in July 2018, in which the seller explains that the tablet is "still covered in sand". This description provides an implicit testimony to the authenticity of the object by connecting it with a legitimate site of origin and discovery in the modern world.

Interestingly, whilst the internet antiquities market participants have, of course, appropriated these existing strategies, they have also introduced some of their own. These include the use of customer reviews and ratings mechanics, which are commonplace in e-commerce. In 2011 Emily Fay examined the role of these feedback mechanics in relation to the risk of inauthenticity in eBay sales of antiquities. The sellers she examined had an average feedback of

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[695] Yates, D., "Value and Doubt: The Persuasive Power of 'Authenticity' in the Antiquities Market," *Platform for Artistic Research Sweden* 2 (2015), p. 72.

[696] Yates, "Value and Doubt", p. 75.

[697] Yates, "Value and Doubt", p. 75.

[698] Yates, "Value and Doubt", p. 75.

[699] Yates, "Value and Doubt", p. 77. The most famous example of authenticity photos can be seen in the case of Giacomo Medici. See Watson and Todeschini, C. *The Medici Conspiracy*.

99.7%, "meaning that buyers are not complaining about the authenticity of the objects they purchased."[700] Such observations led Fay to conclude

> that online auctions have democratized the collecting of antiquities, creating a market for low-value goods; however, this has brought in a new group of inexperienced collectors, without the knowledge or expertise to distinguish the authentic from the sophisticated fakes available.[701]

Further, many internet antiquities dealers also offer authenticity guarantees and assure refunds if an antiquity can be proven to be a fake or forgery.[702]

Combining traditional antiquities trade values and practices with the nuances of e-commerce and social media, the emergence of the internet antiquities market in the past three decades has created new challenges for policing and regulating the illicit trade of antiquities. This has involved applying existing legal frameworks to digital economies and developing new regulatory frameworks for the internet antiquities market. However, before analysing this process in relation to the internet market for antiquities, the existing legal frameworks which dictate the import, export, transfer of ownership, and return of cultural objects must be given their due attention.

4. Legal Frameworks –

g. Definitions –

Before exploring the legal frameworks relevant to the illicit trade of antiquities, it is necessary to discuss how our means of defining cultural objects within a legal context have changed over time. These changes have naturally influenced legal frameworks, and vice versa, as well as broader discourses that inform ideas of ownership and guardianship. Whilst complex and spanning many decades, we can observe a broad trend in changing approaches to definitions as a shift from cultural property to cultural heritage over time.[703] Much like the nationalist vs. universalist approach to cultural ownership, the use of the definitions of cultural property and cultural heritage can be associated with key UN Educational, Scientific, and Cultural Organization (UNESCO) instruments, which will be discussed in section 2.1.4.h.

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[700] Fay, "Virtual Artifacts", p. 460.
[701] Fay, "Virtual Artifacts", p. 460.
[702] Dundler, "#antiquitiesdealers".
[703] Lixinski, L., *International Heritage Law for Communities – Exclusion and Re-Imagination.* Oxford: Oxford University Press, 2019. pp. 27 – 65. For further discussion of the difference between these two legal concepts, see: Frigo, M., "Cultural Property v Cultural Heritage: A "Battle of Concepts" in International Law?" *International Review of the Red Cross* 86. 854 (2004), pp. 367 – 377, and Prott, L. V. and O'Keefe, P. J., ""Cultural heritage" or "cultural property" *International Journal of Cultural Property Law* 1.2 (1992), pp. 307 – 320.

In his examination of international heritage, legal scholar Lucas Lixinski makes a number of significant observations about the shift from property to heritage. These observations can be summarised into his argument that the shift from cultural property to heritage, whilst enhancing "many of the values of cultural heritage" has had the "(unintended) consequence of disassociating communities from heritage they live with or around, and for whose survival they are necessary."[704] On the international stage the term cultural heritage has been sincerely embraced, but in a domestic context this is largely not the case. Most domestic cultural laws are still grounded in property-based legal discourses, resulting in what Lixinski calls "a fundamental disconnect" between international and domestic legal frameworks.[705]

Within this belief system, cultural heritage is seen as a non-renewable resource that constitutes the "common heritage" of "humankind". It can be identified by five criteria, including heritage as universal, intergenerational, non-economic, scientific, and free from sovereign control. These definitions collectively contribute to a narrative that heritage is a universal discourse, which results in the exclusion of communities from controlling their own culture and alienates local communities from decision making processes. In response to this concern, Lixinski proposes that there is the potential for there to be the inclusion of a "specific way of conceptualizing property" in our international heritage discourses. [706]

h. International Treaties –

When discussing the modern antiquities market, there are two key international treaties to consult: the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970 UNESCO Convention),[707] and the *1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* (1995 UNIDROIT Convention).[708] Whilst the issue of protecting cultural heritage during wartime had been addressed in the *1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict,*[709] the 1970 UNESCO Convention was the first international instrument which addressed the illicit trade of cultural property during peacetime.

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[704] Lixinski, *International Heritage Law for Communities,* p. 27
[705] Lixinski, *International Heritage Law for Communities,* p. 36.
[706] Lixinski, *International Heritage Law for Communities* p. 27
[707] 1970 UNESCO Convention.
[708] 1995 UNIDROIT Convention.
[709] Refer back to section 1.1.2. for a discussion of the Hague Conventions.

The 1970 UNESCO Convention provides a common framework for State Parties on the measures required to prohibit and prevent the import, export, and transfer of cultural property.[710] Highlighted during the drafting process, the intended purpose of the 1970 UNESCO Convention "would be to protect the cultural heritage of peoples, as opposed to the cultural heritage of mankind."[711] This nationalistic approach distinguished the 1970 UNESCO Convention from the universalist principles embodied in the 1954 Hague Convention, set forth in the preamble which states "that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind".[712] Article 1 of the 1970 UNESCO Convention defines cultural property as "property which, on religious or secular grounds, is specifically designated by each state as being of importance for archaeology, prehistory, history, literature, art or science and which belongs" to an enumerated list of categories of objects.[713]

In Article 4 there is further specification that for the purpose of the Convention the types of cultural property constitutes the cultural heritage of each State, including objects:

(a) created by the individual or collective genius of nations of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;

(b) found within the national territory;

(c) acquired by archaeological, ethnological or natural science missions, with the consent of competent authorities of the country of origin of such property;

(d) which has been the subject of freely agreed exchange;

(e) received as a gift or purchased legally with the consent of competent authorities of the country of origin of such property.

This definition of cultural property encapsulates a far broader idea of heritage than what had previously been represented in international legal frameworks. This approach allowed for a

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[710] 1970 UNESCO Convention.

[711] Lixinski, *International Heritage Law for Communities,* p. 35, paraphrasing *Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property – Preliminary report prepared in compliance with Article 10.1 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution.* SHC/MD/3, 8 August 1969. para. 10.

[712] See Blake, J., *International Cultural Heritage Law.* Oxford: Oxford University Press, 2015. pp. 1 – 22; Lixinski, *International Heritage Law for Communities,* pp.27 – 65; Merryman, "Two Ways of Thinking,".

[713] Such as products of archaeological excavations (sanctioned or clandestine), specimens of fauna, flora, minerals and anatomy, fossils, paintings, drawings, sculptures, antiquities more than 100 years old, manuscripts, ethnological and historical objects, and elements of artistic or historical monuments or archaeological sites that have been dismembered.

transition from focusing only on cultural objects to other forms of cultural expression, which better highlighted indigenous rights and heritages.[714] It is also important to recognise the influence of the International Customs Convention (ICU) and the International Customs Union (ICU) in this broader definition of cultural property.[715] The ICC and ICU were considered a "decisive" influence on the 1970 UNESCO Convention, "particularly as a number of states had adopted the International Customs Convention, and thereby already incorporated that terminology in their domestic laws."[716] However, during the drafting process of the 1970 UNESCO Convention, the broad scope of this definition of cultural property was criticised for its "wide margin for discretion",[717] which allowed each state to determine which objects were of "particular importance". Japan, for example, shared concerns that such broad allowances "would create inconsistencies and compromise the effectiveness of the instrument."[718]

The 1970 UNESCO Convention imposes obligations on State Parties to both protect their own cultural heritage and the cultural heritage of other State Parties. Depending on their method of implementation – which will be discussed in the next section – the core obligation of State Parties can be found in Article 3:

> The import, export or transfer of ownership or cultural property effected contrary to the provisions adopted under this Convention by the State Parties thereto, shall be illicit.

And Article 7(b)(i):

> The State Parties to this Convention undertake:
>
> > (b)(i) to prohibit the import of cultural property stolen from a museum or a religious or secular monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

State Parties which implement the former obligation into national law and regulations prohibit the import of all cultural objects whose export from another State Party was illegal.[719] Whereas the latter covers examples of "traditional theft from documented collections" meaning undocumented antiquities – such as from clandestine archaeological excavations – are not

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[714] Lixinski, *International Heritage Law for Communities,* p. 37.
[715] UNESCO, *Technical and Legal Aspects of the Preparation of International Regulations to Prevent the Illicit Import, Export and Sale of Cultural Property.* UNESCO/CUA/115, of 14 April 1962. 5-6.
[716] Lixinski, *International Heritage Law for Communities,* p. 34.
[717] Lixinski, *International Heritage Law for Communities,* p. 34.
[718] Lixinski, *International Heritage Law for Communities,* p. 34.
[719] Gerstenblith, P., "UNESCO (1970) and UNIDROIT (1995) Conventions," in C. Smith (eds). *Encyclopedia of Global Archaeology.* New York: Springer, 2014. p. 7428, and O'Keefe, P. J., *Commentary on the 1970 UNESCO Convention* 2007. Builth Wells, UK: Institute of Art and Law, 2007. pp. 41 – 44.

addressed. Whilst this approach to implementation may be easier to enforce compared to the former,[720] it makes the 1970 UNESCO Convention an ineffective tool at combatting the majority of illicit cultural trafficking. These obligations are expressed in the instrument through three key principles: prevention, as States are required to "undertake to oppose" the illicit import, export, and transfer of ownership of cultural property "with the means at their disposal"; restitution "by helping make the necessary reparations"; and international cooperation which "constitutes the most efficient means of protecting each country's cultural property against all the dangers resulting there from."[721]

Requirements for preventing the illicit trade of antiquities are stated in Articles 5, 6, 7, 8, and 14. Article 5 is concerned with the actions State Parties undertake to protect their own cultural heritage, including the drafting of laws and regulations to secure protection and prevent the illicit trade (Article 5(a)), the establishment of national inventories of "protected property" (Article 5(b)), developing or establishing "scientific and technical institutions […] required to ensure the preservation and protection of cultural property" (Article 5(c)), arrange supervision for archaeological excavations (Article 5(d)), establishing rules for stakeholders – "curators, collectors, antique dealers, etc." – which conform with the principles of the Convention (Article 5(e)),[722] employing educational measures "to stimulate and develop respect for cultural heritage" (Article 5(f)), and giving appropriate publicity to cultural property which has "disappeared" (Article 5(g)). Article 6 offers further prevention support in the provision of the introduction of export certificates that "would specify that the export of cultural property in question was authorized" (Article 6(a)). Article 7 shifts the focus to preventing the illicit import and acquisition of cultural property "originating in another State Party […] which has been illegally exported after entry into force of this Convention." Article 8 requires State Parties to impose penalties or sanctions for those responsible for infringing prohibitions. The success of criminal penalties in this context, however, has been challenged, with researchers and commentators calling for more stringent penalties for actors involved in the market-end of the illicit antiquities supply chain.[723] And finally, Article 14 sets the expectation of the provision of

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[720] Gerstenblith, "UNESCO (1970) and UNIDROIT (1995) Conventions," p. 7428.
[721] 1970 UNESCO Convention, Article 2.(i-ii).
[722] Examples of such restrictions are made apparent in Article 10 of the Convention, which "obliges antique dealers subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject" (Article 10(a)).
[723] See, for example: Mackenzie, S., "Illicit Antiquities, Criminological Theory, and the Deterrent Power of Criminal Sanctions for Targeted Populations," *Art Antiquity and Law* 125 (2002), pp. 125 – 161, and "Dig a Little Deeper: Law, Regulation and the Illicit Antiquities Market," *British Journal of Criminology* 45.3 (2005), pp. 249 – 268.

national services to oversee the protection of cultural heritage "with an adequate budget" within the means of the State Party.

Preventative measures in the 1970 UNESCO Convention are supported by the principle of international cooperation, which is of fundamental importance when dealing with the transnational antiquities market. This principle is best expressed in Article 9:

> Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other states who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

Cultural heritage legal scholar Patty Gerstenblith highlights this Article as particularly difficult to implement. For example, several key terms – such as "cultural patrimony", "jeopardy" and "pillage" – are left undefined, and the use of terms like "irremediable injury" should also include the "destruction of the stratigraphy of a site".[724] Commentator Marina Papa Sokal highlights that preliminary drafts of the Convention contained a number of highly stringent obligations that many market nations would not accept, including a commitment by art-importing countries to enforce other countries' export control laws" and that no reservations to the Convention would be permitted.[725] Thus, the final text did not include these more stringent obligations and has been subsequently criticised for its ineffectiveness.

One of the greatest limitations of the 1970 UNESCO Convention is its lack of retroactivity: its obligations apply to stolen cultural property which has been exported or imported "after the entry into force […] for the States concerned."[726] For this reason, many market participants have used the enactment of the 1970 Convention as a demarcation between "good and legitimate" antiquities – those that are okay to study and own – and "bad and illegitimate" ones

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[724] Gerstenblith, "UNESCO (1970) and UNIDROIT (1995) Conventions," p. 7429.
[725] Papa Sokal, M., "The U.S. Legal Response to the Protection of the World Cultural Heritage," in N. Brodie (ed.), *Archaeology, Cultural Heritage, and The Antiquities Trade.* Florida: University Press of Florida. p. 36.
[726] 1970 UNESCO Convention.

– those we should avoid engaging with.[727] Also known as the 1970 provenance threshold,[728] this approach encourages market participants to only consider contemporary crime, and to systematically ignore the harm suffered by nations, peoples, and communities for the centuries when their heritage was plundered during periods of conflict and colonial invasion. It encourages market participants to disregard the sovereignty of affected countries, who almost universally had export restrictions for their cultural property in place well before the 1970 UNESCO Convention. Ultimately, it encourages market participants to acknowledge their legal obligations whilst neglecting their ethical responsibilities – a limitation which is addressed in the "Framework" presented in Chapter 3.1.

The other inadequacy of the instrument in reducing the flow of illicit cultural trafficking is that some market and transit countries which play significant roles in the illicit antiquities market have not ratified the Convention. Upon celebrating its 50th anniversary,[729] the 1970 UNESCO Convention has 140 State Parties.[730] In response to concerns of looting and destruction in the Middle East in the past twenty years, a number of important market and transit countries have ratified the Convention – such as Switzerland – or strengthened existing legislation – Germany.[731] However, ratification is not universal and the methods of implementation of the Convention are not consistent from state-to-state – as will be explored in the next section – undermining efforts to combat illicit trafficking. Israel, for example, plays an important role in the supply, demand, and transit of antiquities yet is not a Member State to the 1970 UNESCO Convention.[732]

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[727] Brodie, N., "Provenance and Price: Autoregulation of the Antiquities Market," *European Journal of Criminal Policy and Research,* 20 (2014), pp. 427 – 444, and O'Keefe, *Commentary on the 1970 UNESCO convention,* pp. 156 – 158.

[728] Mackenzie et al., *Trafficking Culture,* pp. 94 – 100. For commentary on the provenance threshold see: Brodie, "Provenance and Price"; Gerstenblith, "Implementation of the 1970 UNESCO Convention"; and Marlowe, "A response to Chippindale and Gill".

[729] UNESCO, "Celebrate 50 years of fight against illicit trafficking". Accessed 10 December 2020. https://en.unesco.org/news/celebrate-50-years-fight-against-illicit-trafficking . See also The Antiquities Coalition, "50 Years After the 1970 UNESCO Convention, the Work Continues". Accessed 10 December 2020. https://theantiquitiescoalition.org/50-years-after-the-1970-unesco-convention-the-work-continues/

[730] UNESCO, "State Parties Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, 14 November 1970". Accessed 10 December 2020. https://pax.unesco.org/la/convention.asp?order=alpha&language=E&KO=13039

[731] The cultural property laws of Germany and Switzerland are the subject of section 2.1.4.i.

[732] For discussion of Israel's role in the modern antiquities market and Palestinian cultural heritage issues, see: Kersel, M., "The Trade in Palestinian Antiquities," *Jerusalem Quarterly* 33 (2008), pp. 21 – 38 and "Fractured oversight: The ABCs of cultural heritage in Palestine after the Oslo Accords," *Journal of Social Archaeology* 15.1 (2014), pp. 24 – 44, and Rjoob, A. A., "The Impact of Israeli Occupation on the Conservation of Cultural Heritage Sites in the Occupied Palestinian Territories: The Case of 'Salvaged Excavations'," *Conservation and Management of Archaeological Sites* 11.3–4 (2009)*,* p. 214 – 235.

In the decades since the 1970 UNESCO Convention, there have been attempts to consolidate and extend international cultural heritage law in response to these valid criticisms. The International Institute for the Unification of Private Law (UNIDROIT) became involved in developing a new regulatory instrument for the transnational market for cultural objects at the request of UNESCO in the 1990s. At the time this decision was deemed controversial for two reasons: UNIDROIT had never been involved with heritage issues before, and perhaps more importantly, most of the countries facing major heritage concerns were not members of UNIDROIT.[733] The *1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* was designed to be a "reasonable compromise between the interests of market and 'source' States,"[734] and addresses two key limitations of the 1970 UNESCO Convention: a lack of time limitations on legal actions and the misuse of the term "good faith".[735] For cultural heritage legal scholar Janet Blake, the timing of the UNIDROIT Convention in the context of major civil suits related to cultural heritage demonstrates a "shift of policy" and "signals the recognition that a workable framework for the restitution and return of stolen and illegally exported cultural objects […] is needed."[736]

Employing the same definition of cultural objects as Article 1 of the 1970 UNESCO Convention, the UNIDROIT Convention applies to international claims for:

  (a) the restitution of stolen cultural objects;
  (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage (hereinafter "illegally exported cultural objects").[737]

This distinction between stolen and illegally exported cultural objects is reflected in the text of the Convention, with Chapter II (Articles 3 and 4) devoted to the former and Chapter III (Articles 5, 6 and 7) to the latter. Chapter IV includes general provisions which apply to both stolen and illegally exported cultural objects, including the role and jurisdiction of the courts of Contracting States (Article 8), interpretations of legal obligations for Contracting States (Article 9), and the limitations of the provisions detailed in Chapter II and Chapter III (Article 10). Like the 1970 UNESCO Convention, the 1995 UNIDROIT Convention is not retroactive and thus does not apply to cultural objects stolen or illegally exported before the instrument came into

[733] Prott, L., "The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects – Ten Years On," *Uniform Law Review* 14.1-2 (2009), p. 215.
[734] Blake, *International Cultural Heritage Law,* p. 48.
[735] Prott, "The UNIDROIT Convention," p. 215.
[736] Blake, *International Cultural Heritage Law,* pp. 68 – 69.
[737] *UNIDROIT Convention,* Art. 1.

force. This limitation, however, is acknowledged in the third and final part of Article 10, which states:

> This Convention does not in any way legitimise any illegal transaction of whatever nature which has taken place before the entry of this Convention or which is excluded under paragraphs (1) or (2) of this article, nor limit any right of a State or other person to make a claim under remedies available outside the framework of this Convention for the restitution or return of a cultural object or illegally exported before the entry into force of this Convention.

The 1995 UNIDROIT Convention introduces the concept of due diligence in relation to restitution claims for stolen and illegally exported cultural objects. Due diligence is a term used beyond the context of the contemporary antiquities market, with a common use definition – action considered reasonable for people to be expected to take in order to keep themselves or others and their property safe – as well as specialised use in the fields of business, economics, and finance: "the detailed examination of a company and its financial records, done before becoming involved in a business arrangement with it".[738] Nowadays the term is commonly used by market participants and commentators in the art and antiquities market to describe the process of investigating an object's provenance before acquisition.

Article 4 of the 1995 UNIDROIT Convention explicitly references the concept of due diligence twice:

> (1) The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object

And again:

> (4) In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation, and whether the possessor consulted accessible agencies […]

The phrase "any other relevant information and documentation" is particularly relevant when dealing with the modern antiquities market, with Gerstenblith highlighting that this should

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[738] Cambridge Dictionary, "Due diligence". Accessed 16 December 2020.
https://dictionary.cambridge.org/dictionary/english/due-diligence

include context cues which indicate theft or illegal export: "origin in areas with recent large-scale looting […], or the presence of soil, mud, or straw on the object."[739]

Further, the 1995 UNIDROIT Convention also provides a definitive statute of limitations for restitution claims. These conditions are established in Articles 3 and 5, including a period of three years from the time the claimant is aware of the location and current possessor of the stolen or illegally exported object, and, in any case, a period of 50 years from the time of the theft or illegal export (Article 3(3)). However, cultural objects which form "an integral part of an identified monument or archaeological site, or belonging to a public collection" (Article 3(4) or can be considered "sacred or communally important […] belonging to and used by a tribal or Indigenous community" (Article 3(8)) are not subject to time limitations apart from the period of three years from the discovery of the location and possessor.

At the time of writing, the 1995 UNIDROIT Convention has a total of 48 Contracting States including a number of nations that are typically identified as source countries such as Italy, Greece, Cyprus, and Peru.[740] Nations which have recently experienced mass-looting from archaeological and heritage sites during periods of prolonged conflict, such as Afghanistan and Syria, are also present. Missing from this list, however, are key representatives from the market end of the illicit antiquities trade, namely the United States and the United Kingdom. Further, there are some nations such as Switzerland who play an important role in the illicit antiquities market which have signed the Convention but are yet to implement it into domestic legislation.

In her reflection on the 1995 UNIDROIT Convention ten years after it entered into force in 1998, cultural heritage legal scholar Lyndell Prott addresses this criticism of the instrument and questions its validity. After all, Prott highlights,

> international agreements which make serious changes to the existing rules always tend to take a long time to be fully adopted by a substantial number of states. Conventions which achieve very high numbers of Member State ratifications […] tend to conventions which the States do not find place onerous obligations on them, or, indeed already encapsulate their existing rules or practice.[741]

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[739] Gerstenblith, "UNESCO (1970) and UNIDROIT (1995) Conventions," p. 7430.
[740] UNIDROIT, "UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) – Status". Accessed 17 December 2020. https://www.unidroit.org/status-cp
[741] Prott, "The UNIDROIT Convention," p. 229.

In other words, the 1995 UNIDROIT Convention largely required Member States to make significant changes to domestic cultural property legislation, and changes which do not happen overnight. At the time of writing Prott notes that 29 countries had become State parties of the Convention. Now, more than ten years on from her publication the total number is 48. When questioning the effectiveness of these international legal frameworks, then, it is necessary to explore not only which countries have implemented these instruments into domestic law, but also how they have achieved this process.

i. Applications to Domestic Contexts –

Both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention must be implemented into domestic law in order to be enforceable. This section does not seek to analyse how every Member State of these instruments have achieved, or failed to achieve, this process. Rather, it presents an overview of general trends of national cultural property legal frameworks with a focus on countries which play significant roles in the modern antiquities market. To demonstrate the varying approaches taken from the different ends of the market, this discussion will start with domestic law in nations traditionally known as source countries, such as Egypt, before moving to focus on trafficking transit portals, like Switzerland, and ending with an overview of multiple market countries.

Restrictions on the export of cultural property have existed at a national level since the 19th century. An early example can be found in Egypt, which experienced widespread plundering of heritage and archaeological sites following Napoleon's Egyptian expedition (1798 – 1801).[742] Whilst the expedition was not a military success for France, his campaign was accompanied by a team of more than 150 "savants" – scientists, artists, and engineers – who recorded Egypt's land and monuments. These accounts of Egypt were later published in a set of twenty-three volumes entitled *Description de l'Egypte.*[743] Napoleon and his army also acquired a significant

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[742] For an overview of the campaign, see: Dykstra, D., "The French Occupation of Egypt, 1798–1801," in M. W. Daly (ed.), *The Cambridge History of Egypt,* 2. Cambridge: Cambridge University Press, 1998. pp. 113 – 138.
[743] The first volume of this monumental work was published between the years 1809 – 1828: Commission des sciences et arts d'Egypt, *Description de l'Egypte, ou, Recuiel des observations et des recherches qui ont* été faites en Egypte pendant l'expédition de l'armée française. Paris: C. L. F. Panckoucke, 1820. The text and plates have been digitised and made accessible to the public through the work of Bibliotheca Alexandrina: Bibliotheca Alexandrina, "'Description de l'Egypte' Digital." Accessed 16 September 2020. http://descegy.bibalex.org/index.html.

number of Egyptian antiquities,[744] which – along with statues and other artworks plundered from Italy[745] – were displayed in the *Musée Napoléon.*

These outputs from Napoleon's military expedition resulted in the rise of European and British fascination with Egypt – a phenomenon known as "Egyptomania".[746] According to papyrologist Hélène Cuvigny, in the years following the expedition, the French and English discovered

> an archaeological El Dorado and became antiquities hunters and dealers. Some of them (not least the consuls) financed excavations, whether from passion or greed, and assembled fabulous collections, which they sold in Europe, especially to museums.[747]

In 1835, de facto ruler of Egypt from 1805 to 1848, Muhammad Ali Pasha al-Mas'ud ibn Agha ordered the suspension of all excavations in Egypt and forbade the exportation of antiquities. According to papyrologist Hélène Cuvigny this order was "ineffectual" as "the demand was too great and the authorities indifferent to the plundering."[748] Throughout the remainder of the 19th century and into the 20th century, the demand for Egyptian antiquities was fostered by "Egyptomania" and increasing levels of globalisation.

In 1983 the Egyptian Law on the Protection of Antiquities (1983 LPA) entered into force. The position of ownership and the trade of Egyptian antiquities is made explicit in Article 6 of the 1983 LPA:

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[744] Miles argues that the scale of plundering of art by Napoleon, from both Egypt and Italy, "was unprecedented in early modern history". Miles, *Art as Plunder,* p. 320.

[745] During his invasion of Italy, Napoleon famously wanted to take Trajan's Column from Rome back to Paris, but was advised against it by his engineers. The antiquities he did plunder from Italy were displayed in the *Musée Napoléon,* but not before they were "carried into Paris in a triumphal procession, closely modelled on those described by Roman authors." Miles, *Art as Plunder,* p. 321. After the Battle of Waterloo, the Duke of Wellington arranged to these artworks to be returned to Italy, "where [they] belonged, he believed, rather than in Windsor Castle." Miles, *Art as Plunder,* p. 9.

[746] Baber, T., "Ancient Corpses as Curiosities: Mummymania in the Age of Early Travel," *Journal of Ancient Egyptian Interconnections* 8 (2016), pp. 60 – 93; Colla, E., *Conflicted Antiquities: Egyptology, Egyptomania, Egyptian Modernity.* Durham, N.C.: Duke University Press, 2007; Curl, J. S., *Egyptomania: The Egyptian Revival: A Recurring Theme in the History of Taste.* Manchester, UK: Manchester University Press, 1994; Reid, D. M., *Whose Pharaohs? Archaeology, Museums, and Egyptian National Identity from Napoleon to World War I.* Berkeley, CA: University of California Press, 2002; and Stevenson, A., *Scattered Finds: Archaeology, Egyptology, and Museums.* London: UCL Press, 2019.

[747] Cuvigny, H., "The Finds of Papyri: The Archaeology of Papyrology," in R. S. Bagnall (ed.). *The Oxford Handbook of Papyrology.* New York: Oxford University Press, 2011. p. 32. The plundering of Egyptian archaeological sites became so problematic that in 1835 all excavations were suspended and a decree was issued which forbade the exportation of all antiquities.

[748] Cuvigny, "The Finds of Papyri," p. 32.

[a]ll antiquities with the exception of religious endowments (waqfs) shall be deemed public property, and the ownership, possession and disposition of them shall be subject to the terms and conditions set forth in this law and regulations made thereunder.[749]

And then in Article 7:

[a]ll trade in antiquities shall be prohibited as from the date of coming into force of this law.[750]

The law outlines the provisions for both a registry of movable property (1983 LPA, Article 8) and immovable property (1983 LPA, Article 12); restricts exports at all Egyptian airports, ports, and borders (1983 LPA, Article 9) whilst permitting exhibitions that are abroad for limited periods and include antiquities that are not classified as "unique or particularly vulnerable to damage" (1983 LPA, Article 10); and details the reporting process for "every person who fortuitously discovers a movable antiquity" (1983 LPA, Article 24). The Egyptian Antiquities Law also introduced harsh penalties and sanctions, including convicted antiquities smugglers liable "to a prison term with hard labor and a fine of not less than 5,000 and not more than 50,000 [Egyptian] pounds."[751]

Whilst this law and its penalties do not address the substantial number of antiquities which were exported from Egypt prior to 1983, it does cover the periods of heightened looting and trafficking which have occurred since Arab Spring.[752] In 2018 Egyptian Parliament approved proposed amendments to the 1983 Egyptian Antiquities Law including an increase in penalties for "whoever steals, possesses, hides and collects an antiquity for the purpose of smuggling or is involved in such an act" to life imprisonment and a fine "not less than LE 50,000 […] and not more than LE 250,000."[753] Minister of Antiquities, Khaled El-Enani, stated these amendments fit within the broader efforts of the Egyptian government to protect Egyptian heritage since the 2011 revolution.[754]

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[749] *Law on the Protection of Antiquities,* Law No. 117 of 1983. Egypt. Trans. UNESCO. Accessed 15 December 2020. https://www.cemml.colostate.edu/cultural/09476/pdf/egyptian-law-117-of-1983.pdf . Henceforth cited as 1983 LPA.

[750] 1983 LPA.

[751] 1983 LPA, Art. 41.

[752] For research demonstrating the intensification of looting in Egypt during Arab Spring, see: Hanna, "Documenting looting activities in post-2011 Egypt." and Parcak et al., "Satellite evidence of archaeological site looting in Egypt: 2002-2013". On the aftereffects of this period of looting, see: Paul "Repatriating the Past".

[753] Gamil, M., "New law intensifies penalties for antiquities-related crimes," *Egypt Today,* 24 April 2018. Accessed 1 December 2020. https://www.egypttoday.com/Article/1/48513/New-law-intensifies-penalties-for-antiquity-related-crimes

[754] Gamil, "New law intensifies penalties for antiquities-related crimes".

Such laws and penalties, however, can only have so much effect when we consider the transnational nature of the illicit antiquities market. The previous sections of this chapter have introduced the concept of transit port[al]s and trafficking routes which are designed to move antiquities from countries like Egypt to destination marketplaces where they are sold and consumed as legitimate commodities. Criminal individuals and organisations take advantage of different and weaker regulatory frameworks, as well as conceptions of ownership which vary across jurisdictions. There is also the issue of transnational legal obligations to consider, as

> [a]n antiquity may have been exported from its source country illegally, but this may not prevent it from being legally imported into a transit state. The transit state, then, likely will not devote time and money to the detection of items that they do not internally consider to be contraband.[755]

In order to effectively regulate the antiquities market, then, it is necessary for these "free ports" to commit themselves to fighting illicit cultural trafficking – a task which Switzerland has committed itself to in the last two decades. Switzerland had historically served as the main transit portal for looted antiquities, as highlighted in famous cases like the Medici smuggling operation.[756] After lobbying efforts led by UNESCO, archaeologists, investigators, and other stakeholders, Switzerland finally ratified the 1970 Convention in 2003. The new law was designed to "control the import of cultural property into Switzerland, and its transit, export and repatriation".[757]

The efforts of the Swiss government, however, are somewhat undermined by the fact that illicit flows have now shifted to other free ports like Hong Kong and Dubai.[758] These changes in the organisation of the illicit antiquities market suggest that despite strengthening legislation in some nations, demand for antiquities remains high enough for looters and smugglers to develop alternative trafficking routes and strategies. The issue to explore, then, is how nations which are identified as the "market" or "destination" portions of the trade have implemented the 1970 UNESCO Convention and 1995 UNIDROIT Convention in domestic law, and also through other soft law approaches. This process of implementation in market nations was much slower in comparison to that of nations typically identified as source countries, with no development in most major market countries until the late 1990s and early 2000s.[759] As of 2017, Patty

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[755] Mackenzie et al., *Trafficking Culture,* p. 9.
[756] Watson and Todeschini, *The Medici Conspiracy.* For a detailed discussion of the role of Switzerland in facilitating the illicit antiquities trade see: Kunitz, M., "Switzerland & the International Trade in Art & Antiquities," *Northwestern Journal of International Law & Business* 21.2 (2001), pp. 519 – 542.
[757] Regazzoni, G. "Long the hub of the illicit antiquities trade".
[758] Mackenzie et al., *Trafficking Culture,* p. 9.
[759] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 78.

Gerstenblith argued that a "sufficient number of market nations" had ratified the 1970 Convention that it was possible to create a "typology of methods of implementation".[760] Within this typology, Gerstenblith identifies four recurring examples of national implementation including "across-the-board" import restrictions, bilateral agreements, hybrid approaches, and "specific designation" – all of which will be briefly discussed here.

"Across-the-board" import restrictions implement Article 3 of the 1970 UNESCO Convention by granting "reciprocal recognition to the export restrictions of other nations when those export restrictions are promulgated as part of their implementations of the 1970 UNESCO Convention."[761] This approach also requires the implementation of Article 6(b), which states that the exportation of cultural property is prohibited unless accompanied by an export certificate. Examples of States which have adopted this broader implementation scheme are Australia, Canada, and Germany. The former will be discussed in greater detail in Chapter 3.2, so instead here the focus will be on the latter two.

Canada implemented Articles 3 and 6(b) in 1978 by enacting broad import and export regulations in the form of the Cultural Property Export and Import Act (CPEIA) R.S.C. 1985, c. C-51 ff. The CPEIA applies to both export and import controls, protecting Canadian cultural heritage whilst also applying to "foreign cultural property". The law, however, is not retroactive and only applies to "foreign cultural property illegally exported after the date on which a cultural property agreement comes into force in both Canada and the reciprocating state."[762] Between 1978 and 2000 there have been 11 requests made to Canada for returns, and between 2000 and 2007 they facilitated returns to Peru, Bolivia, Egypt, and Columbia.[763] In 2011 Canada seized and returned to Bulgaria 21,000 cultural objects – "many of which were illegally excavated"– which was their largest ever seizure and restitution.[764]

When Germany first implemented the 1970 UNESCO Convention in 2007,[765] it only prohibited the import of cultural objects which had been "individually classified in an accessible inventory

[760] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 79.
[761] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 79.
[762] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 80.
[763] O'Keefe, *Commentary on the 1970 UNESCO Convention*, p. 149.
[764] Office of the Minister of Canadian Heritage and Official Languages, "Government of Canada Returns Its Largest Ever Seizure of Cultural Property to the Republic of Bulgaria," *Canadian Heritage,* 10 June 2011. Accessed 2 December 2020. https://ifacca.org/en/news/2011/06/10/government-canada-returns-its-largest-ever-seizure/
[765] *Kulturgüterrückgabestez* 2007. [*Act to implement the UNESCO Convention 14 November 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property* 2007]. See also

by the country of origin at least one year prior to removal".[766] Such an approach fails to take into account the nature of clandestine looting, which "produces undocumented artifacts whose existence is generally unknown until they appear in the market country."[767] In response to these limitations, and an awareness of the widespread looting throughout Middle East countries, Germany amended its legislation in 2016.[768] These amendments unified "German law with respect to export controls",[769] whilst also fulfilling their obligations under United Nations Security Council Resolution 2199.[770]

The second method of implementation of the 1970 UNESCO Convention involves two States entering into a supplementary bilateral agreement; a method which has only been adopted by Switzerland and the United States.[771] According to Morag Kersel and Austin (Chad) Hill, these bilateral agreements, like the one between the United States and Jordan, are the "embodiment of cultural diplomacy write large as both countries agree that the cultural heritage […] is at risk from buyers in the United States."[772] However, research conducted by Gordon Lobay suggests that these bilateral agreements have only had a limited impact on the global trade of antiquities.[773] His empirically-based assessment of the bilateral agreement between the United States and Italy 2001,[774] highlights the limitations of MOUs, with the data indicating a 39% increase in the volume of U.S. imported Central Italian antiquities post-2001.[775] Lobay does, however, observe a decline in certain types of artefacts and the increasing inclusion of provenance in U.S. antiquities auctions and sales following the 2001 agreement.

From a distance, these figures appear to suggest improvements in values and practices of U.S. antiquities dealers and collectors. Unfortunately, on closer inspection this increase in

Gerstenblith, P., "2007 Cultural Heritage Legal Summary," *Journal of Field Archaeology* 33.1 (2008), pp. 102 – 110.

[766] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 81.

[767] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 81.

[768] Mehrheit, K., "Bundestag beschließt umstrittenes Kulturgutschutzgesetz," *Monopol,* 23 June 2016. Accessed 15 December 2020. https://www.monopol-magazin.de/bundestag-beschliesst-umstrittenes-kulturgutschutzgesetz See also: Weiler-Esser, J., "The new German Act on the Protection of Cultural Property – A better protection for archaeological heritage in Germany and abroad?" *Journal of Art Crime* (2017), pp. 3 – 10.

[769] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 81.

[770] UN Security Council Resolution 2199.

[771] Gerstenblith, "Implementation of the 1970 UNESCO Convention".

[772] Kersel, M. M. and Hill, A., "Databases, Drones, Diggers, and Diplomacy: The Jordanian Request for a US Cultural Property Bilateral Agreement," *Journal of Field Archaeology* 45 (2020), S108.

[773] Lobay, G., "Border Controls in Market Countries as Disincentives to Antiquities Looting at Source? The US-Italy Bilateral Agreement 2001," in S. Mackenzie and P. Green (eds), *Criminology and Archaeology: Studies in Looted Antiquities*. Oxford: Hart Publishing, 2009. pp. 59 – 80.

[774] *US-Italy Bilateral Agreement, Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Pre-Classical, Classical and Imperial Roman Periods of Italy,* 23 January 2001.

[775] Lobay, "Border Controls in Market Countries", p. 71.

provenance has not seen an increase in the quality of information provided by antiquities dealers and collectors. As the 2001 Agreement is not retroactive, previous sales are capable of providing "adequate provenance" as they can demonstrate which antiquities were located in the United States prior to January 2001. To quote Lobay:

> [e]ven though provenance is being used with greater frequency, it is misleading to call this a complete success. The problem is that previous sales information, even if it is verifiable, only reveals the location prior to a specific date; it does not contribute to a better understanding of the legitimacy of an artefact.[776]

The third type of implementation has been termed as "hybrid approaches" as they include nations which have ratified both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, implementing domestic measures which are "pursuant to both Conventions".[777] Examples of these hybrid approaches can be found in the domestic legal frameworks of Aotearoa New Zealand, the Netherlands, and the United Kingdom. Aotearoa New Zealand, for instance, joined the 1995 UNIDROIT Convention in late 2006 and the 1970 UNESCO Convention in early 2007, and its 2007 Protected Objects Act enacts elements from both instruments into domestic law.[778] The 2007 Protected Objects Act incorporates Article 3 and 7 of the 1970 UNESCO Convention by prohibiting the import of "an unlawfully exported protected foreign object",[779] whilst also regulating the export of Aotearoa New Zealand protected objects.[780] The definition of protected foreign object – "an object in or from a foreign State that is of importance for archaeology, prehistory, history, literature, art, or science"[781] – resembles the definitions used in both the 1970 UNESCO and 1995 UNIDROIT Conventions.[782]

The other examples of hybrid approaches, however, demonstrate how nations that have only ratified the 1970 UNESCO Convention have been influenced by the 1995 UNIDRIOT Convention. In their 2009 legislation the Netherlands implemented Article 3 of the 1970 UNESCO Convention, by prohibiting the import of cultural property that:

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[776] Lobay, "Border Controls in Market Countries", p. 72.
[777] Gerstenblith, "Implementation of the 1970 UNESCO Convention", p. 83.
[778] *Protected Objects Act 1975.* New Zealand.
[779] *Protect Objects Act,* Art. 10A.
[780] *Protect Objects Act,* Art. 5.
[781] *Protect Objects Act,* Art. 2(1).
[782] Gerstenblith, "Implementation of the 1970 UNESCO Convention," pp. 83 – 84.

(a) has been removed from the territory of a State party in breach of the provisions adopted by that State party in accordance with the objectives of the Convention in respect of the export of cultural property from that State party or the transfer of ownership of cultural property; or

(b) has been unlawfully appropriated in a State party.[783]

In an accompanying Explanatory Memorandum the conditions of unlawful appropriation are clarified, including unlawful excavation at archaeological sites, through direct reference to the 1995 UNIDROIT Convention Article 3(2), which states:

> [f]or the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.[784]

Similarly, the United Kingdom embodies this hybrid approach introduced by Gerstenblith, mainly through the incorporation of the misappropriation definition from the 1995 UNIDROIT Convention. Upon implementing the 1970 UNESCO Convention, the United Kingdom originally decided not to enact domestic legislation. Then in 2003 it introduced new criminal legislation in the form of the Dealing in Cultural Objects (Offences) Act 2003, "although this was not characterized as a direct means of implementing the 1970 UNESCO Convention."[785] The 2003 Act introduced new criminal offences for dealing in "tainted cultural objects", defining this term as a person excavating or removing an object from "(a) […] a building or structure of historical, architectural or archaeological interest where the object has at any time formed part of the building or structure, or (b) […] from a monument of such interest."[786] Further, it is "immaterial" whether the removal or excavation occurs within the United Kingdom or elsewhere, or whether the removal or excavation was in violation of domestic or foreign law.[787] Again, these provisions bear a resemblance to Article 2(3) of the UNIDROIT 1995 Convention, making the United Kingdom an example of hybrid implementation.

The final method of implementation established by Gerstenblith is that of "Specific Designation": adoption of the 1970 UNESCO Convention which is far narrower in scope as it requires "that objects whose recovery is sought to have been recorded or inventoried before

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[783] *Cultural Heritage Preservation Act* (1984/2002/2009). The Netherlands.
[784] UNIDROIT 1995 Convention, Article 3.(2).
[785] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 84.
[785] *Dealing in Cultural Objects (Offences) Act* 2003. United Kingdom. For commentary on the 2003 Act see: Mackenzie, S. and Green, P., "Criminalising the Market in Illicit Antiquities. An Evaluation of Dealing in Cultural Objects (Offences) Act 2003 in England and Wales," in S. Mackenzie and P. Green (eds), *Criminology and Archaeology: Studies in Looted Antiquities.* Oxford: Hart Publishing, 2009. pp. 145 – 170.
[786] Dealing in Cultural Objects (Offences) Act, 2.2; 2.4
[787] Dealing in Cultural Objects (Offences) Act, 2.3

they are stolen or illegally exported."[788] As discussed above in relation to Germany's former legislation, this approach is ineffective when dealing with the modern illicit antiquities trade where large amounts of stolen material are circulated before countries of origin are aware of the act of looting. Unlike Germany, however, Japan has not addressed the limitations of this approach with new legislation, with Gerstenblith arguing their preference for this mode of implementation reflects the Japanese domestic market: "free trade in objects that are not inventoried."[789]

Restricting the illegal exportation and importation of cultural objects at the domestic level is a necessary step in stemming the global flow of illicit antiquities. In a later section of this chapter the question of how these national laws are enforced by states will be explored, however it is important to recognise here that domestic legal frameworks have symbolic value even if they are not adequately applied. To quote criminologist Kenneth Polk:

> [i]t would be foolish to argue that there is no role in the control of illicit antiquities for deterrence in the form of penalties found in criminal laws […]. If they do nothing else, such laws and conventions send a message about a moral stance being taken by the various governments.[790]

j. Soft Law –

In addition to international and domestic legal frameworks, there is also the role of "soft law" to explore when examining the modern antiquities market. Broadly speaking this category of regulation involves the policies of businesses which facilitate sales of antiquities – such as auction houses and internet sales-hosting websites – and the professional guidelines adopted by dealers, museum curators, scholars, scientists, and other professionals who engage with cultural heritage. The role of these policies is to align the institution or business with the relevant legal frameworks – dependent on whether the institution or business is national or international – as well as communicating the ethics and standards for professional behaviour.

Whilst individual museums have their own policies for acquiring, researching, deaccessioning, and displaying antiquities, most are shaped by the guidelines put forward by the International Council of Museums. Created in 1946, ICOM represents the global community of museums,

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[788] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 85.
[789] Gerstenblith, "Implementation of the 1970 UNESCO Convention," p. 85.
[790] Polk, "Whither Criminology," p. 18.

and is therefore committed to a number of objectives and values, which *inter alia* address the role and responsibilities of museums in the illicit trade of antiquities. At the Reform Task Force, which reported to the ICOM General Assembly in Barcelona in 2001, three key values were established: independence, integrity, and professionalism.

All three values which ICOM seeks to uphold with its 35,000 members worldwide respond to the ethical responsibilities of museum professionals. First, ICOM independently documents the illicit trade of cultural objects and offers a mediation process "in cases of contested heritage".[791] Second, ICOM's commitment to its own standards of integrity, namely their Code of Ethics, is of great significance here as all members – both museums and museum professionals – are required to "adopt it into their practice if they are or wish to become members of ICOM."[792] Finally, ICOM supports the professionalism of museums and museum professionals worldwide, through "National and International Committees, its Code of Ethics, […] professional development, publications, annual conferences, and other projects".[793]

In terms of ICOM's Code of Ethics, which must be upheld by existing and potential members, there are a number of principles which respond to the issues of cultural heritage crime and the complicity of museums and museum professionals in these criminal activities. The first Code of Ethics, entitled the *ICOM Code of Professional Ethics,* was adopted unanimously by the 15th General Assembly of ICOM in Buenos Aires in November 1986. Since then it has been amended and retitled in 2001 to the *ICOM Code of Ethics for Museums,* with an additional set of revisions occurring in 2004. The *Code of Ethics for Museums* is presented as a "minimum standard for museums", which includes a series of principles supported by guidelines for desirable professional practice." In the 2018 version of this document many of the guidelines can be seen as important in engendering ethical behaviour and practice. These standards will be explored again in Chapters 2.2 and 3.1.

These types of policies for professional practice have also been introduced by numerous dealer associations which operate on a national and international level. For example, the International Association of Dealers in Ancient Art (IADAA) is an organisation established in 1993 which represents "top international dealers" of Classical, Egyptian, and Near Eastern antiquities. Their prime function is to "facilitate good relations between the trade and museums, collectors,

[791] International Council of Museums (ICOM), "Strategic Plan 2016 – 2022." p. 9. Accessed 25 November 2020. http://icom.museum/wp-content/uploads/2018/06/ICOM_STRATEGIC_PLAN_2016-2022_ENG.pdf
[792] ICOM, "Strategic Plan," p. 9.
[793] ICOM, "Strategic Plan," p. 10.

archaeologists and government agencies."[794] Members of the IADAA are expected to adhere to the "highest professional standards" laid out in their "stringent code of ethics", including undertaking "due diligence as a matter of course" and obligations to "check every object over €5,000 with INTERPOL Database of Stolen Art or the Art Loss Register."[795]

Similarly, The Antiquities Dealers' Association, (ADA) a UK-based association established by George Lambor in 1982, binds its members to "operate under strict ethical rules."[796] Its Code of Conduct requires members to "comply with all applicable laws […] wherever they operate in the world", to conduct a satisfactory level of due diligence before offering cultural property for sale and to act in good faith "throughout all transactions", and to seek further documentation if purchasing antiquities which have originated from conflict zones to ensure they have been in circulation prior to the period of conflict.[797] Further, the ADA Code of Conduct states: "[i]t is a condition of membership that all goods acquired at the purchase price of £3,000 or more be checked with an appropriate stolen art database, unless they have already been so checked."[798] Failing to comply with the relevant legal frameworks and the ADA Code of Conduct would result in expulsion.[799]

Ethics policies and codes of conduct belonging to antiquities dealer and collector associations are based on two shared – and problematic – assumptions. First, that there is a legitimate and licit antiquities market which exists in parallel to the illicit and illegitimate market, and second, that individuals and institutions have the right to privately own the cultural heritage of others. As discussed at in section 2.1.2.e., market participants who generate demand for antiquities often minimise the harm caused by their actions through use of neutralisation techniques and shared denial narratives. Ultimately, these neocolonial justifications for private ownership of antiquities are embodied in these policies implemented by dealer communities and associations rendering them ineffective in the current state at promoting ethical relationships with and consumption of antiquity. Thus, the "Framework for Ethical Engagement with and Consumption of the Ancient World" both acknowledges the damage these neutralisation techniques and shared denial techniques can cause and provides recommendations for how these justifications can be avoided.

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[794] IADAA, "Chairman's Address". Accessed 25 November 2020. https://iadaa.org/
[795] IADAA, "Chairman's Address".
[796] The ADA, "Welcome to the Antiquities Dealers' Association". Accessed November 2020. https://theada.co.uk/
[797] The ADA, "Code of Conduct". Accessed 26 November 2020. https://theada.co.uk/code-of-conduct/
[798] The Antiquities Dealers' Association, "Code of Conduct".
[799] The Antiquities Dealers' Association, "Code of Conduct".

5. Enforcement of Legal Frameworks –

k. International Enforcement –

Enforcing cultural heritage legal frameworks at the international level faces many challenges. This issue is not, however, unique to this field of law. One of the common criticisms levelled at international legal frameworks is their lack of enforceability. But there are some mechanisms in place on the international stage that play an important role in monitoring and reducing the illicit flow of antiquities. These include agencies and organisations, like the International Criminal Police Organization (INTERPOL), the European Union Agency for Law Enforcement Cooperation (EUROPOL) and the World Customs Organization (WCO).

Established in 1923, INTERPOL has been a key factor in the fight against cultural property crime since 1925. It is generally considered the "first manifestation of a coordinated international policing effort in the fight against-cross border crime",[800] and we can trace its origins to the late nineteenth century – a period associated with the foundations of international law.[801] The initial aim of the earlier iterations of INTERPOL was to create stability in Western Europe following World War I and the Russian Revolution.[802] It allows for the participation of all nations in the world to join and currently comprises of 194 nations.

In 1963 INTERPOL's art crime unit was established. Originally it focused mainly on stolen works of art and cultural property, and one of its initial strategies involved the circulation of pictures and/or descriptions of stolen art objects "in the form of INTERPOL print notices alerting to the loss of valuable pieces of art."[803] Over time these print notices evolved into a computerised index of international art thefts, which police organisations and relevant institutions in member states have had access to since 1999.[804] In 2005, the index formally became the Stolen Art Database, and since 2009 the database has been "public" with access granted to "every person with a legitimate interest."[805]

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[800] Hufnagel, S., "INTERPOL and International Trends and Developments in the Fight Against Cultural Property Crime," in S. Hufnagel and D. Chappell (eds). *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. p. 91.
[801] Fijnaut, C., "International policing in Europe: Its present situation and future," in J-P. Brodeur (ed.), *Comparisons in Policing: An international perspective.* Aldershot: Avebury, 1995. pp. 115–116.
[802] Fijnaut, "International policing in Europe," p. 116
[803] Hufnagel, "INTERPOL and International Trends and Developments", p. 91
[804] Hufnagel, "INTERPOL and International Trends and Developments", pp. 91-92.
[805] INTERPOL, *INTERPOL annual report 2009.* Lyon: INTERPOL, 2010. p. 40

In addition to the Stolen Art Database, INTERPOL enforces international legal frameworks in the fight against illicit antiquities trafficking through a number of measures. First, by ensuring information is shared among countries, bringing experts together in workshops and conferences, and offering specialised training on how to counter illicit trafficking. Second, by analysing emerging trends in cultural heritage crimes, Third, through the circulation of special posters to national police and customs agencies, museums and auction houses which draw attention to a specific theft or situation. And finally, by supporting national police and customs agencies in conducting national and regional global operations against the illicit trafficking of cultural objects.[806] At the time of writing the most recent example of a successful operation conducted with INTERPOL's assistance is the global Operation Athena II, which resulted in the arrest of 101 suspects and the recovery of 19,000 archaeological objects.[807]

Operation Athena II, and many other operations that INTERPOL is involved in, were collaborative affairs and thus the role of INTERPOL "cannot be looked at in isolation."[808] In her assessment of INTERPOL and other international trends in countering cultural property crime, Saskia Hufnagel emphasises the role that other agencies and organisations, including EURPOL, Eurojust and the WCO, play in supporting INTERPOL and national police and customs forces.[809] Antiquities trafficking networks are highly globalised, and thus successful law enforcement operations require the involvement of many national and international organisations. In Hufnagel's words, "all the resources available must be pooled".[810]

l. Domestic Enforcement –

At a national level many countries have specialist taskforces and databases which are designed to enforce both domestic and international law. These specialist policing and customs organisations and strategies which monitor the illicit trade of antiquities, and intervene when thefts, looting and smuggling occurs. Like the varied nature of domestic heritage law, the approach to its enforcement varies from country to country. Whilst some nations have these specialist task forces devoted to policing art and antiquities crime, others are more limited in

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[806] INTERPOL, "How we fight cultural heritage crime." Accessed 15 March 2021. https://www.interpol.int/en/Crimes/Cultural-heritage-crime/How-we-fight-cultural-heritage-crime
[807] EUROPOL, "101 Arrested and 19,000 Stolen Artefacts Recovered in International Crackdown on Art Trafficking," *EUROPOL Press Release,* 6 May 2020. https://www.europol.europa.eu/newsroom/news/101-arrested-and-19000-stolen-artefacts-recovered-in-international-crackdown-art-trafficking
[808] Hufnagel, "INTERPOL and International Trends and Developments", p. 90.
[809] Hufnagel, "INTERPOL and International Trends and Developments", pp. 90 – 106.
[810] Hufnagel, "INTERPOL and International Trends and Developments", p. 90.

their specialist expertise. The same inconsistencies can be observed in the use of stolen art and antiquities databases.

The effectiveness of such enforcement measures is reliant on a combination of sufficient funding and resources, the level of training and education given to most relevant actors (such as customs agents and police officers), the current socio-political and economic climate of the nation, and political will. Examples of best practice enforcement measures can be observed in the efforts of key UNESCO partners: the Italian Carabinieri and the Spanish Guardia Civil, and the Instituo Nacional de de Anthropologíe e Historia of Mexico.

The Italian Carabinieri are the fourth branch of the Italian Armed Forces, and primarily carry out domestic policing duties. Its Art Crime Squad, otherwise known as the *Comando Carabinieri per la Tutela del Patrimonio Culturale* (Carabinieri Command for the Protection of Cultural Heritage, or the Italian Carabinieri T.P.C.), was established in May 1969 and has four sections of operation: archaeology, antique dealing, counterfeiting, and modern art.[811] Across these categories, the squad's recovery record is high with 137,000 works to the estimated value of $500 million recovered in 2014 alone.[812] Their track record includes the infamous Medici case in 2005,[813] and the investigation of other antiquities dealers including Gianfranco Becchina, Robert Hecht, Antonio Savoco, and Noriyoshi Horiuchi. They also undertake an ongoing involvement in the protection of heritage sites located in Iraqi conflict zones.[814] In addition to investigations and rescue operations, the T.P.C. maintains "Leonardo", a database of stolen artworks, and considers education a key component in their mission to "prevent cultures becoming commodities."[815]

Similarly, the Heritage Team of the Central Operational Unit of the Spanish Guardia Civil (Civil Guard) is tasked with investigating any crime against cultural property, including the

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[811] Ministero Della Difesa, "The Carabinieri TPC". Accessed 17 November 2020. http://www.carabinieri.it/multilingua/en/the-carabinieri-tpc

[812] Poggioli, S., "For Italy's Art Police, An Ongoing Fight Against the Pillage of Priceless Works," *NPR,* 11 January 2017. Accessed 24 July 2020. https://www.npr.org/sections/parallels/2017/01/11/508031006/for-italys-art-police-an-ongoing-fight-against-pillage-of-priceless-works.

[813] For a comprehensive account of the Medici case, see: Watson and Todeschini, *The Medici Conspiracy.*

[814] Ryan, M., "How the Italian Police Wound up Having a Significant Presence in Iraq," *Washington Post,* 23 June 2016. Accessed 24 July 2020. https://www.washingtonpost.com/news/checkpoint/wp/2016/06/23/how-the-italian-police-wound-up-having-a-significant-presence-in-iraq/

[815] Lokay, A., "Brigadier General Fabrizio Parrulli, Director of the Carabinieri Art Squad, Speaks at the Smithsonia," *The Antiquities Coalition,* 6 August 2018. Accessed 24 July 2020. https://theantiquitiescoalition.org/brigadier-general-parrulli-smithsonian/
For further information about the TPC's contribution to antiquities crime policing, see: Rush, L. and Benedettini Millington, L., *The Carabinieri Command for the Protection of Cultural Property: Saving the World's Heritage.* Suffolk: Boydell Press, 2015.

theft, looting, and trafficking of cultural objects; art fraud; and counterfeiting.[816] In a joint investigation with INTERPOL and EUROPOL they successfully seized 41,000 cultural goods, including archaeological objects, in late 2017. This investigation specifically focused on the illicit trafficking of cultural objects, theft, looting, and internet sales. The Guardia Civil seized 2000 objects in a single successful investigation within Spanish borders, with the monitoring of internet pages dedicated to the sale and purchase of objects of historical value.[817]

The Instituo Nacional de de Anthropologíe e Historia of Mexico (INAH) is a Mexican federal government bureau established in 1939 with the aims of researching, preserving, protecting, and promoting the prehistoric, archaeological, anthropological, paleontological, and historical heritage of Mexico. Whilst not a policing force like the Carabinieri or Guardia Civil, they have managed to implement novel and successful market disruption techniques that are worth noting. In her article on the value of authenticity in the antiquities market, Donna Yates presents these efforts of the INAH as a demonstration of how descendant communities can potentially interfere with the public sales of their heritage.[818] These strategies involved the INAH issuing public statements and sending diplomatic notes to foreign governments to inform that some of the objects advertised as being of Mexican heritage presented for sale at Barbier-Mueller and Bonham's auctions were in fact "handicrafts" and "fakes".[819]

Following the initial attempt at disruption at the Barbier-Mueller sale, INAH also went as far as to accuse Bonhams of committing a "fraudulent act" by knowingly selling fakes to their buyers.[820] Whilst sales of Mexican antiquities did go ahead at both of these auctions, they did not reach the pre-auction estimates,[821] demonstrating the potential of this inexpensive and easy strategy. To quote Yates

[816] UNESCO, "Specialized Police Forces". Accessed 24 July 2020.
http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/partnerships/specialized-police-forces/
[817] EUROPOL, "Press Release: Over 41 000 Artefacts Seized in Global Operation Targeting the Illicit Trafficking of Cultural Goods," *EUROPOL Newroom,* 21 February 2018. Accessed 24 July 2020.
https://www.europol.europa.eu/newsroom/news/over-41-000-artefacts-seized-in-global-operation-targeting-illicit-trafficking-of-cultural-goods
[818] Yates, "Value and Doubt".
[819] Yates, "Value and Doubt".
[820] Raina, E., "México Acusa De Fraude a Una Casa De Subastas Neoyorquina," *El País,* 13 November 2014. Accessed 24 July 2020. https://elpais.com/cultura/2014/11/13/actualidad/1415839720_671547.html
[821] In the case of the Barbier-Mueller sale, the auction fetched a total of £10,296,300, which was only half of the pre-auction estimate. Further, 165 of the 313 lots did not sell. Yates, "Value and Doubt", p. 80.

it appears as if Mexico has rightly determined that challenging the legality of antiquities for sale rarely produces results, but questioning the authenticity of pieces may cause prices (and buyers) to bottom out.[822]

Unfortunately, these task forces are rare exemplars of commitment and success in the wider context of mixed results from policing efforts worldwide. Despite the recognised importance of heritage, "it receives very little priority in most European police forces."[823] There are a number of common barriers to effective policing of art and antiquities crime, including a lack of resources and expertise, low public awareness among local communities, a lack of interstate cooperation, and undertrained government officials who are often susceptible to bribes.[824] However, these domestic efforts naturally do not exist in isolation. They are both supported and limited by the complex international legal framework explored above.

m. The Role of NGOs –

A final, yet crucial, component in the response to the illicit antiquities market is the role of NGOs in raising public awareness and advocating for policy changes. Founded in 2011, the Antiquities Coalition is based in Washington DC and is leading a global campaign against the looting and trafficking of antiquities. Working in collaboration with external researchers and other heritage groups, the organisation operates a Think Tank[825] and #CultureUnderThreat Taskforce which conducts research into the impact of the global illicit antiquities network and has provided recommendations to the U.S. Government, The United Nations, and the market.[826] They have also utilised Twitter, Facebook and LinkedIn with their social media campaign #BuyerBeware as part of their outreach efforts.[827] The #BuyerBeware Awareness Campaign

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[822] Yates, "Value and Doubt", p. 82.

[823] Oosterman, N., "Regional Overviews of the Policing of Art Crime in the European Union," in S. Hufnagel and D. Chappell (eds). *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. p. 214.

[824] See: Block, L., "European police cooperation on art crime: Comparative overview," *Journal of Art Crime* 5.1 (2011), pp. 13 – 26 and "Policing art crime in the European Union," in S Hufnagel and D. Chappell (eds). *Contemporary Perspectives on the detection, investigation and prosecution of art crime.* Farnham: Ashgate, 2014. pp 187 – 205; Gruber, S., "Challenges in Investigating, Policing and Preventing Art Crime," *Journal of Art Crime* (2020), pp. 25 – 36; Kerr, J., *The Securitization and Policing of Art Theft: The Case of London.* New York: Routledge, 2015; Oosterman, "Regional Overviews" and Oosterman, N. and Yates, D., "Policing Heritage Crime in Latin America," *Revista de Direito Internacional* 17.3 (2020), DOI: https://doi.org/10.5102/rdi.v17i3.7030

[825] The Antiquities Coalition Think Tank provides "high-quality, innovative, and results-oriented research to the world's decision makers, especially those in government and private sectors." The Antiquities Coalition, "Think Tank". Accessed 15 March 2021. http://thinktank.theantiquitiescoalition.org

[826] The Antiquities Coalition, Middle East Institute, and Asia Society, "#CultureUnderThreat: Recommendations for the U.S. Government." April 2016. Accessed 24 July 2020. https://live-ac-taskforce.pantheonsite.io/wp-content/uploads/2015/01/Culture-Under-Threat-Task-Force-Report-Complete-Document-.pdf

[827] The Antiquities Coalition, "#BuyerBeware Awareness Campaign." Accessed 24 July 2020. https://theantiquitiescoalition.org/buyerbeware/

aims to raise public awareness about the connections between the looting of antiquities and international security concerns. This particular campaign also acknowledges the risks involved in the internet market for antiquities, and the Antiquities Coalition additionally collaborated with Neil Brodie in the development of a policy brief for policing the market.

More recently, the Antiquities Coalition has published their first practicum, entitled "How Can We Advance the Cause of Protecting Cultural Heritage and Antiquities? Leverage Public Awareness Campaigns".[828] The policy paper, authored by strategic communications professional Claire Buchan Parker, explores the various ways in which public awareness campaigns have been utilised to aid in the protection of human life, endangered species and antiquities. Buchan Parker argues that "public awareness campaigns have been important in changing social norms", citing Global Witnesses' conflict diamonds campaign as an example.[829] Raising public awareness and educating consumers to make more ethical decisions when interacting with the antiquities market is also a central component of the "Framework for Ethical Engagement with and Consumption of the Ancient World".

6. Attempts to Regulate the Internet Antiquities Market –

The emergence of an internet market for antiquities invited new challenges and concerns for those seeking to regulate the trade in illegal antiquities. To counter these unique challenges, INTERPOL, UNESCO, and ICOM developed a list of "Recommendations", inviting Member States and the States with ICOM National Committees to request cooperation with Internet sales platforms; to establish a central authority responsible for monitoring the sales of cultural objects via the internet; to cooperate with national and international police forces and INTERPOL; maintain statistics and register information concerning the sale of cultural objects via the Internet; establish legal measures which will allow for the immediate seizure of cultural objects with "reasonable doubt" concerning their "licit provenance"; and assure that any seized objects are returned to their rightful owners.[830] They also encourage internet dealers and online sales platforms to display the following disclaimer:

[828] Buchan Parker, C., "How Can We Advance The Cause of Protecting Cultural Heritage and Antiquities? Leverage Public Awareness Campaigns." *The Antiquities Coalition Think Tank, Practicum No. 1,* February 2021. Accessed 27 May 2021. https://thinktank.theantiquitiescoalition.org/how-can-we-advance-the-cause-of-protecting-cultural-heritage-and-antiquities-leverage-public-awareness-campaigns/
[829] Buchan Parker, "How Can We Advance", p. 2.
[830] INTERPOL, UNESCO, and ICOM, "Basic actions concerning Cultural Objects being offered for Sale over the Internet." 2006. Accessed 29 July 2020. https://en.unesco.org/sites/default/files/basic-actions-cultural-objects-for-sale_en.pdf

> *"With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: i) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported; ii) request evidence of the seller's legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM".*[831]

There are some clear issues with these guidelines, the most obvious being the ambiguity around legal jurisdiction. For instance, when inviting Member States to request cooperation with internet sales platforms, do they mean platforms which are legally registered within the State? Or is it in reference to the origin of the objects being sold? Does Italy, for instance, have the right to request cooperation with an American internet sales platform concerning the trade of Roman antiquities? And what of websites like invaluable.com and eBay.com which facilitate the trade of antiquities from global users? This ambiguity is clearly reflected in the ongoing operations of internet dealers. For example, the disclaimer provided in these "Recommendations" is nowhere to be seen on any current websites offering antiquities for sale.[832] Whilst many Internet dealers do offer some form of "legal" disclaimer on their websites, they rarely mention the 1970 UNESCO Convention directly and never reference to cooperation with INTERPOL. Whether this is a failing of the Member States or the internet dealers remains unclear.

Eleven years since the publication of the "Basic Actions", archaeologist Neil Brodie presented a policy brief for the Antiquities Coalition, titled "How to Control The Internet Market in Antiquities? The Need for Regulation and Monitoring."[833] Of particular concern for Brodie is a lack of self-regulation evident in the businesses of Internet dealers with a failure not only to enforce existing rules but to even present them to potential customers.[834] For example, the written rules of eBay United States are

> [a]t present, from the eBay home page it is a four-click path starting from a small print policy heading at the foot of the page to the statement of regulations. From the same home page it is a separate four-click path to the antiquities sales pages. At no point do these paths intersect and it is possible for a buyer to reach the sales pages without needing to view the rules.[835]

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[831] INTERPOL, UNESCO, and ICOM, "Basic actions."
[832] Brodie, "How to Control the Internet Market in Antiquities?" and Dundler, "Still covered in sand."
[833] Brodie, "How to Control the Internet Market in Antiquities?"
[834] Brodie, "How to Control the Internet Market in Antiquities?" p. 10.
[835] Brodie, "How to Control the Internet Market in Antiquities?" p. 10.

In contrast, eBay United Kingdom has instated a pop-up window which alerts potential buyers of their legal requirements when purchasing domestic antiquities. There is no apparent reason why this model could not be replicated in other countries.[836]

To counter the "destructive impact" of the internet antiquities market, Brodie suggests policy aimed at improving customer awareness combined with "measures of voluntary regulation and oversight supported by vigorous law enforcement when appropriate".[837] These acts of voluntary self-regulation should involve the clear statement about "acceptable provenance of objects sold" which aligns with the one recommended by ICOM/INTERPOL/UNESCO; the display of a warning about the prevalence of fake antiquities and the issues with determining authenticity; and United States based dealers in particular should be required to display a clear explanation of governing U.S. law.[838] To support these measures, Brodie proposes a series of enforcement strategies including advocacy for these recommendations and a need for cooperation with eBay and other online dealers in regular monitoring of sales to ensure compliance, and to work with law enforcement when stolen and trafficked antiquities are identified.

Most of these suggestions are consistent with, yet elaborate on and extend, the recommendations from ICOM/INTERPOL/UNESCO. Brodie's final recommendation, however, is unique and potentially the most important in this list:

> criminal investigations of illicit trade should focus on the internet dealers and auctioneers themselves, not the antiquities they sell. The aim should be removing criminals from the market, not recovering and repatriating stolen material.

Whilst this recommendation may be considered controversial, especially from the perspective of source countries and descendant communities who desire the repatriation of their looted heritage, Brodie suggests an interesting shift in how we regulate the market.

In June 2020, Facebook changed the "Regulated Goods" section of their "Community Standards", to prohibit the sale of "Historical artifacts" on its platforms. The exact phrasing restricts users from posting "[c]ontent that attempts to buy, sell, trade, donate, gift or solicit historical artifacts."[839] This policy update occurred in response to the ongoing efforts of

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[836] Brodie, "How to Control the Internet Market in Antiquities?" p. 10.
[837] Brodie, "How to Control the Internet Market in Antiquities?" p. 12.
[838] Including the relevant provisions on the Convention on Cultural Property Implementation Act (CCPIA) and bilateral agreements or memoranda of understanding (MOUs). Brodie, "How to Control the Internet Market in Antiquities?" p. 12.
[839] Facebook, "Community Standards: 4. Regulated Goods." June 2020. Accessed 29 July 2020. https://m.facebook.com/communitystandards/recentupdates/regulated_goods/

researchers and commentators to highlight how Facebook was being used by criminal individuals and organisations to traffic cultural objects.[840] However, it quickly became apparent to observers that such prohibitions would do little to stem the illicit flows of cultural trafficking, due to Facebook's failure to enforce their own policies or provide users the necessary tools to report postings which violate the Regulated Goods restrictions. This is not a unique issue to the illicit antiquities trade, and can be observed across Facebook's platforms in other illicit markets, including the illicit wildlife trade. For example, Katie Paul of the Antiquities Trafficking and Heritage Anthropology Research (ATHAR) Project and a member of the Alliance to Counter Crime Online (ACCO), highlighted how it took ten months for Instagram to update their reporting function so users could report posts featuring endangered animals.[841] Commenting on Instagram's internal rules, Paul states

> [e]nforcement of those rules is a different issue entirely, and Facebook Inc. has made little effort to police the content that not only violates its own set of rules, but national and international law.[842]

Further, if Facebook Inc. were to commit themselves to the enforcement of these internal policies, the question to consider is what developments in the internet market for antiquities could be anticipated. Currently buyers and sellers of antiquities operate in relatively plain sight on these social media platforms, with the ATHAR Project regularly updating on its Twitter account evidence of the founding of new private groups trading in antiquities, including notice on 6 November 2020 of one dedicated to Jewish manuscripts and artefacts.[843] But, if Facebook started to actively remove these groups – and document the posts for potential legal investigations – and other sales platforms like eBay were to restrict sales of antiquities in the way they do human remains and wildlife specimens, would market participants shift to the encrypted Dark Net? Or would they continue to operate in the "grey" areas of the Surface Web, utilising strategies employed by sellers of other illicit commodities? For example, listing ivory as "fauxivory" and then "ox bone" and so on as the filters were updated; a process which was described by Head of Global Regulatory Policy at eBay, Wolfgang Weber, as like playing a game of "Whack-a-Mole."[844] These concerns about the limitations of regulatory frameworks in

[840] See, for example, the work of the ATHAR Project and the ACCO.
[841] Paul, K. A., "Instagram Just Created Reporting for Endangered Species – Almost One Year After it Was Listed in Their Community Guidelines." *Alliance to Counter Crime Online,* Medium.com, 2 March 2020. Accessed 19 November 2020. https://medium.com/alliance-to-counter-crime-online/instagram-just-created-reporting-for-endangered-species-almost-one-year-after-it-was-listed-as-3a1fa7a01278
[842] Paul, "Instagram Just Created Reporting for Endangered Species".
[843] https://twitter.com/ATHARProject/status/1329071483423961088
[844] Williams, T., "On the Internet, Illegal Trade in Endangered Wildlife Thrives." *Yale Environment 360*, 2015. Accessed 19 November 2020.

combatting illicit market flows ultimately highlight the necessity of changing normative standards of market participants.

Conclusion –

The modern antiquities market is a product of the historical and theoretical context explored in the first part of this thesis. It is a market which reflects centuries of colonialist and imperialist collecting processes and values, including the commodification of the past and fetishisation of the "other". And, as nations and communities developed safeguards in the form of export restrictions to protect their cultural patrimony from pillage and looting, it has become a market which cannot be separated from crime. These are the origins which cannot be contemplated without horror.[845] These are the origins which market participants must reckon with in order to forge more ethical relationships with the ancient world.

These ethical quandaries are not new. Consumption practices which cause harm not only to the rightful owners and custodians of cultural objects, but the cultural objects themselves are not modern innovations. What is new, however, and largely belonging to the 20th century, is the criminalisation of acts of cultural looting, plunder, and trafficking. Nowadays, most countries affected by cultural heritage crimes have national laws in place to combat the looting, destruction, and illicit import and export of cultural property. These legal frameworks are shaped by interpretations of the obligations enshrined in international instruments, such as the 1970 UNESCO Convention and 1995 UNIDROIT Convention, as well as bi-lateral agreements. However, the limitations of these instruments and the inconsistencies in modes of implementation on the domestic stage, combined with the endurance of traditional collective practices and values has seen the illicit antiquities market survive and even flourish in certain contexts in the 21st century. Crises including ongoing internal and external conflicts in the MENA region and the COVID-19 pandemic highlight this harsh reality.[846]

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https://e360.yale.edu/features/on_the_internet_illegal_trade_in_endangered_wildlife_thrives
[845] Benjamin, *Illuminations*, p. 256.
[846] Arutz Sheva Staff, "Antiquities thieves operate with impunity during coronavirus crisis"; Elmacioglu, L., "'A search for anything to sell in ancient walls': How Covid sparked a rush of antiquities looting in Turkey," *Independent,* 16 April 2020. Accessed 27 May 2021.
https://www.independent.co.uk/news/world/europe/archaeology-turkey-treasure-looting-coronavirus-b1825733.html?fbclid=IwAR1ERv-fSyNCQCb1oUNCQe0AixIlE_L0d50yc83O1lQY7c-yH_dV-PPwOLY
; Paul, "Facebook Antiquities Looters Remain Active as Pandemic Rages On"; Porterfield, C., "Van Gogh Heist Footage"; Rea, "Thieves Have Stolen Three Old Master Paintings"; and Sharpe, "Online antiquities smugglers are taking advantage of the coronavirus crisis".

The rise of e-commerce and social media as tools for businesses and consumers has invited even further challenges for those fighting illicit cultural trafficking. Platforms like eBay and Facebook have been identified as facilitating the dissemination of fakes and forgeries, as well as authentic looted antiquities. Whilst some platforms have introduced internal policies concerning the illicit trade of cultural objects, these restrictions are largely unenforceable and users buy and sell a vast array of antiquities from all corners of the globe. Further, these marketplaces operate in plain sight throughout the Surface Web simply because there is no need to hide if the risk of consequences – such as punishment in the form of fines or imprisonment, or negative social stigma – is so minor. Ultimately, this failure of both "hard" and "soft" law in deterring illicit cultural trafficking highlights the need for new approaches to how we regulate the modern antiquities market; approaches which include a shift from adhering to legal obligations and towards ethical relationships with the past more holistically. Such an approach is offered in the "Framework for Ethical Engagement with and Consumption of the Ancient World", presented in Chapter 3.1.

2.2. ANCIENT WORLD STUDIES AND ACADEMIC PRACTICE

"In New York, the Metropolitan Museum is considering what amounts to a plea bargain with Italian authorities for having acquired antiquities that Italy says were stolen. In California, the longtime curator for ancient art at the J. Paul Getty Museum has resigned to face trial in Rome on charges of conspiracy to receive stolen artifacts. In Iraq, a German archaeologist has been kidnapped by insurgents. Having led the United States investigation into the looting of the Iraq Museum in April 2003, I find none of these events surprising. Indeed, the patina of gentility we usually associate with the world of antiquities has always rested atop a solid core of criminal activity.

But it's getting worse: in a modern-day version of the old "molasses to rum to slaves" triangle trade of pious New England ship captains, the cozy cabal of academics, dealers, and collectors who turn a blind eye to the illicit side of the trade is in effect supporting the terrorists killing our troops in Iraq."

(Matthew Bogdanos)[847]

Introduction –

The above quote is an excerpt from an New York Times op-ed piece published in 2005, entitled "The Terrorist in the Art Gallery." Its author Colonel Matthew Bogdanos, an Assistant District Attorney in Manhattan and a colonel in the United States Marine Corps Reserves, was one of the first to highlight the connection between terrorist financing and the illicit antiquities trade. Speaking from his own personal experience, Bogdanos explores a number of contemporary pressing issues with the smuggling and looting of antiquities from conflict zones and other sources, effectively removing the "patina of gentility" usually associated with the market.[848] One of the most striking parts of this opinion piece, however, is the description of the "cozy cabal of academics, dealers, and collectors".[849] In his article Bogdanos rightly argues that these individuals and their respective institutions occupy worlds informed by criminal activities, including: looting, trafficking, money laundering, organised crime, and even terrorist financing.

It is this relationship between academia and the market that the following chapter interrogates and problematises. This "cozy cabal" is explored by the presentation of three case studies: the relationship between Norwegian antiquities collector, Martin Schøyen, and numerous scholars

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[847] Bogdanos, M., "The Terrorist in the Art Gallery," *The New York Times,* 10 December 2005. Accessed 22 February 2021. https://www.nytimes.com/2005/12/10/opinion/the-terrorist-in-the-art-gallery.html
[848] Bognados, "The Terrorist in the Art Gallery".
[849] Bognados, "The Terrorist in the Art Gallery".

and institutions; the translation, valuation, and provision of sales descriptions of potentially looted cuneiform objects provided by Assyriologists post-Gulf War; and the misconduct of Professor Dirk Obbink in his dealings with the Museum of the Bible. These three examples are by no means a holistic representation of the issue of unethical scholarly conduct, or the ways in which academia facilitates the modern antiquities market. However, they are contemporary cases which are inherently connected to the issues outlined by Bogdanos in his article and the wider corpus of antiquities trafficking scholarship.

With these examples of unethical academic behaviour and practices established, the focus will shift to how various disciplines within the broader field of ancient world studies have addressed, or failed to address, their problematic relationship with the antiquities trade. Such examples include the policies and guidelines of academic associations and institutions, standards for conducting and publishing research, and wider theoretical approaches to ethics which inform individual, institutional, and discursive conduct. In doing so this section also explores and problematises the neocolonial discourses and pervasive colonial imageries which continue to inform the fields of ancient world studies. This examination of the "status quo" of ethics in ancient world studies ultimately illuminates a need for change in the way we approach research, antiquities market engagements, and how we discuss the past more broadly.

1. *"The Cozy Cabal" – How do Academics and Academic Institutions Facilitate the Market?*

Before introducing the three case studies, it must first be established how academics and academic institutions facilitate the market. In other words, what does this "cozy cabal" actually look like? To begin this examination, we must refer back to Chapter 2.1 reflect on the significance of authenticity and expertise in the antiquities market. Being able to prove that an antiquity offered for sale is legitimately from the ancient world is paramount in establishing its economic and cultural value.[850] However, not all market participants have the necessary expertise to determine the authenticity of every antiquity they encounter, and thus they must rely on other experts to make these judgements. Such expertise can come from market connoisseurs, but it is academic discourses and methodologies that are prized above all other bodies of knowledge.

Yet guaranteeing authenticity is not the only role academics can play in the market. In his study of the market for illegally looted and exported Iraqi antiquities, Neil Brodie argues academics

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[850] Yates, "Value and Doubt".

are of central importance for the antiquities market. They support a credible pricing regime by establishing the quality, interest and rarity of pieces on offer, and maintain customer confidence by keeping the market free of fakes.[851]

They perform this function in numerous, and sometimes unintentional ways, including participating in price formation by identifying objects and by promoting market confidence by authenticating objects.[852]

Providing these services for the market can often lead to mutual benefits for individual scholars and academic institutions. Some translation, transliteration, and valuation services lead to financial gain, and there is often the possibility for professional gain also with academics being provided unique access to antiquities from private collections to study and potentially publish.[853] Not every academic provides this service directly for a collector or dealer, however, it must be acknowledged that these market participants frequently refer to the research output of historians, archaeologists, papyrologists, and other ancient world specialists to describe, authenticate, and assign value to antiquities.[854] Brodie also highlights that whilst most academic experts are not directly involved with the antiquities trade, the minority that is directly involved have significant impacts for two reasons:

> First, many hold senior and influential positions within universities and professional bodies so that their opinions and actions carry the weight of authority and provide a normative example for junior academics to imitate. Second, a relatively small group of individuals may exert disproportionately large commercial effects.[855]

Another form of market facilitation is the practice of what Brodie identifies as "provenance suppression", which has the effect of obstructing scholarly or police investigation into antiquities crimes, and "passively" condoning the illicit antiquities trade.[856] As established previously in Chapter 2.1, academics have traditionally studied and published antiquities without close examination of the object's provenance. This behaviour may be motivated by the desire to "avoid any legal or ethical entanglements that knowledge of illegal provenance might entail."[857] But it has now become so normalised to suppress – or merely fail to engage – with provenance in the fields of ancient world studies that academics are not always aware of the

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[851] Brodie, "The Market in Iraqi Antiquities," p. 129.
[852] Brodie, N., "Congenial Bedfellows?" p. 415.
[853] Brodie, "The Market in Iraqi Antiquities", p. 131.
[854] Dundler, "#antiquitiesdealers".
[855] Brodie, "Congenial bedfellows?" p. 412 – 413.
[856] Brodie, "Congenial bedfellows?" p. 415.
[857] Brodie, "Congenial bedfellows?" p. 414 – 415.

related issues or do not have the expertise to conduct provenance research themselves. It is only quite recently that a number of high-profile cases have highlighted this issue with academic conduct.

For example, the Gospel of Jesus's Wife controversy demonstrated the pitfalls in failing to sufficiently engage with provenance research prior to studying, presenting, and publishing antiquities.[858] The saga began in 2012 when eminent professor of early Christian studies Karen L. King presented a papyrus fragment at the International Congress of Coptic Studies and quickly made world headlines.[859] King proposed that the rectangular fragment, approximately 4 by 8 centimetres, was a fourth century Coptic translation of a gospel composed in Greek in the late second century. The Coptic text translated to:

> My mother gave me life… The disciples said to Jesus, deny. Mary is (not?) worthy of it… Jesus said to them, "My wife… she is able to be my disciple."[860]

If the text was genuine, it would have significant ramifications for the study of early Christianity. King herself argued that the main point of this text was that "women who are wives and mothers can be Jesus's disciples".[861] This passage could be contextualised within ancient debates over whether "marriage or celibacy [was] the ideal mode of Christian life" and whether someone could simultaneously be a sexual and holy being.[862]

For these reasons, heated debates about the text's authenticity were ignited across the world. In response the *Harvard Theological Review* delayed publication of King's research pending the results of "further testing and analysis of the fragment".[863] Later in 2014 the results of these tests were published in a special issue of the *Harvard Theological Review.* The issue presented King's commentary on the so-called Gospel of Jesus' Wife,[864] alongside other articles describing a number of analyses conducted on the papyrus: a palaeographical assessment of the

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[858] For a detailed investigation into the Gospel of Jesus's Wife, see: Sabar, *Veritas.*

[859] Trifunov, D., "'Gospel of Jesus's Wife' revealed in Rome by Harvard scholar," *GlobalPost,* 18 September 2012. Accessed 27 February 2021. https://www.pri.org/stories/2012-09-18/gospel-jesuss-wife-revealed-rome-harvard-scholar-video

[860] King, K. L, ""Jesus said to them, 'My wife…'": A New Coptic Papyrus Fragment," *Harvard Theological Review* 107.2 (2014), pp. 131 – 159.

[861] Sabar, A., "The Unbelievable Tale of Jesus's Wife," *The Atlantic,* July 2016. Accessed 27 February 2021. https://www.theatlantic.com/magazine/archive/2016/07/the-unbelievable-tale-of-jesus-wife/485573/

[862] Sabar, "The Unbelievable Tale".

[863] Marrapodi, E., "'Jesus Wife' fragment gets more testing, delays article," *CNN Belief Blog,* 3rd January 2013. Accessed 27 February 2021. https://religion.blogs.cnn.com/2013/01/03/jesus-wife-fragment-gets-more-testing-delays-article/

[864] King, ""Jesus said to them".

text,[865] a chemical ink test,[866] infrared microspectroscopy,[867] and radiocarbon dating.[868] These tests suggested what the experts had already believed: that the fragment did appear to be ancient. But what had not been exposed to the same level of rigorous examination was the fragment's ownership history.

In a 2016 post for the Markers of Authenticity blog, Coptic papyrologist Malcolm Choat explored the issue of the publication of papyri without provenance information at length.[869] He acknowledged that in her paper for the Harvard Theological Review, Karen King had actually provided more information than most editors of papyri ever do. In her article, King disclosed an overview of the provenance information provided by the anonymous private owner.[870] This detail contrasted with the vast majority of editors, who

> usually only mentioned basic data, such as the date at which the papyrus entered the collection, and perhaps the dealer from whom it came. More frequently they have said nothing whatsoever about the artefact's acquisition history.[871]

Ultimately, it was the provenance research conducted by journalist Ariel Sabar and later published in a 2016 article for *Atlantic Magazine* that was enough to lead Karen King herself to conclude the text was likely a modern forgery.[872] It also led King to admit that she had done little to investigate the provenance of the fragment and knew nothing about Fritz during the duration of their exchanges. She further acknowledged the value of research such as that Sabar

[865] Choat, M., "*The Gospel of Jesus's Wife:* A Preliminary Paleographical Assessment," *Harvard Theological Review* 107.2 (2014), pp. 160 – 162.

[866] Yardley, J. T. and Hagardon, A., "Characterization of the Chemical Nature of the Black Ink in the Manuscript of *The Gospel of Jesus's Wife* through Micro-Raman Spectroscopy," *Harvard Theological Review* 107.2 (2014), pp. 162 – 164.

[867] Azzarelli, J. M., Goods, J. B. and Swager, T. M., "Study of Two Papyrus Fragments with Fourier Transform Infrared Microspectroscopy," *Harvard Theological Review* 107.2 (2014), p. 165.

[868] Hodgins, G., "Accelerated Mass Spectrometry Radiocarbon Determination of Papyrus Samples," *Harvard Theological Review* 107.2 (2014), pp. 166 – 169, and Tuross, N., "Accelerated Mass Spectrometry Radiocarbon Determination of Papyrus Samples," *Harvard Theological Review* 107.2 (2014), pp. 170 – 171.

[869] Choat, "Lessons from the "Gospel of Jesus' Wife" Affair".

[870] The provenance information disclosed in the article included a photocopy of the contract of sale, and copies of other photocopies including commentary from an academic about the nature of the fragment. The investigation conducted by Sabar, however, indicates these documents were falsified.

[871] Choat, "Lessons".

[872] Sabar, A., "Karen King Responds to 'The Unbelievable Tale of Jesus's Wife," *The Atlantic,* 17 June 2016. Accessed 27 February 2021. https://www.theatlantic.com/politics/archive/2016/06/karen-king-responds-to-the-unbelievable-tale-of-jesus-wife/487484/. However, it should be noted that since this initial response to Sabar's article, King has somewhat backtracked on her belief of the fragment's authenticity. Or, rather, she argues that the "[f]ocus on whether it's a forgery or not is taking attention off the things that really matter." See Sabar, *Veritas,* pp. 328 – 331.

had meticulously conducted, stating that the "article has helped [her] see that provenance can be investigated".[873]

In response to controversies like the Gospel of Jesus's Wife, there have been general improvements in research practices around provenance and other ethical issues related to the illicit antiquities market. But there has not been a universal progression towards more ethical conduct across disciplines, institutions, and publications. Further, there are still concessions for unprovenanced antiquities of a certain type which undermines the integrity of such attempts to foster ethical academic conduct. For example, the American Society of Overseas Research (previously known as the American Society of Oriental Research) (ASOR) includes "the cuneiform exception" in their Policy on Professional Conduct.[874] Whilst ASOR's professional conduct policy generally restricts ASOR members from publication and presentation in their venues of antiquities without provenience, cuneiform texts are treated differently. The ASOR Policy on Professional Conduct provides the following justifications for "the cuneiform exception":

> becausea. [sic] in zones of conflict since the early-1990s, most prominently in Iraq and Syria but also elsewhere, looting of cuneiform tablets has occurred on a *truly massive scale;*b. [sic] cuneiform texts may be authenticated *more readily* than other categories of epigraphic archaeological heritage; c. the content of a cuneiform text can provide information *independent* of archaeological provenience.[875]

In addition to the forms of academic interactions with the antiquities market established by Brodie, there is a broader form of engagement with the belief systems enacted by antiquities collectors and dealers. Ancient world studies did not emerge in an ideological vacuum, and has undeniably been influenced by the colonialist and Orientalist discourses discussed in Part 1. As a result, the study of the ancient world has been fraught with problematic neocolonial behaviours and practices, which are reflected in the market also. Whilst controversial, it must be acknowledged by academic individuals and institutions that any study and research of the

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[873] Sabar, "Karen King Responds". For a further discussion about the potential of provenance research in identifying chains of ownership and previously unknown findspots, see Lyons, C. L., "On Provenance and the Long Lives of Antiquities," *International Journal of Cultural Property* 23.2 (2016), pp. 245 – 253.
[874] American Society of Overseas Research, "Policy on Professional Conduct." Accessed 25 February 2021. https://www.asor.org/about-asor/policies/policy-on-professional-conduct/
[875] American Society of Overseas Research, "Policy on Professional Conduct," III.E.5. NB: Author's own italics. For an analysis of this policy, see Gerstenblith, P., "Do Restrictions on Publication of Undocumented Texts Promote Legitimacy," in M. T. Rutz and M. M. Kersel (eds), *Archaeologies of Text: Archaeology, Technology, and Ethics.* Oxford, UK: Oxbow Books, 2014. pp. 214 – 226.

ancient world assigns contemporary value and interpretations to its tangible and intangible remains. The implications of this argument will be explored further throughout this chapter and a section in the proposed guidelines for ethical conduct will be devoted to how we can begin to enact necessary disciplinary reform.

2. Examples of Unethical Conduct: Three Case Studies –

With an understanding of how academia intersects with the modern antiquities market established, these forms of market facilitation will be explored deeper in the following three case studies. All three are examples from text-based studies, a field which experiences more heightened interactions with the antiquities market due to the need for specialist expertise to translate and transliterate texts, as well as to provide authentication and valuation services.[876] Text-based scholarship is also unique to other ancient world studies disciplines, as its practitioners historically have not valued the archaeological record and provenance of the texts they study.[877] It is also the field of my own expertise, and the focus of the Forging Antiquity research project.

a. Case Study 1: Martin Schøyen and his relationship with academics and institutions –

Whilst a clear representation of academic misconduct, the following case study is centred on the activities of a famous antiquities collector – Martin Schøyen. The Norwegian businessman started collecting books and manuscripts, including papyrus, in 1955. However, the collection itself started in the 1920s by Schøyen's father, an engineer named Martin Olsen Schøyen who collected some 1000 volumes of "early and later editions of Norwegian and international literature, history, travel, science, as well as antiquities."[878] Currently, the Schøyen Collection is one of the largest modern private collections of manuscripts and is located across Oslo and London, and comprises of 20,450 manuscript items at the time of writing.[879] Within the collection, labelled MSS 1-5527, approximately 6,870 manuscript items are dated to the "ancient period 3,500 BC – 500 AD."[880] Objects from the Schøyen collection were featured in a

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[876] Brodie, "The Market in Iraqi Antiquities," p. 130.

[877] See Gerstenblith, "Do Restrictions […] Promote Legitimacy?"; Prescott, and Munch Rasmussen, "Exploring the "Cozy Cabal""; and Owen, D. L., "Censoring Knowledge: The Case for the Publication of Unprovenanced Cuneiform Tablets," in J. Cuno (ed.), *Whose Culture? The Promise of Museums and the Debate over Antiquities.* Princeton, NJ: Princeton University Press, 2009. pp. 125 – 142.

[878] The Schøyen Collection, "About Us". Accessed 22 February 2020. https://www.schoyencollection.com/about-schoyen-collection

[879] The Schøyen Collection, "Scope & Size of the Schøyen Collection. Accessed 22 February 2020. https://www.schoyencollection.com/about-schoyen-collection/scope-size

[880] The Schøyen Collection, "Scope & Size."

dedicated Christie's auction which took place in July 2019 in London.[881] The auction, entitled "The History of the Western Script: Important Antiquities and Manuscripts from the Schøyen Collection", resulted in sales totalling GBP 1,287,375 across 52 individual lots.

In a recently published article, Christopher Prescott and Josephine Munch Rasmussen present the results of their investigation into the history of the Schøyen Collection, and the researchers and public institutions that have collaborated with and supported the collector over a period of thirty years.[882] Whilst Schøyen had been collecting since the 1950s, the scope of their study starts with the 1990s and focuses on his previous head-of-research, Jens Braarvig, and the Collection's most visible supporters and partners: the National Library of Norway and its former director (1994-2002), Bendik Rugaas.[883] However, according to the authors, numerous individuals and institutions have been involved in "acquisitions, research, management and public promotion of Schøyen's collection."[884] Unfortunately, the details of how these individuals and institutions have interacted with the Collection are difficult to access, with involved parties failing to provide "comprehensive or existing accounts" resulting in a "twenty year cat-and-mouse game of deflections, public misinformation, and circumvention, countered by investigative journalism and research."[885]

In terms of the actual instances of what can be defined as academic misconduct, Prescott and Munch Rasmussen have identified a number of common examples. One of note is Schøyen's acquisition of the "Buddhist Dead Sea Scrolls." In October 2000, Schøyen made the announcement that he had dedicated resources to saving 1400-year-old Buddhist manuscripts from destruction at the hands of the Taliban. Relaying the account of the "dramatic" rescue operation to the newspaper *Aftenposten*, Schøyen was quoted "No lives were lost, but I had to pay a premium price."[886] The manuscripts themselves dated from the second to the 7th century and contained some of "the oldest of the most important texts in Mahyana Buddhism, the sutras, Buddha's sermons."[887]

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[881] Christie's, "History of the Western Script: Important Antiquities and Manuscripts from the Schøyen Collection," Christie's Sale 18152, 10 July 2019. Accessed 22 February 2020. https://www.christies.com/en/auction/the-history-of-western-script-important-antiquities-and-manuscripts-from-the-sch-yen-collection-28402/?intsaleid=28402&saletitle=

[882] Prescott, and Munch Rasmussen, "Exploring the "Cozy Cabal"".

[883] Prescott and Munch Rasmussen, "Exploring the "Cozy Cabal"" p. 70.

[884] Prescott and Munch Rasmussen, "Exploring the "Cozy Cabal"" p. 70.

[885] Prescott and Munch Rasmussen, "Exploring the "Cozy Cabal"" p. 70.

[886] Bjørhovde, H., "Nordmann eier unik historisk skatt: Vil du prøve Tut-ankh-Amons ring?" *Aftenposten*, 23 October 2000; 15. English Translation provided by Prescott and Munch Rasmussen, "Exploring the "Cozy Cabal"".

[887] Bjørhovde," Nordmann eier unik historisk skatt".

When pressed on how the Buddhist manuscripts were transported from Afghanistan (where the alleged rescue took place) to Pakistan to London to Norway, Schøyen was evasive. He explained that researchers "counselled" him throughout the process.[888] Such scholars would have been those associated with the research project established in 1997, *Buddhist Manuscripts in the Schøyen Collection*: Braarvig, Jens-Uwe Hartmann, Kazunobu Matsuda, Lore Sander, and later Paul Harrison.[889] Not only did this group of researchers counsel Schøyen on the process of transporting the manuscripts, but prior to joining the research group it appears that Sander had assisted an antiquities dealer, Sam Fogg, in preparing the initial 108 manuscripts in the BMSC in London for auction. To quote Prescott and Munch Rasmussen:

> Sander's and the other scholars' involvement was essential for creating marketable objects, as Fogg had little ownership information, and was not sure about the potential context.[890]

In addition to these services, the scholars who worked with Schøyen were essential in reinforcing the collector's altruistic image and deflecting the acquisition of the manuscripts from further scrutiny. Braavig defended his and Schøyen's acquisition and research practices, by using appeals to specific ideals and claims which are collectively "orientalist tropes at their core" and all "support the idea of Schøyen as a legitimate holder of the manuscripts."[891] This form of rhetoric is designed to reinforce pervasive colonial attitudes which deny communities and peoples access to their own cultural patrimony. Challenging these colonial discourses is thus central to the proposed guidelines for ethical academic conduct.

b. Case Study 2: The translation, valuation, and provision of sales descriptions of potentially looted cuneiform objects provided by Assyriologists –

Similar to the previous case study, next example also reflects the trend of mass-looting in conflict zones. Since the 1990s, political instability and ongoing conflict created ideal conditions for widespread cultural looting from numerous MENA (Middle-Eastern/North African) countries including Iraq, Kuwait, Syria, Libya, and Jordan. This period is also marked by some of the most famous museum thefts in modern history, namely the looting of the National Museum of Iraq in April 2003, and the 1990 Iraqi invasion looting of the Kuwait

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[888] Prescott and Munch Rasmussen, "Exploring the "Cozy Cabal" p. 72.
[889] The Schøyen Collection MSC 1. *Buddhist Manuscripts in the Schøyen Collection I.* ed. J. Braarvig, J. Hartmann, K. Matsuda, and L. Sander. Oslo: Hermes Publishing, 2000.
[890] Prescott and Munch Rasmussen, "Exploring the "Cozy Cabal" p. 72.
[891] Prescott and Munch Rasmussen, "Exploring the "Cozy Cabal" p. 73.

National Museum.[892] The result of this looting directly resulted in the market for cuneiform objects increasing in volume at such a rapid rate that it could only be attributed to the introduction of "new material".[893] In an investigation published in 2011 into the state of the antiquities market between 1990 and 2003, Neil Brodie concludes that this "new material could only have been moving out of Iraq through illegal means."[894]

The sudden influx of this material was challenging to existing dealers and collectors, who were largely unfamiliar with Sumerian script and the broader context of the cuneiform writing system. Due to their inexperience, market participants required access to expert knowledge for translation, authentication and valuation of these objects. Such expertise was found in individuals like Professor Wilfred Lambert, who described 32 of the 142 cylinder seals offered for sale in 2008 by the major auction houses.[895] In addition to these descriptions, he also translated 211 of the 332 cuneiform objects on offer in this period.[896] As Lambert was Professor Emeritus of Assyriology at Birmingham University and a Fellow of the British Academy, his reputation and expertise would have had a tremendous impact on the consumer confidence in the trade of cuneiform objects.

Unfortunately, there is little we can learn about the provenance of this cuneiform material from Lambert's analysis. In a 2003 New York Times article, written in the aftermath of the antiquities looted during the Gulf War, Lambert was identified as an expert of validating authenticity in the market for cuneiform objects.[897] Via telephone interview, Lambert estimated he had "evaluated several hundred items from the region [of Iraq], working for several London dealers." He is quoted as saying in a "marketplace filled with copies and fakes, his role is limited to identifying the age and culture of objects and ascertaining that they are genuine." However, when asked by journalists about the provenance of these antiquities, Lambert admitted to not being able to verify how these objects came on the market. He said, "I don't necessarily know where it comes from or how long it's been coming" and that the dealers "don't themselves, I suspect, very often."[898]

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[892] Bogdanos, *Thieves of Baghdad* and Bogdanos, "The Casualties of War", and Rothfield, *Antiquities Under Siege* and *The Rape of Mesopotamia*.
[893] Brodie, "The Market in Iraqi antiquities," p. 130.
[894] Brodie, "The Market in Iraqi antiquities," p. 130.
[895] Brodie, "The Market in Iraqi antiquities," p. 129.
[896] Brodie, "The Market in Iraqi antiquities," p. 129.
[897] Gottlieb, M. and Meier, B., "Of 2,000 treasures stolen in the Gulf War of 1991, only 12 have been recovered. *New York Times.* 30 April 2003. Accessed 22 February 2021. https://www.nytimes.com/2003/05/01/world/aftereffects-plunder-2000-treasures-stolen-gulf-war-1991-only-12-have-been.html
[898] Gottlieb, M. and Meier, B. "Of 2,000 treasures stolen in the Gulf War of 1991".

What we do know is that Lambert had an ongoing contract with the Barakat Gallery, a fifth-generation family owned business originally founded in Jerusalem.[899] Nowadays the gallery is located online and has brick-and-mortar presences in Hong Kong, London, Jordan, Korea, and the United States. The dealer offers the following description of their relationship with the Assyriologist:

> The Barakat Gallery has secured the services of Professor Lambert (University of Birmingham), a renowned expert in the decipherment and translation of cuneiform, to examine and process the information on these tablets.[900]

As recently as 2021, Lambert had provided authentication, translations and descriptions for 203 of 233 cuneiform objects offered for sale by the Barakat Gallery.[901] The remaining 15 pieces were presented with translations also, suggesting the dealer had worked with another unidentified Assyriologist at some point.

c. Case Study 3: The misconduct of Professor Dirk Obbink in his dealings with the Museum of the Bible –

In October of 2019, following a three-month investigation conducted by the Oxyrhynchus Papyri Project,[902] it was revealed that the Museum of the Bible Collection included thirteen fragments of papyrus from the Oxyrhynchus collection. The results of this investigation revealed that the acquisition of these fragments was facilitated by theft and deception. The Museum of the Bible, a Washington-based institution was founded by the Green Family, the evangelical Christian owners of American retail chain, Hobby Lobby. Opened in November 2017, the $400 million facilities of the Museum of the Bible house the 40,000 antiquities owned by the Green Collection, which was assembled from November 2009 onward by its original director, Scott Carroll, and Hobby Lobby president, Steve Green.

The collection, institution, and associated scholarly mentorship program formed in 2010 – the Scholars Initiative (previously known as the Green Scholars Initiative) – have found themselves the centre of numerous controversies since 2011 when U.S. Federal Agents intercepted a

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[899] Gottleib, M. and Meier, B. "Of 2,000 treasures stolen in the Gulf War of 1991".
[900] Barakat Gallery, "About." Accessed 22 February 2021. http://store.barakatgallery.com/about/
[901] Dundler, "#antiquitiesdealers".
[902] The Oxyrhynchus Papyri Project is a long-term collaboration between the British Academy and the Egypt Exploration Society. The Project, currently funded by the Arts and Humanities Research Council and the British Academy, includes deciphering, reconstructing, and publishing the papyri found at Oxyrhynchus. See: Egypt Exploration Society, "The Oxyrhynchus Papyri". Accessed 14 August 2021. https://www.ees.ac.uk/papyri , and Parsons, P., "The Oxyrhynchus Papyri Project (BAR)," *British Academy Review* 14 (2009), pp. 33 – 36.

shipment of cuneiform objects looted from Iraq on route to Oklahoma City.[903] In the following decade, more stories of criminal activity and misconduct have come to light, some of which have been documented in Joel Baden and Candida Moss's investigative account, *Bible Nation: The United States of Hobby Lobby*.[904] Thus when news of the thefts of the Oxyrhynchus fragments broke in late 2019 it was unsurprising to see the Museum of the Bible involved in the investigation. What was more surprising, however, was the alleged conduct of a member of Oxford University's classics department, Professor Dirk Obbink.

In a statement released in October 2019, the Egypt Exploration Society (EES) stated that Professor Obbink had allegedly stolen 11 Oxyrhynchus fragments and secretly sold them to Hobby Lobby in a series of transactions between 2010 and 2013.[905] The other two fragments in the Museum of the Bible collection were traced to transactions between Hobby Lobby and an antiquities dealer based in Israel, to which museum spokesperson Heather Cirmo admitted "The exact circumstances of how these items moved from Oxford to Israel are unknown to us."[906] Further, this was not the first time that Obbink had been suspected of criminal behaviour. In 2018 he was accused of selling a fragment of the Gospel of Mark by journalists Baden and Moss, which he refuted in a public statement.[907] The fragment in question was believed to have

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[903] In 2017 the United States filed a civil complaint to forfeit thousands of cuneiform tablets and clay bullae that had been smuggled from Iraq by Hobby Lobby. Eastern District of New York Department of Justice, "United States Files Civil Action To Forfeit Thousands of Ancient Artifacts Imported by Hobby Lobby," E.D.N.Y. Docket No. 17-CV-3980 (LDH) (VMS), 5 July 2017. Accessed 14 August 2021. https://www.justice.gov/usao-edny/pr/united-states-files-civil-action-forfeit-thousands-ancient-iraqi-artifacts-imported . More recently, Hobby Lobby forfeited a cuneiform tablet bearing a portion of the Epic of Gilgamesh to the United States. The tablet had been purchased from an international auction house using false provenance. United States Department of Justice, "Rare Cuneiform Tablet Bearing Portion of Epic of Gilgamesh Forfeited to United States," Press Release 21-704, 27 July 2021. Accessed 14 August 2021. https://www.justice.gov/opa/pr/rare-cuneiform-tablet-bearing-portion-epic-gilgamesh-forfeited-united-states . The tablet of Gilgamesh was one of 17,000 looted antiquities repatriated to Iraq in August 2021. Arraf, J., "Iraq Reclaims 17,000 Looted Artifacts, Its Biggest-Ever Repatriation," *New York Times,* 3 August 2021. Accessed 14 August 2021. https://www.nytimes.com/2021/08/03/world/middleeast/iraq-looted-artifacts-return.html

[904] Moss, C. R. and Baden. J. S., *Bible Nation: The United States of Hobby Lobby.* Princeton and Oxford: Princeton University Press, 2017. See also: Hicks-Keeton, J. and Concannon, C. (eds), *The Museum of the Bible: A Critical Edition.* Lanham, MD: Rowman & Littlefield, 2019.

[905] The first statement was released on 14 October 2019 and the second with further updates on the situation a week later. Egypt Exploration Society, "Professor Obbink and missing EES papyri," 14 October 2019. Accessed 22 February 2021. https://www.ees.ac.uk/News/professor-obbink-and-missing-ees-papyri and Egypt Exploration Society, "Missing papyri: two updates to the EES statement of Monday 14 October 2019," 21 October 2019. Accessed 22 February 2021. https://www.ees.ac.uk/news/missing-papyri-two-updates

[906] Schaverien, A., "Oxford Professor is Accused of Selling Ancient Texts to Hobby Lobby," *The New York Times,* 16 October 2019. Accessed 22 February 2021. https://www.nytimes.com/2019/10/16/world/europe/oxford-professor-bible-hobby-lobby.html

[907] For further details of the alleged sale of this fragment of Mark, see: Moss, C., "Did Oxford Scholar Secretly Sell Bible Fragment to Hobby Lobby Family?" *The Daily Beast,* 24 and 25 June 2019. Accessed 22 February 2021. https://www.thedailybeast.com/did-oxford-scholar-dirk-obbink-secretly-sell-bible-fragment-to-hobby-lobby-family
Nongbri, B., ""First Century" Mark, Dirk Obbink, and Hobby Lobby," *Brent Nongbri – Variant Readings,* 23 June 2019. Accessed 22 February 2021. https://brentnongbri.com/2019/06/23/first-century-mark-dirk-obbink-and-

been excavated in 1903, and according to the EES, it had never been for sale and had remained in their possession ever since.[908]

In June, 2019 concerns around Obbink's ongoing contract with Hobby Lobby led Oxford to cease his access to the Oxyrhynchus collection.[909] He was also suspended from his teaching duties from this time, but remained an employed professor of the Oxford University's Christ Church College. When the news of his misconduct broke in October 2019, Obbink systematically denied the accusations, stating they were "entirely false" and that documents against him were "fabricated in a malicious attempt to harm his reputation and career."[910] However, on the 16 April 2020, T*he Oxford Blue* released a news exclusive detailing Obbink's arrest. Obbink had been arrested on the 2 March 2020 for the alleged theft of papyrus from the Sackler Classics Library in Oxford (where the Oxyrhynchus Papyri are housed).[911] The publication also revealed that he had not only been investigated for the theft of the 11 papyrus fragments housed in the Museum of the Bible, but a staggering 120 pieces which were owned by the EES collection.

d. Common themes across the three case studies –

Each of these case studies represents a different form of academic facilitation of the antiquities market. In the first case study, a number of scholars (but especially Jens Braarvig) provided Schøyen with both guidance on the acquisition of unprovenanced and looted manuscripts. They also bolstered Schøyen's right to ownership of the manuscripts in the public discourse. The second case study involved Wilfred Lambert and anonymous Assyriologists providing appraisal services for unprovenanced cuneiform objects, which have been associated with mass-looting in MENA regions since the 1990s. And the final case study saw the academic, Dirk Obbink, allegedly stealing papyri from the EES Collection to sell to Hobby Lobby. The level of

hobby-lobby/ and "The "First Century" Mark Purchase Agreement: Some Initial Questions," *Brent Nongbri – Variant Readings,* 24 June 2019. Accessed 22 February 2021. https://brentnongbri.com/2019/06/24/the-first-century-mark-purchase-agreement-some-initial-questions/

[908] Egypt Exploration Society, "EES Statement: Professor Obbink and sales of papyri to Hobby Lobby," 25 June 2019. Accessed 22 February 2021. https://www.ees.ac.uk/news/ees-statement-professor-obbink-and-sales-of-papyri-to-hobby-lobby

[909] Egypt Exploration Society, "EES Statement: Professor Obbink and sales of papyri to Hobby Lobby".

[910] Obbink's statement was issued in a local Texas newspaper, the *Waco Tribune-Herald,* which could not be accessed outside of the United States. Geoffrey Smith of the University of Texas at Austin broke the news of the statement on Twitter on 19 October 2019. Then another Twitter user, @Incunabula provided full text of the relevant portion of the article. See Nongbri, B., "A Statement from Dirk Obbink," *Brent Nongbri – Variant Readings,* 20 October 2019. Accessed 22 February 2021. https://brentnongbri.com/2019/10/20/a-statement-from-dirk-obbink/

[911] Heslop, L., "Christ Church professor arrested over scandal of stolen papyrus," *The Oxford Blue,* 16 April 2020. Accessed 22 February 2021. https://www.theoxfordblue.co.uk/2020/04/16/exclusive-christ-church-professor-arrested-over-scandal-of-stolen-papyrus/

engagement with the illicit trade of antiquities varies from case study to case study, but they all effectively demonstrate a variety of ways in which academics facilitate the market.

3. Ancient World Studies: The Status Quo –

In their 2011 article in the "Journal of Cultural Heritage", Vassilike Argyropoulus and her colleagues addressed the issue of publishing and studying unprovenanced archaeological objects.[912] Whilst they gave sufficient weight to both sides of contemporary debates on the issue,[913] they highlighted current systemic failures to introduce and implement publication ethics and standards across institutions and disciplines. In response to such current inadequate approaches to these ethical issues, the authors proposed a number of measures that should be employed by academics and academic institutions. Such suggestions included presentation of all antiquities with their provenance; the development of an institutional policy on these issues; and suggest introducing a disciplinary standard for the "promotion and protection of cultural property in terms of research and publication involving tangible problematic cultural remains."[914] Their proposed model resembles ethical guidelines in place involving the experimentation on human and animal subjects.

This following section will establish whether such measures have been implemented in the decade following the publication of this article, and/or identify any other attempts to challenge and reform the ethics of scholarly practice. Considering the breadth of research that can be housed within the broader field of ancient world studies, there will be a subsection devoted to three different disciplines: archaeology and bioarchaeology; textual based studies such as papyrology; museum and cultural heritage research; and research involving Indigenous peoples. Before assessing the status quo for ethical academic conduct, however, a broad overview of how prevailing neocolonial and Orientalist discourses have counteracted attempts to foster ethical relationships with the ancient world will be provided.

e. Prevailing Attitudes and Approaches: Neocolonialism, Eurocentrism, Orientalism, and Ancient World Studies –

In March 2017, the Ramsay Centre for Western Civilisation was founded with the objective

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[912] Argyropoulos, V., Polikreti, K, Simon, S. and Charalambous, D., "Ethical issues in research and publication of illicit cultural property," *Journal of Cultural Heritage* 12.2 (2011), pp. 214 – 219.

[913] Such debates were identified as the argument that such publications and research indirectly support illicit trafficking vs. beliefs that scientific study of such objects can help fight against criminal activity through the identification of fakes and forgeries.

[914] Argyropoulos et al., "Ethical issues," p. 218.

to advance education by promoting studies and discussion with the establishment and development of western civilisation, including through establishing scholarship funds and educational courses in partnership with universities.[915]

Since 2017 a number of Australian universities – including the University of Wollongong,[916] The University of Queensland,[917] and most recently the Australian Catholic University[918] – have instituted such partnerships with the Ramsay Centre and have established undergraduate degrees, a Bachelor of Arts in Western Civilisation. The Ramsay Centre was funded by an "extraordinary endowment" by the late Mr Paul Ramsay AO, an Australian businessman who wanted to create a "cadre of leaders – Australians [with] awareness and appreciation of their country's Western heritage and values."[919] The establishment of the Ramsay Centre can be viewed within a context of a wider global trend: the desire to save the integrity of Western Civilisation and its heritage from an increasingly socially progressive world. Within the field of ancient world studies this is expressed through a fear that we are upending or replacing traditional forms of historical, archaeological, and papyrological discourses.[920]

In her examination of the reception and interpretation of ancient Greek and Latin texts by the online communities of the Far Right, classicist Donna Zuckerberg interrogates the mechanics of appropriating the classical world to promote patriarchal and white supremacist ideology.[921] These often misogynistic and racist communities are hardly the first to do so, with the most famous modern example being the (mis)use and (mis)appropriation of imageries and values

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[915] The Ramsay Centre, "About Us." Accessed 22 February 2021. https://www.ramsaycentre.org/about-us/

[916] Haines, S., "Ramsay Centre and University of Wollongong sign funding agreement," Ramsay Centre Public Announcement, 6 August 2019. Accessed 22 February 2021. https://www.ramsaycentre.org/ramsay-centre-and-university-of-wollongong-sign-funding-agreement/

[917] Haines, S., "Ramsay Centre and the University of Queensland sign Memorandum of Understanding," Ramsay Centre Public Announcement, 8 August 2019. Accessed 22 February 2021. https://www.ramsaycentre.org/ramsay-centre-and-the-university-of-queensland-sign-memorandum-of-understanding/ and "Ramsay Centre and the University of Queensland sign Philanthropic Agreement," 18 November 2019. Accessed 22 February 2021. https://www.ramsaycentre.org/ramsay-centre-and-the-university-of-queensland-sign-philanthropic-agreement/

[918] Haines, S., "Ramsay Centre and Australian Catholic University sign Memorandum of Understanding," 24 February 2020. Accessed 22 February 2021. https://www.ramsaycentre.org/ramsay-centre-and-australian-catholic-university-sign-memorandum-of-understanding/

[919] The Ramsay Centre, "About Us – The Ramsay Vision." Accessed 22 February 2021. https://www.ramsaycentre.org/about-us/the-ramsay-vision/

[920] See, for example: Abbott, A., "Paul Ramsay's Vision for Australia," *Quadrant Magazine,* 24 May 2018. Accessed 22 March 2021. https://quadrant.org.au/magazine/2018/04/paul-ramsays-vision-australia/ , and Hanson, V. D and Heath, J., *Who Killed Homer? The Demise of Classical Education and the Recovery of Greek Wisdom.* New York: Encounter Books, 2001.

[921] Zuckerberg, D., *Not All Dead White Men – Classics and Misogyny in the Digital Age.* Cambridge and London: Harvard University Press, 2018. See also Futo Kennedy, R., "We Condone It by Our Silence. Confronting Classics' Complicity with White Supremacy, *Eidolon,* 12 March 2017. Accessed 3 July 2021. https://eidolon.pub/we-condone-it-by-our-silence-bea76fb59b21

from classical antiquity by the Nazi regime during the Third Reich.[922] The most important takeaway from Zuckerberg's book *Not All Dead White Men*, however, is the danger in ignoring the (mis)use of ideas, values, and symbols from the ancient world. In her words

> [a]nybody who has an interest in the Classics or social justice should not ignore this trend, which has the potential to reshape what ancient Greece and Rome mean in the twenty-first century while simultaneously promoting dangerous and discriminatory views about gender and race.[923]

Contrary to the dire image painted by conservatives, the triumph of Western Civilisation remains pervasive in the 21st century. The field of ancient world studies is no exception. Despite attempts to decolonise research and teaching practices,[924] much of our contemporary relationship with the ancient world could still be deemed problematic and harmful. As demonstrated in the first case study involving the Schøyen Collection and the Buddhist

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[922] For discussion of the use of classical imagery Nazi Germany, see: Krebs, C. B., *A Most Dangerous Book: Tatcitus's Germania from the Roman Empire to the Third Reich.* New York: W&W Norton, 2012; Losemann, V., *Nationalsozialismus und Antike: Studien zur Entwicklung des Faches Alte Geschichte 1933 – 1945.* Hamburg: Historiche Perspektive, 1977, and "Classics in the Second World War," in W. Bialas and A. Rabinbach (eds), *Nazi Germany and the Humanities: How German Academics Embraced Nazism.* London: Oneworld, 2007. pp. 306 – 340; and Roche, H., *Sparta's German Children: The Ideal of Ancient Sparta in the Royal Prussian Cadet-Corps, 1818-1920, and in National-Socialist Elite Schools (The Napolas), 1933 – 1945.* Swansea: The Classical Press of Wales.

[923] Zuckerberg, *Not All Dead White Men,* p. 5.

[924] Whilst decolonising in teaching and research practices has been a broader phenomenon in the humanities more generally, there are specific cases of attempts to decolonise sub-fields of ancient world studies. An example of such efforts is embodied in the Decolonising the Classics movement. For discussions and reflections of the challenges faced in this process, and suggestions for how to move towards a Decolonised Classics, see: Blouin, K., "Doing Classics on Indigenous Land," *Everyday Orientalism.* Accessed 3 July 2021. https://everydayorientalism.wordpress.com/2021/05/26/doing-classics-on-indigenous-land/?fbclid=IwAR385NuwNVBqBMIp-Q50s988wbpUiztb4htJt2oJLYlt4XXwdqrbpuQjXcM ; Derbew, S., "Decolonizing Blackness, alongside the Classics Curriculum. A conversation with Dr Sarah Derbew," *The University of Warwick Classics and Ancient History.* Accessed 3 July 2021. https://warwick.ac.uk/fac/arts/classics/intranets/students/modules/africa/interview/sarahderbew/ ; Futo Kennedy, R., "Why I Teach About Race and Ethnicity in the Classical World," *Eidolon,* 12 September 2017. Accessed 3 July 2021. https://eidolon.pub/why-i-teach-about-race-and-ethnicity-in-the-classical-world-ade379722170 ; Giusti, E., "Centring Africa in Greek and Roman Literature while Decolonising the Classics Classroom," *Cambridge School Classics Project Blog.* Accessed 3 July 2021. https://blog.cambridgescp.com/centring-africa-greek-and-roman-literature-while-decolonising-classics-classroom ; Hancock-Jones, R., "Decolonising the Classics Classroom: Diversity & Representation in Visual Aids," *Cambridge School Classics Project Blog.* Accessed 3 July 2021. https://blog.cambridgescp.com/decolonising-classics-classroom-diversity-representation-visual-aids ; *Keele Manifesto for decolonising the curriculum.* Accessed 3 July 2021. https://www.keele.ac.uk/equalitydiversity/equalityframeworksandactivities/equalityawardsandreports/equalityawards/raceequalitycharter/keeledecolonisingthecurriculumnetwork/#keele-manifesto-for-decolonising-the-curriculum ; Ram-Prasad, K., "Reclaiming the Ancient – Towards Decolonized Classics," *Eidolon,* 4 July 2019. Accessed 22 February 2021. https://eidolon.pub/reclaiming-the-ancient-world-c481fc19c0e3 ; Roynon, T., "On Decompartmentalizing Black Classicism. A Conversation with Dr Tessa Roynon," *The Universtiy of Warick Classics and Ancient History.* Accessed 3 July 2021. https://warwick.ac.uk/fac/arts/classics/intranets/students/modules/africa/interview/roynon/ ; and Zuckerberg, D., "How to Be a Good Classicist Under a Bad Emperor," *Eidolon,* 22 November 2016. Accessed 22 March 2021. https://eidolon.pub/how-to-be-a-good-classicist-under-a-bad-emperor-6b848df6e54a

manuscripts, scholars reinforce the neocolonial and Orientalist beliefs of modern antiquities collectors and dealers. Colonial powers have long used the same excuses of "saving" cultural heritage or "discovering" archaeological sites as a justification for imperial expansion.[925] For example, the word "treasure" is still frequently used by academic institutions and individuals to describe ancient cultural objects.

Academics who operate in the field of ancient world studies also often employ neocolonial rhetoric to justify their professional practices and the conduct of their predecessors. For example, in early 2021 two archaeologists – Bruce Borque and Elizabeth Weiss – published commentary on the rise of ethical concerns in the field of archaeology.[926] "Gone," they lamented, were "the days when great discoveries are made by the great adventurers who seek objective scientific knowledge from the soil and the bones of forgotten peoples."[927] It is not only archaeologists who rely on these types of defences, with some classicists continuing to justify their relevance through a colonial-imperial lens. To quote Rebecca Futo Kennedy:

> as long as Classics justifies itself by claiming to be the foundation of Western Civilization (feel free to do a random check of university department web pages), it will continue to find itself uncomfortably at the contested centre of the continuing culture wars.[928]

Another recent example of this practice can be seen in the phenomenon of "colonialist cosplay", identified by Katherine Blouin, Monica Hanna, and Sarah Bond.[929] Their article published in late 2020 directly challenged the recreation and engagement with the aesthetics of colonialism practiced by academics and the wider public. Examples of this include former First

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[925] See Effros, B. and Lai, G. (eds), *Unmasking Ideology in Imperial and Colonial Archaeology: Vocabulary, Symbols, and Legacy.* Los Angeles, CA: Cotsen Institute of Archaeology Press, 2018.

[926] Borque, B., "The Campaign to Thwart Paleogenetic Research Into North America's Indigenous Peoples," *Quillette,* 29 March 2021. Accessed 20 June 2021. https://quillette.com/2021/03/29/the-campaign-to-thwart-paleogenetic-research-into-north-americas-indigenous-peoples/ and Weiss, E. and Springer, J., "Academic Freedom and Native American Reburials," *Areo Magazine,* 31 March 2021. Accessed 20 June 2021. https://areomagazine.com/2021/03/31/academic-freedom-and-native-american-reburials/

[927] Beisaw, A. M., "Two Archaeologists Unscientifically Argue that Ethical Practice is Anti-Science," *The Geek Anthropologist,* 27 April 2021. Accessed 20 June 2021. https://thegeekanthropologist.com/2021/04/27/two-archaeologists-unscientifically-argue-that-ethical-practice-is-anti-science/?fbclid=IwAR2L4-AF1PZXlJ4TSa4B375Xzm5Sfd6csy_yk7x5JTz2KZFcbMMIdtCkCn4

[928] Futo Kennedy, "We Condone It by Our Silence".

[929] Blouin, K., Hanna, M. and Bond, S. E., "How Academics, Egyptologists, and even Melania Trump Benefit from Colonialist Cosplay," *Hyperallergic,* 22 October 2020. Accessed 29 October 2020. https://hyperallergic.com/595896/how-academics-egyptologists-and-even-melania-trump-benefit-from-colonialist-cosplay/?fbclid=IwAR01VVhP_PJr79PU-oyyShN7NlNQ5vJC4PgBHc9Cx21KSmIi5vk-L-FjvjE

Lady of the United States, Melania Trump, who wore a pith helmet during safari in Kenya in 2018,[930] and Dr Colleen Manassa Darnell, the self-styled "Vintage Egyptologist".

Darnell is a former Assistant Professor (2006-2010) and Associate Professor of Egyptology (2010-2015) at Yale University. At the time of writing she teaches art history at the University of Hartford, and is a curatorial affiliate at the Yale Peabody Museum of Natural History. She also has an impressive following, which outperforms any other public Egyptologist, on YouTube (35,000 followers) and Instagram (153,000 followers), with her posts and videos promising to transport followers "to the realm of *The Great Gatsby* meets *The English Patient.*"[931] Commenting on the success and popularity of Darnell's social media persona, the authors highlight the dangers and harms in white-washing our consumption of the ancient world – an argument which has been articulated elsewhere by Blouin,[932] Hanna,[933] and Bond,[934] as well as Donna Zuckerberg in her analysis of the appropriation of the classics by patriarchal

[930] Burke, J., "Melania Trump criticised for wearing colonial-style hat during Kenyan safari," *The Guardian,* 6 October 2018. Accessed 21 January 2021. https://www.theguardian.com/world/2018/oct/05/melania-trump-in-pith-helmet-on-kenya-safari-likened-to-colonialist , and Rogers, K., "Melania Trump Raises Eyebrows in Africa With Another White Hat," *The New York Times,* 5 October 2018. Accessed 21 January 2021. https://www.nytimes.com/2018/10/05/world/africa/melania-trump-pith-helmet.html . For discussion of the pith helmet as a symbol of colonial oppression see: Cohn, B., "Cloth, Clothes, and Colonialism," in D. Miller (ed.) *Consumption: The history and regional development of consumption.* London: Routledge, 2001. pp. 405 – 430; di Leonardo, M., "The Trope of the Pith Helmet: America's Anthropology, Anthropology's America," in A. Waterson and M. D. Vesperi (eds), *Anthropology of the Shelf: Anthropologists on Writing.* Oxford: Wiley-Blackwell, 2009. pp. 160 – 171; and Scott, J. S., "Melania Trump's Pith helmet is not just a hat," *The Conversation,* 14 October 2018. Accessed 21 January 2021. https://theconversation.com/melania-trumps-pith-helmet-is-not-just-a-hat-104824
[931] Blouin et al., "How Academics […] Benefit from Colonialist Cosplay".
[932] Katherine Blouin is Associate Professor in Roman History and Classics at the University of Toronto and the co-editor of the blog, *Everyday Orientalism* (Blouin, K., Gad, U. A. and Mairs, R., *Everyday Orientalism.* Accessed 2 February 2021. https://everydayorientalism.wordpress.com/
). For an example of her work on Orientalism, colonialism, and the antiquity disciplines, see Blouin, K., "Beyond the Nile: Orientalism, environmental history, and ancient Egypt's Mareotide (northwestern Nile Delta)," *History Compass* 15.10 (2017), https://doi.org/10.1111/hic3.12397
[933] Monica Hanna is an Egyptologist and activist for protecting cultural heritage. She created and maintains Egypt's Heritage Task Force, which aims to document the losses of Egyptian cultural heritage and bring these issues to global audiences (https://www.facebook.com/pg/EgyptsHeritageTaskForce/about/?ref=page_internal. Accessed 2 February 2021). Examples of Hanna's work include: Hanna, M., "What has happened to Egyptian heritage after the 2011 unfinished revolution," *Journal of Eastern Mediterranean Archaeology & Heritage Studies* 1.4 (2011), pp. 371 – 375; "Documenting looting activities in post-2011 Egypt"; and "Losing heritage, losing identity," *Al Rawi: Egypt's Heritage Review* 5 (2013), pp. 22 – 25.
[934] Sarah Bond is an Associate Professor of History at the University of Iowa. Examples of her critiques of racism in the reception of the ancient world and the classics include the following articles: Bond, S. E., "Whitewashing Ancient Statues: Whiteness, Racism And Color In The Ancient World," *Forbes,* 27 April 2017. Accessed 2 February 2021. https://www.forbes.com/sites/drsarahbond/2017/04/27/whitewashing-ancient-statues-whiteness-racism-and-color-in-the-ancient-world/?sh=50faf375ad5c ; "Why We Need to Start Seeing the Classical World in Color," *Hyperallergic,* 7 June 2017. Accessed 2 February 2021. https://hyperallergic.com/383776/why-we-need-to-start-seeing-the-classical-world-in-color/ ; "This is Not Sparta. Why the Modern Romance with Sparta is a Bad One," *Eidolon,* 8 May 2018. Accessed 2 February 2021. https://eidolon.pub/this-is-not-sparta-392a9ccddf26 ; and "Pseudoarchaeology and the Racism Behind Ancient Aliens," *Hyperallergic,* 13 November 2018. Accessed 2 February 2021. https://hyperallergic.com/470795/pseudoarchaeology-and-the-racism-behind-ancient-aliens/

white supremacy.[935] The examples of Darnell and Trump and colonialist cosplay are thus part of a wider issue with "more open forms of apology of colonialism and imperialism".

According to Blouin et al., the public success of the "Vintage Egyptologist"

> shows how the image of Egyptology remains largely Orientalist. While scholars are very prone to laugh at the many clichés and stereotypes that shape the way ancient civilizations are portrayed in the mass media, we should not forget that these stereotypes have been, for the most of us, the starting point, the spark that ignited our passions, fueled our initial interest in Antiquity.[936]

It is thus important to recognise that any and all engagement with antiquity for research purposes has the potential to shape modern perspectives of the ancient world. With this in mind it is essential to decolonise not only academic practice, but the values and beliefs which support them.

f. Archaeologists and Bioarchaeologists –

If stopping the flow of illicit trafficking of antiquities is a war, then archaeologists and bioarchaeologists are currently working on the frontline. Some have been exposed to violence and, in extreme cases, have even been murdered for their attempts to protect cultural sites.[937] Many have had their worksites and storage facilities plundered. Further, most archaeologists and bioarchaeologists who work in the field would have seen the evidence of extensive looting at some point in their careers. Not all of these researchers, however, are united in attempts to prevent the pillaging of cultural sites across the world.

On the 29th of April 2020, the Antiquities Coalition hosted an online live debate entitled: "Do Archaeologists Have an Ethical Obligation to Report Looting?"[938] The debate developed from

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[935] Zuckerberg, *Not All Dead White Men.*

[936] Blouin et al., "How Academics […] Benefit from Colonialist Cosplay".

[937] The most famous modern example of this occurring is the tragic death of Syrian archaeologist Khaled al-Asaad, who was executed by Islamic State militants for refusing to give them information about the site of Palmyra and hidden antiquities in August 2015. See: BBC News, "Syrian archaeologist 'killed in Palmyra' by IS militants," *BBC News,* 19 August 2015. Accessed 22 February 2021. https://www.bbc.com/news/world-middle-east-33984006; Killgrove, K. "Archaeologists Respond to the Murder of Khaled al-Asaad at Ancient Palmyra," *Forbes,* 20 August 2015. Accessed 22 February 2021. https://www.forbes.com/sites/kristinakillgrove/2015/08/20/archaeologists-respond-to-the-murder-of-khaled-al-asaad-at-ancient-palmyra/#38da3d654d94; and
UNESCO, "Director-General Irina Bokova deplores the loss of two leading scholars of Syrian Antiquity," *UNESCO News.* Accessed 22 February 2021. https://en.unesco.org/news/director-general-irina-bokova-deplores-loss-two-leading-scholars-syrian-antiquity.

[938] Due to COVID-19, the Antiquities Coalition debate took place via Zoom on 29 April 2020, and was later posted on YouTube. https://www.youtube.com/watch?v=E2nwMxkROgk

the Antiquities Coalition Think Tank's most recent policy brief published in March 2020, which was written by criminal justice scholar Blythe Alison Bowman Balestrieri. The report was based on the results of a global survey conducted by Balestrieri in 2013,[939] and draws together insights on why many field archaeologists say they "do *not* report archaeological site looting when they encounter it." The global survey involved approximately 15,000 archaeologists and its results established that nearly 80% of this group experience looting first-hand and not always as isolated incidents.[940] Only 38% of the archaeologists who encountered evidence of looting in the field took action: 14% handled the situation internally through means of documentation and or/discussion among project members and/or direct intervention with looters, and 24% took external action by notifying law enforcement and/or appropriate archaeological authority.[941]

The debate hosted by The Antiquities Coalition presented the following scenario to its speakers and audience: "You're a field archaeologist, you watch a looter walk away with artifacts – and you don't report the looting. Are you in the wrong?" Whilst it may seem like a one-sided discussion, in reality, some field archaeologists argued that the situation is more complicated than it may seem initially. In her policy brief, Balestrieri established seven common explanations for non-reporting including concern for the welfare of those doing the illicit digging; a sense of futility as law enforcement or local authorities are unable or unwilling to address the issue; uncertainty of how they should act; sympathy for the looters, who "lack economically viable alternatives and are victims of wealthier countries' demand for antiquities"; valuing productivity and career progression over the protection of cultural heritage; apathy towards looting; and threats to safety when working in "unstable and/or conflict-ridden regions."[942]

Not all archaeologists and bioarchaeologists work in the field, and fieldwork is not the only avenue of research that must be discussed here. The disciplinary values, publishing guidelines, teaching practices, and the regulatory frameworks employed by archaeological associations, local governments, and research institutions are all part of this broader discussion of ethical conduct also. Whilst it is not possible to list all examples of these ethical guidelines, it is worth referring back to Argyropoulos et al.'s study which established in 2011 that there were no

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[939] Bowman Proulx, B., "Archaeological Site Looting in "Glocal" Perspective: Nature, Scope, and Frequency," *American Journal of Archaeology* 117. 1 (2013), pp. 111 – 125.
[940] Balestrieri, B. A. B., "Do Archaeologists Have an Ethical Obligation to Report Looting? Protecting Antiquities and an "Ethical Double Standard"," Antiquities Coalition Policy Brief No. 6 (2020), p. 2.
[941] Balestrieri, "Do Archaeologists Have an Ethical Obligation to Report Looting?" p. 3.
[942] Balestrieri, "Do Archaeologists Have an Ethical Obligation to Report Looting?" p. 4.

uniform guidelines for publishing and studying cultural heritage, [943] as there are for other fields of research that involve testing with human and animal subjects.[944] A decade later, the status quo has not dramatically changed and there are no still universal guidelines for archaeological research, and the guidelines that do exist have "little normative force".[945]

It is worth dwelling on some of the unique challenges faced by those who work with human remains in developing and maintaining ethical research practices. In 1989 the World Archaeological Congress (WAC) provided a formal response these concerns with the creation of the Vermillion Accord: six clauses regarding science and the treatment of the dead.[946] More than three decades later, the Vermillion Accord remains significant to "the archaeological profession and Indigenous groups, and its development and adoption is a key moment in the history of the reburial moment."[947] It also has the legacy of being the first document co-developed with archaeologists and Indigenous peoples (from Australia, Scandinavia, New Zealand, Africa and North America), illustrating that "mutual understanding and respect were indeed possible between Indigenous people and archaeologists."[948]

The guidelines of the Vermillion Accords are:

1. Respect for the mortal remains of the dead shall be accorded irrespective of their origin, race, religion, nationality, custom and tradition.
2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable, and lawful, when they are known or can be reasonably inferred.
3. Respect for the wishes of the local community and of the relatives or the guardians of the dead shall be accorded whenever possible, reasonable and lawful.
4. Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.

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[943] Argyropoulos et al., "Ethical issues".

[944] In Australia, for instance, there is the *National Health and Medical Council Act 1992* which has informed the *National Statement on Ethical Conduct in Human Research (2007).* There is also the *Australian code for the care and use of animals for scientific purposes,* 8th ed., 2013.

[945] Brodie, "The Market in Iraqi Antiquities," p. 132.

[946] World Archaeology Congress, *The Vermillion Accord on Human Remains.* South Dakota, US, 1989.

[947] Fforde, C., "Vermillion Accord on Human Remains (1989)," in C. Smith (ed.), *Encyclopedia of Global Archaeology.* New York, US: Springer, 2014. p. 7612 –. For more commentary on the reburial movement, see: Fford, C., *Collecting the dead: archaeology and the reburial issue.* London, UK: Duckworth, 2004 and Hubert, J., "A proper place for the dead: a critical review of the 'reburial' issue," in R. Layton (ed.) *Conflict in the archaeology of living traditions.* London, UK: Routledge, 1989. pp. 131 – 136.

[948] Zimmerman, L., "A decade after the Vermillion Accord: what has changed and what has not? In C. Fforde, J. Hubert and P. Turnbull (eds), *The dead and their possessions: repatriation in principle, policy and practice.* London, UK: Routledge, 2002. p. 91.

5. Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.

6. The express recognition that the concerns of various ethnic groups, as well as those of science, are legitimate and to be respected will permit acceptable agreements to be reached and honours.[949]

According to archaeologist Larry Zimmerman the Vermillion Accord did not necessarily change "attitudes about the primacy of scientific approaches to the past" nor contribute to "greater positive interaction between indigenous people and archaeology."[950] Subsequently, the studying of human remains, including their removal from burial sites, the subjection to invasive scientific testing, and the publishing of these results, remains an area of contention within the field of bioarchaeology. [951] Nestled within the broader and correlated frameworks of Egyptomania (section 2.1.4.i.) and Orientalism (Section 1.2.3.e.), mummies have long been subject to popular imagination resulting in the related phenomenon of "Mummymania".[952] Egyptologist, Jasmine Day, argues that the continued mistreatment of mummies and pervasive media stereotypes of the "mummy's curse" can undermine demands for mummified remains to be removed from display in public collections.[953]

News of archaeological discoveries involving mummified remains tend to dramatically capture public interest, for example the petition started in response to the scientific discovery of a 2000-year-old sarcophagus in 2018.[954] Upon opening the Ptolemaic-era sarcophagus discovered in Alexandria, the archaeological team discovered it was filled with dirty water and three skeletons.[955] The water in the "dark sarcophagus" quickly became known as "the red liquid" and was the subject of interest for the wider public. This attention included the founding of a

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[949] *The Vermillion Accord on Human Remains.*
[950] Zimmerman, "A Decade After the Vermillion Accords," p. 97.
[951] Piombino-Mascali, D. and Gill-Frerking, H., "The Mummy Autopsy: Some Ethical Considerations," in K. Squires, D. Errickson, and N. Márquez-Grant (eds), *Ethical Approaches to Human Remains – A Global Challenge in Bioarchaeology and Forensic Anthropology.* Cham: Springer Nature Switzerland, 2020. pp. 605 – 625. See also the work of museum research Angela Steinne on reshaping the conversation around human remains in museums: Mummy Stories, "About". Accessed 20 March 2021. https://www.mummystories.com/
[952] Baber, "Ancient Corpses as Curiosities" and Day, J., *The Mummy's Curse: Mummymania in the English-Speaking World.* Routledge, 2006.
[953] Day, *The Mummy's Curse.* See also: Luckhurst, R., *The Mummy's Curse: The True History of Dark Fantasy.* Oxford: Oxford University Press, 2014.
[954] Change.org, "Petition: let people drink the red liquid from the dark sarcophagus". Accessed 20 March 2021. https://www.change.org/p/let-people-drink-the-red-liquid-from-the-dark-sarcophagus
[955] Daley, J., "Scientists Begin Unveiling the Secrets of Mummies in the Alexandria 'Dark Sarcophagus'," *Smithsonian Magazine,* 21 August 2018. Accessed 20 March 2021. https://www.smithsonianmag.com/smart-news/were-learning-more-about-inhabitants-dark-sarcophagus-180970085/

Change.org petition entitled "let people drink the red liquid from the dark sarcophagus" was started in 2018. The petition to "the king of skeletons, egypt", which has more than 36,000 signatures at the time of writing, requests to

> drink the red liquid from the cursed dark sarcophagus in the form of some sort of carbonated energy drink so we can assume its powers and finally die.[956]

A more recent example of research on mummified remains which made global headlines includes attempts by a team of British researchers to synthesise the voice of the 3000 year-old-remains of an Egyptian scribe and priest, Nesyamun.[957] In his response to this research output, archaeologist Michael Press described the researchers' attempts as "cursed" in more ways than one.[958] Not only did Press dispute the "sensational" and "exaggerated" claims that the research team managed to recreate a living voice from a dead man's vocal tract, but he also deeply questioned the ethics of their methodologies. Reflecting on the history of mistreatment of human remains in Egyptology, he argues

> CT scans are just the latest tool to be exploited by Egyptologists, and British researchers hyping how they synthesized the groan of an Egyptian mummy seems not merely cheap but disturbing.[959]

In response to the ethics statement in the original study – which insisted "Nesyamun's own words express his desire to 'speak again'"[960] – the researchers and general public are challenged to think about desire and consent within the context of Egyptian beliefs of the afterlife.[961] "If we really cared," Press posits

> about the desires of long-dead Egyptians, then we might consider that Nesyamum would have wanted to remain wrapped up and treated like a god […] – not having his insides bared for all by CT scan, reminding us of his humanity.[962]

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[956] Change.org, "Petition".

[957] Howard, D. M. et al., "Synthesis of a Vocal Sound from the 3,000 year old Mummy, Nesyamun," *Scientific Reports* 10 (2020), https://doi.org/10.1038/s41598-019-56316-y

[958] Press, M., "Attempts to Reconstruct a Mummy's Voice Are Cursed," *Hyperallergic,* 27 January 2020. Accessed 20 March 2021. https://hyperallergic.com/539573/attempts-to-reconstruct-a-mummys-voice-are-cursed/

[959] Press, "Attempts to Reconstruct".

[960] Howard et al., "Synthesis of a Vocal Sound," p. 2.

[961] See, for example, Riggs, C., *Unwrapping Ancient Egypt: The Shroud, the Secret and the Sacred.* London and New York: Bloomsbury, 2014.

[962] Press, "Attempts to Reconstruct".

g. Text-based Scholarship –

In his study of the market for looted Iraqi antiquities, Neil Brodie establishes that the role of scholarship in the trade of text-based antiquities – such as cuneiform objects and papyri – is even more prominent and pervasive due to the level of expertise required to provide translations in addition to authentications and valuations.[963] One may assume that this may correspond with a heightened level of awareness of the ethical and legal issues involved in engaging with the market, or even studying unprovenanced texts. However, in reality this is not the case. Text-based scholars have been slower to adapt to these issues compared to archaeologists and museum professionals.

As we saw in all three of the above case studies, academics from the fields of papyrology and Assyriology were complicit – both through their acts and omissions – in facilitating the illicit antiquities market for papyrus and cuneiform objects as recently as 2020. This resistance to changes in disciplinary practices and behaviours is influenced by a number of factors, but the main reason can be reduced to the perception that textual studies are more distant from the issues of looting and smuggling antiquities – because they study the "text" and not the "object".[964] Many textual scholars also believed themselves unaffected by the impacts of looting in the ways that archaeologists are, as there was no perceived need for archaeological context when studying a text.

The past decade, however, has seen a building sense of the failings of these disciplinary attitudes. For example, a number of recent scandals have rocked the discipline of papyrology in particular, including the previously discussed Gospel of Jesus's Wife and the ongoing stories of misconduct from the Museum of the Bible and The Green Scholars Initiative.[965] These examples effectively demonstrated to the papyrological community and the wider global audience that the "status quo" was not only encouraging unethical beliefs and behaviours, but was directly involving researchers in crime and undermining the integrity of scholarship more broadly. In response to these controversies, both papyrological individuals and associations have enacted a number of initiatives in order to improve disciplinary standards and practices. For example, in 2010 the International Association of Papyrologists (Association Internationale de Papyrologues/AIP) ratified their recommendations concerning the illicit trade in papyri.[966]

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[963] Brodie, "The Market in Iraqi Antiquities," p. 130.
[964] Prescott and Munch Rasmussen, "Exploring the "Cozy Cabal", pp. 186 – 187.
[965] Moss and Baden, *Bible Nation* and Hicks-Keeton and Concannon, *The Museum of the Bible.*
[966] Association Internationale de Papyrologues, "Recommandations." 2010. Accessed 22 February 2021.
https://www2.ulb.ac.be/assoc/aip/recomman.htm

However, as highlighted by papyrologists Roberta Mazza and Malcolm Choat,[967] the AIP document did not "explicitly recommend that its members should not participate in the trade in papyrus."[968] The American Society of Papyrologists (ASP) did make such a recommendation in their resolution, *Resolution Concerning the Trade in Papyri,* which prohibits the direct participation "in the buying or selling of papyri or other archaeological objects that have been excavated illegally or exported from their country of origin after 24 April 1972."[969] The ASP resolution also finds "actions that increase the commercial value of papyri and objects that have been excavated illegally or exported from their country of origin after 24 April 1972" unacceptable.[970] Whilst more detailed and offering a number of useful recommendations for papyrologists, in her analysis of the ethics of papyrology Mazza found that they have not been uniformly observed.

h. Museum and Heritage Research –

If archaeologists have been on the frontline in the war against antiquities looting and smuggling, then museum professionals have definitely been the public face of cultural heritage issues. For some years now individual museums, their collections, and museum curatorship as a field has been recognised as a driver of antiquities trafficking through their demand for novel acquisitions and Orientalising tendencies.[971] Public collections have been at the centre of a number of controversies and calls to repatriate looted or otherwise dubiously acquired cultural objects have affected museums worldwide.[972] Some individuals and institutions have also allegedly been involved with criminal activities, as was famously the case of museum curator Marion True and the Getty Museum.[973] This is not to say, however, that the entire community

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[967] Mazza, R., "Papyrology and Ethics," 28th International Congress of Papyrology. Plenary Session: Setting limits to our discipline? 5 August 2016. Accessed 22 February 2021 https://facesandvoices.files.wordpress.com/2016/07/papyrology-and-ethics_mazza2.pdf

[968] Choat, M., "Forging Antiquities: The Case of Papyrus Fakes," in S. Hufnagel and D. Chappell (eds), *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019, p. 559.

[969] American Society of Papyrologists, "ASP Resolution Concerning the Illicit Trade in Papyri." 2007. Accessed 22 February 2021. https://www.lib.berkeley.edu/sites/default/files/asp-resolution.pdf

[970] Mazza, "Papyrology and Ethics," p. 4.

[971] Hicks, D., *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution.* London: Pluto Press, 2020; Mackenzie et al., *Trafficking Culture,* pp. 15 – 16; Procter, *The Whole Picture;* and Vrdoljak, *International Law, Museums and the Return of Cultural Objects.*

[972] Felch and Frammolino, *Chasing Aphrodite;* Tsirogiannias, C., "Prompt in Theory and Delay in Practice: a case in museum study ethics," *AP: Online Journal in Public Archaeology* 6 (2016), pp. 12 – 25; and Watson and Todeschini, *The Medici Conspiracy.*

[973] For a thorough account of Marion True and the Getty story, see: Felch and Frammolino, *Chasing Aphrodite,* and Watson and Todeschini, *The Medici Conspiracy.*

of museum professionals, institutions, and associations have been failing to address these issues – proactively and reactively.

Whilst individual museums have their own policies for acquiring, researching, deaccessioning, and displaying antiquities, most are shaped by the guidelines put forward by the International Council of Museums (ICOM). Created in 1946, ICOM represents the global community of museums, and is committed to a number of objectives and values, which *inter alia* address the role and responsibilities of museums in the illicit trade of antiquities. At the Reform Task Force, which reported to the ICOM General Assembly in Barcelona in 2001, three key values were established: independence, integrity, and professionalism.

All three values which ICOM seeks to uphold with its 35,000 members worldwide respond to the ethical responsibilities of museum professionals. First, ICOM independently documents the illicit trade of cultural objects and offers a mediation process "in cases of contested heritage".[974] Second, ICOM's commitment to its own standards of integrity, namely their Code of Ethics, is of great significance here as all members – both museums and museum professionals – are required to "adopt it into their practice if they are or wish to become members of ICOM."[975] Finally, ICOM supports the professionalism of museums and museum professionals worldwide, through "National and International Committees, its Code of Ethics, […] professional development, publications, annual conferences, and other projects".[976]

In terms of ICOM's Code of Ethics, which must be upheld by existing and potential members, there are naturally a number of principles which respond to the issues of cultural heritage crime and the complicity of museums and museum professionals in these criminal activities. The first Code of Ethics, entitled the *ICOM Code of Professional Ethics,* was adopted unanimously by the 15th General Assembly of ICOM in Buenos Aires in November 1986. Since then it has been amended and retitled in 2001 to the *ICOM Code of Ethics for Museums,* with an additional set of revisions occurring in 2004. The *Code of Ethics for Museums* is presented as a "minimum standard for museums", and is presented as a series of principles supported by guidelines for desirable professional practice."[977] In the 2018 version of this document many of the guidelines can be seen as important in engendering ethical behaviour and practice.

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[974] ICOM, "Strategic Plan," p. 9.
[975] ICOM, "Strategic Plan," p. 9.
[976] ICOM, "Strategic Plan," p. 10.
[977] ICOM, "ICOM Code of Ethics for Museums," 2017.

For example, the guidelines around provenance and due diligence introduced in section 2.3 states

> [e]very effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest or exchange has not been illegally obtained in, or exported from its country of origin or any intermediate country […] Due diligence in this regard should establish the full history of the item since discovery or production.[978]

The ICOM Code of Ethics for Museums also includes guidelines which address the issue of museum collections being used as data for research, as well as the research activities conducted by museum professionals and institutions.[979] It requires members to respect the "interests and beliefs of the community, ethnic or religious groups […] where these are known" when researching human remains and materials of sacred significance (3.7). The guidelines also acknowledge the ethical issues with displaying and exhibiting heritage objects, explicitly stating that museums should "avoid displaying or otherwise using material of questionable origin or lacking provenance" as "such displays or usage can be seen to condone and contribute to the illicit trade in cultural property" (4.5). Finally, the ICOM Code of Ethics also requires members to operate according to their legal obligations, including both national and local legislation, (7.1) and the international legislation "that is taken as a standard in interpreting *ICOM Code of Ethics for Museums"* (7.2).

The ongoing changes to these guidelines made by ICOM demonstrates the evolving nature of responses to legal and ethical challenges for museums since the mid-20th century. Alterations to such ethical frameworks are also very influential in determining how the market operates more broadly, which can have both positive and negative effects. For instance, the 2008 policy of the Association of Art Museum Directors (AAMD) introduced what would come to be known as the 1970 provenance threshold. The AAMD 2008 guideline stated that a museum

> normally should not acquire a work unless sold proof exists that the object was outside its country of probable modern discovery before 1970, or was legally exported from its probable country of modern discovery after 1970.[980]

Discussed previously in section 2.1.4.h., the 1970 provenance threshold can be understood as the arbitrary line drawn between "good and legitimate" and "bad and illegitimate" antiquities. In other words, antiquities which are safe and legal to collect and those which should be

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[978] ICOM, "ICOM Code of Ethics for Museums," p. 9.
[979] ICOM, "ICOM Code of Ethics for Museums," pp. 19 – 21.
[980] AAMD, *Report of the AAMD Task Force on the Acquisition of Archaeological Materials and Ancient Art.* New York: Association of Art Museum Directors, 2008.

avoided. The immediate result of these changes in AAMD guidelines was the emergence of the belief that the antiquities market would regulate itself. In the words of Trafficking Culture consortium: "the operation of autoregulation became tied to the AAMD's 1970 threshold, with the market discriminating against antiquities without a pre-1970 provenance."[981] Offering an "opportunity and justification for abbreviated due diligence" for public and private collectors, provenance thresholds of any type ultimately encourage market participants to only acknowledge their legal obligations whilst neglecting their ethical responsibilities.

i. Research involving Indigenous Peoples –

All of the above ancient world studies disciplines have the potential to interact with living Indigenous communities, peoples, societies, and groups. There are also many other fields of research which interact with Indigenous peoples and their ways of living, including *inter alia* their cultural heritages and histories. However, the tradition of studying and publishing research about Indigenous societies has been fraught with unethical academic conduct. To quote the Australian Institute of Aboriginal and Torres Strait Islander Studies' (AIATSIS) *Code of Ethics:*

> For Indigenous peoples, the ongoing experiences of colonisation, theft of lands and resources, disruption to societies and families, and suppression of culture and identity, is a denial of human dignity and respect. When done well, research can, and has, had positive impacts for Indigenous peoples, but research has not been immune to the practices that are imbued with racism, exploitation and disrespect.[982]

Or, as put more directly by Linda Tuhiwai Smith:

> The word itself, 'research', is probably one of the dirtiest words in the indigenous world's vocabulary. When mentioned in many indigenous contexts, it stirs up silence, it conjures bad memories, it raises a smile that is knowing and distrustful. The ways in which scientific research is implicated in the worst excesses of colonialism remains a powerful remembered history for any of the world's colonized peoples. It is a history that still offends the deepest sense of our humanity.[983]

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[981] Mackenzie et al., *Trafficking Culture,* p. 96.
[982] AIATSIS, *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research,* Canberra, 2020. p. 11.
[983] Smith, L. T., *Decolonizing Methodologies. Research and Indigenous Peoples* (2nd ed.). London and New York: Zed Books, 2021. p. 30.

Many existing ethical approaches to conducting research on Indigenous peoples and their culture have been developed using the guiding principles of the United Nations Declaration on the Rights of Indigenous People (UNDRIP).[984]

The legally non-binding declaration, adopted in 2007 by the United Nations, delineates and defines the individual and collective rights of Indigenous peoples.[985] Central to the declaration is the right of Indigenous peoples to self-determination "by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development."[986] The UNDRIP has also been viewed as outlining "Indigenous historical grievances, contemporary challenges and socio-economic, political and cultural aspirations" which have "elevated the pursuit of Aboriginal priorities from localized agendas to global priorities."[987] Whilst the UNDRIP has influenced national and local policy and legislative frameworks for Indigenous peoples in various ways across jurisdictions,[988] one of the relevant considerations here is how the declaration has affected standards of research ethics.

AIATSIS, for example, released their revised *Code of Ethics* in 2020 which was informed by the UNDRIP, and is also consistent with and supports the Australian Code for Responsible Conduct of Research and the National Statement on Ethical Conduct on Human Research.[989] Their influences are observable in the *Code of Ethics'* four underpinning principles: 1. Indigenous self-determination, 2. Indigenous leadership, 3. Sustainability and accountability, and 4. Impact and value. Each principle includes a series of responsibilities related to Aboriginal and Torres Strait Islander research, and at the centre of all four lies the "core ethical value of integrity and acting in the right spirit."[990] The purpose of the AIATSIS *Code of Ethics* is to: promote ethical and responsible practice in Aboriginal and Torres Strait Islander research

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[984] The UNDRIP.

[985] The UNDRIP.

[986] The UNDRIP, p. 5. For a discussion of the legal significance of UNDRIP's enshrinement of the right to self-determination, see: Cambou, D., "The UNDRIP and the legal significance of the right of indigenous peoples to self-determination: a human rights approach with a multidimensional perspective," *The International Journal of Human Rights* 23.1-2 (2019), pp. 34 – 50.

[987] Coates, K., "From aspiration to inspiration: UNDRIP finding deep traction in Indigenous communities," *The Rise of the Fourth World,* 18 September 2013. Accessed 6 March 2021. https://web.archive.org/web/20130923083225/http://www.cigionline.org/blogs/aspiration-inspiration-undrip-finding-deep-traction-indigenous-communities

[988] Gómez Isa, F., "The UNDRIP: an increasingly robust legal parameter," *The International Journal of Human Rights* 23.1-2 (2019), pp. 7 – 21; Lenzerini, F., "Implementation of the UNDRIP around the world: achievements and future perspectives. The outcome of work of the ILA Committee on the Implementation of the Rights of Indigenous Peoples," *The International Journal of Human Rights* 23.1-2 (2019), pp. 51 – 62; and Pulitano, E. (ed.), *Indigenous Rights in the Age of the UN Declaration.* Cambridge: Cambridge University Press, 2012.

[989] *Australian Code for the Responsible Conduct of Research (2018),* and *National Statement on Ethical Conduct in Human Research (2007).*

[990] AIATSIS, *Code of Ethics,* p. 9.

– across all disciplines and methodologies – in Australia; increase the contribution of Indigenous knowledge to Australian research; ensure research has a positive and meaningful impact for Aboriginal and Torres Strait Islander peoples; and continuously improve the quality and standards of research in this area.[991]

Within this framework, Aboriginal and Torres Strait Islander research is broadly defined as:

> all research that impacts on or is of particular significance to Aboriginal and Torres Strait Islander peoples, including the planning, collection, analysis and dissemination of information or knowledge, in any format or medium, which is about, or may affect, Indigenous peoples, either collectively or individually.[992]

Additional support in the undertaking of ethical Aboriginal and Torres Strait Islander research is offered by AIATSIS in the form of a guide for implementing their *Code of Ethics,*[993] and the AIATSIS Research Ethics Committee which is "responsible for reviewing projects involving Aboriginal and Torres Strait Islander research to ensure the appropriate ethical standards have been met."[994]

Outside of Australia,[995] there are ethical frameworks to guide research on other Indigenous peoples, including the First Nations Peoples of Canada,[996] Aoteoroa New Zealand,[997] and the

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[991] AIATSIS, *Code of Ethics.*

[992] AIATSIS, *Code of Ethics,* p. 2.

[993] AIATSIS, *A Guide to applying: The AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research,* Canberra, 2020.

[994] AIATSIS, "Committees". Accessed 13 March 2021. https://aiatsis.gov.au/about/who-we-are/governance-and-structure/committees

[995] In addition to the AIATSIS *Code of Ethics,* there are also these following examples of guidelines for ethical Australian Aboriginal and Torres Strait Islander Research: Davis, M., *Undertaking projects and research in Central Australia: CLC protocols and the development of protocols for projects and research in the CLC region.* Central Land Council, 2005; Janke, T. and Foster, P., "Keeping cultural knowledge and Indigenous research protocols. A case study on the Kimberley land council's intellectual property and traditional knowledge policy," *Indigenous Law Bulletin* 8.18 (2015), pp. 17 – 20; KLC Research, Ethics and Access Committee and KLC Aboriginal Corporation *Intellectual Property and Traditional Knowledge Policy.* Kimberley Land Council. Accessed 18 July 2022. https://static1.squarespace.com/static/59fecece017db2ab70aa1874/t/5ab0a8600e2e72e816fe4288/1521526883405/klc-intellectual-property-and-traditional-knowledge-policy%281%29.pdf ; Orr, M. et al., *Aboriginal Knowledge and Intellectual Property Protocol: Community Guide.* Desert Knowledge Cooperative Research Centre, 2009.

[996] For example, the First Nations Information Governance Centre (FNIGC) maintains the OCAP principles, based on First Nations ownership, control, access, and possession over data. FNIGC, "The First Nations Principles of OCAP". Accessed 13 March 2021. https://fnigc.ca/ocap-training/ . The Assembly of First Nations also offers a guide for conducting ethical research and using Aboriginal Traditional Knowledges. The Assembly of First Nations, "*First Nations Ethics Guide on Research and Aboriginal Traditional Knowledge*". Accessed 13 March 2021. https://www.afn.ca/uploads/files/fn_ethics_guide_on_research_and_atk.pdf

[997] These guidelines include: Hudson, M. et al., *Te Ara Tika. Guidelines for Māori research ethics: A framework for researchers and ethics committee members.* AHRECS, 2010, and Kennedy, V. and Cram, F., "Ethics of Researching with Whānau Collectives," *MAI Review* 3 (2010), pp. 1 – 8.

United States.[998] The need for multiple guidelines – rather than a single, universal ethical code –highlights the diversity of Indigenous peoples and their cultures, spiritualities, laws, lores, beliefs, traditions, languages, and so on. It is necessary then for any individuals or institutions conducting research on, about, or with Indigenous peoples to adhere to the guidelines specific to the peoples subject to the research. All examples of research and Indigenous peoples, however, should involve attempts to decolonise methodologies, which involves recognising that the "pursuit of knowledge is deeply embedded in the multiple layers of imperial and colonial practices."[999] According to Linda Tuhiwai Smith, a Ngāti Awa and Ngāti Porou woman,[1000] a decolonising framework for research methodologies involves more than just a process of deconstruction and challenging the Western paradigm of research and history. Instead,

> it is about centering our [Indigenous] concerns and world views, and then coming to know and understand theory and research from our own perspectives and for our own purposes.[1001]

Conclusion –

Academic practices and conventions reflect the social, cultural, political, and economic contexts in which their associated disciplines emerged. Most fields of ancient world studies developed in relation to the market for antiquities, and vice versa. And both scholarship and the market evolved within the context of imperial invasion and colonial occupation of nations, peoples, and countries which remain the popular objects of study in the 21st century. Recalling the performance of the "golden age" of archaeological discovery discussed in this chapter, this relationship between scholarship, the market, and colonial discourses is not always critically engaged with as it should be. In fact, it is celebrated by some individuals, communities, and institutions as a time which is perceived to have existed before the ethical and legal issues which dominate our disciplinary landscapes in the late 20th and 21st century. Worst still are

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[998] The National Congress of American Indians (NCAI) Policy Research Center launched the *Research that Benefits Native People: A Guide for Tribal Leaders* curriculum in 2009 to "support tribal nations and American Indian and Alaskan Native communities working to develop research oversight processes and policies." NCAI Policy Research Center, "Research that Benefits Native People: A Guide for Tribal Leaders". Accessed 13 March 2021. https://www.ncai.org/policy-research-center/initiatives/research-regulation . See also: The Hopi Tribe, "HCPO Policy and Research: Protcol for Research, Publications and Recordings". Accessed 13 March 2021. https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/hopi_tribe_research.pdf , and Mihesuah, D. A., "Suggested Guidelines for Institutions with Scholars Who Conduct Research on American Indians," *American Indian Culture and Research Journal* 17.3 (1993), pp. 131 – 139.

[999] Smith, *Decolonizing Methodologies,* pp. 31 – 32. For other work on decolonising methodologies and Indigenous research, see: George, L., Tauri, J. and MacDonald, L. T. A. O. T., *Indigenous Research Ethics. Claiming Research Sovereignty Beyond Deficit and the Colonial Legacy.* West Yorkshire: Emerald Publishing Ltd., 2020.

[1000] The University of Waikato/Te Whare Wānanga o Waikato, "Professor Linda Tuhiwai Smith". Accessed 13 March 2021. https://www.waikato.ac.nz/maori/linda-tuhiwai-smith

[1001] Smith, *Decolonizing Methodologies,* p. 89.

academics who operate in ancient world studies and separate their professional practice from such blatant displays of colonialism, without challenging the colonial structures and frameworks that their work remains embedded within.[1002]

If we factor in the rise in the (mis)use and (mis)appropriation of ancient history and its related fields by conservative extremists in recent years,[1003] the situation becomes even more morally charged. To quote Blouin, Bond, and Hanna:

> we, intersectionally minded antiquity scholars, cannot afford to look the other way anymore. It is time for us to occupy the area of public discourse equipped with our scholarly insights more creatively and more loudly.[1004]

As researchers of the ancient world – its peoples, cultures, (hi)stories, and knowledge – it is paramount to engage in the work of decolonising our ways of understanding the past. This is not only a task for those who work in museums or on archaeological excavations, but for every individual and institution that participates in the wider discourse of ancient world studies. Ethical practice can only truly occur if we establish research methodologies which not only abide by our legal obligations, but respond to broader notions of harm. For researchers operating in ancient world studies, this involves reckoning with our complicity in colonial research practices as well as decolonising contemporary methodologies. It is also a challenge to defy creating loopholes in ethic codes and regulatory frameworks, which allow for unethical practice to continue under the illusion of reform. Above all else, it is our responsibility to treat all individuals, communities, groups, and peoples with respect, and to (re)create methodologies which are culturally safe for both the living and deceased.

[1002] Blouin et al., "How Academics […] Benefit from Colonialist Cosplay" and Futo Kennedy "We Condone It by Our Silence".
[1003] Zuckerberg, *Not All Dead White Men*
[1004] Blouin et al., "How Academics […] Benefit from Colonialist Cosplay".

PART 3. RETHINKING ENGAGEMENT WITH AND CONSUMPTION OF THE PAST

A Klee painting named "Angelus Novus" shows an angel looking as though he is about to move away to something he is fixedly contemplating. His eyes are staring, his mouth is open, his wings are spread. This is how one pictures the angel of history. His face turned toward the past. Where we perceive a chain of events, he sees one single catastrophe which keeps piling wreckage upon wreckage and hurls it in front of his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing from Paradise; it has got caught in his wings with such violence that the angel can no longer close them. This storm irresistibly propels him into the future to which his back is turned, while the pile of debris before him grows skyward. This storm is what we call progress. (Walter Benjamin)[1005]

[1005] Benjamin, *Illuminations,* pp. 257 – 258.

3.1. A FRAMEWORK FOR ETHICAL ENGAGEMENT AND CONSUMPTION

> Reckoning with complicity is multifaceted, involving admitting one's embroilment in a society that provides unearned dividends to certain groups of people, and admitting that one operates from within the structures that one critiques. It involves confronting the fact that colonialism creates local problems, not just faraway problems. This more directly implicates the self, begging more urgent questions about what actual personal sacrifice might be needed to address such problems and injustice. (Clare Land)[1006]

Introduction –

The internet has irrevocably changed the ways in which we communicate, form connections, and engage in commerce. As discussed in Chapter 1.3, these changes have shaped the nature of illicit marketplaces. Whilst the claims that globalisation directly corresponds with increasing amounts of criminal activity may be inflated and inaccurate, it cannot be denied that the internet and its role as facilitator of global communication has greatly benefitted criminal organisations and individual criminals. Crime is also occurring online in previously unexpected places. When we think of internet crime, we tend to reference encrypted networks and the Dark Net, but in reality, criminal activity happens on many legitimate websites on the Surface Web. The illicit antiquities market is a clear example with the internet and social media being used as a sales tool, for community building and networking, and for disseminating shared values, behaviours and [mis]information. But these are not the only markets where this activity occurs, nor are they the biggest areas of concern for internet regulators. For example, section 1.3.1.c. introduced that the Surface Web and social media platforms have been associated with the trafficking of humans, narcotics, weapons, and child sexual abuse imagery.

Ultimately, all of this illicit activity occurring online highlights a growing need for better market regulation – both on and offline. However, as we have observed in the examination of the internet markets for antiquities, regulating digital marketplaces is not a straightforward process. Attempts to do so have been found insufficient, and examples of marketplaces which are more stringently regulated – such as narcotics and prohibited weapons – demonstrate that illicit sales continue despite attempts to prevent or intervene. Within this context it is becoming

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[1006] Land, *Decolonizing Solidarity,* p. 247.

increasingly important to self-regulate by making more ethical consumer decisions, ranging from our diets to our wardrobes; from our travel itineraries to our household pets. The 21st century is commonly referred to as both the digital and information age. We have never been able to access so much information so easily before because of the digital technologies that are ubiquitous in our lives. So, while the internet and other new technologies may be making it easier for criminals to conduct their illicit businesses, it is also far easier for us as consumers to educate ourselves and make ethical choices. This "Framework for Ethical Engagement with and Consumption of the Ancient World" seeks to model how this can be achieved amongst 21st century antiquities market participants.

The proposed "Framework" is presented in three parts, beginning with the introduction of the relevant theoretical context. This discussion involves an examination of the ethical and legal foundations of the "Framework", largely influenced by Andrew Ashworth's principles of criminal law combined with new interpretations of harm and complicity.[1007] The purpose of this section is to establish the ethical and legal parameters of the proposed "Framework", which will be applied throughout this and the following chapter. Once this theoretical understanding is established, the next three sections address the guidelines for ethical engagement with and consumption of the ancient world. These are overlapping concepts which codify our modern relationships with antiquity, however, they are treated separately here for clarity. Engagement in this context can be understood as the myriad of ways in which individuals and institutions intersect with the modern and historic market for antiquities. Framed by Baudrillard's semiological theories, consumption in the "Framework" refers to the system of interpretation through which we understand the ancient world. Despite being presented in discrete sections, the suggestions for ethical engagement and consumption are designed to be applied holistically for best practice.

Ethical engagement with the antiquities market is dealt with in the second part of this chapter. After a discussion of the scope for engagement, the "Framework for Ethical Engagement with the Ancient World" will be set out in a series of suggestions targeted towards specific market participants.[1008] These participants include collectors and casual buyers, dealers and casual sellers, governments and local communities, market facilitators, public collecting institutions, collector and dealer associations and communities, and the wider public. Following these

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[1007] Horder, *Ashworth's Principles of Criminal Law.*
[1008] The suggestions for market participants are also presented in schematic form in the Appendix.

targeted guidelines is a broader discussion of alternative collecting practices including the role of 3D-printing and more traditional replica production methods, as well as an argument for supporting contemporary heritage-making through the respectful engagement with living artists and artisans.

The focus then shifts to the subjects of Chapter 2.2, academic institutions and individuals. The guidelines for ethical academic practice are presented as a series of recommendations in three parts: ethical research, publishing and teaching; ethical interactions with the market; and ethical relationships with the past.[1009] These recommendations have not been developed in isolation, however, and the contribution of the Forging Antiquity research team – namely Professor Malcolm Choat, Dr Rachel Yuen-Collingridge, and Richard Bott – must be acknowledged.[1010] Further recognition must be extended to the discussions with contributors and participants from the Markers of Authenticity seminar series and research stream over the past five years.[1011] Collectively, these ongoing dialogues have resulted in the development not only of these guidelines for ethical academic conduct, but in the betterment of my own personal research practice and relationship with the ancient world.

The fourth and final part of this chapter is devoted to the exploration of the ethical consumption of the past. Here and elsewhere throughout this project, the idea of consumption has been influenced by the work of French sociologist and cultural theorist Jean Baudrillard. This section thus starts with an exploration of Baudrillard's work on commodities and consumption in the consumer society.[1012] Rather than presenting suggestions in a series of targeted guidelines like in the previous section, this discussion of ethical consumption involves problematising the contemporary harmful and neocolonial interpretations of antiquity and proposes how this can be addressed.[1013] Whilst the issues and proposed resolutions explored in this section have broader applications, they are especially targeted at colonisers and the beneficiaries of colonialism.

[1009] The guidelines for ethical academic practice are also presented in schematic form in the Appendix.

[1010] Forging Antiquity is a Australian Research Council Discovery Project entitled "Forging Antiquity: Authenticity, forgery and fake papyri." Forging Antiquity, "The website for the Australian Research Council Discovery Project: Forging Antiquity: Authenticity, forgery and fake papyri". Accessed 22 February 2021. http://www.forgingantiquity.com

[1011] Markers of Authenticity is an interdisciplinary research stream run by Professor Malcolm Choat, Dr Rachel Yuen-Collingridge and myself from the Macquarie University Department of Ancient History, and Dr Margie Borschke, a Senior Lecturer in the Department of Media, Music, Communication and Cultural Studies Macquarie University. Markers of Authenticity, "About". Accessed 22 February 2021 https://markersofauthenticity.com

[1012] Jean Baudrillard's ideas on consumption and commodification is explored in his following works: Baudrillard, *Le Système des objets.* and *La Société de consummation.*

[1013] The guidelines for ethical consumption are also presented in schematic form in the Appendix.

1. Ethical and Legal Foundations –

The modern antiquities trade is defined by its lack of transparency. As discussed in Chapter 2.1 antiquities are sold, donated, gifted, researched, and published without verifiable provenance,[1014] which should testify to legal status and authenticity. The question which will be explored in this section – and in the wider presentation of the "Framework" – is whether the actions taken by market participants should be deemed as criminal acts or omissions through the failure to act and/or disclose information to the relevant authorities. This section also addresses the notions of harm and complicity, both within and beyond a legal environment. Complicity with causing harm is a central focus of the "Framework", requiring an overview of what these terms mean in the context of this thesis.

a. Acts vs. Omissions –

The ninth edition of *Ashworth's Principles of Criminal Law* poses the following question: "is there any means of distinguishing acts from omissions?"[1015] Whilst this line of inquiry is central to many legal cases and issues, it is especially relevant if we consider the illicit antiquities market. But first, what are acts and how do they differ to omissions? The common-law definition for criminal acts stems from the Latin term *actus reus* – guilty act. A "guilty act" must be unlawful within a certain legal context, meaning it is something that a defendant lacks permission to do.[1016] Within the context of Ashworth's principles, there are three broader categories of offences. The first two are acts: offences related to the state of affairs (e.g. offences to be "on" designated sites) and offences of possession (e.g. being in possession of controlled substances). The third type of offences are offences of omission which "penalize a person for doing nothing when he or she [or they] should have done something."[1017]

Inside these broader categories of criminal acts are further distinctions and related difficulties. For example, the concept of possession has emerged within the context of drug cases which stem from two propositions. First, is that a person is not in possession of an item that has been planted on their person without their knowledge. Second, if a person is cognisant that an "article or container has come into their control", they are deemed to be in possession of it and its contents "even if mistaken about its contents, unless the thing is of a wholly different nature

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[1014] This convention of the antiquities market has been explored extensively elsewhere. For example: Brodie, "Iraq 1990 – 2004 and the London Antiquities Market," and "The Market in Iraqi Antiquities"; Chippindale and Gill, "Material Consequences of Contemporary Classical Collecting", and Mackenzie et al., *Trafficking Culture.*
[1015] Horder, *Ashworth's Principles,* p. 114.
[1016] Horder, *Ashworth's Principles,* p. 99.
[1017] Horder, *Ashworth's Principles,* p. 109.

from what was believed."[1018] Whilst most laws and legal cases related to possession are concerned with controlled drugs or weapons, these propositions have relevance when discussing the sale, trade, and transfer of ownership of antiquities. The possession of looted or illegally exported antiquities faces criminal charges in most legal jurisdictions, however, there are often exceptions made for "good faith" buyers.[1019]

Questions of what can be deemed an offence of omission are similarly complicated. According to Ashworth's principles, these difficulties stem from two key questions: what is the relationship between an "omission, as a piece of voluntary conduct or behaviour, and an act?" And is it ever justified "to make an omission a criminal offence?"[1020] There have been different responses to these lines of inquiry in the courts and legal theory, including the linguistic or interpretative approach which argues certain verbs imply action and thus exclude liability for omission,[1021] or the categorising of conduct as omission an approach, which "makes liability depend on the recognition of duty."[1022] These approaches, however, still fail to offer clear distinctions between acts and omissions, and thus remain open to interpretation – or manipulation by illicit actors – in different contexts. This reality leads to the belief that "there are many ambiguous cases in which the act-omission distinction should not be used as a cloak for avoiding the moral issues."[1023]

The lack of transparency in the modern and historic antiquities market has been established in Chapter 2.1. Collectors and owners of antiquities are afforded a veil of anonymity with dealers, auction houses, scholars, and other professional individuals and institutions concealing their identities and information about how they acquired the object. These practices resulted in a marketplace where antiquities are routinely offered for sale, or published in research, as "unprovenanced". However, this term can be misleading as it makes the antiquity seem to have come into existence in this state, when in reality this transformation has required the omission of information over time and space. To quote the authors of the *Stealing History* report:

> [w]hen these objects come to market, *someone* knows where they originated, but isn't saying. As far as antiquities are concerned, archaeologically [and legally] important information is

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[1018] Horder, *Ashworth's Principles,* p. 112.
[1019] This convention in national antiquities laws reflects the influence of the 1970 UNESCO Convention. For further discussion, refer to section 2.1.4.
[1020] Horder, *Ashworth's Principles,* p. 112.
[1021] Horder, *Ashworth's Principles,* p. 113.
[1022] Horder, *Ashworth's Principles,* p. 114.
[1023] Horder, *Ashworth's Principles,* p. 114.

being deliberately withheld. A more accurate phrase here would be 'antiquities with an undisclosed provenance'.[1024]

But does this count as an example of an offence of omission?

Neither the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* nor the *1995 UNIDROIT on Stolen or Illegally Exported Objects* refer to charges of omission in their texts.[1025] The *European Convention on Offences Relating to Cultural Property*, however does include its scope "omissions that affect cultural property"[1026]. Also known as the Delphi Convention, the treaty was only signed by six States of the Council of Europe in 1985, none of which ratified its terms into domestic legislation.[1027] However, in 2017 The Council of Europe Convention on Offences relating to Cultural Property was adopted, and remains open for signature of member and non-member states.[1028] This more recent incarnation of the Delphi Convention, aimed at preventing and combating the illicit trafficking of cultural property, does not include omissions related to cultural property in its scope. This lack of offences of omissions is consistent with domestic legislation also. Albanian cultural property law, however, does include offences of omissions, which are mostly related to the failure to declare finds of protected cultural objects or sites.[1029]

However, the "Framework for Ethical Engagement with and Consumption of the Ancient World" is not solely grounded in legal foundations. Much of the problematic conduct of antiquities market participants takes place within "grey" areas: in regulatory loopholes and gaps in legal frameworks.[1030] The audience for these guidelines is thus encouraged to move beyond their legal obligations and consider broader notions of harm (which will be discussed more extensively in section 3.1.1.c.). Within this approach, individuals and institutions should establish best practice based on cooperation with law enforcement and source market

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[1024] Brodie, Doole and Watson, *Stealing History,* p. 26.
[1025] 1970 UNESCO Convention and 1995 UNIDROIT Convention.
[1026] Council of Europe, *European Convention on Offences relating to Cultural Property.* Delphi, 23 May 1985. Art. 2.3.
[1027] Manacorda, S., "Criminal Law Protection of Cultural Heritage: An International Perspective," in S. Manacorda and D. Chappell (eds), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property.* New York: Springer, 2011. pp. 37 – 39.
[1028] Council of Europe, *Council of Europe Convention on Offences relating to Cultural Property.* Nicosia, 19 May 2017.
[1029] For example: Albanian law (*Law No. 27/2018 on Cultural Heritage and Museums)* considers "omission to report the competent bodies in non-compliance with this article [On-site Random finds] consists a violation and the persons responsible are held liable." Art. 146.6.
[1030] For discussion of market greyness, refer back to section 1.3.2.g.

stakeholders, and commit to greater market transparency. Recommendations on how this can be accomplished will be presented in this and the next chapter.

b. Complicity –

The proposed "Framework for Ethical Engagement with and Consumption of the Ancient World" often explores the complicity of market participants in illegal, illicit, and unethical acts. Whilst this term has a distinct legal meaning – offences involving more than one person – its use in the context of this "Framework" is intended to be taken more broadly. This section will thus briefly explore two concepts of complicity: legal complicity and colonial complicity. Both terms have influenced the obligations for market participants and the wider public introduced in the "Framework".

Starting with the legal perspective of complicity, it is worth acknowledging the complex social dynamics at play. Within the framework of criminal law, crimes involving more than one person are regarded more seriously as "[j]oint criminal activity often involves planning and mutually reinforcing determination to offend."[1031] The involvement of more than one person also introduces social pressures from the wider group which influences how individuals may behave. To quote Ashworth's principles:

> [t]he fact that any activity is known by the participants to be group activity will – even if spontaneously undertaken – usually make it difficult for an individual to withdraw for fear of letting others down and losing face. When, more specifically, people act as a group in committing crime, their offending may escalate in nature or broaden in scope as a feature of group dynamics.[1032]

As established in Chapters 1.3 and 2.1, the illicit antiquities market involves the commission of multiple crimes often by different individuals. Whilst some criminal participants may operate at all three stages of the transnational supply chain – source, trafficking and transport, and market – looted or stolen antiquities are traditionally passed through many hands before their final sale.[1033] The question which must be explored in relation to the "Framework for Ethical Engagement with and Consumption of the Ancient World", however, is what can be understood as the "proper scope of criminal liability."[1034] In other words, what is the minimum amount of

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[1031] Horder, *Ashworth's Principles,* p. 452.
[1032] Horder, *Ashworth's Principles,* p. 452. See also: Kumar Katyal, N., "Conspiracy Theory," *Yale Law Journal* 112 (2003), pp. 1307 – 1398.
[1033] For detail concerning trafficking process for looted and stolen antiquities, refer to section 2.1.2.b.
[1034] Horder, *Ashworth's Principles,* p. 453.

involvement which renders an individual as being complicit in a crime committed by somebody else?

Ashworth's principles of criminal law identify three forms of participating in a crime:

1. As a principal. An example for the antiquities market would include an individual who steals an artwork from a museum or illegally loots an artefact from an archaeological site.

2. As an accomplice who "aids, abets, counsels or procures" the offence, or who is "liable as a participant as a joint venture with the principal(s)".[1035] If we consider the modern antiquities market, an accomplice could include a private collector who encourages a dealer to source antiquities which are known to be illegally excavated or exported.

3. As someone who becomes involved in assisting the offender(s) after the crime has been committed, such as helping to conceal the commission of the crime. In the context of the antiquities market this would include a professional restorer who cleans a looted statue to conceal evidence of its illicit acquisition.[1036]

However, there are challenges in distinguishing between these three forms of participation in a crime. Much of this difficulty lies in the distinctions which arise between complicity across different contexts. Corporate complicity, for example, "refers to indirect involvement by companies in human rights abuses – where the actual harm is committed by another party, including governments and non-State actors."[1037] Within this subcategory of complicity there are further distinctions to be made, including the differences between direct complicity (when a state knowingly acts in ways which assist in the violation of human rights), beneficial complicity (occurring when a business passively benefits in some way from the human rights abuses committed by someone else), and silent complicity (involving when companies are present where human rights abuses are occurring, yet they fail to take action to condemn the abuse).[1038]

[1035] UK Public General Act, *Accessories and Abettors Act 1861.*
[1036] Horder, *Ashworth's principles*, p. 454.
[1037] United Nations Human Rights Council, *Protect, Respect and Remedy: a Framework for Business and Human Rights – Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie* UN Doc A/HRC/8/5, 2008. p. 73.
[1038] Daft, S., "Integrating Responses to Violators and Corporate Accomplices: A Role for the Security Council? *New Zealand Journal of Public and International Law* 10 (2012), pp. 200 – 207.

Whilst traditionally discussed in the context of corporate complicity in human rights abuses, it is also worth reflecting on what William Schabas identified as the "complicity cascade", which interrogates how far the scope of complicity can extend.[1039] "How far," Schabas asks,

> can the net be thrown? […] The further we go down the complicity cascade, of course, the more difficult it is to establish the "substantial nature" of any assistance, assuming this to be a requirement for corporate liability.[1040]

This notion of complicity is particularly relevant if we consider the nature of the illicit antiquities trade, which involves the commission of multiple crimes across different legal jurisdictions. As explored in Chapter 2.1, this network of activity also includes a variety of individual and group actors who interact with the market at different stages.

In respect to the modern antiquities market, there is more than one notion of complicity to explore. The first and second parts of this thesis have established the colonial history and neocolonial present of the antiquities trade, and thus it is necessary for market participants who are also beneficiaries of colonialism to acknowledge their complicity with colonialism. The challenge of reckoning with complicity is reserved to its own chapter in Clare Land's *Decolonizing Solidarity,* in which she examines this key element in the "politics of solidarity".[1041] Here the non-Indigenous reader is presented with a paradox: we must always face the challenge of confronting our complicity with colonialism whilst operating within colonial systems.

According to Land, this process begins

> with being aware of complicity and for many involves dealing with discomfort about that. The challenge is to admit it, to resist it, to undo it, yet also see how it provides us with opportunities to resists the workings of colonialism.[1042]

Complicity, however, is inescapable for non-Indigenous people living on stolen land, and this contradiction must be "factored in and reflected upon continuously."[1043] Non-Indigenous people

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[1039] Schabas, W., "Enforcing International Humanitarian Law: Catching the Accomplices," *International Review of the Red Cross* 83 (2001), pp. 439 – 459.
[1040] Schabas, "Enforcing International Humanitarian Law," p. 451.
[1041] Land, *Decolonising Solidarity,* p. 229.
[1042] Land, *Decolonising Solidarity,* p. 229. See also Barker, A., "From adversaries to allies: Forging respectful alliances between Indigenous and settler peoples," in L. Davis (ed.), *Alliances: Re/envisioning Indigenous–non-Indigenous Relationships.* Toronto: University of Toronto Press, 2010. pp. 316 – 333, and Keefer, T., "The politics of solidarity: Six Nations, leadership, and the settler left," *Upping the Anti,* 4 May 2009.
[1043] Land, *Decolonising Solidarity,* p. 229. See also: Thornton, R., "Repatriation as healing the wounds of the trauma of history: Cases of Native Americans in the United States of America," in C. Fforde, J. Hubert and P. Turnbull (eds), *The Dead and Their Possessions: Repatriation in Principle, Policy and Practice.* New York: Routledge, 2002. pp. 17 – 24.

are required to ask themselves how the shape of their lives maintain and reproduce colonial systems, and whether it reflects "the acknowledgement of sovereignty and or/the dismantling of privilege?"[1044]

Land situates this challenge within "work sites" for non-Indigenous people, which also includes undertaking critical self-reflection, committing to public action, and doing "personal-material work: to change the shape of our lives."[1045] Whilst this work is necessary for all non-Indigenous people, it is particularly urgent for antiquities market participants, who have long benefitted from colonial systems. These tasks for reckoning with complicity and engaging in a politics of solidarity is central in the "Framework for Ethical Engagement with and Consumption of the Ancient World". Land's approach also informs the modelled application of the "Framework" to the Australian settler-colonial context presented in Chapter 3.2.

c. Harm –

Throughout this thesis the idea of harm has been a recurrent theme. Harm has been discussed in relation to the experience of colonised peoples and their descendent communities, and also in association with antiquities themselves. It is necessary, then, to establish what is meant by harm in this context before introducing the "Framework for Ethical Engagement with and Consumption of the Ancient World". The overall aim of criminal law is to prevent "certain kinds of behaviour that society regards as either harmful or potentially harmful."[1046] Such behaviours which require sanction under criminal law include the use of force, coercion, exploitation or domination that threatens an individual's autonomy.[1047] The scope of criminal law, however, is not limited to protecting people but also has a role to play in safekeeping "public" or "common goods", defined by Joseph Raz as referring

> not to the sum of the good of individuals, but to those goods, which, in a certain community, serve the interests of people generally in a conflict-free, non-exclusive, and non-excludable way.[1048]

[1044] Land, *Decolonising Solidarity,* p. 232.
[1045] Land, *Decolonising Solidarity,* p. 233.
[1046] Findlay, M., Odgers, S. and Yeo, S., *Australian Criminal Justice.* Docklands, VIC: Oxford University Press ANZ, 2010. p. 2
[1047] Horder, *Ashworth's principles,* p. 50.
[1048] Raz, J., *Ethics in the Public Domain: Essays in the Morality of Law and Politics.* Oxford: Oxford University Press, 1994. p. 52.

Criminal law is thus used by individuals in a society to defend themselves and each other against harms which violate their shared interests and values "that are considered fundamental to its proper functioning."[1049] However, notions of what constitutes harm are not static across time and space, and it is always the responsibility of lawmakers to determine if an interest or value is so fundamental that it requires protection enshrined in criminal law.[1050] These obligations are compounded further by what Mark Findlay, Stephen Odgers, and Stanley Yeo identify as three key factors. First, that there are interests or values which are crucial to the functioning of society which may be incompatible with the threat of criminal sanctions. Second, that criminal law is not the only method of social control. And third, that the primary aim of criminal law is "blurred by its increased use of the criminal law to regulate conduct for reasons of economy and expediency."[1051]

Further, there is always a competing dynamic at the centre of the criminalisation debate: whether the needs of the community outweigh an individual's right to autonomy. The individual autonomy approach, also known as the "harm to others approach" is a product of individualistic liberalism which "places individual autonomy at a premium."[1052] The community welfare approach, on the other hand, justifies using criminal law to "protect the continued physical well-being of members of the community", as well as potential related economic impacts to the community.[1053] The need to balance the right of individual autonomy with community welfare is so fundamental that it is articulated in the Universal Declaration of Human Rights:

> In the exercise of his rights and freedoms, everyone shall be subject only to such limitations are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.[1054]

Criminal law is therefore influenced by and beholden to these two competing principles in its overall aim of preventing harm. But what does it mean to cause harm? In his famous philosophical essay on the relationship between authority and liberty,[1055] John Stuart Mill proposed that

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[1049] Findlay et al., *Australian Criminal Justice* p. 2.
[1050] Findlay et al., *Australian Criminal Justice,* p. 2.
[1051] Findlay et al., *Australian Criminal Justice,* p. 3.
[1052] Findlay et al., *Australian Criminal Justice,* p. 3.
[1053] Findlay et al., *Australian Criminal Justice,* p. 4.
[1054] UN General Assembly, *Universal Declaration of Human Rights.* Paris, 10 December 1948. Art. 29.2.
[1055] Mill, J. S., *On Liberty.* London: John W. Parker and Son, 1859.

the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.[1056]

This principle, commonly known as the Harm Principle, has long been used in discussions of ethics and moral philosophy, criminalisation and law-making processes, as well as being a tenet of contemporary libertarianism.[1057] Its use, however, is not without controversy, with scholars and commentators seeking to reconcile the limitations of Mill's principle and its applications to civic society. For example, that the "precise content and implications of the principle are in many ways unclear".[1058] The Harm Principle also fails to distinguish between "self-regarding conduct, which is not liable to interference, and other-regarding conduct, which is."[1059] Mill is also perceived as contradicting his own principle of harm through his commitment to the contradictory beliefs of utilitarianism.[1060]

Despite these critiques, there are supporters of the Harm Principle who value its dedication to individual liberty and toleration – two core tenets of liberalism.[1061] Legal scholar, Joel Feinberg, for instance, highlights the permissive act aspect of the Harm Principle and argues that

> it is always a good reason in support of penal legislation that it would probably be effective in preventing (eliminating, reducing) harm to persons other than the actor and there is probably no other means that is equally effective at no greater cost of the other values.[1062]

Within Feinberg's approach, however, there is not an obligation for penal legislation to be used even if the conditions put forward are met.[1063] Similarly, John Gardner argues that true strength of the Harm Principle is its ability to "regulate achievement as well as endeavour" and to act "as a constraint on legislators".[1064] The law, Gardner says,

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[1056] Mill, J. S., *On Liberty*. Kitchener, Ontario: Batoche Books, 2001. p. 13.

[1057] For discussion of Mill and libertarian philosophy, see Capaldi, N., "The Libertarian Philosophy of John Stuart Mill," *Reason Papers* 9 (1983), pp. 3 – 19, and Marwah, I. S., *Liberalism, Diversity and Domination*. Cambridge, MA: Cambridge University Press, 2020.

[1058] Holtug, N., "The Harm Principle," *Ethical Theory and Moral Practice* 5.4 (2002), p. 358.

[1059] Saunders, B., "Reformulating Mill's Harm Principle," *Mind* 125.500 (2016), p. 1005.

[1060] Holtug, "The Harm Principle," pp. 380 – 382. See also: Crisp, R., *Mill on Utilitarianism*. London: Routledge, 1997.

[1061] Such advocates for The Harm Principle and its place in the liberal tradition include legal philosopher H. L. A. Hart (Hart, H. L. A., *Law, Liberty and Morality*. Stanford: Stanford University Press, 1963), political and legal philosopher Joel Feinberg (Feinberg, J., *Harm to Others*. Oxford: Oxford University Press, 1984), and Joseph Raz, a legal, moral, and political philosopher (Raz, J., *The Morality of Freedom*. Oxford: Clarendon Press, 1986).

[1062] Feinberg, J., *Harm to Self: The Moral Limits of the Criminal Law*. New York: Oxford University Press USA, 1989. p. 26.

[1063] Horder, *Ashworth's Principles,* p. 71.

[1064] Gardner, J., "Review: Douglas Husak, *Overcriminalization: The Limits of the Criminal Law,* Oxford University Press, 2008, 231 pp., $49.95 (hbk), ISBN 9780195328714," *Notre Dame Philosophical Review* 3 (2008). Accessed 2 February 2021. https://ndpr.nd.edu/news/overcriminalization-the-limits-of-the-criminal-law/

must actually prevent the harm that it is intended to prevent, and must, moreover, do so in a way that is proportionate to the harm actually prevented.[1065]

These ideas of harm, however, are drawn from Western legal frameworks and thus may not adequately address all peoples' definitions of harm. It is not my role or right, as a beneficiary of colonialism, to determine what may or may not be harmful in the context of the "Framework for Ethical Engagement with and Consumption of the Ancient World". Instead, the application of the guidelines which follow in this chapter and the next chapter are reliant on listening to and working in partnership with the various individuals, groups, peoples, and nations who have been affected by the contemporary and historic trade of antiquities. This level of respect is extended to the deceased also, although, admittedly it is not always a straightforward undertaking to interpret the beliefs of past peoples. Regardless, efforts should always be made to respectfully engage with the living and, when possible, the texts of the deceased to determine practice and behaviours which do not cause further harm to those affected by cultural trafficking and destruction.

d. Green Criminology and Broader Ideas of Harm –

Ethical engagement with and consumption of the past requires embracing a broader idea of harm than what has been traditionally accepted in criminal law. The theoretical approach to environmental crime known as green criminology seeks to re-define crime beyond traditional ideas of law-breaking, and instead extends the scope of criminology wider to consider acts of crime that are not encapsulated by the law. In its broadest sense, green criminology addresses the issues of environmental harms from criminological perspectives, or the application of criminological thought to environmental issues. Such an approach is necessary when considering forms of crime that harm both people and the environment, as "[g]reen crimes cause both direct and indirect forms of harm, the former of which affect the ecosystem and the latter a consequence of direct harms."[1066] It also involves shifting from traditional ideas of law-breaking constrained by strict legal restrictions, and, instead, acknowledging that "crime" is a social construct that does not remain static across time or space.[1067]

[1065] Gardner, "Review: Douglas Husak".
[1066] Lynch and Stretesky, "Green Criminology," p. 1.
[1067] Potter, "Justifying 'Green' Criminology" and South, "Green Criminology".

This alternative approach to environmental crimes was originally introduced by criminologist Michael Lynch in 1990,[1068] and was subsequently expanded upon in Lynch and Nancy Frank's book published in 1992, *Corporate Crime, Corporate Violence.*[1069] Early practitioners of the theory worked on the foundations of existing research that identified the intersection between crime and environmental concerns. These past studies highlighted the concerns embodied by green criminology and were pioneers in exploring "dimensions of environmental damage, crime and victimisation" within an interdisciplinary framework.[1070] According to Nigel South, what this existing corpus of scholarship indicated to the field was a clear "fit" between green issues and criminological concerns, and once established, "[t]he next step was to encourage development of a more rigorously environmentally-engaged agenda and set of methods and theories."[1071]

Since its introduction, the existing body of green criminological research has developed into multiple areas of study dedicated to the "relationship between the natural environment, or ecology, crime, and justice."[1072] The movement has generally been more influential and successful in contexts where political will and environmental consciousness align with the scope and practice of green criminology.[1073] Whilst designed to respond to environmental harm, green criminology has much to offer the consideration of ethical engagement with the modern antiquities market. First and foremost, a framework designed within this approach requires participants to not just consider what is legal and legitimate, but what is ethical and harmful. This overcomes the current limitations of ethical approaches to the modern antiquities market, namely the tendency to only prohibit the buying and selling of antiquities that entered the market after the 1970 UNESCO Convention. By focusing on what is harmful rather than what is explicitly illegal, antiquities that were acquired during periods of colonial invasion and earlier conflicts are just as unethical as those that were looted yesterday.

[1068] Lynch, M. J., "The Greening of Criminology: A Perspective for the 1990s," *Critical Criminologist* 2.3 (1990), pp. 3 – 12.

[1069] Frank, N. and Lynch, M. J., *Corporate Crime, Corporate Violence*. Albany, NY: Harrow and Heston, 1992.

[1070] South, N. J., "A Green Field for Criminology? A Proposal for a Perspective," *Theoretical Criminology* 2.2 (1998), p. 214.

[1071] South, "Green Criminology: Reflections, Connections, Horizons," p. 6

[1072] Lynch and Stretesky, "Green Criminology", p. 1.

[1073] Lynch and Stretesky, "Green Criminology", p. 1.

2. (Re)Defining Engagement –

e. Scope for Engagement –

This section establishes the scope for engagement within the proposed "Framework" by answering two key questions: what constitutes as engagement with, and who engages with the antiquities market? In other words, who are the target audiences for these guidelines? As introduced earlier, there is overlap between these guidelines and the discussion on the ethical consumption of the past. The antiquities market, after all, is the direct product of the commodification of the ancient world. Therefore, anyone who intersects with the modern and historic trade of antiquities can be viewed as a consumer of antiquity. The distinction between engagement with and consumption of lies within the broader purview of practices of commodifying the past. These practices include producing or consuming media or objects which are inspired or influenced by intangible heritage in the form of beliefs, values, practices, and traditions from the ancient world.

Engagement, then, in this context can be understood as the shared practices and behaviours maintained by individuals, groups, and institutions which intersect with the market for antiquities at any stage. This can range from these traditional market participants – collectors and dealers, collecting institutions and researchers of antiquity, restorers and heritage professionals, looters and traffickers – to the wider public who may interact with antiquities if only when attending museum exhibitions, or viewing documentaries depicting ancient sites and objects. The trade of antiquities is a global phenomenon which has occurred across time and space and thus involves the participation of individuals, groups, and institutions across the world. However, given that much of the demand for antiquities and associated problematic market values and behaviours are products of colonialism – as explored in Parts 1 and 2 – former colonial powers and settler colonies are of particular significance when determining the scope of these guidelines.

In her exploration of colonial solidarity with Indigenous struggles, Clare Land problematises the socio-political alliances between middle-class settler activists and First Nations peoples in Australia.[1074] As part of her valuable and practical suggestions for those undertaking Indigenous activism and scholarship, Land highlights the "necessity with reckoning with complicity." Part of this challenge is for colonisers and beneficiaries of colonialism is in reconstructing their/our interests and engaging with a project of

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[1074] Land, *Decolonising Solidarity.*

> reckoning with privilege, reckoning with being on the land of certain Aboriginal people. It is
> about reckoning the knowing that being there was enabled by their dispossession and
> displacement – or even extermination – and is enabled still by everything that keeps things that
> way.[1075]

If we extend Land's arguments beyond Australians who live on the traditional country of dispossessed and displaced First Nations peoples, we can frame the need to decolonise collections of sacred objects and human remains within this project of reckoning with complicity. Colonial collections are an issue for colonisers. Whilst First Nations peoples are the rightful owners of objects acquired during colonial periods, it is not their responsibility to educate non-Indigenous audiences about their ethical responsibilities when engaging in the modern antiquities market. It is the work of colonisers and the beneficiaries of colonialism to critically reflect on their own collecting attitudes and practises, and examine existing collections in order to decolonise them and move toward a more ethical engagement with the past.

f. Guidelines for Ethical Engagement –

The following guidelines for ethical engagement are presented in distinct sections targeted at the various stakeholders and market participants identified in the scope for engagement. These targeted suggestions, however, are preceded by a series of general principles which have a two-fold purpose: first, to provide a foundation for the guidelines, and second, to serve as generalised advice be adopted by any individual, group, or institution who engages in the modern antiquities market. These general principles are founded in the Markers of Authenticity ethics framework drafted by Rachel Yuen-Collingridge, Malcolm Choat, Richard Bott, and myself.[1076]

f. i. General principles –

The first principle which guides the "Framework for Ethical Engagement with and Consumption of the Ancient World" is the respect of the self-determination of others, which includes both living and past communities, peoples, individuals, and nations. Self-determination is one of the fundamental tenets of international law, codified in two international covenants on civil, political, economic, social and cultural rights. Article 1 of these covenants states:

[1075] Land, *Decolonising Solidarity,* p. 230
[1076] Yuen-Collingridge, R. et al., "Towards an Ethical Framework for Ancient World Studies," *Markers of Authenticity.* Accessed 14 January 2021. https://markersofauthenticity.com/ethics/

> All peoples have the right to self-determination. By virtue of that right they may freely determine their political status and freely pursue their economic, social and cultural development.[1077]

However, there are difficulties in the universal application of this definition. For example, there is an incompatibility between this definition and considerations of the rights of the dead. This issue is of particular relevance to this "Framework", which is concerned with ethical relationships with the ancient world and deceased peoples. Further, in the context of the rights of Indigenous peoples there are questions as to whether Indigenous groups constitute as "peoples" and whether self-determination can coincide within an existing, colonial nation.[1078] Thus, the "Framework for Ethical Engagement with and Consumption of the Ancient World" is based on a wider definition of self-determination which includes peoples, individuals, and nations, whether they are living or deceased.

The "Framework" is also founded on the recognition of other modes of knowledge and ways of understanding the past, particularly those of all relevant stakeholders. These knowledges and understandings should be sought out and valued by antiquities market participants, as well as the wider public. When possible, engaging in these knowledges should take place in dialogue and collaboration with those stakeholders. However, it must be recognised that collaborating and maintaining dialogue with Indigenous groups and individuals can be a fraught process for a number of reasons. For example, these dialogues and partnerships almost always take place in the context of power imbalances between Indigenous and non-Indigenous groups, which face the risk of reproducing "colonizing dynamics".[1079] There is also a tendency of supporters of to address "difference" in harmful ways which reinforce imperialist relationships with First Nations individuals and groups, such as negating differences or fetishising the "other" as something strange and exotic "to know".[1080]

[1077] UN General Assembly, *International Covenant on Civil and Political Rights.* New York, 1954 and *International Covenant on Economic, Social and Cultural Rights.* New York, 1954.

[1078] See: Bradley, J. and Seton, K., "Self-determination or "Deep Colonising": land claims, colonial authority and indigenous representation," in B. Hocking (ed.), *Unfinished Constitutional Business? Rethinking Indigenous Self-Determination.* Canberra: Aboriginal Studies Press, 2005. pp. 32 – 46.

[1079] Land, *Decolonizing Solidarity,* p. 115. See also: Bell, A., "Recognition or ethics? De/centering and the legacy of settler colonialism," *Cultural Studies* 22.6 (2008), pp. 850 – 869, and Wallace, R., *Merging Fires: Grassroots Peacebuilding between Indigenous and Non-Indigenous Peoples in Canberra.* Winnipeg, MAN Fernwood Publishing, 2013.

[1080] Land, *Decolonizing Solidarity,* p. 120. See also Gandhi, L., *Affective Communities: Anticolonial Thought, Fin-de-sièle Radicalism, and the Politics of Friendship.* Durham, NC: Duke University Press, 2006; Lugones, M., "Playfulness, 'world'-travelling, and loving perception," *Hypatia* 2.2 (1987), pp. 3 – 19, and Jones, A. and Jenkins,

In order to forge "non-imperalistic understanding between people",[1081] it is necessary to learn about difference "from the Other" rather than "learning about the other."[1082] Just as non-Indigenous people are varied in their motivations for establishing dialogue and collaborations, Indigenous peoples, in their diversity, may take different approaches in managing relationships with supporters."[1083] For these reasons, Land argues that

> [n]o matter what the form or function of the relationships, attentiveness to notions of representation, voice, difference, dialogue and power is key to reflective practice. It is important to consider a variety of perspectives on collaboration, dialogue and difference in order to foreground the contradictions inherent in collaboration and dialogue across difference.[1084]

Building on this current point, these guidelines are founded in the belief that all individuals and institutions which interact with antiquity must contribute positively and meaningfully to the wellbeing of living and past communities, peoples, individuals, and nations.

Finally, these guidelines acknowledge that best practice should always be determined by broader notions of harm, rather than legality. This principle reflects back on the discussion of harm in the previous section and draws attention to the historic crimes and injustices which are the backdrop to the modern antiquities trade. Market participants must therefore move beyond considering only their legal requirements but instead develop practices based on broader ethical obligations to the past.

f. ii. Collectors and Casual Buyers –
Antiquities collectors are the drivers of market demand and – whilst varied in their individual motivations, collecting habits, and approach to ethics – are generally united in their desire to "own" the past. Self-aware collectors often identify themselves as having a compulsion to increase the size of their antiquities collections and are known, like collectors of anything, to form deep emotional connections with the objects they desire. Within this broader category of "collector" there are several subcategories to consider: private, individual collectors who may or may not be affiliated with collecting institutions; public collecting institutions like museums or teaching collections; and antiquities dealers who also form their own personal collections. Both individuals and institutions must take responsibility for educating themselves about the

K., "Rethinking collaboration: Working the Indigene-colonizer hyphen," in N. K. Denzin, Y. S. Lincoln and L. T. Smith (eds), *Handbook of Critical and Indigenous Methodologies.* Los Angeles, Sage. pp. 471 – 486.
[1081] Lugones, "Playfulness," p. 11
[1082] Jones and Jenkins, "Rethinking collaboration," p. 471.
[1083] Land, *Decolonizing Solidarity,* p. 116.
[1084] Land, *Decolonizing Solidarity,* p. 116.

nature of the market they are engaging in and acknowledge that their demand for antiquities is a driver of criminal and unethical activities. They must interrogate the shared denial narratives used by collectors and dealers to neutralise their proximity to contemporary and historic crime.

There are also the buyers of antiquities who may not necessarily identify as collectors; the far more casual consumers of cultural objects. This group of buyers is particularly important in the development of educational campaigns designed for improving normative behaviour and values for a couple of reasons. First, they are new to the market and may lack awareness of their legal and ethical obligations when participating in the modern trade in antiquities. And second, as they are new and likely casual market participants, they may not have the same entrenched system of values and behaviours as the collectors discussed above.

Collectors and casual buyers of antiquities have an important role to play in changing values and behaviours in the modern antiquities market. In the context of the 1993 agreement between Mali and the United States,[1085] the Malian Government stated that it "regards "good collectors" and public-trust museums as natural partners in its goal of sharing those artistic and cultural glories with the world."[1086] Responding to this statement, Roderick McIntosh, Téréba Togola and Susan Keech McIntosh considered what constituted a "good collector". In their 1995 article they identify seven characteristics which are a response to the ethical and legal issues with the African art market. The "Good Collector", the authors argue,

> will actively demonstrate a willingness to join with like-minded collectors to self-police the art market. As a necessary part of this action, they will wrest the dialogue about the ethics of collecting and about relations of source and market nations from the trafficking syndicates and their apologists, where that dialogue about essential ethics is presently lodged.[1087]

Following this logic, the ethical antiquities collector should avoid purchasing antiquities that meet any of the following criteria:

[1085] The 1993 is a bilateral agreement between the Republic of Mali and the United States concerning import restrictions on a wide range of antiquities and archaeological material from the Niger River and the Bandiagara region of Mali. It was first enacted as an emergency action in response to the systematic looting in Mali's upper Inland Delta and Méma, and then formalised in 1997. Since then the agreement has been extended in 2002, 2007, 2012 and 2017. *U.S.-Mali Cultural Property Agreement, Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger Valley and the Bandiagara Enscarpment (Cliff) 1997.*

[1086] McIntosh, R., Togola, T., and Keen McIntosh, S., "The Good Collector and the Premise of Mutual Respect among Nations," *African Arts* 28.4 (1995), p. 60.

[1087] McIntosh, Togola and Keen McIntosh, "The Good Collector," p. 60.

(a) a lack of verifiable export documents from the country of origin,

(b) can be identified as a type of cultural object which has been deemed at risk of looting and trafficking according to an ICOM Red List of Cultural Objects at Risk,[1088]

(c) can be identified as a cultural object which has been stolen from an archaeological, heritage site, museum, or art gallery according to the INTERPOL Stolen Works of Art Database, [1089]

(d) can be identified as a cultural object which has been stolen or a type of cultural object which has been deemed at risk of looting and trafficking according to the country of origin or descendant community of origin,

(e) or can be sourced to an archaeological context associated with significant levels of organised looting, including both modern- and colonial-era looting.

Collectors and buyers with existing collections of antiquities should endeavour to establish their ethical status. This process can involve consulting the aforementioned databases including the INTERPOL Stolen Works of Art Database, the ICOM Red Lists of Cultural Objects at Risk, and similar resources from the source countries that the antiquities are believed to originate from. Ideally, direct communication between the collector and relevant government body of the source nation, or representative from a descendant community, should occur to eliminate any ethical concerns that may not be identifiable on such databases. If looted antiquities are identified during this process, collectors must offer to return the cultural objects to the rightful owners, the source country or descendant community.[1090] These guidelines apply to both private and public collectors.

f. iii. Dealers and Casual Sellers –

All of the ethical guidelines outlined for antiquities collectors and buyers can also inform ethical dealing and selling practices. Thus, the ethical antiquities dealer should also avoid purchasing and selling antiquities which meet the same criteria identified above. As many dealers are also collectors, these participants should also endeavour to examine their existing collections to identify illegal and unethical antiquities. All antiquities within existing collections

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[1088] ICOM, "Red Lists Database". Accessed 14 January 2021. https://icom.museum/en/activities/heritage-protection/red-lists/

[1089] INTERPOL, "Stolen Works of Art Database". Accessed 14 January 2021. https://www.interpol.int/en/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database

[1090] Noting the issues discussed in section 1.2.4., any attempts to repatriate looted or unethically acquired cultural objects should be done in partnership with source and descendant communities.

should be cross-referenced against the resources suggested in section 3.1.2.f.ii. Further, as antiquities market professionals, dealers and sellers should set the benchmark for transparent and open communication with source countries and descendant communities.

Antiquities dealers must also communicate their personal and professional ethics to buyers and potential buyers. Many established antiquities dealers already do so, using their own websites or pages on selling platforms to outline their market values and practices. It is not a universal practice, however, and sales hosting websites do not require sellers of cultural objects to communicate their understanding of ethics or even the relevant legal contexts to buyers and potential buyers. Whilst this should to become an industry standard, more importantly, dealers must be held accountable for matching their words with their actions. If dealers are claiming to only trade in legal antiquities, they should be explicitly demonstrating these ethics by selling only antiquities that meet the criteria proposed above. Anything less shows a dissonance between their perceived legal awareness and the ethics of their business.

Whilst professional dealers and casual sellers of antiquities need to conduct their businesses ethically and within the relevant legal frameworks, they are also responsible for communicating information to their buyers and potential buyers. Antiquities dealers occupy a unique position in the market through their often-intimate relationships with collectors. They are thus presented with certain responsibilities to ensure that when they transfer ownership of antiquities that they are also transferring certain values and best collecting practices to their buyers. For internet antiquities market dealers in particular there are a number of ways in which this communication of values and behaviours can and should take place.

First, through the explicit discussion of the ethical and legal issues related to engaging with the modern antiquities market, including an acknowledgement of the market's proximity to crime, conflict, and colonialism. Second, by assuming a transparent approach to provenance information including providing detailed provenance that focuses on the movement of the object and export documents rather than the "quality" of collector who has previously owned the antiquity. This could include statements about when there are periods of time unaccounted for in the antiquity's sales record. By problematising provenance, antiquities dealers will be communicating to buyers and prospective buyers that this market mechanism is not infallible and that it is exceptionally difficult to identify "legitimate" antiquities. Finally, as a bare minimum standard of all antiquities dealers it should be necessary for them to include the proposed disclaimer in the UNESCO/ICOM/INTERPOL 2006 "Recommendations":

> *"With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: i) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported; ii) request evidence of the seller's legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM".[1091]*

This disclaimer should be presented for sale with all antiquities, without exception.

f. iv. Market Facilitators –

In this context, antiquities market facilitators encompass a broad and diverse group which facilitates the trade of antiquities in multiple ways. Market facilitation involves providing a platform for buying and selling antiquities, and encouraging market demand explicitly or otherwise. The former category includes the online sales hosting platforms and social media, and auction houses, who nowadays widely embrace an internet presence as well as traditional brick-and-mortar locations. These businesses directly support the buying and selling of antiquities, and historically this has involved being complicit with criminal activity. Sales hosting platforms should therefore adopt their own internal ethical guidelines in addition to abiding by the relevant legal requirements, and must communicate these guidelines explicitly to users and potential users. The criteria outlined in section 3.1.2.f.ii. should be considered the benchmark for all antiquities traded through these selling platforms. Furthermore, a philosophy of transparency and open communication with source countries and law enforcement agencies should also be the norm for all sales hosting platforms when potentially illicit antiquities are identified.

Websites and social media platforms which enable the buying and selling of antiquities also have a responsibility to communicate the relevant legal and ethical issues associated with the illicit antiquities trade. Whilst some of these sales hosting platforms do already have specific user guidelines in place to communicate this information to an extent, these messages are not consistent across the internet market or even within one business. For example, the wording of what can and cannot be sold in relation to cultural objects vary from country-to-country in eBay user guidelines. This can be connected to local legal contexts, however, what could be more consistent across eBay would be the display of these internal policies. The United Kingdom division of eBay offers a pop-up function when buyers are viewing cultural objects offered for

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[1091] INTERPOL, UNESCO, and ICOM, "Basic actions".

sale, alerting them to the legal conditions of such sales. This feature does not exist elsewhere and could be replicated in all countries where antiquities can be purchased from eBay. These proposed actions would meet the bare minimum of responsibility on behalf of sales hosting websites. For further commitment to helping combat the illicit trade of antiquities websites which allow the sale of cultural objects should consider consulting with hiring heritage experts when designing software which monitors sales pages.

The second category of market facilitators is a trickier group to define. Broadly speaking these individuals and institutions contribute to market demand in explicit and implicit ways. The former category includes antiquities dealer communities and associations who promote the passion and private right of antiquities ownerships. It also includes the group of market facilitators identified in section 2.1.2.d. These market actors are professionals who either enhance the value of the antiquity through their actions or expertise (for example professional restorers and academics) or protect the buyer from legal threats (for example lawyers and insurers).[1092] However, in terms of implicit influence on the market, it can be argued that any public engagement with the ancient world could be seen as influencing market demand. Engagement in this context would include the study, display, and publication of an antiquity in any context (outside of highlighting the illicit nature of the antiquities market). Admittedly, this idea is a controversial one that may not sit well with the community of museum professionals and academics.

f. v. Collecting Institutions –
Similar to the role academics perform in the antiquities market discussed in Chapter 2.2, collecting institutions play a significant role in the creation of value. According to Howard Morphy and Robyn McKenzie

> [t[he potential significance of an object changes over time with the accumulation of evidence about it – through archival research, formal analysis, scientific analysis and additional information provided by museum visitors. Methods of analysis and changing understanding of the significance of the object can transform its value over time.[1093]

In other words, through the acquisition, research and display of antiquities, museums are contributing to their sociocultural position in the modern world and the ways in which we

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[1092] Mackenzie et al., *Trafficking Culture*, pp. 16 – 17.
[1093] Morphy, E. and McKenzie, R., *Museums, Societies and the Creation of Value.* New York and London: Routledge, 2021. p. 3.

interpret the past. If we accept that collecting institutions are inherently colonial institutions,[1094] the acquisition, research and display of antiquities by modern museums can be viewed as the reinforcement of (neo)colonial value systems.

Thus museums, more than any other stakeholder, should be setting a benchmark for ethical practice and education the world about the realities of the antiquities market, and the impacts of illicit antiquities trafficking and colonial-era looting. Unfortunately, this has not been the case thus far and many collecting institutions, both public and private, have been embroiled in scandals involving the acquisition of antiquities from known illicit sources. These controversies have resulted in a change in expectations from museum-goers and the wider public. To quote Dan Hicks, "today people want to know where the culture they consume comes from – how it got here, and whether anybody is asking for it back."[1095]

Whilst many institutions have responded to public pressure and changing values with the development of more ethical and transparent acquisition policies, recent research conducted by Erin Thompson and Mackenzie Priest has highlighted accountability issues with modern museums.[1096] Their study involved assessing the levels of compliance in US museums against the American Alliance of Museums (AAM) 2008 guidelines. The AAM guidelines require three main actions from their member museums, including: a publicly available collections policy, transparency about new acquisitions, and making the ownership history of archaeological material and ancient art available to the public regardless of acquisition date.[1097] Using a dataset of 67 museums with antiquities in their collections, Thompson and Priest identified a number of compliance failures when compared with these guidelines.

> None of the 67 museums were willing or able to give us complete provenance information for
> all the antiquities in their collections. Only 15 museums offered to provide known provenance

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[1094] This argument was made throughout chapters 1.1 and 1.2, but especially at section 1.2.4.

[1095] Hicks, D., "If the Queen has nothing to hide, she should tell us what artefact she owns." *The Guardian,* 31 March 2021. Accessed 6 May 2021. https://www.theguardian.com/commentisfree/2021/mar/31/queen-artefacts-royal-family-looted-law-cultural-heritage?fbclid=IwAR1cjI0l0ndDYIsayhZe5O08OP7kubWXqBEyLQf2UKT2v78GX8LpoTevwuA

[1096] Thompson, E. L. and Priest, M., "The Lax Compliance of Museums with AAM Guidelines for Ancient Art," *Hyperallergic,* 28 March 2021. Accessed 21 June 2021. https://hyperallergic.com/631776/the-lax-compliance-of-museums-with-aam-guidelines-for-ancient-art/?fbclid=IwAR1lOCLVPsTYj0eqL9Z9g3fOuFQZd3S5CT7XkAZ-4W_UGeKtnuF9LjlKb8k

[1097] American Alliance of Museums, "Archaeological Material and Ancient Art". Accessed 22 June 2021. https://www.aam-us.org/programs/ethics-standards-and-professional-practices/archaeological-material-and-ancient-art/

information on an item-by-item basis if we wanted. Only three museums provided us with a list of the antiquities they had acquired after the AAM guidelines came into force in 2008.[1098]

However, the most concerning finding from their study was that only six of the 67 museums had posted relevant collections policies on their websites.[1099]

These issues are not limited to the United States, nor are they only of concern for public collecting institutions. While the reporting requirements and governance arrangements may differ for public and private museums, the issues remain the same. All collections which contain antiquities are required to undertake the necessary work of reckoning with their complicity with colonialism and antiquities crime. At a minimum, this process involves implementing basic actions about increasing transparency and researching the provenance of existing collections. But decolonising collections and collecting practices does not only involve repatriating antiquities to source countries or descendant communities. It is "a long-term process that seeks to recognise the integral role of empire in our museums – from their creation to the present day."[1100] It is a process which requires transparency and accountability, confronting our existing ontologies of the past, and working in partnership with source countries and descendant communities.

f. vi. Collector and Dealer Associations/Communities –

Whether they be associations which require formal membership, or internet and social media forums, antiquities collector and dealer communities have a significant role to play in reframing ethical engagement with the antiquities trade. There are also communities, both formal and informal, for researchers and professionals who operate in ancient world studies. This section will explore communities and associations for antiquities collectors and dealers, whilst academic associations and communities will be treated separately in section 3.1.3.

As discussed in Chapter 2.1, most collector and dealer associations have their own ethics policies or codes of conduct which they expect members to uphold. However, these internal rules and regulations are often the only efforts made by these organisations to fulfil their ethical obligations as market participants. Here too there are issues arising from the failure of members of these associations to comply with these regulatory frameworks. The "Framework for Ethical

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[1098] Thompson and Priest, "The Lax Compliance of Museums".
[1099] Thompson and Priest, "The Lax Compliance of Museums".
[1100] Museums Association, "Campaigns – Decolonising Museums". Accessed 22 June 2021.
https://www.museumsassociation.org/campaigns/decolonising-museums/#

Engagement with and Consumption of the Ancient World" thus proposes that collector and dealer associations go beyond merely revising existing policies to incorporate the general principles as well as the guidelines for both collectors and dealers introduced above. Instead, like collecting institutions, they should be adopting a position in the market which educates members and the wider public of their ethical and legal responsibilities, as well as introducing them to alternative collecting practices – which will be explored in section 3.1.2.g.

f. vii. General Public –

The general public engages with the antiquities market more frequently than they would recognise. From attending museum exhibitions to playing video games, watching and reading media for entertainment to studying the ancient world at school or university, we as a society are participating in discussions of ownership of cultural objects and, more broadly, of the past itself. To illustrate, I was once invited to attend a public lecture as part of a series presented by my then associate supervisor, Dr Julian Droogan, and his long-term colleague, Iain Shearer. The series, entitled "Dig the world: Astounding tales from the heroic age of archaeology", was presented at the Art Gallery of New South Wales, and touched on notable archaeological excavations and their reception.[1101]

The week I attended the lecture addressed the sites of Al Khanum and Begram in Afghanistan, and the presenter, Iain Shearer, consistently highlighted throughout his seventy-minute lecture the harms to archaeological context and local peoples caused by illicit looting and trafficking.[1102] Upon leaving the lecture theatre I overheard two attendees commenting on these issues. Despite the efforts of Mr Shearer to impart to them the harms caused by these practices, they concluded that these objects were better off in Western collections or else they would be "blown up by the terrorists".

Members of the general public – or rather, anybody who is not otherwise considered a market participant or stakeholder – should endeavour to approach these interactions with a critical awareness of the realities of the modern and historic antiquities market, as well as of the systemic colonialisms and neocolonialisms involved in depictions of the antiquity. Rather than reinforcing harmful and paternalistic relationships with living and ancient cultures, we should

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[1101] For a playlist of the "Dig the world" series audio recordings, see Art Gallery of NSW, "Gallery Audio – Dig the world: Astounding tales from the heroic age of archaeology". Accessed 22 January 2021. https://www.artgallery.nsw.gov.au/channel/audio/dig-the-world/

[1102] My gratitude to Iain who not only gave an informative and ethically responsible lecture, but also arranged for me attend his talk for free.

be challenging our shared and individual ways of understanding the past. In recent years, museum-goers in particular have begun to highlight their discomfort with colonial collections of antiquities.[1103] The pressure of public scrutiny is vital in ensuring museums and galleries are undergoing the necessary process of decolonisation. Erin Thompson and Emiline Smith, argue that

> everyone who goes to […] museums has a role to play. It seems that museums are reluctant to repatriate art when they think their core audiences and donors won't care if they keep it. We need to make it clear to our museums that we do not want to walk around in galleries of stolen artworks.[1104]

However, the general public does not only interact with the past when visiting museums or galleries. Depictions of the ancient world are everywhere in the media we consume. And the intangible products of antiquity remain a commodity which can be purchased for a profit. Further examples of how the wider public otherwise consumes and interprets the ancient world, and how this relationship can be more ethical, will be explored at length in section 3.1.4.

g. *Alternative Collecting Practices –*

As established throughout Parts 1 and 2 of this thesis, nearly all antiquities market activity is proximate to historic or contemporary crime. Recent years has seen a rising surge of ethical awareness of this reality, and a number of market nations have responded by repatriating looted antiquities to source countries and strengthening existing regulatory frameworks to combat the flow of illicit traffic. This growing sense of unease about existing market values and behaviours poses an opportunity for antiquities collectors to adopt alternative collecting practices for the future. Such practices should be built on the foundations of ethical engagement outlined in the previous section and should also take advantage of the innovative technologies of the 21st century. The following section will briefly explore such options, including 3D-modeling and printing techniques, and other methods of replica production, in order to demonstrate how antiquities collectors can incorporate such technologies into their ethical consumption of the past.

Whilst printing is not a new technology, we have been historically limited to two-dimensional processes. The ability to build a three-dimensional (3D) object from a computer-aided model or

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[1103] Hicks, "If the Queen has nothing to hide".
[1104] Thompson, E. L. and Smith, E., "Stumbling Towards Repatriation," *Hyperallergic,* 11 March 2021. Accessed 21 June 2021. https://hyperallergic.com/628195/stumbling-towards-repatriation/?fbclid=IwAR2KclHbZramr7spbwyMKyfGpxrR7Alpu0iPRBMUIOhe88WB64tPgoQj6GM

3D-scan emerged in the 1980s.[1105] Simply, 3D-printing processes involve the construction of a physical object from a three-dimensional digital model, often involving the application of many thin layers of a material – paper, wax, wood, plastic, metal.[1106] Whilst originally used for producing functional or aesthetic prototypes, the development of increasing number of applications for this technology has seen a rise in uses, from scientific laboratories to small organisations and even individuals[1107]. In the context of cultural objects, 3D-scanning and 3D-printing techniques have already been applied in the production of replicas for teaching, research, entertainment, and commercial purposes.[1108]

In 2017 the British Museum announced a new approach to "home shopping", which built on existing work in developing 3D-models of their collection. Many of these 3D-models became available for download on their Sketchfab platform,[1109] and were covered by Creative Commons Non-Commercial licences.[1110] Working in collaboration with Oxfordshire-based company ThinkSee3D, they started casting replicas of antiquities using a mould developed from the 3D-models. These 3D-replicas, made of resin, of famous antiquities within the British Museum's collection are now available for purchase in brick-and-mortar locations and online.

The opportunities of digital scanning and printing for preserving threatened, destroyed or lost cultural heritage has been well established.[1111] According to Chad Elias the "digital reproduction of heritage" is also appealing to a "public that wants to experience historic monuments and objects first-hand."[1112] The desire for 3D-replicas of antiquities has significant ramifications for the antiquities market and the economies of source countries and descendant communities. As stated by legal scholar Charles Cronin:

> [t]hree-dimensional technologies might soon permit source nations to retain the essential intellectual value of cultural artifacts found within their borders, while simultaneously capitalizing upon sales of the originals to collectors who will pay for their 'aura'."[1113]

[1105] Kocovic, P., *3D-Printing and Its Impact on the Production of Fully Functional Components: Emerging Research and Opportunities,* Hershey, PA: IGI Global, 2017. p. xxxvii
[1106] Kocovic, *3D-Printing,* p. xxxviii
[1107] Kocovic, *3D-Printing,* p. xxxviii
[1108] For further discussion about 3D-printing antiquities replicas, see: Wilson, P. F. et al., "Evaluation of Touchable 3D-Printed Replicas in Museums," *Curator: The Museum Journal* 60.4 (2017), pp. 445–65.
[1109] Sketchfab, "British Museum". Accessed 14 January 2021. https://sketchfab.com/britishmuseum
[1110] Pett, D. and Shore, A., "A New Dimension in Home Shopping," *British Museum Blog,* 31 July 2017. Accessed 14 January 2021. https://blog.britishmuseum.org/a-new-dimension-in-home-shopping/
[1111]
[1112] Elias, C., "Whose Digital Heritage?: Contemporay Art, 3D Printing and the Limits of Cultural Property," *Third Text* 33.6 (2019), pp. 687 – 707.
[1113] Cronin, C., "3D Printing: Cultural Property as Intellectual Property," *Columbia Journal of Law & the Arts* 39.1 (2015), p. 1.

There are, however, serious ethical concerns in relation to production, distribution and commodification of 3D-scans of heritage objects. In her examination of archaeological heritage in the age of "digital colonialism", Monica Stobiecka highlights the "ambiguous status" of digital technologies.[1114] Employing Bernard Stielger's interpretation of the term "pharmakon",[1115] Stobiecka argues this "technology may be a poison and a cure at the same time."[1116] In the context of creating digital scans and 3D-printed replicas of antiquities, these technologies become a method of decolonisation whilst simultaneously reinforcing colonial power structures and causing further colonial trauma.

To illustrate her argument, Stobiecka offers a post-colonial interpretation of the copy of the Syrian Arch of Triumph, which was re-created from digital scans in several Western locations following its destruction by the Islamic State in 2015.[1117] The project, led by the Institute for Digital Archaeology,[1118] involved the production of a 1/3 scale reproduction of the arch carved out of pure Egyptian marble using a combination of computer-based 3D rendering and 3D carving technology.[1119] The replica was first installed in Trafalga Square, London, in April 2016, and from there the arch travelled to New York City (2016), Dubai (2017), Arona (2017), Florence (2017), Washington D.C. (2018), Geneva (2019), and Luxembourg (2019 – 2020). The Executive Director of the Institute for Digital Archaeology, Michael Brown, described the project as "an important gesture of friendship and solidarity with people in regions of conflict – people with whom we share a common history".[1120]

[1114] Stobiecka, M., "Archaeological heritage in the age of digital colonialism," *Archaeological Dialogues* 27 (2020), pp. 113 – 125.

[1115] In philosophy and critical theory, the pharmakon is a composite of three meanings: remedy, poison and scapegoat. In his 2011 work, *What Makes Live Worth Living: On Pharmacology,* Bernard Stiegler puts forth his theory of "pharmacology": the idea that technical developments are simultaneously both the cause of and balm to human suffering. Stiegler, B., *What Makes Live Worth Living: On Pharmacology.* Trans. D. Ross. Cambridge, UK: Polity, 2010.

[1116] Stobiecka, "Archaeological heritage in the age of digital colonialism," p. 114.

[1117] The Syrian Arch of Triumph, also known as the Roman Arch of Triumph or the Monumental Arch of Palmyra, was an ornamental archway in Palmyra, Syria built during the reign of Emperor Septimius Severus (193 to 211 CE). After seizing the city of Palmyra in 2015, the Islamic State blew up the arch using dynamite. For further information about the arch, see: Elcheikh, Z., "Palmyra: A story of ruins, struggle(s) and beyond," *Chronos* 39 (2019), pp. 105 – 123; Meskell, L., *A Future in Ruins: UNESCO, World Heritage, and the Dream of Peace.* New York, Oxford University Press, 2018; Nitschke, J. L., "Colonial Past and Neocolonial Present: The Monumental Arch of Tadmor-Palmyra and So-called Roman Architecture in the Near East," in J. L. Nitschke and M. Lorenzon (eds), *Postcolonialism, Heritage and the Built Environment. New Approaches to Architecture in Archaeology.* Cham, Springer. 2020. pp. 73 – 90.

[1118] The Institute of Digital Archaeology was founded to promote, improve and expand digital archaeological technologies, including digital archives, digital imaging, 3D printing and robotic carving techniques in an aim to be a global leader in the field of cultural heritage preservation. Institute of Digital Archaeology, "Our Purpose.' Accessed 4 August 2022. http://digitalarchaeology.org.uk/our-purpose

[1119] Institute of Digital Archaeology, "Building the Arch." Accessed 4 August 2022. http://digitalarchaeology.org.uk/building-the-arch

[1120] Institute of Digital Archaeology, "Building the Arch."

Monica Stobiecka, however, likened this project to a neo-colonial Grand Tour and rightly questioned who actually benefitted from the replica of the arch, because there was little evidence to suggest the people of Syria did.[1121] To quote Stobiecka, the replica was

> neither about Syrian war, nor about Syrian losses, and never about Syrian heritage. This copy was not created for Syrians as a replacement, as compensation, or as a sign of active disagreement. As the 'Grand Tour' of the fake arch proves, it was created by and for imperial powers to mourn, compensate and prove that heritage is not global. In this sense, the process of re-creation revives and recalls the original meaning of the 'real' arch as a sign of imperial power.[1122]

These criticisms and concerns were shared by both commentators and visitors to the arch. Zena Kamash's detailed analysis of the "Postcard to Palmyra" project, which ran alongside the installation of the replica arch in Trafalgar Square, has also revealed that of 169 visitors to the arch 22% had mixed and 18% negative responses.[1123] According to Kamash, some of the mixed responses "raised important questions, especially about for whom this replica arch is being made, and why organizations like the IDA are undertaking these projects".[1124] Meanwhile, the negative responses outwardly accused the project of being an act of self-gratification rather than a demonstration of remembrance. Many negative responses also questioned the authenticity of the replica – which was significantly smaller and made from different materials than the original – describing it as a grotesque Disney-fied construct.[1125]

These critiques of the replica of the arch align with some of the issues faced in the processes of repatriation and decolonising collecting institutions discussed in section 1.2.4. Like the examples previously discussed, the digital reconstruction of lost monuments have typically not been led by the communities most affected by the destruction. As identified by Erin Thompson:

> [s]o far, most of the founders and prime movers of the digital projects that focus on archaeological sites in Syria and Iraq destroyed by or under threat from ISIS are from America

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[1121] Stobiecka, "Archaeological heritage in the age of digital colonialism".
[1122] Stobiecka, "Archaeological heritage in the age of digital colonialism," p. 120.
[1123] Kamash, Z., "'Postcard to Palmyra': bringing the public into debates over post-conflict reconstruction in the Middle East," *World Archaeology* 49.5 (2017), pp. 608 – 622.
[1124] Kamash, "Postcard to Palmyra," p. 611.
[1125] Cunliffe, E., "Should we 3D print a new Palmyra?" *The Conversation,* 31 March 2016. Accessed 5 August 2022. https://theconversation.com/should-we-3d-print-a-new-palmyra-57014 ; Kamash, "Postcard to Palmyra"; Munawar, N. A., "Reconstructing Cultural Heritage in Conflict Zones: Should Palmyra be Rebuilt?" *EX NOVO Journal of Archaeology* 2 (2017), pp. 33 – 48; and Stobiecka, "Archaeological heritage in the age of digital colonialism".

or Western Europe. They have not uniformly sought input on the creation, control, or interpretation of images from local residents of the sites."[1126]

Thus, the digitisation of cultural heritage, whether for preservation or digital repatriation purposes, has the potential to cause further colonial harm if not done in a culturally safe way. This is especially the case in countries like Syria, where these intervention attempts have focused only on preserving

> material heritage, often a Classical antiquity for which Western nations consider themselves to be the legitimate inheritors, while not fully addressing those living and dying through the ongoing conflict or the resultant refugee crisis.[1127]

Another example which illustrates the ethical quandaries related to the digitisation of antiquities is the "Other Nefertiti" or "Nefertiti 2.0." In 2016, two German artists, Nora Al-Badri and Jan Nikolai Nelles, made international headlines when they revealed that they had used a hacked Kinect to secretly scan a 19-inch bust of Queen Nefertiti currently housed in the Neues Museum in Berlin, Germany. The bust was found in present-day Amarna in 1912, and has been in Germany as part of the Neues Collection since the 1930s despite repeated requests for its return to Egypt.[1128] After acquiring the scans they sent them on to an anonymous group of scanners who produced a high quality stereolithography file, which was eventually made available to the public under a Creative Commons License.[1129] Al Badri and Nelles then used the scans to print a replica of the bust, which they delivered to Egypt "in the tradition of Internet activism."[1130] Representatives from the Prussian Cultural Heritage Foundation responded by casting doubt on the quality and authenticity of the scan, considering it to be of "minor quality" compared to the original.[1131]

Regardless, the project, entitled "The Other Nefertiti," seemingly stimulated discussion about cultural theft and challenged accepted narratives of (neo)colonialist national ownership. Describing the aims of their project, the two artists said:

[1126] Thompson, E., "Legal and Ethical Considerations for Digital Recreations of Cultural Heritage," *Chapman Law Review* 153 (2016), p. 155.

[1127] Stobiecka, "Archaeological heritage in the age of digital colonialism," p. 121, paraphrasing Meskell, *A Future in Ruins*, p. 121.

[1128] Bond, S. E., "What the "Nefertiti Hack" Tells Us About Digital Colonialism," *Hyperallergic,* 24 May 2021. Accesed 6 June 2021. https://hyperallergic.com/647998/what-the-nefertiti-hack-tells-us-about-digital-colonialism/?fbclid=IwAR3E6e29W6Yc1zVxLGIcb9xu12LfTcXsIt8S01ToeDdSg76qf8mf7rwd664

[1129] State Machines, "The Other Nefertiti". Accessed 22 January 2021. https://www.statemachines.eu/projects/the-other-nefertiti/

[1130] Wilder, C., "Swiping a Priceless Antiquity … With a Scanner and 3D-Printer," *The New York Times,* 1 March 2016. Accessed 14 January 2021. https://www.nytimes.com/2016/03/02/arts/design/other-nefertiti-3d-printer.html

[1131] Wilder, "Swiping a Priceless Antiquity …".

with the data leak as part of this counter narrative we want to activate the artefact, to inspire critical re-assessment of today's conditions to overcome the colonial notion of possession in Germany.[1132]

They also described the project as a "virtual repatriation of Nefertiti," by making the scan publicly accessible and for a version to be made in Egypt from the first time since the removal of the bust.[1133] By acquiring the data without permission, the artists were also "drawing an analogy between the subversive way in which the data was collected and the original collection of the object."[1134]

However, experts were quick to point out that it would be impossible to use the Kinect – a piece of depth and motion sensing gaming hardware – to produce a scan of a high enough resolution to create a 3D scan.[1135] Following this information, journalists identified that the source of data was likely to have been a "much higher-resolution scan commissioned by the Neues Museum itself, made by a private company, which has not been made available to the public."[1136] If the journalists and technology experts were correct, digital anthropologist Haidy Geismar argues

> then the project is in fact a double hack: drawing attention to museum hoarding not just of ancient collections but of their digital doubles and using the tools of data collection and presentation to undo the regimes of authority and property over which the museum still asserts sovereignty, mocking the redemptive claims of so-called 'digital repatriation'.[1137]

Examples like "the Other Nefertiti" and the Syrian Arch of Triumph discussed invite lines of inquiry about the ownership of 3D-scans and the rights to produce 3D-scans of antiquities for profit. Do institutions and organisations, have the right to create, disseminate and copyright the digital copies of antiquities?[1138] And who has the right to profit from the sales of 3D-replicas? These unresolved questions have led to concerns that the application of 3D-technology to heritage is an act of "digital colonialism": "when museums and institutions 3D scan objects and

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[1132] State Machines, "The Other Nefertiti".

[1133] Geismar, H., *Museum Object Lessons for the Digital Age.* London, UK: UCL Press, 2018. p. 110.

[1134] Geismar, *Museum Object Lessons,* p. 111.

[1135] See: McCormick, R., "The impossibility of stealing a 3,000-year-old head with a video game controller," *The Verge,* 13 March 2016. Accessed 6 June 2021. https://www.theverge.com/2016/3/13/11200760/the-impossibility-of-stealing-a-3000-year-old-head-with-a-video-game

[1136] Geismar, *Museum Object Lessons,* p. 110.

[1137] Geismar, *Museum Object Lessons,* p. 111.

[1138] The IDA copyrighted their scans of the Syrian Arch of Triumph, undermining "the rules of free data flow and accessibility, and moreover the idea of public, universal heritage." Stobiecka, "Archaeological heritage in the age of digital colonialism," p. 116. See Thompson, *Digital Recreations of Cultural Heritage* for a discussion of the legal issues involved in copyrighting 3D scans nad replicas.

then hold onto the images under copyright lock and key."[1139] The argument made by Cronin concerning the economic possibilities of 3D-scanning having positive ramifications for source countries is only true if this work is led by those countries and descendant communities. However, as demonstrated throughout this section, this is often not the case. A more ethical approach to collecting 3D-replicas of antiquities would be to seek out replicas produced by source countries and descendant communities and contributing financially to their cultural heritage infrastructure, instead of continuing to support colonial collecting institutions.

Replicas of cultural objects, however, have existed long before the development of 3D-printing processes. In Ancient Rome there was an entire industry of "copyists" who "turned out thousands of re-creations of most well-known Greek sculptures to adorn Roman homes, villas, and gardens."[1140] Whilst this may seem unusual to contemporary audiences, in reality the modern – post-industrial and increasingly digital – age is obsessed with notions of authenticity in ways that the ancient world never was. In her reconsideration of repetition in Roman sculpture, Roman art historian Elaine Gazda challenges traditional attitudes towards the "Roman copy" identified above. To quote Gazda, these sculptures

> have long been the primary focal point of the deeply-engrained view that Roman artists lacked creativity in contrast to their Greek predecessors who had, according to this view, reached the pinnacle of originality in aesthetic achievement.[1141]

Building on contemporary works which problematised these perspectives in a positive way, Gazda instead argued that the Roman copy, or repeated image, provided a unique social function of emulation which influenced not only art, but also literature, rhetoric, pedagogy, politics, and even industry. Copies were essential in disseminating cultural and political messages in the widespread Roman empire and are capable as acting as "selective and informed determinants of the artistic legacy of Greece in Rome."[1142]

This same sentiment could easily be applied to 3D-replicas and other copies of ancient objects, reframing them as "selective and informed determinants" of our shared and individual connection with antiquity.[1143] Further, we can easily distinguish these types of objects from

[1139] Bond, S., "The Ethics of 3D-Printing Syria's Cultural Heritage," *Forbes,* 22 September 2022. Accessed 5 August 2022. https://www.forbes.com/sites/drsarahbond/2016/09/22/does-nycs-new-3d-printed-palmyra-arch-celebrate-syria-or-just-engage-in-digital-colonialism/?sh=2eeed43c77db
[1140] Thompson, *Possession,* p. 11.
[1141] Gazda, E. K., "Roman Sculpture and the Ethos of Emulation: Reconsidering Repetition," *Harvard Studies in Classical Theology,* Vol. 97 *Greece in Rome: Influence, Integration, Resistance* (1995), p. 122.
[1142] Gazda, "Roman Sculpture," p. 148.
[1143] Gazda, "Roman Sculpture," p. 148.

forgeries and fakes with the consideration of the intention that inspired the act of creation. Simply put, forgeries and fakes are only forgeries and fakes if they are intended to deceive others.[1144] In their examination of transferring the "aura" of objects and exploring the original through copies,[1145] Bruno Latour and Adam Lowe remind us that the word "copy" is not necessarily a derogatory term: "[s]ince it comes from the same etymology as "copious," and thus designates a source of abundance. There is nothing inferior in the notion of a copy, simply a proof of fecundity."[1146] In other words, the desire to copy or replicate an object is an indicator of the original's value to those who seek to recreate it: the more copies and replicas, the more valued the original.

Latour and Lowe also argue "original" objects (in this case antiquities) are always in a state of reproduction. For example,

> [a] painting has always to be reproduced, that is, it is always a re-production of itself even when it appears to stay exactly the same in the same place. Or, rather, no painting remains the same in the same place without some reproduction. For paintings, too existence precedes essence. To have a continuing substance they need to be able to subsist.[1147]

Thus, instead of regarding a reproduction as inferior to the original, Latour and Lowe propose reframing reproductions as a way of accessing the "aura" of the original. And if "the necessity of reproduction is accepted" there is the opportunity for a shift in our lines of inquiry about these objects, from the differentiation of the "original from the facsimiles" to being able to "tell apart a good reproduction from the bad one."[1148]

Many museums across the world already offer replicas of ancient objects for sale and a quick search on eBay presents a vast array of such objects of varying quality available for purchase. Copies made from a variety of materials – stone, marble, wood, plastic, resin, glass, wax. Copies made by hand or machine. Copies which are readily accessible to the wider public. Each of them unique in their own way through our individualised relationship forged with them.

[1144] Chappell and Polk, "Fakers and Forgers".

[1145] Latour and Lowe are referencing the 1936 essay of Walter Benjamin "The Work of Art in the Age of Mechanical Reproduction," in which "aura" refers to an object's unique cultural context: "its presence in time and space, its unique existence at the place it happens to be." According to Benjamin, it is this "aura" which even the "most perfect reproduction of a work of art is lacking." Benjamin, *Illuminations,* p. 220.

[1146] Latour, B. and Lowe, A., "The migration of the aura or how to explore the original through its fac similies," in T. Bartsherer and R. Coover (eds), *Switching Codes.* Chicago, Chicago University Press, 2011. p. 279.

[1147] Latour and Lowe, "The migration of the aura," p. 285.

[1148] Latour and Lowe, "The migration of the aura," p. 285.

Even my own father, who was as disinterested in history as anyone could be, displayed a replica bust of Tutankhamun alongside our crystal ware since before I was born.[1149]

A final alternative to existing collecting practices is respectfully supporting living artists and artisans who maintain the traditions they have inherited from the past, as well as contribute to the formation of new heritage practices through their innovation and creativity. As part of their commitment to a "world where diverse Native American cultures and values are lived, protected and respected", the Association on American Indian Affairs advocate for the support of living artists and artisans.[1150] In addition to supporting repatriation efforts for stolen art and antiquities, and monitoring upcoming domestic and international auctions that may contain "sensitive indigenous cultural heritage items," the Association "always recommends supporting contemporary Native artists, and not to purchase antiquities or artifacts."[1151]

Investment in living Indigenous artists and artisans benefits individuals, families, groups, communities, peoples, and nations in a number of ways. There is an economic element to consider with the creative production of art and artistic expression arguably providing opportunities to "expand the market economy in rural and urban Native communities."[1152] In a study published in 2013, the First Peoples Fund demonstrated how art acts as an "economic engine" in communities based in Washington, Oregon, Montana, and South Dakota."[1153] The economic benefits of supporting living Native artists and artisans is also conveyed in a 2020 New York Times article which revealed the impacts of COVID-19 on the livelihoods of Native Americans.[1154] Whilst some individuals and communal markets have made the transition to e-commerce – including the oldest market in the country, the Sante Fe Indian Market, which went digital in May 2021 – access to internet in isolated communities have limited this opportunity for some. For curator, artist, and magazine editor, America Meredith of the Cherokee Nation, "art is survival" which puts "food on the table for your children."[1155]

[1149] NB: My mother would like me to make it clear that she purchased the bust at a Copper Party (like a Tupperware Party but for copper objects) in the 1980s. The bust came into my possession following my father's passing in June 2021.

[1150] Association on American Indian Affairs, "What We Do". Accessed 21 January 2021. https://www.indian-affairs.org/whatwedo.html

[1151] Association on American Indian Affairs, "Auction Alerts". Accessed 21 January 2021. https://www.indian-affairs.org/auction-alerts.html

[1152] First Peoples Fund, *Establishing A Creative Economy: Art as an Economic Engine in Native Communities.* July, 2013. Accessed 21 January 2021. https://www.firstpeoplesfund.org/market-study

[1153] First Peoples Fund, *Establishing A Creative Economy.*

[1154] Brown, P. L., "On Tribal Lands, a Time to Make Art for Solace and Survival," *The New York Times,* 5 June 2020. Accessed 21 January 2021. https://www.nytimes.com/2020/06/05/arts/design/native-americans-art-coronavirus.html?utm_content=buffer1e74a&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

[1155] Brown, "On Tribal Lands".

Beyond the economic factor, however, there is much to be said about the sociocultural value of supporting living Indigenous artists and artisans. Anishinaabe Canadian journalist Tanya Talaga devotes a significant portion of her exploration of intergenerational trauma and youth suicide in Indigenous populations to the issue of personal and cultural continuity.[1156] "All children", Talaga recognises,

> struggle to find their identity, to discover who they are and where their place is in the world. But Indigenous youth are particularly weighed down by an inability to reconcile their personal and collective pasts, thus mitigating any sense of a viable future.[1157]

Engaging in traditional creative processes is what keeps First Nations cultures alive and connects the living to their ancestors, traditions, and heritages – a relationship that they have often been deprived of by colonialism. Penobscot basketmaker Theresa Secord is teaching her 28-year-old-son Caleb how to use the tools and basket forms which she inherited from her great-grandmother, which she sees as her "responsibility as a culture bearer."[1158] Celebrated Kiowa Nation jeweller Keri Ataumb has been making protective face masks

> out of brain-tanned buckskin adorned with celestial bodies, its interior lined with red and blue trade cloth and a beaded turtle.
> Her mask connects to centuries of medicine men and women. "You're breathing through your ancestors," she said.[1159]

By way of conclusion, it should be acknowledged that supporting living Indigenous artists and artisans should always be done so with great respect for any cultural beliefs and traditions which dictate who can and who cannot own or use certain objects. Certain types of objects are only intended for Indigenous use, and therefore it would be harmful if non-Indigenous individuals or institutions to own or exhibit them. Other objects may be gendered or meant for certain groups of people. There should also be consideration of modern ethical issues in the market, including exploitative practices. The Australian market for First Nations art, for example, has been accused of facilitating "carpetbagging",[1160] resulting in calls for more

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[1156] Talaga, *All Our Relations.*
[1157] Tagala, *All Our Relations,* p. 128. See also: Chandler, M. J. and Lalonde, C. E., "Cultural Continuity as a Hedge against Suicide in Canada's First Nations," *Transcultural Psychiatry* 35.2 (1998), pp. 191 – 219, and "Cultural Continuity as a Protective Factor against Suicide in First Nations Youth," *Horizons* 10.1 (2008), pp. 68 – 72.
[1158] Brown, "On Tribal Lands".
[1159] Brown, "On Tribal Lands".
[1160] 'Carpetbagging' in this context refers to the enslavement and exploitation of First Nations artists for profit (Australian National Dictionary Centre, "Carpetbagger". Accessed 7 July 2022. https://slll.cass.anu.edu.au/centres/andc/carpetbagger). For examples of carpetbagging in the Australian context, see: Commonwealth of Australia, *Standing Committee on Environment, Communications, Information Technology*

stringent regulatory practices.[1161] Further there is an increasing awareness that the cultural expressions and traditional knowledges of First Nations people – also known as Indigenous Cultural and Intellectual Property (ICIP) – should be protected from exploitation and disrespect.[1162] Thus, engaging in modern art markets should also be based in the same general principles for ethical engagement outlined in section 3.1.2.f.i in order to avoid cultural fetishisation and appropriation, and other exploitative market practices.

3. Guidelines for Ethical Academic Practice –

At the 28th International Congress of Papyrology in 2016, papyrologist Roberta Mazza presented a paper in the *Plenary Session: Setting limits to our discipline?* Her paper, entitled "Papyrology and Ethics" navigated the complex relationships between papyrus, provenance, and ethical practice. Whilst the entire discussion is of relevance to these guidelines, one section in particular should be highlighted here as the preamble to the following proposed guidelines for ethical academic practice:

> The AIP [Association Internationale de Papyrologues] recommendations and the ASP [American Society of Papyrologists] resolution are both adamant on the necessity to be aware of legislations in place and on our duty to respect them as any other citizen. But what about ethics? Professional bodies' ethics are established through two main channels: 1) official documents – like those issued by the AIP and the ASP – and their enforcement, and 2) our everyday professional practices, which are not only informed by shared principles, like those contained in the two above mentioned documents, but are the outcome of self-reflective actions by scholars who are concerned about what they are doing and eventually ready to change their methods and behaviours.[1163]

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and the Arts. Indigenous Art – Securing the Future. Canberra, ACT, 2007; Commonwealth of Australia. *Report on the impact of inauthentic art and craft in the style of First Nations peoples.* Canberra, ACT, December 2018; Davidson, H. and Allam, L., "Art dealer rejects claims of 'carpetbagging', exploitation of Aboriginal artists," *The Guardian Australia.* 8 November 2019. Accessed 7 July 2022. https://www.theguardian.com/australia-news/2019/nov/08/claims-of-exploitation-of-aboriginal-artists-intentionally-fabricated-art-dealer-says ; and Wellington, S., "Indigenous artists preyed on and sent into debt by 'carpetbagging' art dealers, inquiry told," *ABC News.* 10 August 2018. Accessed 7 July 2022. https://www.abc.net.au/news/2018-08-10/senate-inquiry-hears-of-indigenous-artist-exploitation/10106774

[1161] Allam, L., "Key Wyatt calls for law change to protect Aboriginal artists from carpetbaggers," *The Guardian Australia.* 27 January 2020. Accessed 7 July 2022. https://www.theguardian.com/artanddesign/2020/jan/27/ken-wyatt-calls-for-law-change-to-protect-aboriginal-artists-from-carpetbaggers ; Commonwealth of Australia. *Report on the impact of inauthentic art and craft in the style of First Nations peoples;* Elsdon, L., Lorenz, R., and Yeung, K., "Fake Art Harms Culture Campaign – Proposed legislation rejected by Parliament," *ArtsLaw.* 1 May 2020. Accessed 7 July 2022. https://www.artslaw.com.au/fake-art-harms-culture-campaign-proposed-legislation-rejected-by-parliament/ ; Hocking, R., "How to be woke when buying Indigenous art," *NITV News.* 6 November 2019. Accessed 7 July 2022. https://www.sbs.com.au/nitv/article/2019/11/06/how-be-woke-when-buying-indigenous-art ; and Wellington, "Indigenous artists preyed on".

[1162] For guidance on how to respectfully engage with ICIP in the Australian context, see Janke, T., *True Tracks. Respecting Indigenous knowledge and culture.* Sydney, NSW: NewSouth Books, 2021.

[1163] Mazza, "Papyrology and Ethics," p. 9.

Here Mazza is encapsulating two key ideas: first, that ethical conduct is enacted through the behaviours, values and disciplinary practices of market participants, and second, that best practice is not only determined by what is legal or illegal, but by broader notions of harm. These principles provide the foundation for both the following ethical guidelines for academic conduct, and also the Markers of Authenticity ethics framework, entitled "Towards an Ethical Framework for Ancient World Studies".[1164]

This section will provide a series of practical guidelines for researchers who interact with the ancient world. These guidelines are designed to foster a greater sense of ethical sensitivity to the numerous issues related to the trade, study of, and interest in the tangible and intangible remains of the past. For greater clarity these recommendations have been grouped into three complementary categories. The first addresses ethical research conduct, which directly considers disciplinary practices including the study, publication, and teaching of ancient world studies. The second is shaping ethical interactions with the contemporary and historic antiquities market. The final category focuses on fostering ethical relationships with the past more generally. While presented in separate categories here, all three sections should be considered and implemented as part of a holistic approach to ethical academic conduct. Further, these guidelines are also designed to complement the "Framework" presented so far.

h. Ethical Research, Publishing, and Teaching –

All occasions of researching, publishing, or teaching information about the ancient world should contribute both positively and meaningfully to the wellbeing of communities, peoples, individuals and nations.[1165] This process can be enacted by individual academics and academic institutions in a number of ways utilising existing resources, or developing new standards if those currently applied are inadequate. First, academic individuals and institutions have an ethical obligation to educate within the academy and beyond about the destructive impact of looting and smuggling that is driven by market demand. This statement is especially true of museums, who have historically been identified as part of this supply and demand dynamic.[1166] The education of this criminal and unethical activity should acknowledge the consequences for

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[1164] Yuen-Collingridge et al., "Towards an Ethical Framework"

[1165] The framework is based on four principles: 1. "Respect the self-determination of others, whether they be communities, peoples, individuals, nations, now or at any stage of the past." 2. "Seek out and value other modes of knowledge and ways of understanding the past, especially those of all relevant stakeholders, and in dialogue and collaboration with those stakeholders." 3. "Contribute positively and meaningfully to the wellbeing of communities, peoples, individuals, nations through research and teaching." 4. "Acknowledge that best practice is not determined by legality, but by broader notions of harm."

[1166] Brodie, Doole and Watson, "Stealing History"; Felch and Frammolino, *Chasing Aphrodite,* and Mackenzie et al., *Trafficking Culture,* pp. 15 – 16.

the antiquities themselves, those involved in the trade, and the source countries and local communities which are all affected by this process.

Second, ethical research and publication on the ancient world can only take place when the individual or institution acknowledges the explicit and implicit wishes of ancient peoples or communities. In terms of the former, this is only achieved by not engaging in activities which contravene these beliefs or other cultural prohibitions of the subject peoples by "scanning, exhibiting, exhuming, testing, disseminating, modifying or otherwise disturbing the integrity of ancient cultural artefacts, human remains, and environments."[1167] The same level of respect must be extended when studying artefacts that are deemed illicit in terms of the laws of the nation states in which they were found and according to relevant international conventions.

An important exception to this rule is publications which reference such artefacts by way of highlighting the destruction of cultural heritage or the illicit trade of antiquities. To support this approach, it is further recommended that any artefact being presented or published must be subjected to thorough investigation of its provenance, provenience, and authenticity. The results of this investigation should be made as transparent as possible – in a way that does not interfere with active legal investigations – to the public. Furthermore, provenance and provenience details should always be included on museum labels, in catalogues, academic books and journals, popular publications, and online databases.

Finally, in terms of the curation, guardianship, and study of collections there are some more specific suggestions. Existing collections should be subjected to the same level of scrutiny of antiquities that have not been acquired. This process should involve the auditing of established collections for antiquities that have been acquired through illicit or otherwise dubious means. Again, the results of this investigation should be made available to the public. Further, if illicit artefacts are identified as part of this process, the academic individual and institution must collaborate with the appropriate legal and/or cultural authorities concerning their return and/or transfer of guardianship.

i. Ethical Interactions with the Market –

In addition to educating the academy and the wider public about the destructive impacts of cultural heritage crimes, academic individuals and institutions should ensure that their

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[1167] Yuen-Collingridge et al., "Towards an Ethical Framework".

interactions with the antiquities market are meeting both legal and ethical obligations. This principle relates to some of the suggestions outlined in the previous section – namely acknowledging the sovereignty of nations and maintaining respect for living and past individuals, communities, and peoples. However, there are some more specific guidelines that can be introduced to encourage more ethical interactions with the antiquities market.

Considering that the modern antiquities market is a grey market, we cannot therefore presume that the antiquities we encounter have been legally or legitimately acquired. Even if they had been exported from their believed country of origin prior to 1970 UNESCO Convention, we cannot ignore the ethical issues associated with collections developed out of colonialism, conflict, and activities that were technically criminal in many domestic contexts at the time. Therefore, it is suggested that academic individuals and institutions avoid interactions with the market that may assign economic value to cultural objects, subsequently transforming them into commodities that can be traded. This involves not providing valuations, authentications, translations, transliterations, descriptions of, or any other information for artefacts which are "immediately destined or intended to be placed on the antiquities market, in so far as can be ascertained at the time of engagement."[1168]

For example, Wilfred Lambert's services for the Barakat Gallery discussed in Chapter 2.2 would be in direct contradiction of this guideline. This is not to say, however, that engagement with such stakeholders and the wider public should be entirely avoided, but rather that care must always be taken to ensure that scholars are not aiding in the illicit or otherwise harmful commoditisation of the ancient world. In terms of individuals who approach scholars to learn more about an artefact they may have inherited, it would be advised that the information given to them is about the generic historical context of said artefact rather than specific details about its economic value (i.e. comparisons to similar objects on the market). Additionally, academic institutions and individuals should endeavour to provide ethical alternatives for the market when engaging with the ancient world. This suggestion would involve supporting a shift from traditional market values of needing to possess and acquire an artefact based on its authenticity, beauty, and rarity, and instead consider new modes of consuming the past.

[1168] Yuen-Collingridge et al., "Towards an Ethical Framework".

j. Ethical Relationships with the Past –

This final category of guidelines is the most important as it informs best practice for both ethical research conduct and ethical interactions with the market. Forging ethical relationships with the past should therefore be seen as the foundation of ethical conduct for academic individuals and institutions. First and foremost, this ethical relationship must be shaped by a sincere respect for the self-determination of others, "whether they be communities, peoples, individuals, nations, now or at any stage of the past."[1169] This guiding principle can be implemented through a number of practical strategies.

In order to foster ethical relationships with the past, academic individuals and institutions must not only promote respect for tangible cultural heritage, but also intangible heritage.[1170] Whilst this other, equally significant, part of cultural identity has not been explored as extensively in this thesis as tangible cultural heritage, it is worth mentioning here as part of these guidelines. When engaging with intangible cultural heritage it is important to apply the same level of respect as we would to tangible cultural heritage.[1171] This includes not misappropriating ancient ideas, works, and practices, and respecting the privacy of individuals and communities "where evidence exists of their efforts to restrict access or the distribution of information."[1172]

This approach should be supported by genuine efforts to educate ourselves as a discipline on uses of the ancient world, and its tangible and intangible remains, in contemporary society and combat any misuses encountered. Confronting such harmful narratives is a central theme of Zuckerberg's *Not All Dead White Men,* and identified by her as one of the key challenges for academic individuals and institutions who study the classics. In her book and elsewhere she has argued

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[1169] Yuen-Collingridge et al., "Towards an Ethical Framework". For further discussion of respecting the self-determination of others, especially Indigenous peoples, see:

[1170] The *UNESCO Convention for the Safeguarding of Intangible Cultural Heritage* (2003) defines intangible cultural heritage as the "practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces therewith – that communities, groups, and in some cases, individuals recognize as part of their cultural heritage." UNESCO, *Convention for the Safeguarding of Intangible Cultural Heritage*. 17 October 2003, Paris.

[1171] See: Canadian Commission for UNESCO, "Understanding Intangible Cultural Heritage," 10 October 2019. Accessed 20 March 2021. https://en.ccunesco.ca/blog/2019/10/understanding-intangible-cultural-heritage ; Lenzerini, F., "Intangible Cultural Heritage: The Living Culture of Peoples," *European Journal of International Law* 22.1 (2011), pp. 101 – 120; Lixinski, *Intangible Cultural Heritage in International Law* and UNESCO, *Ethical Principles for Safeguarding Intangible Cultural Heritage.* Decision of the Intergovernmental Committee: 10.COM 15.A (Windhoek, 2015).

[1172] Yuen-Collingridge et al., "Towards an Ethical Framework".

that classicists needed to take steps to ensure that the discipline's future would not resemble its past – that we would not return to a world where the Classics were read and championed almost exclusively by wealthy white men.[1173]

To remedy this misuse and misappropriation, Zuckerberg proposes the application of intersectional feminist theory to the study of the Classics,[1174] to counteract the "relatively superficial" use of the ancient world by conservatives and the Far Right.[1175]

Further, it is essential to recognise that all people of all nations have the right to access and control their own cultural heritages. For Indigenous peoples, this right is enshrined in Article 11 of the UNDRIP, which states they:

> have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.[1176]

Due to the nature of modern and historic diaspora, cultural identities are fluid and multi-faceted and therefore it is possible for individual, peoples, and communities to have dynamic cultural heritages also.[1177] It is necessary to provide opportunities for members of the public of all nations – especially in contexts where their cultural heritage is the focus of research or a collection – to engage with the tangible and intangible remains of the past for free. This can be accomplished through a number of strategies, including online digital repositories, or through regular free access to institutions and collections.

Finally, all academic individuals and institutions must recognise that any and all engagement with the ancient world has the potential to shape market narratives and wider perceptions of the past. It is crucial then that any engagement with the ancient world must be careful and considered. Our individual and institutional practices and beliefs must be decolonised, a process involving "identifying colonial systems, structures and relationships, and working to challenge

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[1173] Zuckerberg, *Not All Dead White Men,* p. 186.
[1174] Intersectional feminism is a theoretical framework which aims to broaden the goals of the earlier waves of feminism, which largely focused on the experiences and issues of white, middle-class women. The term was coined in 1989 by black feminist scholar Kimberlé Crenshaw who sought to better elucidate the oppression of African American women. See, Crenshaw, K., "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 1989.1 (1989), pp. 139 – 167.
[1175] Zuckerberg, *Not All Dead White Men,* p. 189.
[1176] The UNDRIP, Article 11.1.
[1177] Graham, B. and Howard, P. (eds), *The Ashgate Research Companion to Heritage and Identity.* Aldershot: Ashgate, 2008.

those systems."[1178] This requires critiquing and avoiding neocolonial and Orientalist discourses which reduce cultural heritage to "treasures" to be "hoarded" or glorify archaeological and historiographical practices which have caused – and continue to cause – harm. We must avoid promoting narratives that support depriving nations, peoples, and communities of access to and authority over their own cultural patrimony.

4. (Re)Defining Consumption –

k. Scope for Consumption –

Before problematising the contemporary and historic intepretation of the ancient world – and introducing practical suggestions to avoid these practices and challenge beliefs which inform them – it is necessary to establish what is meant by the consumption of the past in this context. Published in 1970, Jean Baudrillard's *La Société de consummation* was the first attempt to interpret the symbolic value of consumption in 20th century Western societies.[1179] Influenced by Thorstein Veblen's theory of conspicuous consumption, [1180] as well as building on his earlier work *Le Système des objets,* Baudrillard proposes a new myth of consumption in which the object is "substitutable in a more or less unlimited way within the field of connotations".[1181]

A washing machine, for example:

> *serves* as an appliance and *acts* as an element of prestige, comfort, etc. It is strictly the latter field which is the field of consumption. All kinds of other objects substituted here for the washing machine as the signifying element. In the logic of signs, as that of symbols, objects are no longer linked in any sense to a *definite* function or need. Precisely because they are responding here to something quite different, which is either the social logic or the logic of desire, for which they function as a shifting unconscious field of signification.[1182]

Consumption is thus "radicalized" into the consumption of the sign – what value is assigned to the object – not the object itself.[1183] Applying this framework to the modern day relationship with ancient objects, it can be argued that interacting with antiquities and depictions of the ancient world is not merely motivated by a "function or need" – such as, educating oneself or

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[1178] *Keele Manifesto for decolonising the curriculum.*
[1179] Baudrillard, *La Société de consummation.*
[1180] According economist and sociologist Thorstein Veblen, conspicuous consumption includes the spending of money on and the acquisition of luxury goods and services with the intention of displaying the economic power or accumulated wealth of the consumer. A common example would be the decision to purchase and drive a luxury car, rather than a more economic vehicle. See: Veblen, T., *The Theory of the Leisure Class: An Economic Study of Literature.* United States, Macmillan, 1899.
[1181] Baudrillard, *La Société de consummation,* p. 77.
[1182] Baudrillard, *La Société de consummation,* p. 78.
[1183] Purwanti and Mas'ud, "Consumption Practice in the Baudrillard Perspective," p. 40.

others – but rather as a desire to gain certain societal advantages: power, pleasure, prestige, and distinction.

The consumption of the past is thus embedded in socio-political values which are products of Renaissance classicism and neo-classicism, as well as being informed by colonial and neocolonial attitudes. At first it may seem that this reception of antiquity would only concern the market participants identified in the previous section – collectors and dealers, collecting institutions and researchers of antiquity, restorers and heritage professionals, looters and traffickers, and members of the general public who "interact" with antiquities – in reality, the scope for consumption of antiquity is much broader. This is simply because modern depictions of the ancient world are so pervasive. Any 21st century consumer of any form of media – film, television, music, video games, theatre, literature, fashion, and so on – is likely to bear witness to a creator's interpretation of the past. The "Vintage Egyptologist" discussed in section 2.2.3.e. both consumes and commodifies ancient Egypt and the "golden age" of archaeological discovery through Instagram posts, colonialist cosplays, YouTube videos, and vintage cruises aboard the SS Sudan steamboat.[1184] But so too do the followers and subscribers to these social media accounts, who consume Darnell's neocolonial interpretation of antiquity.

If we recall Baudrillard's theory that an individual does not consume these forms of media –for a function or need, but rather consumes the ancient world as a "sign", the issue of unethical consumption emerges. Historically, the value and meaning assigned to the ancient world has been harmful and problematic to individuals, groups, communities, and peoples, both living and deceased. Colonial imageries are constantly being reproduced without commentary, critique, or challenge. The classical world, for example, continues to be celebrated as a signifier of Western progress and triumph, justifying commitment to conservative values and ideas.[1185] Depictions of the "East", on the other hand, reduce diverse individuals, groups, communities, and peoples to stereotypes which are designed to reinforce colonial power and imperial domination.[1186] Indigenous histories are either completely erased in depictions of settler-colonial countries, or presented in ways which justify non-Indigenous invasion of their traditional lands.[1187]

[1184] Blouin et al., "How Academics […] Benefit from Colonialist Cosplay".
[1185] See, for example, DuBois, P., *Trojan Horses: Saving the Classics from Conservatives*. New York: NYU Press, 2001.
[1186] Said, *Orientalism* and *Culture & Imperialism*.
[1187] For further discussion of the erasure of First Nations Australian history, and attempts to challenge this viewpoint, see: Byrne, "The Ethos of Return"; Griffiths, *Deep Time Dreaming;* and Reynolds, *Truth-Telling.*

Further, these problematic representations of marginalised groups and minorities play an educational role.[1188] Whether intentionally or otherwise, entertainment media teaches us, especially those who do not have direct contact with the members of groups being represented, about *inter alia* race, gender, sexuality, and politics. In other words, they reinforce stereotypes and existing biases, resulting in "critical consequences for intergroup relationships and for marginalized group members' self-concept."[1189] This is necessary for all 21st century audiences – especially the beneficiaries of colonialism – to confront their complicity with the unethical consumption of the ancient world, and forge new ways of understanding, imagining, and connecting with the past.

l. Guidelines for Ethical Consumption –

Unlike the guidelines for ethical engagement, this section is not separated into recommendations for groups of market participants. Instead, the guidelines for ethical consumption are presented as a series of suggestions for any individual who consumes media which depicts the ancient world. The proposed strategies for ethical consumption are not based in the belief that modern audiences need to avoid or reject interpretations of the ancient world. Not only would this approach be virtually impossible to maintain, it would also fail to acknowledge that representations of the past have potential to be positive, empowering, and important to marginalised individuals, communities, peoples, and nation.

l. ii. (Re)Framing: Rejecting (Neo)Colonial Language and Stereotypes –
The importance of framing in consuming the ancient world is influenced by Erving Goffman's theory of primary frameworks, which

> vary in degree of organization. Some are neatly presentable as a system of entities, postulates, and rules; others – indeed, most others – appear to have no apparent articulated shape, providing only a lore of understanding, an approach, a perspective. Whatever the degree of organization, however, each primary framework allows its user to locate, perceive, identify, and label a seemingly infinite number of concrete occurrences defined in its terms.[1190]

[1188] Cortes, C. E., *The Children are Watching: How the Media Teach About Diversity.* New York: Teachers College Press, Columbia University, 2000.

[1189] Tukachinsky, R., "Where We Have Been and Where We Can Go From Here: Looking to the Future In Research On Media, Race and Ethnicity," *Journal of Social Issues* 71 (2015), p. 187.

[1190] Goffman, E., *Frame Analysis: An Essay on the Organization of Experience.* Boston: Northeastern University Press, 1986. p. 21.

In other words, it is these primary frameworks, or "schemata of interpretation",[1191] which aid individuals in interpreting information.

If we apply this theory to the context of consuming the ancient world, the primary frameworks are the learned socio-political beliefs and values which inform our relationship with the past. As these beliefs and values have historically been informed by colonialism and classicism – and continue to be embedded in neocolonialism and neoclassicist thought – it is essential to identify, critically reflect upon, and ultimately reject these primary frameworks in order to establish more ethical relationships with the past. Whilst framing in this context involves a variety of strategies of communication, the discussion here will focus on the importance of language choice, the use of harmful stereotypes, and the ways in which key discussions and debates are presented.

Language choice is one of the clearest ways in which interpretative schemata, and associated stereotypes, are either reproduced or dismantled.[1192] A notable example when examining how the ancient world is framed in media is the use of words which reduce heritage objects to exotic commodities: treasures, rarities, curiousities, curios, collectables, and so on. Adjectives like "valuable", "exotic", "precious", "rare", "primitive", and even "beautiful" are equally problematic as they are capable of fetishishing ancient objects, sites, and ideas. The use of these words reinforces neocolonialist beliefs that the past and its tangible remains should stay within the control of the colonial governments and institutions, and they should be avoided entirely. Further, the responsibility for ethical and anti-colonial language choice is not limited to the creators of texts or objects, but also lies in the audience's response to them. These ongoing dialogues are a continuous reflection of our evolving relationship with living and dead individuals, peoples, and communities which inhabited antiquity.

Similarly, constructing and disseminating interpretations of the past which are reliant on clichés and stereotypes perpetuates colonial systems and causes harm to individuals, communities, groups, and peoples. Earlier we explored the pervasive Orientalist frameworks which have dominated depictions of the "East",[1193] as well as the harmful stereotypes of Indigenous peoples

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[1191] Goffman, *Frame Analysis,* p. 21.
[1192] Collins, K. A. and Clément, R., "Language and Prejudice: Direct and Moderated Effects," *Journal of Language and Social Psychology* 31.4 (2012), pp. 376 – 396; Maass, A., "Linguistic Intergroup Bias: Stereotype Perpetuation Through Language," *Advances in Experimental Social Psychology* 31 (1999), pp. 79 – 121, and Sutton, R. M. and Douglas, K. M., "Celebrating Two Decades of Linguistic Bias Research: An Introduction," *Journal of Language and Social Psychology* 27.2 (2008), pp. 105 – 109.
[1193] Informed by Edward Said's theory of Orientalism: Said, *Orientalism* and *Culture & Imperialism.*

as incapable of looking after themselves or their traditional lands and heritages.[1194] There is also the cliché – whether made explicit or otherwise – that art crimes are "victimless crimes, only affecting the few who can afford to own art".[1195] This stereotype is reinforced when creators of texts or objects depict art and cultural heritage crimes but fail to engage in the necessary ethical and legal discussions which give the criminal act the sufficient weight.[1196]

Finally, (neo)colonial frameworks can be either supported or rejected by the ways in which cultural heritage and historiographical issues are engaged with. Narratives which fail to subvert the dominant colonial approaches to the ownership of the ancient world and its (in)tangible remains reinforce paternalistic and harmful attitudes which deny individuals, communities, groups, and peoples access to their own heritage. In this regard more than just avoiding (neo)colonial language and stereotypes; it is necessary to also reject the underlying arguments and justifications which inform colonial power and systems. Within the context of our relationship with the ancient world, this involves challenging dominant viewpoints about the ownership of heritage. For example, that institutions and individuals in "Western" or "developed" countries are more capable or worthy custodians of the past and its tangible remains. Heritages instead should be framed as dynamic entities which are constantly being (re)shaped in the daily lives of individuals, communities, groups, and peoples – especially those who have been dispossessed, marginalised or otherwise harmed by colonial forces.

l. iii. Representation: Creating Space for Alternative Voices –
The argument that tangible and intangible heritages belong in the possession, or custodianship,[1197] of descendant communities leads us to the second part of the "Framework for Ethical Engagement with and Consumption of the Ancient World". This section focuses on the importance of representation and creating space for alternative voices in our consumption and commodification of the ancient world. Elaborating on the ideas explored in the previous section, this discussion of representation is grounded in the belief that the ancient world and its remains – antiquities, sites, and ideas – do not exist purely in the purview of white people.

[1194] Talaga, *All Our Relations,* pp. 18 – 20 and 133 – 134.
[1195] Balcells, "One Looter, Two Looters, Three Looters …" p. 40.
[1196] This issue has been examined by co-founder of the ATHAR Project Katie Paul via #popculturalheritage and the following articles: Paul, "Pop-Cultural Heritage" and "The Pop-Cultural Heritage of Terrorism".
[1197] Acknowledging that the ideas of ownership and property has been viewed as a Western construct and is not universal, therefore it is not capable of meeting the needs of all peoples. Further, property has also been used – and continues to be used – as a tool of domination by colonial forces to oppress Indigenous peoples See: Harris, C. L., "Whiteness as Property," *Harvard Law Review* 8 (1993), pp. 1707 – 1791; Lixinski, *International Heritage Law for Communities.* pp. 52 – 57; Moreton-Robinson, *The White Possessive;* and Prott and O'Keefe, ""Cultural Heritage" or "Cultural Property"?"

Representation, then, should involve the participation of diverse voices, reflected in the creation, portrayal, and reception of media depicting the ancient world. In other words, it is not enough to just feature black, minority ethnic and Indigenous peoples in popular media, but it is crucial that they are creators and co-creators in their development. There should also be consideration as to how such texts and objects will be received by these individuals and communities, and effort put into creating media in the primary languages of the peoples being represented.

In addition to representing diverse languages and experiences, space must also be created for alternative histories, historiographies, and ways of telling stories. This includes methodologies, microhistories, oral storytelling, and perspectives which challenge the mainstream Eurocentric depictions of the ancient world. Many Indigenous peoples have storytelling traditions which are deeply embedded in their social structures, shared identities, pedagogical practices, and historical records.[1198] Yet their experiences have been widely excluded from dominant and authoritative historical narratives and dialogues.[1199] These colonial attitudes neglect the wealth of knowledge about my country's history disseminated in First Nations songlines, also known as dreaming tracks, which convey information through song, story, dance, art, and ceremony, rather than recorded by the written word.[1200]

By creating space for the alternative voices in historical discourses and moving beyond the dominant Eurocentric modes of understanding antiquity, representation can and should be used as a tool of empowerment for marginalised peoples. It should not, however, create opportunity for further harm or fetishisation of the "other". Beneficiaries of colonialism should therefore approach media depicting the past and its tangible remains with a critical awareness of (neo)colonial frameworks and their ongoing influence on the epistemology of historical knowledge. Ultimately, it is only through valuing, respecting, and truly listening to the voices of the silenced that ethical consumption of the ancient world can take place.

[1198] It would be impossible to encapsulate the diversity of First Nations storywork in a single footnote, however, here are a few references which should serve as a starting point: Archibald, J., Lee-Morgan, J. and De Santolo, J. (eds), *Decolonizing Research: Indigenous storywork as Methodology.* New York and London: Bloomsbury Publishing PLC, 2019; Iseke, J., "Indigenous Storytelling as Research," *International Review of Qualitative Research* 6.4 (2013), pp. 559 – 577; Hanna, M. and Henry, M., *Our Telling: Interior Salish stories of the Nlha7kapmx people.* Vancouver: UBC Press, 1995; and King, T., *The Truth About Stories: A Native Narrative.* Minneapolis, MN: Minnesota University Press, 2008.

[1199] Vincent, E. and Land, C., "Silenced voices: Absence of Indigenous voices from the "history wars"," *Arena Magazine* 67 (2003), pp. 19 – 21.

[1200] Gay'Wu Group of Women, *Songspirals – Sharing women's wisdom of Country through songlines.* Crows Nest, NSW: Allen & Unwin, 2019, and Neale, M. and Kelly, L. (eds), *Songlines: The Power and Promise.* Port Melbourne, VIC: Thames & Hudson Australian, 2020.

Conclusion –

In a letter sent in December 1513 to Franceso Vettori, Niccolo Machiavelli described his interactions with "the great men of antiquity" which took place in his library.

> They receive me with friendship; from them I derive the nourishment which alone is mine and for which I was born. Without false shame I talk with them and ask them the causes of actions; and their humanity is so great that they answer me. For four long and happy hours I lose myself in them. I forget all my troubles; I am not afraid of poverty or death. I transform myself entirely in their likeness.[1201]

Machiavelli's words encapsulate Renaissance values and beliefs about the ownership and inheritance of antiquity; values and beliefs which have been persuasive and remain deeply embedded in our ways of understanding the past in the 21st century. As we have seen throughout this thesis thus far, these attitudes have long shaped our engagement with and consumption of the ancient world. But antiquity is not Machiavelli's "alone". Nor is it the sole property of Renaissance and post-Renaissance thought. In order to recognise the diversity of experiences in both the ancient world and its reception, these Eurocentric views need to be challenged and critiqued.

This chapter has outlined guidelines for forging ethical relationships with the past. Such strategies have included decolonising antiquities market practices and our broader engagements with the ancient world. This chapter has also directed suggestions to specific categories of individuals and institutions, as well as offering recommendations for the general public who are constantly interacting with depictions of the ancient world and heritage issues. It has also challenged existing conventions on what constitutes ethical antiquities market practice, and explored alternative ways of collecting antiquities including supporting living artists and artisans, and collecting 3D-printed objects and handmade replicas. Through this dual-model of developing ethical engagement with and consumption of antiquity and its remains, market participants and the wider public are encouraged to develop best practice which is determined by broader notions of harm and complicity.

By accepting that the ways we conceptualise, discuss, and commodify the past can be harmful to individuals, groups, communities, and peoples, beneficiaries of colonialism in particular can move towards more ethical relationships with both the living and the deceased. These are the

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[1201] Niccolò Machiavelli to Francesco Vettori, 10 December 1513, from Coleman, J., "Machiavelli's via moderna: medieval and Renaissance attitudes to history," in M. Coyle (ed.), *Niccolò Machiavelli's The Prince: New Interdisciplinary Essays.* Manchester and New York: Manchester University Press, 1995. p. 198.

local problems, and they are everywhere: in the disciplines of ancient world studies, in private collections and public collecting institutions, in heritage policies and legal frameworks, and in many depictions of the past. These are problems that must finally be reckoned with, and adopting strategies for ethical engagement with and consumption of antiquity at a professional and personal level is a necessary step in addressing this challenge.

3.2. LOCAL PROBLEMS: APPLICATION TO THE AUSTRALIAN CONTEXT

"The Historians and scientists, collectors and naturalists were constantly coming to terms with the hunters and gatherers who preceded them. […] Through their history-making, Europeans sought to take hold of the land emotionally and spiritually, and they could not help but deny, displace and sometimes accommodate Aboriginal perceptions of place." (Tom Griffiths)[1202]

"You feel absolute wonder and astonishment. How clever they were – how dedicated they were to the dead, their families, to their own protection. […] It was all good fun. Dirty work, of course. But as it turned out, very, very rewarding." (Joan Howard)[1203]

Introduction –

The Australian city of Perth is one of the most geographically isolated metropolitans in the world. Named after the Scottish city of Perth in 1829, the area in and around the Western Australian capital has been the Country of Whadjuk Noongar people for at least 40,000 years. It is difficult to conceive of a location more geographically and historically disparate to the classical world. Yet, in November 2017 a local newspaper story showed how these trans-historical connections resonated with a Perth local.[1204] At the time of publication of the article in the West Australian, Joan Howard was 95-years-old and resided in one of Perth's most affluent suburbs. She had worked as a nurse in the Second World War, and travelled the world extensively with her husband who had worked as a United Nations diplomat in the Middle East in the 1960s and 70s.

Whilst accompanying her husband on official UN business, Mrs Howard volunteered to work on a number of archaeological excavations in the region. She worked alongside "noted British and American archaeologists" on excavations in Lebanon and Jordan. Over the duration of 11 years she was also able to travel freely throughout Syria, Egypt, Palestine, and Israel. It is during these "adventures" that Mrs Howard acquired a collection of antiquities said to be now

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[1202] Griffiths, *Hunters and Collectors,* p. 5.

[1203] Catanzaro, J., "Indiana Joan: Meet WA's real life tomb raider, 95-year-old Joan Howard," *The West Australian,* 4 November 2017. Accessed 14 October 2020. https://thewest.com.au/news/wa/indiana-joan-meet-was-real-life-tomb-raider-95-year-old-joan-howard-ng-b88631462z .

[1204] Catanzaro, "Indiana Joan".

worth more than A$1m. "Indiana Joan" was what the Western Australian dubbed the "real-life tomb raider" with a "mischievous twinkle" in her eye "Indiana Joan".[1205] The article was filled with details of her search for "lost treasures."[1206]

Prior to the interview with Catanzaro, Mrs Howard had kept quiet about her collection and how she acquired it, confessing "[y]ou don't go around saying 'I've been in a tomb'."[1207] Mrs Howard's collection of antiquities included Neolithic axe heads, both Roman and Phoenician pottery and weapons, "coins and jewellery from the time of the pharaohs", and an Egyptian funerary mummy mask, which she describes as a "lovely, man or woman".[1208] Some of her collection resides with her, some pieces were donated to the Western Australia Museum, but the majority is kept in a secure third-party location in Perth. When asked about what would happen to her antiquities after her death, Mrs Howard coyly replied: "It's going where it should go."[1209]

In response to the article, Monica Hanna, of Egypt's Heritage Taskforce, posted an open letter on Facebook addressed to Australia's Ambassador to Egypt. Her letter stated in no uncertain terms "where it [the collection] should go" is back to the likely countries of origin.[1210] Further, she highlighted the (il)legality of Mrs Howard's actions, demanding an investigation be conducted on her collection residing in Perth. Hanna criticised the "celebratory tone" of the article, which encouraged the decontextualising of cultural heritage, ultimately transforming "archaeological finds from historical objects to mere aesthetic artefacts."[1211] The archaeologist was not alone in her criticism of both "Indiana Joan's" actions and the way the article positively framed illicit looting of heritage objects, with other commentators joining the conversation via social media. The Australian Department for Foreign Affairs and Trade commenced an investigation into the matter, in response to a request made by the Retrieved Antiquities Department at Egypt's Supreme Council of Antiquities.[1212] Whilst the results of this investigation are yet to be made publicly available, Australia will be legally and politically

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[1205] Catanzaro, "Indiana Joan".
[1206] Catanzaro, "Indiana Joan".
[1207] Catanzaro, "Indiana Joan".
[1208] Catanzaro, "Indiana Joan".
[1209] Catanzaro, "Indiana Joan".
[1210] M. Hanna quoted by Australian Associated Press, "'Indiana Joan': Perth woman, 95, accused of looting Egypt artefacts," The Guardian, November 24 2017. Accessed 6 March 2021. https://www.theguardian.com/science/2017/nov/24/indiana-joan-perth-woman-95-accused-of-looting-egypt-artefacts
[1211] Australian Associated Press, "'Indiana Joan'".
[1212] Farid, F., "Meet 95-year-old Australian 'Indiana Joan' accused of looting antiquities from Egypt," The Sydney Morning Herald, November 24 2017. Accessed 6 March 2021. https://www.smh.com.au/world/95yearold-australian-indiana-joan-accused-of-looting-antiquities-from-egypt-20171121-gzq5fe.html

obliged to return any antiquities which were illegally exported from their likely country of origin.

Whilst sensationalised by the media, "Indiana Joan" was not the first example of an Australian (individual or institution) engaging in the illicit antiquities trade. Despite being so geographically removed from the classical world, this remote country has seen a number of similar scandals which are disproportionate to the size and scale of the domestic antiquities market. Australia also has its own ancient past and the cultural heritages of Aboriginal and Torres Strait Islander peoples have not been safe from destruction and plunder. The following section will explore the nature of the Australian antiquities market, both licit and illicit, including key stakeholders, and the legal framework which regulates the trade. Once this context is established, the strategy for applying the "Framework for Ethical Engagement with and Consumption of the Ancient World" to an Australian context will be introduced. This section considers the responsibilities and opportunities for different stakeholders in the Australian context, including local communities, governments at all levels, collecting institutions, and academic institutions and individuals. Finally, this chapter concludes with three case studies of existing initiatives in Australia which both demonstrate and inspired the guidelines and principles of the "Framework".

1. The Australian Antiquities Market –

Australia's collective fascination with antiquity emerged in the 19th century, influenced by the broader context of collecting and fetishising the ancient world throughout Europe.[1213] Whilst having been inhabited by Aboriginal and Torres Strait Islander peoples for at least 65,000 years,[1214] Australia was "settled" as a penal colony of the British Empire in the late 18th century. Despite evidence of agricultural infrastructure and permanent housing – and other so-called signs of civilisation – pre-colonial Aboriginal and Torres Strait Islander peoples were identified as nomadic hunter-gatherers who could not hold rightful ownership of the land.[1215] However, colonial Australians could never escape the ramifications of "settling" a country that had been inhabited and managed by existing populations for tens of thousands of years. In his

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[1213] As discussed in Chapters 1.1 and 1.2.

[1214] This is the current accepted dating of Aboriginal occupation of Australia, based off the dating of rock art at the western Arnhem site of Madjedbebe. See Allen and O'Connell, "Both half right"; Clarkson et al., "Human occupation of Australia by 65,000 years"; May et al., "The rock art of Madjedbebe (Malakunanja II)"; Roberts, Jones and Smith, "Thermoluminescence dating of a 50,000-year-old human occupation site"; and Roberts et al., "Single-aliquot and single-grain optical dating".

[1215] For an overview of historical Aboriginal agricultural practices and the influence of early colonial-settler narratives on Indigenous Australian historiography, see: Pascoe, B., *Dark Emu.* Broome (WA): Magabala Books, 2014.

exploration of the antiquarian imagination in Australia, Tom Griffiths highlights how the colonial contemplations with nature and the past were "inextricable from a contemplation of Aboriginal culture."[1216]

Antiquarianism in Australia "preceded and paralleled" the 19th century disciplines of professional archaeology and history. For Griffiths, the antiquarian imagination is best identified through its "cultivation of field skills, attention to locale, undisciplined breadth, engagement with memory and sensuous enjoyment of material things", which makes it a "surprising source of invigoration for an academic history."[1217] Yet Australian antiquarians – both in the 19th century and now – faced a unique challenge: "the knowledge that the land had been – perhaps still was – someone else's."[1218] At the centre of 19th century antiquarianism was the emergence of collecting culture, made tangible in curio cabinets and *Wunderkammer*.[1219] Australia was no exception, with collections formed through objects acquired locally and abroad. Networks of communication and exchange with the Empire allowed settler-colonists to boost their social status and gain imperial cultural capital from a distance.[1220] Gifts of natural specimens, local artefacts, and even the bodies of First Nations Australians were sent back home in exchange for "courtesy, honour, and prestige."[1221]

Collectors of human remains in the 19th century were influenced by emergent theories of evolution, which required "vast collections of bodies and body parts" to contribute to the debates on human origins and diversity.[1222] The newly established Australian colonies were quickly proven to be advantageous places for English and European medical men to practice dissecting. European comparative anatomists were especially eager to work on the bodies of First Nations Australians, soon "turning their bodies into rare collectables."[1223] This fascination with Indigenous bodies was realised in the development of extensive collections of First Nations skulls and bodies, supplied through massacres and the desecration of sacred burial sites.[1224]

[1216] Griffiths, *Hunters and Collectors,* p. 5.
[1217] Griffiths, *Hunters and Collectors,* p. 3.
[1218] Griffiths, *Hunters and Collectors,* p. 3.
[1219] See section 1.2.3.c. for detailed discussion of curiousity cabinets and *Wunderkammer*.
[1220] MacDonald, *Human Remains*.
[1221] MacDonald, *Human Remains,* p. 9.
[1222] MacDonald, *Human remains,* p. 87.
[1223] MacDonald, *Human remains,* p. 10.
[1224] See MacDonald, *Human remains*.

At one point the graverobbing became so commonplace that living First Nations people developed anxieties about the post-death treatment of their own bodies. For example, Nueonene woman, Truganini became deeply distressed by the death of her kin and how "people in Hobart had taken their skulls".[1225] She expressed concerns that they would take her skull as well, and begged to be buried in the "deepest place" possible to avoid that fate.[1226] When Truganini died in 1876, her fears were realised when her remains were retrieved from her grave and presented to the public at the Melbourne Centennial Exhibition in 1888.[1227]

In examining this practice, MacDonald has identified what she calls a "political economy of bone collecting" involving exchanges of donations and gifts between colonial and metropolitan men.[1228] Swept up in the mid-Victorian mania of bone-collecting, amateurs and professionals alike felt as if "they were contributing to the study of British antiquity" by owning and studying human remains, including those of Aboriginal Australians. Collectors like Dr Joseph Barnard – who boasted the possession of 1,474 skulls by 1867[1229] – Sir William Henry Flower, and American Samuel Morton,[1230] used their collections to explore ideas of humankind's origins from monogenist and polygenist evolutionary perspectives.[1231] Skeletal remains of First Nations peoples were used to confirm pseudo-scientific racist beliefs about their inferiority, which served to justify their colonisation and even extinction. Collections of ancestral remains are thus a tangible manifestation of the injustices faced by Indigenous peoples worldwide and our obligation to decolonise our ontologies of the past.

Unfortunately, this practice of collecting First Nations bodies was not confined to the 19th century. As recently as the mid-20th century, the grave sites of Aboriginal Australians were violated in order to obtain human remains under the guise of scientific and anthropological research. In 1948, the American-Australian Scientific Expedition to Arnhem Land was conducted involving the collaboration of the National Geographic Society, the Smithsonian

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[1225] Pybus, C., *Truganini. Journey through the apocalypse.* Crows Nest, NSW: Allen & Unwin, 2020. p. 262.
[1226] Pybus, *Truganini,* p. 262.
[1227] Pybus, *Truganini,* pp. 265 – 266.
[1228] MacDonald, *Human remains,* at pp. 87; 94 – 95; 108.
[1229] Details of his collection can be found at MacDonald, *Human remains,* p. 98.
[1230] Morton's collection was catalogued in his *Crania Americana* (Morton, S. G., *Crania America: A Comparative View of the Skulls of Various Aboriginal Nations of North and South America.* Philadelphia: J. Dobson, 1839) and *Crania Aegyptiaca* (*Crania Aegyptiaca: Observations on Egyptian Ethnography, Derived from Anatomy, History and the Monuments.* Philadelphia: John Penington, 1844).
[1231] For discussion of monogenist (the theory of human origins which posits a common descent for all human races) and polygenist (the opposite of monogenism which argues multiple origins for human races) evolutionary theories, see: Bowler, P. J., *Evolution: The History of an Idea.* Berkeley: University of California Press, 1989; Haller Jnr., J. S., "The Species Problem: Nineteenth-Century Concepts of Racial Inferiority in the Origin of Man Controversy," *American Anthropologist* 72 (1970), pp. 1319 – 1329, and Keel, T. D., "Religion, polygenism and the early science of human origins," *History of the Human Sciences* 26.2 (2013), pp. 3 – 32.

Institution, and numerous agencies from the Commonwealth of Australia.[1232] During this expedition, Deputy Leader and Archaeologist from the Smithsonian, Frank M. Setzler clandestinely removed Aboriginal human remains from mortuary caves and burial sites.[1233] Setzler's own diary entries from October 7 reveal the nature of his acquisitions:

> I paid no attention to these bones as long as the natives were with me. During the lunch period, while the two native boys were asleep, I gathered two skeletons which had been placed in crevices outside the caves.[1234]

The collection of skeletal material Setzler acquired was omitted from the expedition's "inventory of trophies". They were then exported to the United States, where they were accessioned into the Smithsonian's collection. 50 years after the expedition, the Traditional Owners and descendants of the ancestral remains lobbied for their return to Country.[1235] In 2010, the Smithosonian returned two-thirds of the Arnhem Land human remains to a delegation of Gunbalanya and Galiwinku peoples, located in west and north-east Arnhem land respectively.[1236] Describing the repatriation of ancestral remains, celebrated artist Benson Nagurrgurrba said the following:

> As soon as they got back here, all the remains, we had a ceremony – rubbing all them bones with red ochre. We went and collected paperbark, and getting all the human remains lined up; men, women, and a child. As we rub those bones with red ochre, wrapped them in the paperbark, they heard us, and they really missed it. They were happy to be home.[1237]

These returns sit within the broader context of institutions, including the Smithsonian,[1238] making efforts to decolonise their collections and collecting practices.[1239] In Australia the process of ancestral remains repatriation, both international and domestic, is supported by the

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[1232] For insight into the 1948 Arnhem Land Expedition, see: Thomas, M. and Neale, M. (eds.), *Exploring the Legacy of the 1948 Arnhem Land Expedition.* Canberra, ACT: ANU E Press, 2011.
[1233] Thomas, M. "Expedition as Time Capsule: Introducing the America-Australian Scientific Expedition to Arnhem Land" in M. Thomas and M. Neale (eds.), *Exploring the Legacy of the 1948 Arnhem Land Expedition.* Canberra, ACT: ANU E Press, 2011. p. 21.
[1234] Black, M. "Documentary Sheds Light on Robbing of Indigenous Remains 'in the Name of Science'," *ABC News.* 5 October 2018. Accessed 25 August 2020. https://www.abc.net.au/news/2018-10-05/film-sheds-light-on-theft-of-indigenous-human-remains/10329764
[1235] Black, "Documentary Sheds Light".
[1236] Rebgetz, L. "US Gives Back Arnhem Land Ancestral Remains," *ABC News,* 5 July 2010. Accessed 25 August 2020. https://www.abc.net.au/news/2010-07-05/us-gives-back-arnhem-land-ancestral-remains/891978
[1237] Quoted in Zillman, S., "Arnhem Land community continues to bear scars of American tomb-raiders," *ABC News,* 12 July 2017. Accessed 27 October 2020. https://www.abc.net.au/news/2017-07-12/arnhem-land-community-bears-the-scars-of-american-tomb-raiders/8700960
[1238] Wintle, C., "Decolonizing the Smithsonian: Museums as Microcosms of Political Encounter," *The American Historical Review* 121.5 (2016), pp. 1492 – 1520.
[1239] Decolonising colonial collections and collecting practices was explored in section 1.2.4.

Office for the Arts, which operates at a federal level within the purview of the Department of Infrastructure, Transport, Regional Development and Communications. As part of their broader commitment to protecting and preserving Australian cultural heritage, the Office for the Arts helps "facilitate the unconditional return of Aboriginal and Torres Strait Islander remains from overseas collections […] to their communities of origin, contributing to healing and reconciliation."[1240] This process involves working with stakeholders – First Nations communities, other Australian government agencies, Australian collecting institutions, state and territory and local governments, and overseas governments and institutions – and the establishment of Australian Government Policy on Indigenous Repatriation in 2011.[1241]

Further, the Office for the Arts maintains an Indigenous Repatriation Program which provides support for inventory and provenance research, community visits by museum staff, consultants to help communities coordinate returns, museum visits by community representatives to aid in the identification of ancestral remains, travel for community representatives to collect ancestral remains within Australia and overseas, and preparing, packing and transporting ancestral remains for return.[1242] The Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) offers additional support through the Return of Cultural Heritage Initiative, originating in 2018 and formally implemented in July 2020.[1243] In 2021 the Federal Government committed AUD$4.7 million on a detailed business place for the establishment of the Ngurra Cultural Precinct. Following the recommendations of the 2014 National Resting Place Consultation Report,[1244] the proposed precinct would include a National Resting Place for the "respectful holding of ancestral remains" that are unable to be returned to Country.[1245] These kinds of measures are vital both to the healing processes for First Nations Australians and the reckoning with colonial complicity required for all non-Indigenous Australians living on First Nations land.

[1240] Office for the Arts, "What we do – Cultural Heritage – Indigenous Repatriation." Accessed 9 December 2020. https://www.arts.gov.au/what-we-do/cultural-heritage/indigenous-repatriation

[1241] Department of Communication and the Arts, "Australian Government Policy on Indigenous Repatriation," September 2016. Accessed 9 December 2020. https://www.arts.gov.au/documents/australian-government-policy-indigenous-repatriation

[1242] Office for the Arts, "What we do – Cultural Heritage – Indigenous Repatriation". Accessed 17 March 2021. https://www.arts.gov.au/what-we-do/cultural-heritage/indigenous-repatriation#:~:text=The%20Initiative%20seeks%20to%20return,Initiative%2C%20visit%20the%20AIATSIS%20website.

[1243] The Return of Cultural Heritage Initative is the subject of Case Study 1 in section 3.2.6.l.

[1244] The Treasury, *Budget Measures 2021-22*. Canberra, 11 May 2021.

[1245] Advisory Committee for Indigenous Repatriation, *National Resting Place Consultation Report*. Canberra, 2015.

Whilst a smaller market compared to other countries, Australia is undeniably a participant in the global antiquities trade. "Indiana Joan" is not the only traveller and amateur archaeologist who illicitly obtained artefacts whilst abroad. For example, a number of Australian service personnel acquired both authentic and fake artefacts while stationed in Egypt and the Levant during the First World War.[1246] The Australian Museum was also a contributor to the Egypt Exploration Fund between 1898 and 1914, resulting in over 300 Egyptian artefacts being acquired by the institution during this period of time.[1247] Like the exchanges of Tasmanian human remains between colonial-settlers and the Empire, antiquities of ancient Egyptian, African, Mesopotamian, Roman, and Greek origin were donated to emerging Australian collections from the late 19th century onward. Australian collections of antiquities thus represent both the triumph of British and European imperialism, and the success of settler-colonisers in displacing existing cultural and historical contexts and transplanting their own.

Nowadays, Australian antiquities collectors and collecting institutions have their choice of both the international market and a handful of local dealers. Major auction houses like Sotheby's and Bonhams do not deal in classical antiquities in Australia. But they do facilitate the market for artefacts from the Asian and Pacific regions, as well as First Nations art and artefacts. In 2021, a Perth auction house faced backlash when it listed a number of items advertised as formerly belonging to Adolf Hitler.[1248] The owner of the auction house, JB Military Antiques, defended their decision to auction the objects, claiming they were to be "sold as historical artefacts" which have an "educational legacy".[1249]

In addition to auction houses, there is an internet market for antiquities that operates domestically in Australia. It is nowhere as extensive as the markets located in more traditional antiquities market centres like the United Kingdom and United States, but it does exist.[1250] Antiquities are also sold by antiquarians who may not specialise in ancient world objects, with antique booksellers trading in small amounts of papyrus for example.[1251] As is the case in other

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[1246] R.D. Milns Antiquities Museum, McWilliam, J. and Donaldson, J., "The First World War Antiquities Project," The University of Queensland. Accessed 6 March 2021. https://hpi.uq.edu.au/project/first-world-war-antiquities-project and Asmussen, B., "The 'Bric-a-Brac' of War," The Queensland Museum Network Blog, 30 June 2014. Accessed 6 March 2021. https://blog.qm.qld.gov.au/2014/06/30/the-bric-a-brac-of-war/

[1247] Australian Museum, "African Collection," Updated 28 November 2019. Accessed 6 March 2021. https://australianmuseum.net.au/learn/cultures/international-collection/african/

[1248] Truu, M., "A Perth auction house is under fire for the 'grotesque' sale of Adolf Hitler's personal gravy boat," SBS News, 16 April 2021. Accessed 10 June 2021. https://www.sbs.com.au/news/a-perth-auction-house-is-under-fire-for-the-grotesque-sale-of-adolf-hitler-s-personal-gravy-boat?cid=sbsnews:edm:newspm:relation:news:na:na

[1249] Jamey Blewitt, cited in Truu, "A Perth auction house".

[1250] Dundler, ""Still covered in sand".

[1251] This example is sourced from my unpublished Masters of Research thesis.

markets, amateur dealers utilise social media platforms to sell antiquities alongside the used furniture and collectables which circulate the local Facebook Marketplace.[1252]

2. Examples of Australian Cultural Heritage Crime –

a. Aboriginal and Torres Strait Islander Art and Artefacts –

Above the mass-looting of Aboriginal graves to feed the demand of 19th century bone collectors and anatomists was explored at length. But what has yet to be discussed is the exploitation of the heritage of Aboriginal and Torres Strait Islander peoples – a phenomenon which has been pervasive in the Australia since the late 18th century. Collections of Aboriginal and Torres Strait Islander artefacts developed throughout Australian's colonial history, established by both European visitors and British settlers.[1253] First encounters between Indigenous Australians and Europeans during the 17th century were the earliest instances of collecting Aboriginal artefacts as souvenirs.[1254]

However, it is from the late 18th century onward that these collections became sizeable and systematic. These collecting practices developed within the broader framework of Australian ethnographic discourses in the 19th and early 20th centuries, which were influenced by, and had an influence on, social evolutionary thinking and the production of anthropological theory.[1255] To quote Nicholas Peterson, Lindy Allen and Louise Hamby:

> right from the moment of first contact, Aboriginal people and their ways of life captured the European imagination not least because they were seen as humans in the chrysalis phase. […] It took nearly a hundred years after settlement, with the emergence of a systematic interest in

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[1252] Dundler, ""Still covered in sand".

[1253] For example, the collecting activities of German collector, Herman Klaatsch, and Australian anthropologist, Norman Tindale, in the rainforests of North Queensland: Erckenbrecht, C. et al., "Artefacts and collectors in the tropics of North Queensland," *The Australian Journal of Anthropology* 21.3 (2010), pp. 350 – 366.

[1254] A famous example of these invasion-era thefts is the Gweagal shield and spears, which were stolen from the Gweagal people in 1770. The spears are to be repatriated from Cambridge University to Kamay-Botany Bay. See: Nugent, M. and Sculthorpe, G., "A Shield Loaded with History: Encounters, Objects and Exhibitions," *Australian Historical Studies* 49.1 (2018), pp. 28 – 43; Pes, J., "Leading Australian activist accuses British Museum of downgrading provenance of Aboriginal shield to prevent restitution," *Art Newspaper,* 30 September 2020. Accessed 10 June 2021. https://www.theartnewspaper.com/news/australia-shield-restitution-british-museum ; Schlunke, K., "One strange colonial thing: material remembering and the Bark Shield of Botany Bay," *Journal of Media & Cultural Studies* 27.1 (2013), pp. 18 – 29; Silva, N., "Historic Gweagal spears stolen at First Contact are repatriated back to Eora-Sydney," *NITV News,* 30 April 2021. Accessed 10 June 2021. https://www.sbs.com.au/nitv/article/2021/04/29/historic-gweagal-spears-stolen-first-contact-are-repatriated-back-eora-sydney?fbclid=IwAR2Fiy2NfTrrs-79tCZXzyjmEoiUkRr6U6M687LteOdQKArWm6mX2tlXk04 ; and Thomas, N., "A Case of Identity: The Artefacts of the 1770 Kamay (Botany Bay) Encounter," *Australian Historical Studies* 49.1 (2018), pp. 4 – 27.

[1255] Peterson, N., Allen, L. and Hamby, L., (eds), *The Makers and Making of Indigenous Australian Museum Collections.* Carlton, VIC: Melbourne University Press, 2008.

Aboriginal social and cultural practices, before it was realised that this material simplicity was juxtaposed with great cultural and social complexity.[1256]

It is this juxtaposition which is seen as the source of fascination and fetishisation that First Nations Australian peoples held for Victorian society, driving the demand to own, study, and classify objects created and used by Aboriginal and Torres Strait Islander peoples.[1257]

Artefacts, including the most sacred of objects, were taken from Aboriginal and Torres Strait Islander communities during five periods of collecting, from unsystematic collecting from the time of invasion to modern-day collecting.[1258] The result of this collecting is that in 2017 an estimated 250,000 Aboriginal items were held in museums worldwide, and that many others were predicted to be in the collections of private individuals.[1259] Calls for the repatriation of Aboriginal and Torres Strait Islander heritage objects – and human remains – from both Australian and international collections are ongoing.[1260] Aboriginal and Torres Strait Islander places, areas, objects, and human remains are also protected by both federal and state legislation. However, the theft and destruction of heritage sites and objects in Australia remains an ongoing and controversial issue.

A recent case involved the illegal removal and theft of ancient rock carvings featuring petroglyphs that are at least 40,000 years old from the coastline of Tasmania.[1261] As of 2019 November it remains an unsolved crime currently under investigation by the Australian Federal Police (AFP). The theft was believed to have occurred in October 1998, with the thief cutting away an entire section of rock and transporting the slab to the Australian mainland via the ferry service. The AFP registered the theft with the INTERPOL stolen art database, following the

[1256] Peterson, N., Allen, L. and Hamby, L., "Introduction," in N. Peterson, L. Allen and L. Hamby (eds), *The Makers and Making of Indigenous Australian Museum Collections.* Carlton, VIC: Melbourne University Press, 2008. p. 1.

[1257] See: Burridge, K., *Encountering Aborigines. A Case Study: Anthropology and the Australian Aboriginal.* New York: Pergamon, 1973; Peterson et al, *The Markets and Making;* Griffiths, *Hunters and Collectors;* Jones, P., "Words to Objects: Origins of Ethnography in Colonial Australia," *Records of the South Australian Museum* 33.1 (2000), pp. 33 – 47; and *Ochre and Rust: Artefacts and Encounters on Australian Frontiers.* Kent Town, SA: Wakefield Press, 2007.

[1258] Peterson et al., "Introduction," p. 8.

[1259] Peterson et al. "Introduction," p. 2 and Jones, *Ochre and Rust.* See also: Sculthorpe, G., Nugent, M., and Murphy, H., *Ancestors, Artefacts, Empire: Indigenous Australian in British and Irish Museums.* London, UK: British Museum, 2021.

[1260] The Return of Cultural Heritage initiative, established in 2018, is led by AIATSIS who facilitates the return of Aboriginal and Torres Strait Islander cultural material from overseas governments, collecting institutions, and private collectors. AIATSIS, "Return of Cultural Heritage". Accessed 2 April 2021. https://aiatsis.gov.au/about/what-we-do/return-cultural-heritage

[1261] Ogilvie, F., "The art of stealing," ABC News, 10 November 2019. Accessed 6 March 2021. https://www.abc.net.au/news/2019-11-10/aboriginal-petroglyphs-stolen-and-missing-from-tasmania/11663382?fbclid=IwAR2otXIyoh_yr6hjO8XIe2o6n1CkfvEvUzbBZJEu-poej6Rg4cVfyyw12vs

trail to the United States where it was believed to have been sold in a rock art sale. The traditional owners of the land, the Palawa people, have made requests for the return of the petroglyph, with antiquities market experts believing it to be in "someone's loungeroom or private museum" in the northern hemisphere.[1262]

b. An "Overlooked Destination" in the Illicit Antiquities Market –

Despite their physical distance from the traditional spheres of illicit antiquities networks, Australian market participants have been found complicit in criminal or otherwise unethical practices. Whilst there are not a large number of cases to highlight as problematic, there are enough to suggest that Australia is an "overlooked destination" in the illicit antiquities market.[1263] In a 2013 briefing paper for the Australian Research Council (ARC) Centre of Excellence in Policing and Security, Duncan Chappell and Damien Huffer explore the possibilities of this phenomenon through a quantitative analysis of the Australian market for South and South East Asian antiquities.[1264] As part of their study, Chappell and Huffer examined a contemporary legal case – *BC Galleries (Vic) Pty Ltd v Commonwealth of Australia* – involving a prominent Australian dealer of antiquities who operates via both brick-and-mortar and online storefronts.

Australian collecting institutions have also been embroiled in scandals involving antiquities trafficking crimes. For example, both the National Gallery of Australia (NGA) and the Art Gallery of New South Wales (AGNSW) acquired objects for their Asian art collections from antiquities dealer, Subhash Kapoor. The NGA and AGNSW's collections included 21 and 6 pieces provided by Kapoor respectively, but the most famous antiquity at the centre of this narrative was the so-called Dancing Shiva.[1265] The 900-year old bronze statue was acquired by the NGA in 2008, purchased from Kapoor's New York Art Gallery for $US5 million. Despite claiming to have conducted appropriate due diligence procedures – "to ensure the Shiva was

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[1262] Ogilvie, "The art of stealing".

[1263] Chappell, D. and Huffer, D. "Quantifying and Describing the South and South East Asian Illicit Antiquities Trade: Australia as an Overlooked Destination?" Australian Research Council Centre of Excellence in Policing and Security Briefing Paper 24 (2013).

[1264] For further discussion of Asian art crime as a broader issue, see: Gruber, S., "Perspectives on the Investigation, Prosecution and Prevention of Art Crime in Asia," in S. Hufnagel and D. Chappell (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives.* Surrey, UK: Ashgate, 2014. pp. 221 – 235, and "Cultural Heritage Offences: A View from Asia," S. Hufnagel and D. Chappell (eds), *The Palgrave Handbook on Art Crime.* London: Palgrave Macmillan, 2019. pp. 503 – 525.

[1265] Barker, A., "Dancing Shiva: National Gallery of Australia should get $11m compensation for stolen statue, court rules," *ABC News,* 27 September, 2016. Accessed 6 March 2021. https://www.abc.net.au/news/2016-09-26/nga-granted-11m-compensation-for-stolen-dancing-shiva/7878740

genuine and that its purchase conformed to international museum standards" – the statue was revealed to have been stolen from a temple in Tamil Nadu.[1266] At the time of the NGA's acquisition the Dancing Shiva was accompanied with provenance documents citing an Indian diplomat and his wife as previous owners who had legally acquired the piece in 1970 and exported it from India in 1971.[1267] However, the statue's "true provenance" became apparent following the US police raid of a Manhattan storage unit held by Kapoor where "tens of millions of dollars of what federal authorities announced were stolen Indian antiquities" were seized.[1268] In September 2014, the Dancing Shiva was returned to the Indian Government, along with a stone sculpture, which marked the first of a wave of returns of illicitly looted pieces housed in Australian institutions.[1269]

Both the NGA and AGNSW were part of the broader scope of Kapoor's illegal dealing practices, which involved the looting of objects from various locations throughout South and South East Asia. Kapoor's criminal activity had been first made public in late 2011, following his arrest in Germany on suspicion of dealing looted artworks as part of years-long investigation codenamed Operation Hidden Idol.[1270] In 2012 he was extradited to India, where he faced multiple criminal charges for his involvement in antiquities smuggling networks.[1271] Then, in July 2019 the Manhattan's District Attorney's Office filed 86 new criminal charges against Kapoor and seven co-conspirators, charging them with operating a $US145 million antiquities smuggling ring over the span of thirty years.[1272]

Curators from both the NGA and AGNSW framed the Kapoor case as the impetus for improving collecting standards in Australia, as well as creating opportunities for dedicated

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[1266] New York Supreme Court statement cited by Barker, "Dancing Shiva".
[1267] New York Supreme Court statement cited by Barker, "Dancing Shiva".
[1268] Barker, "Dancing Shiva".
[1269] Hardy, K., "Four NGA sculptures from Asian collections listed as stolen," *The Canberra Times,* April 25, 2017. Accessed 6 March 2021. https://www.canberratimes.com.au/story/6033779/four-nga-sculptures-from-asian-collection-listed-as-stolen/
[1270] United States Immigration and Customs Enforcement, "ICE seizes statues allegedly linked to Subhash Kapoor, valued at $5 million," News releases, 12 April, 2012. Accessed 6 March 2021. https://www.ice.gov/news/releases/ice-seizes-statues-allegedly-linked-subhash-kapoor-valued-5-million
[1271] Selvaraj, A., "Extradited from Germany, idol smuggler brought to Chennai," *The Times of India,* 14 July, 2012. Accessed 6 March 2021. https://timesofindia.indiatimes.com/city/chennai/Extradited-from-Germany-idol-smuggler-brought-to-Chennai/articleshow/14871542.cms
[1272] Cascone, S.,"New York Files Charges Against Disgraced Art Dealer Subhash Kapoor in $145 Million Smuggling Ring," *Artnet News,* 11 July, 2019. Accessed 6 March 2021. https://news.artnet.com/art-world/new-york-files-charges-145-million-art-smuggling-ring-1598293 and Mashburg, T., "Investigators Say a Ring Smuggled $145 Million in Ancient Artifacts," *New York Times,* 10 July, 2019. Accessed 6 March 2021. https://www.nytimes.com/2019/07/10/arts/design/ancient-artifacts-smuggling-ring.html

provenance research projects.[1273] However, the Kapoor case is not the only example of Australian individuals or institutions interacting with the illicit antiquities market. In 2016, Egypt retrieved over 500 trafficked antiquities from abroad, 17 of which were from Australia.[1274] Whilst only representing a fraction of the overall retrievals, it is still a significant number of Egyptian antiquities unlawfully held in Australian collections. It is also an indicator of Australia's connection with colonial collecting and neocolonial interaction with the past.

3. Key Stakeholders in the Australian Antiquities Market –

c. Local communities –

As discussed in section 2.a. of this chapter, the heritage of Aboriginal and Torres Strait Islander peoples has been sought after by non-Indigenous collectors since the time of First Contact. Living Aboriginal and Torres Strait Islander communities are thus key stakeholders to consider in any attempts to apply the "Framework for Ethical Engagement with and Consumption of the Ancient World" in any context. However, due to the diversity of Aboriginal and Torres Strait Islander lores, colonial and pre-colonial histories, beliefs, spiritualities, and traditions there cannot be a single approach appropriate to all these issues.

Responses to the ethical issues related to the collecting, display, and research of stolen Aboriginal and Torres Strait Islander artefacts must therefore be place-based and be contextualised to the respective Country or Countries. They must also be accomplished in partnership with the local Elders, including Traditional Owners and Custodians. Further, these attempts in application should be done in accordance with the principles of the UNDRIP.[1275] Article 31 of the UNDRIP states:

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions […] They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.[1276]

[1273] Folan, L. and Seiz, N., "Art Crime and Its Aftermath: Australia's Response to the Subhash Kapoor Cases," *The Asian Arts Society of Australia* 25.2 (2016), pp. 4 – 7.
[1274] Egypt Independent, "Egypt retrieved over 500 smuggled artifacts in 2016: official," *Egypt Independent,* 8 December 2016. Accessed 10 June 2021. https://www.egyptindependent.com/egypt-retrieved-over-500-smuggled-artifacts-2016-official/?platform=hootsuite
[1275] The UNDRIP. See section 3.2.3.i. for further discussion of the UNDRIP.
[1276] The UNDRIP Art. 31.

Outside of the living communities of Aboriginal and Torres Strait Islander peoples, Australia is a country of immigrants.[1277] Thus, when discussing the relationship between Australian communities and heritage – tangible and intangible – the role of diaspora must be acknowledged. Periods of mass-migration to Australia have occurred in numerous instances in the past two centuries, especially concentrated during times of global conflict and the Gold Rush of the mid-19th century.[1278]. As a result of these diasporic movements Australia is a multi-ethnic society where individuals and groups of peoples can have authentic connections with the ancient world despite their global and geographic distance.

d. Educational Institutions –

Ancient world studies are taught in differing formats across a number of Australian universities including degrees and units from the disciplines of archaeology, museum and heritage studies, ancient languages and classical studies, and ancient history. Within this disciplinary context there are a number of academic associations and research centres devoted to antiquity.[1279] The study of ancient history is also a feature in the Australian senior secondary curriculum. Both the students and teachers of these disciplines are stakeholders in the antiquities market, albeit some more directly than others. Further, a number of institutions that teach ancient world studies also possess collections of authentic antiquities, housed within university museums, for teaching and research purposes.[1280]

[1277] My own father migrated from Austria in 1956 when he was two years old. My mother's parents migrated from Poland and the United Kingdom following the Second World War.

[1278] For examinations of how the 19th century Gold Rush affected migration patterns in Australia, see: Charles, F., "Peopling the Victorian Goldfields: From Boom to Bust, 1851-1901," *Australian Economic History Review* 50.2 (2010), pp. 148 – 161; Janiszewski, L. and Alexakis, E., "The "Golden Greeks" from "Diggers" to Settlers: Greek Migration and Settlement during the Australian Gold Rush Era, 1850s–1890s," *Journal of Modern Greek Studies (Australia and New Zealand)* (2017), pp. 159 – 182; Mountford, B. and Tufnell, S. (eds), *A Global History of Gold Rushes.* Berkeley, CA: University of California Press, 2018; Murphy, B., *The Other Australia: Experiences of Migration.* Cambridge: Cambridge University Press, 1993; Murray, T. and Crook, M., "Immigration to Australia: 1820 – 1900," in T. Murray and P. Crook (eds), *Exploring the Archaeology of the Modern City in Nineteenth-century Australia.* Cham: Springer, 2019. pp. 31 – 45; Sheng, F., "Environmental Experiences of Chinese People in the Mid-Nineteenth Century Australian Gold Rushes," *Global Environment* 4 (2011), pp. 98 – 117; Vincent, R. V., *The population history of Australia.* Fitzroy, VIC: McPhee Gribble/Penguin, 1988; and Williams, M., *Returning Home with Glory: Chinese Villagers around the Pacific, 1849 to 1949 (Crossing Seas).* Baltimore MA: Project Muse, 2018.

[1279] One such example is the research centre dedicated to studying Western Ancient Civilisation, the Ramsay Centre, which was explored in section 2.2.3.e.

[1280] A list of such university collections has been curated by the Australasian Society for Classical Studies and can be found here: https://www.ascs.org.au/links/museums.html. The Australasian Society for Classical Studies has also published its own volume of antiquities housed across more than a dozen museums and collections of antiquities across Australia and New Zealand: Ridley, R. T., with Marshall, B., and Morrell, K. (eds.), *Fifty Treasures: Classical Antiquities in Australian and New Zealand Universities.* Melbourne: Australasian Society for Classical Studies, 2016.

As discussed in Chapter 2.2, researchers who study the tangible and intangible remains of the ancient world often engage with the market. On occasions the intersections with the antiquities market are more direct and problematic, such as the unethical and illegal actions explored in the three case studies. Australian academics are no exception to these trends, as exemplified in the controversial actions of Dr Mark Allon from the University of Sydney.[1281] Allon, a scholar in the field of South East Asian Buddhist Studies, sourced a pair of stolen ancient Gandharhan Buddhist manuscripts from the "black market" and launched a crowdsourcing campaign to raise $A30,000 to research them.[1282] In the campaign description, Allon did not reveal how he "came into possession of the relics or where precisely they came from."[1283] The manuscripts, however, were identified to have been discovered after 1990, meaning their export from either Afghanistan or Pakistan would have been illegal.

Responses from the global community of cultural heritage crime and ancient world studies researchers drew attention to the legal and ethical issues involved in the purchase and study of unprovenanced antiquities. An anonymous scholar claimed in a letter sent to the University of Sydney that Allon had recounted that he simply "smuggled" the manuscripts to Sydney in his luggage. Whilst he denied these claims, Allon did defend his actions in the following words:

> If I hadn't acted, they would have been destroyed. […]
>
> The only other alternative would be not to have got involved at all and to have left them and never seen them again. They would have disintegrated. We'd never have knowledge of these extremely important manuscripts.[1284]

Not only do Allon's actions resemble the examples of unethical conduct explored in the previous chapter, but so do his words which underlie these actions. This type of justification aligns with the neutralisation techniques employed by antiquities market participants, discussed in section 2.1.2.e. Australian academic individuals and institutions who operate in the fields of ancient world studies are part of the global antiquities market and need to develop ethical behaviours and standards to guide their research and acquisition practices. Further, these messages should be developed and delivered by Australian academic individuals and

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[1281] Boland, M., "Academic tussle as ancient relics from black market brought into country," *The Sydney Morning Herald,* 20 February 2021. Accessed 31 March 2021. https://www.smh.com.au/national/academic-tussle-as-ancient-relics-from-black-market-brought-into-country-20210218-p573p7.html?fbclid=IwAR0vnaESRKdgWhmJxb3FFM0IPUooMPEkIrQ5vyTZBJJ2cLUj0v138xviuDA

[1282] Boland, "Academic tussle".

[1283] Boland, "Academic tussle".

[1284] Boland, "Academic tussle".

institutions to their global peers and domestic students, especially to the students who study ancient history in secondary school. These actions must also take place within the broader project of decolonising our curricula at all stages of the Australian education system. [1285]

e. Antiquities Collectors –

Australian collections of antiquities have existed since the 19th century. One of the founders of the University of Sydney, Sir Charles Nicholson, established the Nicholson Collection in 1860 with a donation of 3000 artefacts from Egypt and Italy for teaching and research.[1286] The collection, still housed at the University of Sydney, is the largest collection of antiquities in the Southern Hemisphere, with more than 30,000 arefacts from Egypt, Greece, Italy, Cyprus and the Middle East.[1287] Nowadays Australia is home to a number of public antiquities collecting institutions, including a number of museums and galleries known as National Collecting Institutions. Across these eleven institutions there are 11.3 million objects in Australian national collections, including 606 new acquisitions in 2018-2019, and 8.1 million of these objects are on display to the public.[1288] These numbers do not take into consideration the state owned and operated collecting institutions, or the antiquities collections housed at numerous Australian universities. Further, these are not the only public collecting institutions operating in Australia now or in the past.

There are also a number of privately-owned collecting institutions that may or may not charge admission to public visitors. Whilst the majority of these private museums and galleries do not necessarily focus on housing antiquities from the classical world, there are sizable collections of

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[1285] For discussion of decolonising the Australian curriculum, see: Hendrick, A. and Young, S., "Decolonising the Curriculum, Decolonising Ourselves: Experiences of Teaching in and from the 'Third Space'," *Advances in Social Work & Welfare Education,* 19.2 (2017), pp. 9 – 24, and McLaughlin, J. M. and Whatman, S. L., "The potential of critical race theory in decolonizing university curricula," *Asia Pacific Journal of Education* 31.4 (2011), pp. 365 – 377, and "Decolonising curricula in an Australian university: re-imagining curriculum through critical race theory," in *World Congress in Comparative Education Conference,* 2010-06-14 – 2010-06-18. Accessed 3 July 2021. https://eprints.qut.edu.au/42551/ . For suggestions on decolonising university curriculum more broadly, see: *Keele Manifesto for decolonising the curriculum.*

[1286] For discussion of Sir Charles Nicholson and his collection, see: Bell, P., "Sir Charles Nicholson's Collection," *Australian Journal of Art* 11 (1993), pp. 56 – 84; Macmillan, D. S., "An Australian Aristocrat: The Personality and Career of Sir Charles Nicholson," *The Australian Quarterly* 28.3 (1956), pp. 40 – 47; and "Nicholson, Sir Charles (1808–1903)," in *Australian Dictionary of Biography,* vol. 2. 1967. Accessed 5 April 2021. https://adb.anu.edu.au/biography/nicholson-sir-charles-2508 ; Sowada, K., "Sir Charles Nicholson: an Early Scholar-Traveller in Egypt," in K. N. Sowada and B. G. Ockinga (eds), *Egyptian Art in the Nicholson Museum, Sydney.* Sydney: Meditarch Publishing, 2006. pp. 1 – 13; and Waldstein, C., "Notes on the Collection of Ancient Marbles in the Possession of Sir Charles Nicholson," *The Journal of Hellenic Studies* 7 (1886), pp. 240 – 250.

[1287] The University of Sydney, "Nicholson Collection". Accessed 2 April 2021. https://www.sydney.edu.au/museum/discover-our-collections/nicholson-collection.html

[1288] Department of Infrastructure, Transport, Regional Development and Communications, Office for the Arts, "Impact of our National Cultural Institutions". Accessed 10 March 2021. https://www.arts.gov.au/what-we-do/museums-libraries-and-galleries/impact-our-national-cultural-institutions

Indigenous Australian artefacts and cultural objects from South and South-East Asia. The Museum of Modern and New Art (MONA) in Tasmania is an example of a privately-owned institution which has acquired both modern art pieces and antiquities, often displaying them together in the same exhibitions.[1289] MONA is a unique case as it is owned by a private art and antiquities collector, David Walsh, who developed his own collection into a public gallery for wider consumption at the cost of $55AU million.[1290]

f. Market Facilitators –

In terms of market facilitators, we can identify many of the usual key actors who operate in the antiquities trade. Auction houses, whilst not dealing in ancient artefacts like their American and English counterparts, still provide a forum for buying and selling heritage objects from Asia, the South-Pacific, and First Nations Australian artists. There are also a handful of internet based dealers who trade both locally and globally, including the BC Galleries – the dealer who was the subject of a Victorian legal case in 2012 involving the export of a range of Chinese Han Dynasty items from Hong Kong.[1291] Antiquities are also sold by and to Australian citizens on auction hosting websites, eBay and invaluable.com, and via social media, including the Facebook Marketplace.[1292] While the market operating out of Australia does not match the size or scope of that of other countries, the internal cultural heritage policies of eBay Australia are ironically more detailed and responsive to legal frameworks than many other marketplaces.[1293]

4. The Australian Regulatory Environment –

Australian heritage laws and policy exist at a federal, state, territory, and local level. Institutions and companies that engage in the trade in antiquities, or their study and publication, generally possess their own sets of internal guidelines shaped by this broader legal framework. The following subsection will introduce the key components to the Australian heritage legal context, with special focus given to regulations pertaining to the internet market for antiquities.

[1289] Such as Matthew Barney's "River of Fundament" exhibition, an operatic-documentary adaption of Norman Mailer's *Ancient's Evenings.* Museum of Modern and New Art, "Matthew Barney – River of Fundament," 22 November 2014 – 13 April 2015. Accessed 10 March 2021. https://mona.net.au/museum/exhibitions/past-exhibitions/matthew-barney-river-of-fundament

[1290] Coslovich, G., "The collector," *The Age,* 14 April 2007. Accessed 10 March 2021. https://www.theage.com.au/entertainment/art-and-design/the-collector-20070414-ge4ng8.html .

[1291] Chappell and Huffer, "Quantifying and Describing".

[1292] Dundler, ""Still covered in sand".

[1293] eBay Australia, "Artefacts and cave formations policy". Accessed 10 March 2021. https://www.ebay.com.au/help/policies/prohibited-restricted-items/artefacts-cultural-heritage-graverelated-items-policy?id=4282

g. Federal and Jurisdictional Legislation –

On 24 May 2020 mining company Rio Tinto destroyed two 46,000-year-old rock shelters at Juukan Gorge, located in the Pilbara region of Western Australia, to extend the Brockman 4 iron ore mine. The rock shelters were of "great cultural, ethnographic and archaeological significance" to the Traditional Owners of Juukan Gorge, the Puutu Kunti Kurrama and Pinikurra (PKKP) peoples, as well as evidence of their continuous-occupation of the area for 46,000 years.[1294] In the words of PKKP Aboriginal Corporation chairman, John Ashburton Juukan Gorge is "not just any caves, […] not just any rocks".[1295]

Australians and international audiences were shocked by the destruction of rock shelters at Juukan Gorge, but were even more "disturbed to learn that the destruction was permitted under the Aboriginal Heritage Act 1972 (WA)."[1296] In other words, it was completely legal according to state law. This information led to an increased level of scrutiny on heritage legislation in Australia, and the establishment of the First Nations Heritage Protection Alliance.[1297] The protection of heritage sites in Australia are the responsibility of states and territories, and the Commonwealth Government only has a limited role in heritage protection. There are six states in the Commonwealth of Australia, each with their own constitution, with its own legislature, judiciary and executive. In addition to the six states are two territories, whose governmental structure are dependent on federal legislation. At the time of writing, all states and territories have their own stand-alone First Nations heritage protection act, apart from New South Wales.

There are three pieces of federal legislation that provide protection for First Nations heritage: the *Aboriginal and Torres Strait Islander Protection Act 1984* (the ATSIHP Act)*,*[1298] the *Protection of Movable Cultural Heritage Act 1986* (the PMCH Act)[1299] (which was guided by the 1970 UNESCO Convention[1300]), and the *Environmental Protection and Biodiversity Act 1999* (the EPBC Act).[1301] The ATSIHP Act gives the Commonwealth Minister for the

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[1294] Joint Standing Committee on Northern Australia, *Inquiry into the Destruction of 46,000 Year Old Caves at the Juukan Gorge in the Pilbara Region of Western Australia. A Way Forward.* Canberra, ACT, 18 October 2021. 1.2.
[1295] Wahlquist, C. and Allam, L., "Juukan Gorge demand a say on Rio Tinto iron ore mine," The Guardian Australia, 18 May 2021. Accessed 12 July 2022. https://www.theguardian.com/australia-news/2021/may/18/juukan-gorge-traditional-owners-demand-a-say-on-rio-tinto-iron-ore-mine
[1296] Joint Standing Committee on Northern Australia, *A Way Forward,* 1.1.
[1297] The First Nations Heritage Protection Alliance is a coalition of member organisations representing First Nations peoples from across Australia, including major Native Title, Land Rights, Traditional Owner, and community-controlled organisations nationally. First Nations Heritage Protection Alliance, "Embracing Cultural Heritage." Accessed 13 July 2022. https://culturalheritage.org.au/embracing-cultural-heritage/
[1298] *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Australia).
[1299] *Protection of Movable Cultural Heritage Act 1986* (Australia).
[1300] 1970 UNESCO Convention.
[1301] *Environmental Protection and Biodiversity Act 1999* (Australia).

Environment the power to intervene were a state/territory government's legislation fails to protect First nations heritage. The PMH Act gives protection from export of movable objects, including objects significant to First Nations people. And the EPBC Act provides protection for First Nations cultural heritage sites if they have been included on the World Heritage List, the National Heritage List or Commonwealth Heritage List.

The ways in which these pieces of legislation operate, including their interactions with each other and with state and territory legislation, has been described as complex, confusing, cumbersome, ineffective, and outdated by a number of reviews.[1302] All Australian legislative frameworks have also been criticised for failing to "adequately encompass the complexity of Indigenous heritage which is living and evolving and is connected not just through historical artefacts, but through songlines, storylines, landscapes and waters."[1303] Since 2020, all state and territory governments and the Commonwealth Government have begun the process of reviewing ongoing heritage protection reforms in the Australian context, at all levels of the government. The Albanese Government has also committed to developing and enacting stand-alone First Nations heritage protection legislation at the Commonwealth level.[1304] The new legislation will be developed in partnership with the First Nations Heritage Alliance and other stakeholders, and will take into account the findings of the final report of the Inquiry into the destruction of Juukan Gorge rock shelters, the Samuel Review of the EPBC Act, the *Dhawura Ngilan best practice standards*, and the principles of the UNDRIP.[1305]

As the focus of this thesis has been on the antiquities market, the *Protection of Movable Cultural Heritage Act 1986* is the most relevant to our examination of the Australian context. The goal of the PMCH Act is to ensure objects of "cultural significance" remain in Australia, whilst also providing a framework for the return of cultural objects that have been illegally imported to Australia to their country of origin.[1306] Divided into five parts, the PMCH Act

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[1302] See, for example, Evatt, E. and the Parliament of Australia, *Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.* Report no. 170 of 1996, July 1996; Hawke, A., The *Australian Environmental Protection Act: Report for the Independent review of the Environmental and Biodiversity Conservation Act 1999.* Canberra, ACT: 2009; Heritage Chairs of Australia and New Zealand, *Dhawura Ngilam: A vision for Aboriginal and Torres Strait Islander heritage in Australia.* Canberra, ACT: 2020; Joint Standing Committee on Northern Australia, *A Way Forward*; and Samuel, G., *Independent Review of the EPBC Act – Final Report.* Canberra, ACT: Department of Agriculture, Water and the Environment, 2020.
[1303] Joint Standing Committee on Northern Australia, *A Way Forward*, 1.6.
[1304] The Australian Labor Party, "Labor's Commitment to First Nations People," Authorised by P. Erickson. Barton, ACT: Australian Labor Party. 2022. p. 19.
[1305] The Australian Labor Party, "Labor's Commitment to First Nations People," p. 19.
[1306] Department of Infrastructure, Transport, Regional Development, and Communications – Office of the Arts, "Movable cultural heritage". 17 October, 2018. Accessed 10 March 2021. https://www.arts.gov.au/what-we-do/cultural-heritage/movable-cultural-heritage

addresses the interpretation of key terms and the application of the legislation to the federal and state legal contexts (Part 1), the control of imports and exports of movable heritage (Part 2), the establishment of a National Cultural Heritage Committee and the National Cultural Heritage Account (Parts 3 and 4), and the enforcement of the Act (Part 5). The role of the National Cultural Heritage Committee is to advise the Minister on the operation of the PMH Act, and to determine which objects should be included in, or removed from, the National Cultural Heritage Control List. The Control List divides objects into two categories: Class A objects, which cannot be exported except with a certificate, and Class B objects which can only be exported in accordance with a permit or certificate.[1307]

In 2018 the 1987 Regulations enabled by section 49 of the PMCH Act were superseded.[1308] Entitled the *Protection of Movable Cultural Heritages Regulations*, the purposes of this new legislation was to "repeal and remake" the existing federal framework and were designed to be compatible with contemporary developments in Human Rights law.[1309] According to the Overview of the legislative instrument, the 2018 Regulations reflect "modern drafting styles and practices"; repeal "redundant provisions and associated definitions" in the 1986 Act; prescribe "various matters required or permitted by the Act to be prescribed"; update aspects of Objects of Fine or Decorative Art of Schedule 1 "to better capture only the most significant types of Aboriginal and Torres Strait Islander objects" and Numismatic objects in Schedule 1 "to list all current Victoria Cross medal awardees"; and finally, to repeal the 1987 Regulations.[1310] However, the most significant update is that the changes in the Regulations enable Australia to

> fully meet its obligations as a state party to the 1970 [UNESCO] Convention, through ensuring that provisions in the Act that relate to export control can be administered.[1311]

The PMCH Act binds the Crown in the right of the Commonwealth, meaning all Australian states and territories (and local governments) must comply with the provisions of the Act and new regulations, including the 2018 Regulations. Further, this legislation is enforced by both the AFP and Australian Border Force (ABF), law enforcement agencies within the Australian

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[1307] Department of Infrastructure, Transport, Regional Development, and Communications – Office of the Arts, "The National Heritage Control Lists". Accessed 10 March 2021. https://www.arts.gov.au/what-we-do/cultural-heritage/movable-cultural-heritage/exporting-cultural-property-australia/national-cultural-heritage-control-list

[1308] Protection of Movable Cultural Heritage Regulations 2018, "Explanatory Statement". Accessed 10 March 2021. https://www.legislation.gov.au/Details/F2018L01710/Explanatory%20Statement/Text

[1309] Protection of Movable Cultural Heritage Regulations 2018, "Explanatory Statement".

[1310] Protection of Movable Cultural Heritage Regulations 2018, "Explanatory Statement".

[1311] Protection of Movable Cultural Heritage Regulations 2018, "Explanatory Statement".

Department of Home Affairs portfolio. The former is the national and principal law enforcement agency of the Australian government which investigates crime and aims to protect national security, whilst the latter's role is limited to onshore and offshore border patrol enforcement, investigations and compliance. Currently there are no specific mentions of cultural heritage objects on the ABF guidelines around Australian imports and exports, outside of policy for human remains and fossils.[1312] Art and antiquities crime is also not explicitly referred to as one of the crimes addressed by the AFP, but there is a reference to the 1986 Act in the Environmental Crime section.[1313]

h. Soft Law –

In addition to this federal and state apparatus, there are internal regulations and guidelines to consider in the context of stakeholders who operate within the global antiquities market. This body of "soft law" includes acquisitions and ethics policies for museums and academic institutions, associations, and publications, as well as user guidelines for market facilitators like eBay. Currently, the Australian arm of auction-hosting website eBay has internal policies which specifically address the trade of artefacts. The "Artefacts and cave formations policy" can be located in eBay Australia's Help section in an article that entails both what the policy is and why eBay has such a policy.[1314]

In terms of what the policy covers, eBay Australia does not allow for the sale of "items obtained from government or protected land, historical grave sites, or shipwrecks" or "looted or stolen goods". These guidelines do not specify whether such restricted items are only from an Australian context, or whether they would cover any looted or stolen artefacts. Any listing of artefacts, fossils, and relics must abide by existing government regulations – again, it is unclear whether they mean only Australian regulations – and "be authentic and listed in the appropriate category." The appropriate category caveat is likely a reference to the policy's guidelines around replicas, which must "[s]tate the item is a replica in the title and description" and "[b]e listed in the Reproduction or Fantasy category, as appropriate."

[1312] Australian Border Force, "How to Import – Importing human remains or ashes". Accessed 10 March 2021. https://www.abf.gov.au/importing-exporting-and-manufacturing/importing/how-to-import/types-of-imports/importing-human-remains-ashes and "Entering and Leaving Australia – Can you bring it in". Accessed 10 March 2021. https://www.abf.gov.au/entering-and-leaving-australia/can-you-bring-it-in/categories/misc

[1313] Australian Federal Police, "What we do – Crime types – Environmental crime". Accessed 10 March 2021. https://www.afp.gov.au/what-we-do/crime-types/environmental-crime

[1314] eBay Australia, "Artefacts and cave formations policy".

The policy then elaborates on the applicability of the Australian heritage legal framework to the listings of Australian cultural items, with reference to the National Cultural Heritage Control List and the different categories of protected objects. It also explicitly states that any items "considered sacred by Aboriginal or Torres Strait Islander persons can't be sold on eBay." In an additional information section of the policy, there is a list of the relevant government regulations including the PMCH Act, the *Historic Shipwrecks Act 1976*,[1315] and the ATSIHP Act. Not only are these laws specifically referenced, but they are also accompanied with a passage of text explaining the nature of the legislation and how it applies to the buying and selling of cultural objects. It also provides a list of links to relevant Australian government department websites, the ICOM's Red List,[1316] and the INTERPOL Stolen Works of Art database.[1317]

Within the "Artefacts and cave formations policy" there are also specific guidelines around both provenance and export permits. All listings of antiquities hosted by eBay Australia must include

> provenance or ownership history of the item, and, where possible, a photo or scanned image of an official document including both the item's country of origin, and the legal details of the sale. The item must be approved for import or export.[1318]

The policy also makes explicit reference to "cultural goods most vulnerable to illicit activity", referring to the ICOM's Red List as a resource for eBay users.[1319] In terms of the breadth and detail of this policy, eBay Australia should be seen as an exemplar antiquities market facilitator. The "Artefacts and cave formations policy" communicates somewhat effectively both what the policy is and why eBay needs to have such a policy. However, there are limitations to these guidelines – including the visibility of the policy, regulatory loopholes and a lack of clarification around enforcement – that must be considered in the application of the proposed "Framework" to the Australian context.

5. Strategies for Developing Ethical Engagement and Consumption for Australians –

Home to a number of collections of antiquities and continuously grappling with its colonial legacy, Australia is a unique context for exploring cultural heritage issues. Recently, Australia has been the site of a number of art crime investigations. Whilst these concerns are not

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[1315] *Historic Shipwrecks Act 1976* (Australia).
[1316] ICOM, "Red Lists Database".
[1317] 1INTERPOL, "Stolen Works of Art Database".
[1318] eBay Australia, "Artefacts and cave formations policy".
[1319] ICOM, "Red Lists Database".

exclusive to Australia, the proposed "Framework for Ethical Engagement with and Consumption of the Ancient World" is to be contextualised to distinct historical, socio-political, and legal landscapes. The following section demonstrates how the "Framework" can be applied to regional contexts. It approaches this application through three overarching themes: the need for reckoning with colonial complicity; the significance of First Nations voices and truth-telling processes in any attempt to foster ethical relationships with the past; and the role of Australian individuals and institutions in the enacting these proposed actions.

i. Reckoning with Colonial Complicity –

Colonialism "creates local problems",[1320] and the cultural heritage landscape in Australia is no exception to this statement. At the forefront of any attempt to promote ethical interactions with the ancient world is a reckoning with the colonial complicity which underlies Australian collecting practices and broader ways of understanding the past. Such an approach would involve market participants – collectors and dealers, public and private collecting institutions, research individuals and institutions, auction houses and sales hosting platforms, and the wider public – shaping their practices and values beyond their legal obligations to consider broader notions of harm. In addition to recognising that the modern antiquities market is tainted by "illegality at each stage of the market"[1321], Australian collecting practices are undeniably products of colonial discourses.[1322] Collections of artefacts – both sourced globally and from Aboriginal and Torres Strait Islander peoples – are the tangible products of colonialism, symbolising the trauma and harm inflicted since 1788.

Developing ethical relationships with the past within this context requires a nuanced methodology due to the diversity of First Nations peoples, as well as the diasporic nature of modern Australian society. There are, however, some guiding strategies which can be considered a starting point for reckoning with our complicity with colonialism in this environment. Decolonisation is essential in the toolkit of all individuals and institutions. First, this process involves the decolonisation of public and private collections of: internationally sourced antiquities in Australia, Aboriginal and Torres Strait Islander artefacts and human remains in Australia, and Aboriginal and Torres Strait Islander artefacts and human remains overseas. The Federal, state and territory, and local governments should all provide financial and political support – or continue their existing support for – the process of repatriating stolen

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[1320] Land, *Decolonizing Solidarity.* p. 247.
[1321] Mackenzie and Yates, "What is Grey About the "Grey Market" in Antiquities?" p. 72.
[1322] Procter, *The Whole Picture.*

or unethically acquired antiquities to communities. Second, ancient world studies individuals and institutions in Australia need to move towards decolonising their methodologies.[1323] This process of decolonisation needs to occur at all levels of education and research in Australia, including the curriculum at all stages of the Australian education system. Ancient world studies in Australia must also recognise the ancient lands and their histories we operate on as equal in complexity and as worthy of academic study as those civilisations which have traditionally dominated our research discourses.

j. First Nations Voices and Truth-Telling –

Reckoning with colonial complicity in Australia is only possible if we as a society address the historic and contemporary injustices experienced by First Nations peoples. Informed by both traditional knowledges and modern creative practices, Aboriginal and Torres Strait Islander voices are vital in the comprehensive truth-telling process about Australia's history. Calls for truth-telling at a local, state, and national level were central to *The Uluru Statement from the Heart,* the result of the 2017 National Constitutional Convention, also known as the Uluru Convention.[1324] The Convention, the "culmination of an Indigenous designed and led process of regional dialogues across the [Indigenous] nations",[1325] highlighted the ongoing failure to "comprehensively and consistently" teach the history of colonial Australia.[1326] The intergenerational trauma of colonialism experienced by individuals, communities, and countries can only be truly addressed by truth-telling processes.[1327] To quote delegates at the Adelaide regional dialogues: "[h]ealing can only begin when this true history is taught."[1328]

Truth-telling can be confronting and challenging, which has consequences:

[1323] George, L., Tauri, J. and MacDonald, L. T. A. O. T., *Indigenous Research Ethics* and Smith, *Decolonizing Methodologies.*

[1324] The Uluru Statement, "The Statement". Accessed 5 April 2021. https://ulurustatement.org . For commentary on The Uluru Statement and its significance to Aboriginal and Torres Strait Islander peoples, see: Davis, M. and Williams, G., *Everything You Need to Know About the Uluru Statement from the Heart.* Randwick, NSW: NewSouth Publishing, 2021; McKenna, "Moment of Truth"; O'Sullivan, D., *Sharing the Sovereign: Indigenous Peoples, Recognition, Treaties and the State.* Singapore: Palgrave Macmillan, 2021, and Reynolds, *Truth-telling.*

[1325] Appleby, G. and Davis, M., "The Uluru Statement and the Promises of Truth," *Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples,* Submission 480 – Attachment 1, 2018. p. 1

[1326] Appleby and Davis, "The Uluru Statement," p. 2.

[1327] Tagala, *All Our Relations.*

[1328] Record of Meeting, Adelaide Dialogue, 7 – 9 April 2017, in Referendum Council, *Full Report of the Referendum Council* (30 June 2017), 16–32.

> Controversy is whipped up and the coals of dormant culture wars are fanned back into life. Reputations are called into question; status is reassigned. Old certainties are challenged and new ways of thinking about the past broadcast to the world.[1329]

This description provided by Henry Reynolds is informed by watching these processes unfold in other settler colonies across the world,[1330] and are "related to the complex story of decolonisation that unfolded during the second half of the 20th century."[1331]

Truth-telling should thus not be reduced to a "symbolic gesture", but rather aim for a process that would "inform a renegotiation of the political relationship between Aboriginal and Torres Strait Islanders and the rest of the nation."[1332] Currently this renegotiation is being realised in the Australian state of Victoria, with the establishment of a "truth and justice process to formally recognise historic wrongs – and address ongoing injustices – for Aboriginal Victorians."[1333] Pioneering the truth-telling processes in Australia, the Victorian government worked in partnership with the First Peoples' Assembly to develop the state-based truth-telling commission. The process, run by the Yoo-rook Justice Commission,[1334] will involve "not only hearing Aboriginal voices – but actually listening to them. And taking meaningful action in order to achieve real and lasting change."[1335]

It is also necessary to centre First Nations voices by celebrating and supporting First Nations artists, creators, and story-tellers. Not only is this support vital for nation building and revitalising the cultural identity of Aboriginal and Torres Strait Islander peoples, but it is a necessary step in the reconciliation process for First Nations and non-Indigenous Australians. This is especially the case for celebrating and supporting media which features First Nations languages and traditional knowledges, which have been oppressed and sometimes even erased

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[1329] Reynolds, *Truth-Telling,* p. 209.
[1330] For example, the Truth and Reconciliation Commission which took place between 2007 and 2015 in Canada (Government of Canada, "Truth and Reconciliation Commision of Canada". Accessed 29 July 2022. https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525#chp2) and the ongoing Truth and Reconciliation Commission for Tornedalians, Kvens and Lantalaiset in Sweden (The Truth and Reconciliation Commission, "About the assignment." https://komisuuni.se/en/about-the-assignment/).
[1331] Reynolds, *Truth-Telling,* p. 209.
[1332] Appleby and Davis, "The Uluru Statement," p. 4.
[1333] Premier of Victoria, the Hon Daniel Andrews MP, "Delivering Truth and Justice for Aboriginal Victorians," 11 July 2020. Accessed 5 April 2021. https://www.premier.vic.gov.au/delivering-truth-and-justice-aboriginal-victorians
[1334] Named for the Wemba Wemba/Wamba Wamba word for "truth".
[1335] Premier of Victoria, the Hon Daniel Andrews MP, "Joint Statement On Victoria's Truth and Justice Process," 9 March 2021. Accessed 5 April 2021. https://www.premier.vic.gov.au/joint-statement-victorias-truth-and-justice-process

by colonial government policies.[1336] To quote Wiradyuri author – who had the opportunity to learn the traditional language of her Country in her fifties – Anita Heiss:

> [h]earing Language is empowering. Reclaiming it for myself means reclaiming my sovereignty as a Wiradyuri yinaa. Learning and speaking it has become part of my role in rebuilding our nation.[1337]

It would be impossible to identify and cite all of the examples of media which centre First Nations voices in the scope of this thesis.[1338] However, A recent example is a book I have personally read, the winner of the 2020 Miles Franklin Literary Award, Tara June Winch's *The Yield*.[1339] Written in English, Aboriginal English, and Wiradjuri (the traditional language of Winch's Country), the novel explores themes which are germane to settler-colonial Australia: land dispossession, the Stolen Generation, genocide and colonial violence, the theft of sacred objects, racism, inter-generational trauma and poverty, and the disconnect between modern Indigenous peoples and traditional knowledge, including the loss of language. The narrative is framed in three parts: through the eyes of a 21st century First Nations woman returning home from London for a funeral; the letters of a 19th century German Lutheran missionary; and the deceased patriarch's book – a dictionary which captures "the language of his people, the traditions of his ancestors, and everything that was ever remembered by those who came before him".[1340]

Ultimately, *The Yield* is a reclamation of the experiences of Indigenous individuals, families, and peoples following colonial invasion; of memories, histories, and truths; and of the language of the Wiradjuri people. The Judge's Report of the 2020 Stella Prize described the impact of author's inclusion of the traditional language in the following words:

> Winch teaches us about Language with a capital 'L' […]. The reader experiences an intricate layering of time through narrative explored in Language. This is Language that drives culture and energy, and brings people back from the brink. It is Language that heals.[1341]

[1336] Prior to colonisation more than 250 languages were spoken by First Nations peoples on the Australian continent. It is estimated only 40 of these languages are still spoken today. Bronham, L., et al., "Global predictors of language endangerment and the future of linguistic diversity," *Nature Ecology & Evolution* 6 (2022), pp. 163 – 173.

[1337] Heiss, A., *Am I Black Enough For You? 10 Years On.* Sydney, NSW: Penguin Random House Australia, 2022. p. 257.

[1338] There are currently more than 7000 works of Aboriginal and Torres Strait Islander storytellers on the BlackWords database: https://www.austlit.edu.au/blackwords

[1339] Winch, *The Yield.*

[1340] Winch, T. J. "The Yield". Accessed 11 February 2021. https://www.tarajunewinch.com/untitled-title-page

[1341] The Stella Prize, "2020 – The Yield". Accessed 11 February 2021. https://thestellaprize.com.au/prize/2020-prize/the-yield/

k. The Role of Institutions and Individuals –

Australian individuals and institutions that operate within the wider environment of cultural heritage discourses have significant roles to play in the process of developing practices based in the ethical engagement with and consumption of the past. As a starting point the behaviours and actions aimed at antiquities market stakeholders, ancient world studies researchers, and the broader public should be applied to the development of individual ethics and institutional ethics policies. Broadly speaking, these recommendations are based on the foundation of decolonising methodologies and ways of understanding the past, which involves examining and challenging existing collecting practices. The application of these guiding principles should be done in accordance with the Australian legal frameworks established in section 3.2.4.g., as well as in partnership with First Nations peoples.

One of the greatest challenges for Australian collecting institutions is improving their engagement with and representation of First Nations peoples. In 2018 Terri Janke and Company released the *AMaGA Indigenous Roadmap project report*,[1342] which examines the issues with past and contemporary First Nations engagement in the museum sector.[1343] As stated in the preface to the report:

> [h]istorically, museums are places where Indigenous cultural materials are displayed through an ethnographic gaze as relics of a past dying culture. […] Over the past 40 years, there have been significant shifts towards changing the relationship and dynamics between cultural institutions and Indigenous people. Today, more than ever, the sector must listen to the voices of Indigenous people who are seeking their rights to determine how their cultural material is managed and represented.[1344]

The findings of the report were based on extensive nationwide consultations with First Nations and non-Indigenous museum and gallery employees, artists, professionals, curators, consultants and community members.[1345] Some of the key issues explored were the issues how First Nations peoples are represented in museums and galleries, the lack of cultural safety and employment opportunities for First Nations people in the museum sector, the lack of engagement and collaboration between First Nations communities and the sector, and the overall failure to value First Nations voices and knowledge systems.[1346]

[1342] Janke, T. "First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries," Australian Museums and Galleries Association, 2018.
[1343] Janke, "First Peoples".
[1344] Janke, "First Peoples," p. 1.
[1345] Janke, "First Peoples".
[1346] Janke, "First Peoples".

As established in section 1.2.4, museums and other cultural knowledge institutions are potential fora for truth-telling and healing. In Australia this opportunity is being taken up by National Collecting Institutions, like the Australian Museum's "Unsettled" exhibition which is the subject of the case study at section 3.2.6.n. It is also taking place in the processes of culturally safe repatriation, which will be discussed in the context of the case study on the Return of Cultural Heritage Initiative at section 3.2.6.l. Museums are indeed "important instruments to both remember the past and to engage in truth-telling,"[1347] however, they should not bear this burden alone. Remembering and memorialising the history of colonial Australia is the responsibility of all educators, researchers, and cultural heritage professionals that operate in this country.

It is also the duty of all non-Indigenous individuals living on the lands of First Nation peoples to reflect on the true history of this country. This ethical obligation is not limited to the histories of Australia since 1788, but also extends to the recognition of the histories of the oldest living civilisation on Earth. Recognising and respecting these histories requires individuals and institutions to move beyond traditional Eurocentric methodologies and ontologies of the past and incorporating traditional First Nations knowledges as data points in their own right.

6. The Framework in Practice: Three Case Studies from the Australian Context

Applying the guidelines and principles of the "Framework for Ethical Engagement with and Consumption of the Ancient World" to the Australian context is an opportunity for institutions and individuals to reckon with their colonial complicity. However, it should be recognised that there are many initiatives currently underway in Australia which both reflect and were an inspiration for the "Framework". This section will examine three examples of such initiatives currently being led by the Australian Federal Government, an Australian academic institution and an Australian collecting institution.

The first case study is devoted to the Return of Cultural Heritage Initiative, led by the Australian Institute of Aboriginal and Torres Strait Islander Studies, which repatriates First Nations cultural heritage material from overseas collecting institutions to Country. The second case study examines the Research Centre for Deep History at the Australian National

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[1347] Reynolds, *Truth-Tellimg,* p. 208.

University, which applies the First Nations practice of deep listening to the study of deep history. And the third case study looks at the role of Australian collecting institutions in truth-telling and promoting reconciliation between First Nations and non-Indigenous Australians, using the Australian Museum's "Unsettled" exhibition as an example. Following the case studies is a table which records how each example aligns with the "Framework". Each of the case studies below reflect a number of the guidelines and principles put forward in Chapter 3.1, although none of them encapsulate the "Framework" in its entirety. Ultimately, the aim of this section is to demonstrate the applicability of the "Framework" through the enactment of its guidelines and principles in policy and programs.

l. The Australian Government and the Return of Cultural Heritage Initiative –

The Return of Cultural Heritage Initiative (RoCH) is led by AIATSIS and is funded by the Australian Government. As part of the RoCH, AIATSIS works with First Nations communities across Australia to secure the return of Aboriginal and Torres Strait Islander cultural heritage material held in overseas collections. In addition to returning culturally significant material from overseas to Australia, RoCH manages and curates a database of First Nations cultural heritage material held overseas; establishes best practice guidelines for the return of First Nations cultural heritage; advocates for change to institutional repatriation practices to bring them into compliance with best practice; and fosters relationships between overseas collecting institutions and First Nations communities.[1348] The material AIATSIS seeks to return to Australia includes objects, photographs, audio-visual records, artwork and archival items. The scope of the RoCH does not include the repatriation of ancestral remains or the material of interest located in Australian collections, which are instead managed by the Australian Office of the Arts.[1349]

In her 1998 contribution to the "repatriation debate", Ellen Herscher highlights the political and emotional factors involved in repatriation, reminding her readers that "these are not simply objects, but tangible symbols of historical wrongs and economic inequities, a focus for national

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[1348] AIATSIS, "Return of Cultural Heritage Initiative," *AIATSIS News,* 15 July 2020. Accessed 11 July 2022. https://aiatsis.gov.au/whats-new/news/return-cultural-heritage-initiative

[1349] The Indigenous Repatriation Program – Museum Grants facilitates the return of Aboriginal and Torres Strait Islander ancestors and secret sacred objects held in eight major Australian museums to their communities of origin. Office for the Arts, "Domestic repatriation". Accessed 11 July 2022. https://www.arts.gov.au/what-we-do/cultural-heritage/indigenous-repatriation/domestic-repatriation

self-esteem and identity".[1350] Thus repatriation in the Australian context has the potential to fit within the broader context of reconciliation and truth-telling.[1351] To quote Alyawarra man and cultural heritage expert, Lyndon Ormond-Parker, "part of any truth telling and reconciliation means owning up to the past and righting these wrongs through programs like the return of human remains and sacred objects."[1352]

The "Framework" presented in Chapter 3.1 considers broader notions of harm than those currently encapsulated in law and scientific practice. It is necessary then, to reflect on the harm experienced by First Nations peoples in this context, particularly the spiritual harm caused by the theft of ancestral remains and sacred objects. Palawa leader Michael Mansell describes the damage to Aboriginal communities from having ancestral remains overseas as "astronomical":

> The spirits of our dead are disturbed by being separated from their bodies. The remains are as important to us as land rights. It's a much more volatile issue, closer to the heart than even getting our land back.[1353]

This spiritual harm experienced by First Nations Australians has also been caused by the theft of sacred and ceremonial objects over the past 300 years and the fact that these objects remain in overseas collections. These objects were taken during a period of invasion, were often acquired through force, and their presence in overseas collections is in contradiction to the traditional laws of the peoples who created and used them.

Interacting with one's cultural patrimony, including both tangible and intangible cultural heritages, has been acknowledged as a part of the reconstruction and healing process for individuals and societies.[1354] Gweagal man Rodney Kelly, who has been campaigning for the

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[1350] Herscher, E., "Many Happy Returns? New Contributions to the Repatriation Debate," *American Journal of Archaeology* 102.4 (1998), p. 809.
[1351] See, for example, Lambert-Pennington, K., "What Remains? Reconciling Repatriation, Aboriginal Culture, Representation and the Past," *Oceania* 77.3 (2007), pp. 313 – 336; McAllister, J., "Truth-telling and how cultural repatriation is fundamental to the reconciliation process," *ABC News,* 27 May 2021. Accessed 11 July 2022. https://www.abc.net.au/news/2021-05-27/indigenous-cultural-repatriation-fundamental-to-reconciliation/13358668#:~:text=Reconciliation%20takes%20action&text=%22The%20repatriation%20process%20is%20also,%22%20Dr%20Ormond%2DParker%20said ; Return, Reconcile, Renew, "What is repatriation?" Accessed 11 July 2022. https://returnreconcilerenew.info/what-is-repatriation.html ; and Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, pp. 290 – 297.
[1352] Ormond-Parker, L., "Grounded in Truth," *Pursuit, University of Melbourne,* 26 May 2019. Accessed 11 July 2022. https://pursuit.unimelb.edu.au/articles/grounded-in-truth
[1353] Michael Mansell is a leader of the Palawa people, lawyer, and activist. He is quoted in Langsam, D., "Quest for the Missing Dead," *The Guardian,* 24 February 1990. Accessed 16 September 2020. http://www.dingonet.com/articles/australia/questfor.html
[1354] Ander, E. L. et al., "Heritage, Health and Well-Being: Assessing the Impact of a Heritage Focused Intervention on Health and Well-being," *International Journal of Heritage Studies* (2012). doi:10.1080/

return of the Gweagal shield since 2016,[1355] described the shield as possessing a "healing power" for Aboriginal Australia that "is much greater than any value it can have as part of a collection in the British Museum."[1356] Further, as established in the previous chapter, the right to "maintain, protect and develop the past, present and future manifestations of their cultures", is enshrined in Article 11 of the UNDRIP.[1357] Facilitating the repatriation process, in partnership with First Nations communities, is thus not only contributing to the necessary work of healing and reconciliation, but is also an opportunity for Australia to meet its obligations under the UNDRIP.

The RoCH started as a pilot project in 2018 and ran to 2020. During this period, it successfully returned 85 culturally significant objects from two overseas collecting institutions: Illinois State Museum and The Manchester Museum at the University of Manchester.[1358] The "fundamental tenet" of the RoCH was that AIATSIS worked in partnership with First Nations "custodians of material to return objects which supported in their maintenance and/or revitalisation of their cultural practices and reasserted their sovereignty of their cultural material."[1359] Within this framework, all requests for repatriations were made by the custodians, not AIATSIS or the collecting institutions or private collectors.[1360] This approach adopted by RoCH is important if we reflect on the issues with repatriation discussed in section 1.1.4. Ensuring that the requests for repatriation are made by the custodians is a necessary step in ensuring our attempts to decolonise our engagement with and consumption of the past is done in partnership with First Nations peoples.

Under the RoCH, requests were for "unconditional repatriation" to the keeping places of First Nations custodians and communities: "the project was not an AIATSIS building exercise."[1361] Further, all research activities and engagement with First Nations communities under the RoCH are guided by the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander

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13527258.2011.651740 and Giblin, J. D., "Post-conflict heritage: symbolic healing and cultural renewal," *International Journal of Heritage Studies* 20.5 (2014), pp. 500 – 518.

[1355] See ABC News, "Calls for British Museum to surrender Indigenous Gweagal shield," *ABC News,* 29 March 2016. Accessed 11 July 2022. https://www.abc.net.au/news/2016-03-29/calls-for-british-museum-to-surrender-gweagal-shield/7280532?nw=0

[1356] Rodney Kelly, quoted by Keenan, S., "Give back the Gweagal shield," *Critical Legal Thinking,* 11 November 2016. Accessed 11 July 2022. https://criticallegalthinking.com/2016/11/11/give-back-gweagal-shield/

[1357] The UNDRIP. Art 11.

[1358] AIATSIS, "Return of Cultural Heritage Project. 2018-20," Canberra, ACT: AIATSIS, 2020.

[1359] Johnston, I. G., et al., "The AIATSIS Return of Cultural Heritage Project: Understanding Aboriginal and Torres Strait Islander Cultural Heritage Material Held Overseas and the Initial Challenges to Repatriating Material to Custodians," *The Museum Journal* 64.4 (2021), p. 654.

[1360] Johnston et al., "The AIATSIS Return of Cultural Heritage Project," p. 654.

[1361] Johnston et al., "The AIATSIS Return of Cultural Heritage Project," p. 656.

Research,[1362] the UNDRIP, and the Australian Government Policy on Indigenous Repatriation.[1363] The RoCH pilot consisted of our research phases:

1. Identify, scope and document collections held in overseas collections;

2. Engage with First Nations stakeholders;

3. Partner with First Nations communities to undertake repatriation case studies; and

4. Produce a final report to inform a business case for future work.[1364]

The RoCH pilot identified over 102,000 Aboriginal and Torres Strait Islander cultural heritage objects being held in a total of 199 overseas collecting institutions, primarily located in the UK, the US and Europe.[1365] The project team corresponded with 194 of the collecting institutions, and of those who responded 124 expressed a willingness to share data about their collections, only 45 expressed a willingness to consider a repatriation request.[1366] The RoCH team argued this correspondence confirmed a "considerable willingness" on behalf of the institutions to "engage about and consider the repatriation of cultural material."[1367]

In the 2020 Budget, the Australian Government announced $10.1 million over four years from 2020-21 will be provided to AIATSIS to continue and expand the RoCH.[1368] Since then AIATSIS has facilitated a number of successful repatriations including the return of over 1800 stone artefacts to Australia from the Israel Museum in Jerusalem;[1369] eight secular items to the Yindjibarndi People from a private collector located in Andover in the UK;[1370] seven objects that hold sacred significance for Walpiri men to Yuendumu from the Kluge-Ruhe Aboriginal Art Collection of the University of Virginia in the US;[1371] a ceremonial headdress to the Lardil

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[1362] The AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research is discussed at length in section

[1363] Office for the Arts, "Australian Government Policy on Indigenous Repatriation," Canberra, ACT: The Australian Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 20 December 2019.

[1364] Johnston et al., "The AIATSIS Return of Cultural Heritage Project," p. 656.

[1365] Johnston et al., "The AIATSIS Return of Cultural Heritage Project," p. 659.

[1366] Johnston et al., "The AIATSIS Return of Cultural Heritage Project," p. 661.

[1367] Johnston et al., "The AIATSIS Return of Cultural Heritage Project," p. 659.

[1367] Johnston et al., "The AIATSIS Return of Cultural Heritage Project," p. 661.

[1368] AIATSIS, "Return of Cultural Heritage Initiative," *AIATSIS News.*

[1369] AIATSIS, "Celebration for the return of cultural heritage material from the Israel Museum, Jerusalem," *AIATSIS News,* 23 February 2021. Accessed 13 July 2022. https://aiatsis.gov.au/whats-new/news/celebration-return-cultural-heritage-material-israel-museum-jerusalem

[1370] AIATSIS, "Yindjibarndi celebrate return of cultural heritage material," *AIATSIS News,* 5 October 2020. Accessed 13 July 2022. https://aiatsis.gov.au/whats-new/news/yindjibarndi-celebrate-return-cultural-heritage-material and Meara, T., "Wayinyjarri-nha (came back). Return of Cultural Heritage to Yindjibarndi," Canberra, ACT: AIATSIS, 2021.

[1371] AIATSIS, "Sacred Walpiri objects arrived in Central Australia for last stage of journey home from US," *AIATSIS News,* 18 June 2022. https://aiatsis.gov.au/whats-new/news/sacred-warlpiri-objects-arrive

People from a private individual located in the UK;[1372] cultural heritage material to the Yawuru People from the Manchester Museum in the UK;[1373] ceremonial and restricted men's objects to the Gangalidda and Garawa Peoples from the Manchester Museum;[1374] six restricted men's objects to the Nyamal People from the Manchester Museum;[1375] secret sacred, restricted ceremonial, open ceremonial and secular objects to the Bardi Jawi People from the Illinois State Museum in the US;[1376] and a cultural heritage material to the Aranda People from the Illinois State Museum and Manchester Museum.[1377]

While each example of repatriation facilitated by the RoCH is unique, they are all alike in how they demonstrate successful repatriation can strengthen First Nations communities and culture, and promote reconciliation and healing. To quote Senior Aranda Man, Mark Inkamala, the return of the cultural heritage material "will restore […] culture and strengthen community" by allowing young people to learn about their culture, to help the Aranda People reconnect to Country and preserve their culture for future generations.[1378] Gangalidda man and representative for the Gangalidda Garawa Native Title Aboriginal Corporation, Mangubadijarri Yanner described the repatriation as "true practical reconciliation" and not just "flowery rhetoric and incremental or tokenistic change."[1379] And for Neilø McKenzie, Yawuru Senior Cultural Leader, the repatriation of "sacred cultural artefacts and ancestral remains back to Country brings them and us a peace of mind."[1380]

Returning cultural heritage material to Country can also be a positive and impactful experience for collecting institutions and private collectors. For example, the family who willingly returned cultural heritage objects to the Yindjibarndi People and Country said "[i]t felt even better than anticipated to give the objects back. It was the right thing to do."[1381] Curator of Living Cultures and Honorary Research Fellow at the Manchester Museum, Stephen Welsh views the

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[1372] AIATSIS, "Back in rightful hands – Lardil headdress received by traditional owners after return from United Kingdom," *AIATSIS News,* 22 March 2022. https://aiatsis.gov.au/whats-new/news/lardil-headdress-return
[1373] Johnston, I. G., Simpson, C., and McKenzie, N., "Return of Yawuru artefacts to Country," Canberra, ACT: AIATSIS, 2020.
[1374] Johnston, I. G., et al., "Thaalijarrmatha Nijinda Durgla Moungibi (Returning back home to my Country Moungibi)," Canberra, ACT: AIATSIS, 2020.
[1375] Johnston, I. G., et al., "Return of Nyamal artefacts to Country," Canberra, ACT: AIATSIS, 2020.
[1376] Johnston, I. G., et al., "Return of Bardi Jawi artefacts to Country," Canberra, ACT: AIATSIS, 2020.
[1377] Johnston, I. G., et al., "Aranda-Kenhe Akngetyalpuma (Aranda belongings have been returned)." Canberra, ACT: AIATSIS, 2020.
[1378] Quoted in Johnston, et al., "Aranda-Kenhe Akngetyalpuma," p. 23.
[1379] Quoted in Johnston, et al., "Thaalijarrmatha Nijinda Durgla Moungibi," p. 25.
[1380] Quoted in Johnston, Simpson, McKenzie, "Return of Yawuru artefacts to Country," p. 20.
[1381] Meara, T., "Wayinyjarri-nha (came back)," p. 20.

unconditional return of cultural heritage material as an opportunity for decolonising modes of curation. He also sees the repatriation as building trust between collecting institutions and First Nations communities, which will "encourage a deepening commitment to healing, reconciliation and inclusion."[1382]

The Return of Cultural Heritage Initiative is a project which directly reckons with the colonial complicity of the Australian Government and earlier colonial governments and international collecting institutions by facilitating unconditional repatriations of cultural heritage material to Country in a culturally safe way. In doing so it successfully embodies a number of the principles and guidelines of the "Framework." The "fundamental tenet" of the RoCH is that requests for repatriation of cultural heritage material are led by the First Nations people, which reflects the first principle: "respect the self-determination of others" (section 3.1.2.f.i.). AIATSIS works in partnership with First Nations communities from the earliest stages of the repatriation process to the publication of the reports cited in this case study, many of which are co-authored by First Nations individuals on behalf of their communities. Each successful repatriation under this approach can be seen as an act of self-determination, with the respective First Nations communities regaining the right to manage their own cultural patrimony according to their traditional laws and customs.

The RoCH also embodies the second principle, which dictates that best practice should always be determined by broader notions of harm, rather than legality (section 3.1.2.f.i.). Aboriginal and Torres Strait Islander heritage was not protected by the laws of either colonial governments or the Australian Government during the periods in which they were acquired by overseas collectors and collections. However, the RoCH is concerned with the broader notions of harm in this context, which include considering the traditional beliefs, laws and customs of the hundreds of Aboriginal and Torres Strait Islander nations across Australia. It seeks to address the injustices, wrongs and harm caused by colonial-era collecting. Ultimately, the RoCH operates from the stance that repatriation, if done in a culturally safe way, can promote healing and reconciliation for First Nations peoples.

Engaging with collecting institutions and private collectors and encouraging them to identify First Nations cultural heritage material in their possession is central to the guidelines for

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[1382] Quoted in Johnston, et al., "Aranda-Kenhe Akngetyalpuma," p. 25.

collectors, collecting institutions and antiquities dealers from in the "Framework" (sections 3.1.2.f..ii. and 3.1.2.f.v.). The provenance work conducted in partnership by AIATSIS and the collecting institutions is an ideal example of the underlying concept of the "Framework": that decolonising collections and collecting practices is the work of the beneficiaries of colonialism. Further, the scoping survey conducted as part of the pilot between 2018 and 2020 is a demonstration of the different levels of commitment to decolonisation that overseas collecting institutions are considering. To quote the RoCH Team: "[w]hile in the past repatriation of cultural heritage material has not been as broadly endorsed by all collecting institutions, it is clear years of advocacy has begun to change this position."[1383]

Finally, AIATSIS regularly publishes updates of successful repatriations and reports of the outcomes of the RoCH on their website, and speak about the RoCH at public events, including the AIATSIS Summit. The RoCH has also been the feature of a number of stories in Australian media outlets, with the permission and participation of AIATSIS and the members of the community being depicted. In other words, the work of the RoCH and the truth about the acquisition and display of First Nations heritage material in collecting institutions is regularly shared with members of the general public. In doing so, AIATSIS is educating the general public about the realities of the modern and historic antiquities market and challenging their ways of understanding Aboriginal and Torres Strait Islander culture.

m. The Australian National University Research Centre for Deep History

Deep history is the multidisciplinary study of human life prior to written or otherwise recorded history. Employing a multi-disciplinary combination of anthropology, archaeology, primatology, genetics and linguistics methodologies, deep history goes beyond the scope of prehistory to tell the "human story".[1384] Its proponents advocate for a wider scope than what they call "shallow history", which fixates on individuals and events, instead favouring the study of trends and processes like kinship, genealogy and developing traditions.[1385] In the preface to their 2011 book, anthropologist Andrew Shryock and historian Daniel Lord Smail reflect on what they describe as a "systematic neglect of deep history among historians and

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[1383] Johnston et al., "The AIATSIS Return of Cultural Heritage Project," pp. 669.
[1384] Cohen, P., "History That's Written in Beads as Well as in Words," *New York Times,* 26 September 2011. Accessed 8 August 2022. https://www.nytimes.com/2011/09/27/arts/deep-history-takes-humanity-back-to-its-origins.html?_r=0
[1385] Cohen, "History That's Written in Beads."

anthropologists."[1386] They argue that rather than being a "product of ignorance or disdain", this disregard is borne from our dominant ontologies of the past: "the architecture of historical arguments, from the narrative motifs and analogies preferred by the writers of history."[1387]

Deep history as a research discipline does indeed have the potential to transform and decolonise the study of history by restoring "historicity to the peoples without history."[1388] However, the methodologies used by proponents of deep history primarily rely on Western scientific methods for accessing the past through its tangible remains.[1389] According to Ann McGrath, Laura Rademaker and Ben Silverstein "[s]uch approaches have absented Indigenous knowledge, casting it as fundamentally irrelevant of deep history […] today."[1390] By continuing to privilege Western knowledge systems and discourses, researchers of deep history are in danger of reinforcing the very same dominant ontologies of the past which they seek to move beyond. This is especially the case for potential deep history projects in settler colonial contexts, like Australia, where the voices, [hi]stories and experiences of First Nations peoples have been routinely excluded and erased from national historical narratives.

In recognition of this limitation of deep history, the Research Centre for Deep History advocates for learning from First Nations peoples in order to "think differently about the practice of history and how it is seen and experienced."[1391] Instead of "sidelining" First Nations historical knowledges, they seek to engage with Aboriginal and Torres Strait Islander knowledge holders through "deep listening". Also known as *dadirri,* deep listening is a process tapping into to the "deep spring" that is inside all of us with a "quiet, still awareness."[1392] In the words of Ngan'gi Elder Miriam-Rose Ungunmerr-Baumann:

> [t]here is no need for words. A big part of *dadirri* is listening. Through the years, we have listened to our stories. They are told and sung, over and over, as the seasons go by.[1393]

[1386] Shryock, A. and Smail, D. L., *Deep History. The Architecture of Past and Present.* Berkeley, CA: University of California Press, 2011. p. x.

[1387] Shryock and Smail, *Deep History,* p. x.

[1388] Smail, D. L., "Preface: 'The Gift of History'," in A. McGrath and M. A. Jebb (eds), *Long History, Deep Time: Deepening Histories of Place.* Canberra, ACT: ANU Press, 2015. p. xi.

[1389] McGrath, A., Rademaker, L., and Silverstein, B., "Deep History and deep listening: Indigenous knowledges and the narration of the deep past," *Rethinking history* 25.3 (2021), pp. 307 – 326.

[1390] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 311.

[1391] The Research Centre for Deep History, "Overview," Accessed 8 August 2022. https://re.anu.edu.au/overview/

[1392] Ungunmerr, M. R., "*Dadirri*: Inner Deep Listening and Quiet Still Awareness." Miriam Rose Foundation, 1988. Accessed 10 August 2022. https://www.miriamrosefoundation.org.au/dadirri/

[1393] Ungunmerr, "*Dadirri.*"

Accessing First Nations voices and experiences to create a more complete history of Australia through deep listening is not only an opportunity for deep historians, it is a necessity. McGrath, Rademaker and Silverstein argue:

> [w]ithout such deep listening, […] much of what is written under the rubric of 'deep' history might in fact present a thin or narrow history, which fails to encompass a breadth of historicities in its understanding of pasts long ago.[1394]

In doing so, these researchers are creating a space for and assigning authority to First Nations perspectives, which is consistent with the foundational principles and the guidelines established in Chapter 3.1. This case study thus provides an analysis of the research, training and teaching activities of the Research Centre for Deep History, which is based in a collaborative and transdisciplinary approach that centres the voices of First Nations Australians.

The Research Centre for Deep History is part of the School of History at the Australian National University. It receives funding for its Rediscovering the Deep Human past project from the Australian Government through the Australian Research Council (ARC). The Centre builds on the work of the ARC Laureate Program, "Rediscovering the Deep Human Past: Global Networks, Future Opportunities," and the "Deepening Histories of Place" ARC Linkage Project, which was completed in collaboration with Terri Janke and Company.[1395] Whilst not First-Nations led, the Centre is ethically and culturally guided by an Indigenous Advisory Committee comprising of First Nations scholars and activists, as well as a General Advisory Committee, including both First Nations and non-Indigenous scholars.[1396] The Director of the Centre, Ann McGrath was the inaugural Director of the Australian Centre for Indigenous History and also the co-editor of *The Routledge Companion of Global Indigenous History,* which highlights the important role of Indigenous history and Indigenous knowledges in addressing contemporary concerns.[1397]

In her director's welcome for the Centre, McGrath describes her frustration with the absence of First Nations perspectives from Australian history as a motivation for her research endeavours. She asks:

[1394] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 309. See also: Trüper, "The Flatness of Historicity," *History and Theory* 58.1 (2019), pp. 23 – 49.

[1395] Terri Janke and Company is an Indigenous law firm that specialises in Commercial Law and ICIP. See section 3.2.5.k. for an examination of TJC's work on improving First Nations engagement in Australian museums and galleries.

[1396] The Research Centre for Deep History, "Advisory committees." Accessed 8 August 2022. https://re.anu.edu.au/advisory-committees/

[1397] McGrath, A. and Russell, L. (eds), *The Routledge Companion to Global Indigenous History.* Abingdon, OX and New York, NY: Routledge, 2021.

> [w]hy should European discovery narratives mark the beginning point of Australian history? Europeans could not logically 'discover' Australian when people were living in it, and nor can today's researchers 'discover the Indigenous deep past, for it will always be a rediscovery of a lived experience.[1398]

Thus, the Research Centre for Deep History centres First Nations knowledges and perspectives through its research methodologies in order to tell a more complete story of Australia's past. As previously highlighted, they advocate for an "equal relationship between historical knowledges" which includes the "ancient memory" of First Nations peoples.[1399]

Whilst McGrath, Rademaker and Silverstein acknowledge there are important distinctions between "western and Indigenous historicities", they argue they should not be separated by "an apparent epistemological barrier that seals each in its own logic."[1400] Instead, they propose practioners of deep history recognise and embrace the ways in which scientific discourses and First Nations knowledge systems inform each other by situating deep learning in "historical practice".[1401] Fundamentally, the application of deep listening as a research method is a culturally safe model of working with First Nations knowledge holders involving respect for

> one's interlocutor as having discrete responsibilities, as someone obligated to and capable of deciding what knowledge should be shared and with be whom. […] it mandates a willingness to act responsibly with the knowledge shared. Rather than acting immediately to translate it into more familiar forms and stories, it requires an effort to understand that knowledge within the social and historical context of its owners.[1402]

To demonstrate their commitment to this methodology, the Research Centre for Deep History embeds deep listening in their research, teaching, public outreach, and training initiatives. In terms of their research of deep human history, they base their methodologies on three "Re" words: rediscover, return, and repatriation. The term "rediscover" is used intentionally, as the team wishes to "signal as researchers, we are not seeing anything for the first time […] Rather, we are revisiting pasts that were lived out."[1403] As discussed above, the Centre accesses these pasts through engaging with First Nations voices and deep listening, always acknowledging the ancient knowledges of individuals and communities. By "return", the team is referring to their

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[1398] The Research Centre for Deep History, "Directors welcome". Accessed 9 August 2022. https://re.anu.edu.au/directors-welcome/

[1399] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 309.

[1400] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 313.

[1401] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 313.

[1402] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 309.

[1403] The Research Centre for Deep History, "Overview".

intentions to return archival knowledge to communities and produce research which has "real value" to First Nations communities[1404]. Similarly, the Centre is committed to repatriating knowledge back to First Nations communities.

The practical implementation of these commitments to rediscovery, return and repatriation are demonstrated in the ongoing research partnership with the First Nations custodians of the Willandra Lakes region in New South Wales. Director of the Centre, Ann McGrath, was part of a team initially undertaking a "multi-vocal history project", working alongside other historians and representatives of the three Traditional Custodian groups: the Ngiampaa, Mutthi Mutthi, and Barktintji peoples.[1405] The methodologies of this project, which commenced in 2006, included conducting and filming interviews, the production of a feature-length documentary, participation in conferences, fieldtrips, First-Nations led tours, and numerous "yarning" gatherings or workshops.[1406] Through applying deep listening to historical practice, the researchers were able to engage with Elders' "epistemologies in which Country and ancestors imparted knowledge of both past and present."[1407]

Not only did this allow the researchers to learn about the ways in which the First Nations people perceive the deep past, but also provided an opportunity for reconciliation and healing for the Willandra Lakes Traditional Custodians. As discussed in section 1.2.4., the Willandra Lakes region was an area of scientific and archaeological interest since the late 1960s resulting in "tensions that bubbled over between the scientists, Indigenous custodians and government organisations."[1408] The Traditional Custodians were seriously harmed by the removal of ancestral remains from Country for scientific analyses without their prior consent or knowledge, and were also frustrated that "their own temporalities and historicities were overlooked by researchers."[1409] By listening deeply to the Willandra Lakes First Nations community and privileging their historic knowledges alongside Western ontologies of the past,

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[1404] Tbe Research Centre for Deep History, "Overview".
[1405] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 315. See also: McGrath, A., "Deep Histories in Time, or Crossing the Great Divide," in A. McGrath and M. A. Jebb (eds), *Long History, Deep Time.* Canberra, ACT: ANU Press, 2015. p. 1 – 32 and Allbrook, M. and McGrath, A., "Collaborative Histories of the Willandra Lakes," in A. McGrath and M. A. Jebb (eds), *Long History, Deep Time.* Canberra, ACT: ANU Press, 2015. Pp. 241 – 252;
[1406] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 315.
[1407] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 315.
[1408] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 315.
[1409] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 316. See also: McGrath, A., and "Critiquing the Discovery Narrative of Lady Mungo," in B. Effros and L. Guolong (eds), *Unmasking Ideology in Imperial and Colonial Archaeology.* Los Angeles, CA: UCLA Cotsen Institute of Archaeology Press, 2018. pp. 227 – 256 and "People of the Footprints. Rediscovery, Indigenous Historicities and the Science of Deep Time," *Interventions* 4.2 (2022), pp. 181 – 207; Tuniz, C., Gillepsie, R., and Jones, C., *The Bone Readers: Atoms, Genes and the Politics of Australia's Deep Past.* Sydney, NSW: Allen & Unwin, 2009.

the researchers involved in this project were able to better understand the deep history of the region in a culturally safe way.

In 2021, the Research Centre for Deep History contributed to several courses in the College of Arts and Social Sciences at the Australian National University. Each of these subjects furthered the Centre's commitment to the "development of high-quality research and teaching to advance the status, recognition, and lives of Aboriginal and Torres Strait Islander peoples."[1410] The contributions of the research team included co-convening: new subject which "considers transnational decolonial and postcolonial challenges to the discipline of history"; a seminar for Honours and Masters students which developed "critical understanding of diverse historiographical approaches in the discipline of history"; and a first year course which focuses on "the ways in which philosophical frameworks of Indigenous ways of knowing have informed, and continue to inform Indigenous ways of being and acting today."[1411]

The Research Centre for Deep History also hosts a number of Early Career Researchers and offers training opportunities for First Nations peoples.[1412] In addition to hosting these events, the Centre also maintains a bi-annual newsletter,[1413] a First Nations speaker series,[1414] and Deep Conversations series.[1415] These training and public outreach activities provide further occasions for the Centre to model best practice for engaging First Nations communities and using deep listening as a historical mode. They also provide a platform for First Nations individuals to speak about their historical knowledges and lived experiences. For example, in December 2021, Wuthathi/Meriam lawyer Terri Janke was hosted as a special guest speaker to talk about her work on ICIP and the True Tracks protocols.[1416] More recently, Gamilaraay archaeologist Wayne Brennan was invited to speak about his work on the community-based Aboriginal rock art project in August 2022.[1417]

[1410] The Research Centre for Deep History, "Teaching." Accessed 10 August 2022. https://re.anu.edu.au/teaching/
[1411] The Research Centre for Deep History, "Teaching".
[1412] The Research Centre for Deep History, "Training." Accessed 10 August 2022. https://re.anu.edu.au/training/
[1413] The Research Centre for Deep History, "Newsletters." Accessed 10 August 2022. https://re.anu.edu.au/newsletters/
[1414] The Research Centre for Deep History, "First Nations Speaker Series." Accessed 10 August 2022. https://re.anu.edu.au/category/first-nations-speaker-series
[1415] The Research Centre for Deep History, "Deep Conversations Series." Accessed 10 August 2022. https://re.anu.edu.au/category/deep-conversations-series
[1416] The Research Centre for Deep History, "Working with Indigenous Cultural and Intellectual Property: An Introduction to the True Tracks ICIP Protocols, Terri Janke," 9 December 2021, Sydney, NSW. See also: Janke, *True Tracks.*
[1417] The Research Centre for Deep History, "Two ways of walking together, Science and Culture – A Community based Aboriginal art project in the Blue Mountains," 3 August 2022, Sydney, NSW.

The Research Centre for Deep History embodies a number of the principles and guidelines of the "Framework for Engagement with and Consumption of the Ancient World," especially the guidelines targeted at academic institutions and individuals. Both the research and teaching initiatives of the Centre align with the recommendations presented in Section 3.1.3.h. In particular, the team contributes positively and meaningfully to the wellbeing of First Nations communities and their work acknowledges and respects the explicit and implicit wishes of ancient peoples and their descendants. The ongoing partnership with the Willandra Lakes Traditional Custodians is a clear demonstration of this. By respecting the Willandra Lakes community's right and obligation to look after their ancestors, the research team both adheres to this guideline and creates opportunities for reconciliation and healing. It also embodies the foundational principle of the "Framework": respect the self-determination of others, which includes both living communities, peoples, individuals, and nations (Section 3.1.2.f.i.).

In doing so, the Centre models how academic institutions and individuals can forge more ethical relationships with the past and living communities. It achieves this by its promotion of respect for the tangible and intangible cultural heritages of Aboriginal and Torres Strait Islander peoples and actively challenges the misappropriation of ancient ideas and traditional practices. For example, in an article published in 2022, the director of the Centre criticised the application of "Western discovery narratives" to First Nations historic knowledges.[1418] Referring to the example of a Mutthi Mutthi woman being credited with the "discovery" of an ancient human trackway at Lake Mungo in 2003, McGrath highlights how "discovery" is an imperial trope in settler coloniser societies.[1419] Her aims in challenging these narratives were to demonstrate how "decolonizing intentions can be misdirected" and to offer alternative approaches to historical practice for future researchers.[1420]

The Centre also aligns with the guidelines around ethical consumption in the "Framework" through both its aims and methodologies. It accomplishes this through its centring of First Nations voices (Section.1.4.l.ii) and by identifying, critically reflecting upon, and ultimately rejecting the neocolonial framing of the past (Section 3.1.4.l.i.). As discussed throughout this case study, the Centre advocates for the inclusion of First Nations historic knowledges alongside dominant Western historicities. This work directly relates to the guidelines for accepting the ancient world, and in this case pre-ancient world, does not exist purely in the

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[1418] McGrath, "People of the Footprints".
[1419] McGrath, "People of the Footprints".
[1420] McGrath, "People of the Footprints," p. 182.

purview of white people and the inclusion of diverse voices in the creation, portrayal, and reception of interpretations of the past. Further, through its support for the use of deep listening as a form of historical practice, the research team are explicitly including diverse methodologies, oral storytelling, and First Nations perspectives which challenge the mainstream Eurocentric depictions of Australia.

The result of these efforts is a research centre which creates space for and values the lived experiences of First Nations Australians. Through its public outreach, training and teaching initiatives, the Research Centre for Deep History is actively demonstrating best practice with fellow researchers, students, and even the general public. Its research partnerships with First Nations communities involves culturally safe practices and provide opportunity for truth-telling, reconciliation, and healing. And, its approach to the discipline of deep history models a kind of scholarship which

> demands a truly co-designed, collaborative and iterative practice. It requires working with Indigenous historians on their Country, in their communities, as directed by Indigenous people. It demands listening. And to the extent, that this re-presents a transformative interdependence, it also moves towards decolonizing the discipline.[1421]

n. The Australian Museum's "Unsettled" exhibition and the role of collecting institutions in truth-telling –

As established in Chapter 1.2, the collection and display of antiquities and cultural heritage objects is a colonial practice. Collecting institutions, such as museums and galleries, are inherently colonial institutions that have been complicit in colonial heritage crime. But, as discussed in sections 1.2.4, 3.1.f.v, and 3.2.5.k, museums and other collecting institutions have an important role to play in the decolonisation process. While engagement in culturally safe repatriation, like the RoCH Initiative examined in a previous case study, is crucial for modern collecting institutions, this is not the only path towards decolonisation.

In his recently published book, Australian historian Henry Reynolds reflected on the importance of truth-telling – which "allows us to weave new stories and to make old ones richer" – and the role of museums and monuments in this process.[1422] Reynolds' commentary is set against the backdrop of the $A500 million renovations intended for the Australian War

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[1421] McGrath, Rademaker and Silverstein, "Deep History and deep listening," p. 320.
[1422] Reynolds, *Truth-telling,* pp. 194 – 208.

Memorial,[1423] and the establishment of a multi-million-dollar Holocaust Education and Interpretation Centre in Hobart, Tasmania.[1424] Both projects attracted criticism from the First Nations and their non-Indigenous allies who highlighted the failure of the federal and state governments to memorialise the "bloody" histories of the frontier wars.[1425] Nala Mansell, a campaign manager for the Tasmanian Aboriginal Centre emphasised how

> [t]here are still no monuments acknowledging the Aboriginal resistance fighters of those who lost their lives and there are certainly no museums to educate people on the history and treatment of Aboriginal people and that's a disgrace.[1426]

In response to these comments, Reynolds proposes the establishment of a "new national museum dedicated to the frontier wars and supported with the same level of funding that is received by the War Memorial."[1427]

While there are currently no plans for such an institution in the Australia,[1428] there have been a number of exhibitions held at collecting institutions, including National Collecting Institutions, which explore the frontier wars and engage in processes of truth-telling. A recent example was the Australian Museum's "Unsettled" exhibition, held on Gadigal Land (Sydney, New South Wales) between 22 May to 10 October 2022.[1429] The exhibition was curated by the Australian Museum's first First Nations curator, Wailwan and Kooma woman Laura McBride, and Yuin woman Dr Mariko Smith, and was designed in response to the 250th anniversary in 2020 of the HMB *Endeavour's* East Coast voyage during 1770.[1430] As both the aims and methodologies of the exhibition align closely with a number of the principles and guidelines of the "Framework", this case study will be dedicated to examining the development of the exhibition, the exhibition

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[1423] Green, A., "Underground Australian War Memorial expansion tipped to top $500 million," *ABC News,* 7 April 2020. Accessed 5 April 2021. https://www.abc.net.au/news/2018-04-07/underground-war-memorial-expansion-tipped-to-top-500-million/9627910

[1424] Ross, S., "Holocaust to be remembered in new Tasmanian education centre," *ABC News,* 2 March 2021. Accessed 5 April 2021. https://www.abc.net.au/news/2021-03-02/frydenberg-announces-new-holocaust-memorial-for-tasmania/13207998

[1425] Cooper, E., "Tasmanian Aboriginal community hurt by lack of memorial, says government ignores 'bloody' history," *ABC News,* 4 March 2021. Accessed 5 April 2021. https://www.abc.net.au/news/2021-03-04/tasmanian-aboriginals-holocaust-centre/13214986 and Fewtrell, T., "War Memorial needs a new act, not a new building," *The Canberra Times,* 5 December 2019. Accessed 5 April 2021. https://www.canberratimes.com.au/story/6521088/war-memorial-needs-a-new-act-not-a-new-building/

[1426] Quoted in Cooper, "Tasmanian Aboriginal community hurt by lack of memorial".

[1427] Reynolds, "it's time for a new museum".

[1428] In May 2021 the Kinchela Boy's Home Aboriginal Corporation (KBHAC) launched a campaign to build Australia's first truth-telling museum and healing centre for Stolen Generations survivors and their families. Coggan, M., "The path to Australia's first truth-telling museum," *Probono Australia,* 26 May 2021. Accessed 22 July 2022. https://probonoaustralia.com.au/news/2021/05/the-path-to-australias-first-truth-telling-museum/

[1429] The Australian Museum, "Unsettled." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/

[1430] The Australian Museum, "Unsettled."

itself, and the reception to the exhibition. Unfortunately, due to the COVID-19 pandemic I was unable to attended "Unsettled" in person. However, the entire exhibition is available online via the Australian Museum's website,[1431] and I have also purchased the exhibition catalogue to support my analysis.[1432]

The Australian Museum, located on the lands of the Gadigal People of the Eora Nation, is Australia's oldest museum.[1433] It currently houses over 21 million scientific specimens and cultural objects.[1434] This includes a dedicated Aboriginal and Torres Strait Islander Collection, which is managed through "increased collaboration with First Nations peoples and communities" to ensure the objects are "interpreted appropriately."[1435] An example of this practice in process is the "Unsettled" exhibition, which was First-Nations led and included over 100 contributions by First Nations people across the country.[1436] In addition to historical documents and more than 80 cultural objects, the exhibition featured the work of contemporary First Nations artists and videos of First Nations Elders talking about their lived experiences.[1437]

The curators of "Unsettled" were very conscious of the colonial legacy of the Australian Museum and collecting institutions more broadly. To quote Laura McBride: "[m]useums have for a long time controlled [First Nations] representation, and how we're represented is how we're perceived by the public."[1438] To remedy this representation issue, a core component of the "Framework", McBride and her team consulted with 800 First Nations people regarding how they would like to mark the anniversary of Captain Cook's Landing. This approach was to ensure the exhibition was culturally appropriate and accurately represented the perspectives of First Nations people.[1439] The top three categories from the respondents were:

[1431] The Australian Museum, "Unsettled."
[1432] McBride, L. and Smith, M., *Unsettled. An Australian Museum Exhibition.* Sydney, NSW: The Australian Museum, 2021.
[1433] The Australian Museum was founded in 1827, making it the oldest museum in Australia and the fifth-oldest natural history museum in the world. It was founded with the aim of procuring "many rare and curious specimens of National History." The Australian Museum, "About – History." Accessed 22 July 2022. https://australian.museum/about/history/
[1434] The Australian Museum, "Discover & Learn." Accessed 22 July 2022. https://australian.museum/learn/
[1435] The Australian Museum, "First Nations." Accessed 22 July 2022. https://australian.museum/learn/first-nations/ For the history of this collection, see: Attenbrow, V., "Ethnographic and Archaeological Collections by FD McCarthy in the Australian Museum," in Peterson, N., Allen, L. and Hamby, L., (eds), *The Makers and Making of Indigenous Australian Museum Collections.* Carlton, VIC: Melbourne University Press, 2008. pp. 472 – 507, and Lampert, R., "The Development of the Aboriginal Gallery at the Australian Museum," *Bulletin Conference of Museum Anthropologists* 18 (1986), pp. 10 – 17.
[1436] The Australian Museum, "Unsettled."
[1437] The Australian Museum, "Unsettled."
[1438] Quoted in Archibald-Binge, E., "Unsettled, an Indigenous-led exhibition at the Australian Museum, unearths Australia's 'uncomfortable history'," *ABC News,* 18 May 2021. Accessed 22 July 2022. https://www.abc.net.au/news/2021-05-18/indigenous-exhibition-on-australias-uncomfortable-history/100143944
[1439] The Australian Museum, "Unsettled."

colonisation and its effects, the truth about Australia's foundation, and to address the false and pervasive history that still maintains itself in our education systems, media and everyday life.[1440]

In addition to these categories, the most common specific responses were: truth, truth-telling, invasions, wars, massacres, genocide, assimilation, dispossession, resistance, resilience, and survival.[1441] Following this engagement process, the exhibition team worked with over 130 First Nation people to interpret the topics identified in the consultation data. McBride described the entire cohort of First Nations community members of understanding the enormity of their task of telling the untold stories of so many individuals, families, communities, nations, and Ancestors. To quote McBride: "[t]hey had been waiting a long time for this story to be told."[1442]

Ultimately, the exhibition team landed on eight key themes. First, an introduction to the exhibition, which highlights the importance of listening to First Nations voices.[1443] The introduction to "Unsettled" set the scope and intentions for the exhibition, encapsulated in the 1971 untitled poem by Bill Day:

> Australia's true history
>
> is never read.
>
> But the blackman
>
> keeps it in his head.[1444]

The second theme, "Signal Fires", reflects on the important roles First Nations Elders and traditional knowledges play in teaching "the importance of the past and acting now for future generations."[1445] Together, a group of cultural objects and an immersive multimedia experience reflect on First Nations peoples' connection to their Country, Ancestors, and traditional practices.[1446] They also illustrate the risk of not valuing the traditional knowledges of First Nations people, especially in the context of land and water management. For example, the

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[1440] McBride, L. and Smith, M., "The *2020 Project* First Nations Community Consultation Report," Sydney, NSW: The Australian Museum, 2019.

[1441] McBride and Smith, "The *2020 Project*".

[1442] The Australian Museum, "Unsettled."

[1443] McBridhe and Smith, *Unsettled,* pp. 16 – 23 and The Australian Museum, "Unsettled Introduction." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/unsettled-introduction/

[1444] Day, B., "Untitled" quoted in McBride and Smith, *Unsettled,* p. 16.

[1445] McBride and Smith, *Unsettled,* pp. 24 – 35 and The Australian Museum, "Signal Fires." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/signal-fires/

[1446] The Living Legacies immersive experience is a Stella Stories Production with Guringai woman Amanda Jane Reynolds as lead artist. The immersive experience was commissioned by the Australia Museum for the exhibition and depicts how First Nations people carry culture and traditional knowledge for future generations. The video depicts a number of cultural protocols, including Smoking Ceremonies and Signal Fires. The exhibition also features the outfits worn by the performers in the video, including the waagura (Crow dancer) outfit designed by Walbunja and Yuin woman Ashweeni Mason. McBride and Smith, *Unsettled,* pp. 26 – 27.

carved spotted gum salvaged from bushfires by Uncle Noel Butler, a Budawang and Yuin artist, "represents 250 years of the wrong way of managing Country."[1447]

The next four themes are centred on the invasions, Frontier Wars, massacres, and genocide, which were synonymous with the British colonisation of First Nations peoples. "Recognising Invasions" references previously unseen historical accounts from both First Nations peoples and those onboard the HMB *Endeavour* during the 1770 East Coast voyage,[1448] which collectively point to the "lack of recognition of dispossession."[1449] The section entitled "Fighting Wars" shows how Australia was not peacefully settled, but rather was taken by force.[1450] This section depicts the decades of violent conflicts between First Nations peoples and the colonisers, also known as the Frontier Wars,[1451] through a series of historical records and cultural objects.[1452] "Remembering Massacres" uses archival records, a map of massacres in Australia between 1788 and 1930,[1453] and contemporary artworks, like Brendan Beirne's

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[1447] Quoted in McBride and Smith, *Unsettled,* p. 29.

[1448] The HMB *Endeavour*'s voyage was originally commissioned as a scientific mission. When the British Admirality found out about the planned voyage, they saw it as an opportunity to expand the British Empire's interests in the Pacific and issued Captain James Cook secret sealed orders instructing him to take possession of any unoccupied lands. He was also instructed to to gain "the consent of the Natives" when claiming possession of anything, however, Cook did not seek or obtain their permission. McBride and Smith, *Unsettled,* pp. 42 – 43.

[1449] The Australian Museum, "Recognising Invasions." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/recognising-invasions/

[1450] McBride and Smith, *Unsettled,* pp. 60 – 83 and The Australian Museum, "Fighting wars." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/fighting-wars/

[1451] For discussion of the Frontier Wars and the ongoing conflicts between First Nations peoples and European colonisers, see: Connor, J., *Australian Frontier Wars, 1788 – 1838.* Sydney, NSW: UNSW Press, 2003; Connors, L., *Warrior. A Legendary Leader's Dramatic Life and Violent Death on the Colonial Frontier.* Crows Nest, NSW: Allen & Unwin, 2015; Gapps, S., *The Sydney Wars: Conflict in the early colony, 1788-1817.* Sydney, NSW: NewSouth Books, 2018; Morrison, J., "Australian Frontier Conflicts 1788 – 1940s". Accessed 23 July 2022. https://australianfrontierconflicts.com.au/ ; Reynolds, *The Other Side of the Frontier* and *Forgotten Wars: new edition.* Sydney, NSW: NewSouth Books, 2022; Reynolds, H. and Clements, N., *Tongerlongeter. First Nations Leader & Tasmanian War Hero.* Sydney, NSW: NewSouth Books, 2021; Russell, L., "The 'frontier wars': undoing the myth of the peaceful settlement of Australia," *Monash University Lens,* 23 April 2021. Accessed 23 July 2022. https://lens.monash.edu/@politics-society/2021/04/23/1382962/the-frontier-wars-undoing-the-myth-of-the-peaceful-settlement-of-australia ; and Spearim, B., "Frontier War Stories," *Boesperim Podbean.* Accessed 23 July 2022. https://boespearim.podbean.com/

[1452] For example, maps of Warrego Country (c. 1845) and the Sydney Wars (1788 – 1817) detail ongoing conflicts (McBride and Smith, *Unsettled,* pp. 64 – 67). Historical documents, like the diaries of Governor Lachlan Macquarie and Captain James Wallis provide evidence of the "authorised campaign of "terror"" known as the 1816 Appin Massacre (McBride and Smith, *Unsettled,* pp. 70 – 76), and a number of metal breastplates which were given by colonisers to individuals who acted as negotiators, which had the effect of undermining shared leadership and collective decision making in Aboriginal communities (McBride and Smith, *Unsettled,* pp. 77 – 81).

[1453] McBride and Smith, *Unsettled,* p. 86. As described as Ali Gripper: "A wall-sized map of Australia is lit up in red, denoting where frontier massacres took place in each year. In 1921, almost two-thirds of the continent is awash in red." (Gripper, A., "Australian Museum gears up for most important show in its history," *The Sydney Morning Herald,* 14 May 2021. Accessed 22 July 2022. https://www.smh.com.au/culture/art-and-design/why-captain-cook-is-only-a-footnote-in-australian-history-20210507-p57pud.html). This map is the "Map of Colonial Frontier Massacres in Australia 1788-1930" and is sourced from the University of Newcastle Massacre Mapping Project. The historians and researchers define a colonial frontier massacre as "the deliberate and unlawful killing of six or more defenceless people in one operation." (Ryan, L., et al., *Colonial Frontier Massacres in Eastern Australia 1788 to 1930.* Vol. 2.1. Newcastle, NSW: University of Newcastle, 2018.) The map can also be sourced here: https://c21ch.newcastle.edu.au/colonialmassacres/map.php

photography series and Tony Albert's glasswork series,[1454] to illustrate historical and ongoing violence against First Nations peoples.[1455] And the "Surviving genocide" section reflects on the different acts of genocide – including massacres, dispossession, dispersals, the sterilisation of Aboriginal women, forced child removals, and assimilation policies – which have been committed against First Nations peoples.[1456] A number of pieces in this section portray the intergenerational trauma caused by the Stolen Generations,[1457] including a recreation of the gates of the Kinchela Boys Home by Uncle Widdy Welsh and an animation produced and narrated by survivors of the Kinchela Boys Home.[1458]

[1454] Brendan Beirne's photographic project, entitled "Dark Days," includes landscape shots of massacre sites taken between 2018 and 2020, including Poison Waterholes Creek, Narrandera NSW c. 1820 (McBride and Smith, *Unsettled,* p. 87), the Hawkesbury River NSW in the 1790s (McBride and Smith, *Unsettled,* p. 88), and the Thouringowa Waterhole massacre, Thargomindah QLD in 1865 (McBride and Smith, *Unsettled,* p. 89). Girramay and Kuku Yalanji artist Tony Smith's glasswork project, *The Prodigal Son,* is a response to the police brutality still experienced by First Nations people, including hundreds of deaths in custody. Albert's series "takes the imagery of these targeted men and transofmr shtem into commanding representations usually reserved for those in positions of privilege." McBride and Smith, *Unsettled,* p. 93.

[1455] McBride and Smith, *Unsettled,* pp. 84 – 93 and The Australian Museum, "Remembering massacres." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/remembering-massacres/

[1456] McBride and Smith, *Unsettled,* pp. 94 – 119 and The Australian Museum, "Surviving genocide." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/surviving-genocide/

[1457] The Stolen Generations refers to the period of forcible removal of thousands First Nations children as a result of Australian government policies. Children were raised in institutions, or foster or adopted by non-Indigenous families. In 1997 the Australian Human Rights Commission released the seminal *Bringing them Home Report.* The report shared the traumatic experiences of many thousands of Aboriginal and Torres Strait Islander people who were affected by the Stolen Generations (Australian Human Rights Commission, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children and Families.* April, 2017.). For more information on the Stolen Generations and its devastating impacts, see: Aboriginal Community Elders Service, *Aboriginal Elders' voices: stories of the "Tide of history": Victorian Indigenous Elders' life stories & oral histories.* Melbourne, VIC: Aboriginal Community Elders Service, 2003; Briskman, L., *The black grapevine: Aboriginal activism and the Stolen Generations.* Annandale, NSW: Federation Press, 2003; Butler, B. and Bond, J., *Sorry and Beyond. Healing the Stolen Generations.* Canberra, ACT: Aboriginal Studies Press, 2021; Fraser, R., *Shadow child: a memoir of the stolen generation.* Sydney, NSW: Hale & Iremonger, 1998; Havnen, P. and Norrington, L., (eds) *Under the mango tree: oral histories with Indigenous people from the Top End.* Darwin, NT: NT Writers' Centre Inc., 2001; Healing Foundation, "Who are the Stolen Generations?" Accessed 23 July 2022. https://healingfoundation.org.au/who-are-the-stolen-generations/ ; Hogan, M., "Stolen Generation Testimonies." Accessed 23 July 2022. https://www.stolengenerationstestimonies.com/ ; Lorena, A. and Brooks, J., "Longing to return home: the progress of the National Inquiry into the Stolen Generations," *Aboriginal Law Bulletin* 3.86 (1996), pp. 6 – 7; Mellor, D. and Haebich, A. (eds) *Many voices: reflections on experiences of Indigenous child separation.* Canberra, ACT: National Library of Australia, 2002; Payne, A. M., *Stolen Motherhood. Aboriginal Mothers and Child Removal in the Stolen Generations Era.* Washington, DC: Rowman & Littlefield, 2021; Quall, L., Diwurruwurru-jaru Aboriginal Corporation, and Katherine Region Stolen Generations Families Committee, *So far from home: oral histories of the stolen generations.* Katherine, NT: Diwurruwurru-jaru Aboriginal Corporation, 2002; Randall, B., *Songman: the story of an Aboriginal elder of Uluru.* Sydney, NSW: ABC Books, 2003; and Read, P., *The Stolen Generations. The removal of Aboriginal children in New South Wales 1883 to 1969.* Sydney, NSW: NSW Department of Aboriginal Affairs, 2006.

[1458] "The Kinchela Aboriginal Boys Training Home (KBH) was a 'home' run by the NSW Government for almost 50 years from 1924 – 1970 to house Aboriginal boys forcibly removed from their families. It's a place of deep importance for survivors, their families and communities." Kinchela Boys Home Aboriginal Corporation, "Kinchela Boys Home." Accessed 23 July 202. https://kinchelaboyshome.org.au/ The two works which reference the Kinchela Boys Home can be found at McBride and Smith, *Unsettled,* pp. 117 – 118.

The final two sections highlight the resilience of First Nations peoples and culture, and the significance of truth-telling in the healing and reconciliation process for First Nations peoples and non-Indigenous Australians. The "Continued resistance" section the different strategies of resistance enacted by First Nations people,[1459] including depictions of resistance fighters like Pemulway,[1460] and the work of contemporary First Nations artists, like Wiradjuri and Ngiayampaa artist Charlotte Allingham,[1461] which is framed as an act of political resistance. The exhibition ends with the "Healing nations" theme,[1462] which advocates for processes of truth-telling to facilitate healing and reconciliation between First Nations peoples and non-Indigenous Australians. This section reflects on "the Great Australian Silence",[1463] including three mixed media sculptures depicting kangaroos in the style of the Three Wise Monkeys by Mamu, Nagagen and Nhajan artist Danie Mellor.[1464] It also highlights the importance of concepts like Winhangadurinya, a Wiradjuri concept meaning deep listening, reflecting, and meditation,[1465] and self-determination in the path towards truth-telling and reconciliation.

The Australian Museum's "Unsettled" exhibition was well received by First Nations and non-Indigenous people alike. Eualayai and Gamillaroi woman, Larissa Behrendt, described the exhibition as groundbreaking for changing "the relationship between the museum and First

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[1459] McBride and Smith, *Unsettled,* pp. 120 –149 and The Australian Museum, "Continued resistance." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/continued-resistance/

[1460] Pemulwuy (1750 – 1802) was a Bidigal law (lore) man of the Eora Nation and remembered as a powerful First Nations resistance leader. When he was shot dead in 1802, his head was cut off and then set to Sir Joseph Banks for his collection. The pieces in the "Unsettled" exhibition that reference Pemulwuy include the reproductions of the series by Marri Ngarr artist Dr Ryan Presley entitled "Blood Money – Infinite Dollar Note – Bembulwoyan Commemorative 2018", and a miniature of the nawi (Tied-Bark Canoe) used by Pemulwuy by artist Uncle Steven Russell. McBride and Smith, *Unsettled,* pp. 134 – 135. For more information on Pemulwuy and his contribution to colonial resistance, see: Goodall, H and Cadzow, A., *Rivers and resilience: Aboriginal people on Sydney's Georges River.* Sydney, NSW: UNSW Press, 2009; Karskens, G., *The Colony: A History of Early Sydney.* Crows Nest, NSW: Allen & Unwin, 2009; and Kohen, J. L., "Pemulwuy (1750 – 1802)," in *Australian Dictionary of Biography.* Canberra, ACT: National Centre of Biography, 2005.

[1461] The "Unsettled" exhibition includes reproductions of artworks by Charlotte Allingham including political statements like "Always Was, Always Will Be Aboriginal Land", "We Never Needed Your Approval to Exist" and "Rent is 250 Years Overdue." McBride and Smith, *Unsettled,* pp. 122 – 125.

[1462] McBride and Smith, *Unsettled,* pp. 150 – 167 and The Australian Museum," Healing nations." Accessed 22 July 2022. https://australian.museum/learn/first-nations/unsettled/healing-nations/

[1463] Previously discussed in section 1.1.1.b., this phrase was introduced by anthropologist W. E. H. Stanner in 1968.

[1464] The three wise monkeys are a Japanese "pictorial maxim" which embody the principle "see no evil, hear no evil, speak no evil." Mieder, W., "The Proverbial Three Wise Monkeys," *Midwestern Journal of Language and Folklore,* 7 (1981), pp. 5 – 38. Danie Mellor's work, "Red, White and Blue 2008" depicts "three kangaroos [who] are posed as figures who knew all, but professed no knowledge as to the impact of empire building, past or present: they see no evil, hear no evil, speak no evil." McBride and Smith, *Unsettled,* p. 154.

[1465] The "Unsettled" exhibition includes a Winhangadurinya deep listening and reflecting space, designed by Fleur and Laurance Magick Dennis from *Milan Dhiiyaan*, a First Nations led business which provides cultural experience for Aboriginal and non-Aborigina people, and created with a team of First Nations Elders, cultural knowledge holders and community members. The space is described as "experiential": "a complex arrangement of three-dimensional objects with deep meanings." McBride and Smith, *Unsettled,* pp. 160 – 167.

Nations people."[1466] Mark Bowyer said it was "informative and visually captivating" and encouraged him to reflect on what he did and didn't know about colonisation.[1467] Stephen Russell for Time Out used adjectives like powerful and astounding to recount his experience of attending the exhibition.[1468] A number of reviews also reflected on how confronting and unsettling the exhibit was. Liz Bond of this Magnificent life described it as "harrowing, emotional and almost too big to take in all at once."[1469] Incidentally Sydney said it was "confronting and challenging" but also ends on a "hopeful note" with its reflection on healing, truth-telling and genuine engagement.[1470]

However, one aspect lacking from the exhibition was the fact it did not reflect enough on the colonial complicity of collecting institutions. In their review of the exhibition, Kirsten Thorpe and Lauren Booker argue

> [a]lthough *Unsettled* addresses many topics related to Australia's colonial history, it did not explicity engage in dialogue about the Australian Museum's specific role in the unsettled histories that were shared.[1471]

I agree with Thorpe and Booker about this oversight, as it was evident even when exploring the website, online tour and catalogue for "Unsettled." Most of the First Nations artefacts on display in the exhibition were from the museum's own collection, however, little if any information about the provenance of these objects was disclosed. It is important for collecting institutions to not just tell stories about the history and trauma of colonisation, but to tell stories about their own role in causing colonial harm through the theft, display, appropriation and (mis)interpretation of objects of cultural significance, human remains and knowledge more broadly.

Despite this oversight, the "Unsettled" exhibition reflects the principles and guidelines of the "Framework for Engagement with and Consumption of the Ancient World" in a number of

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[1466] Quoted in Gripper, "Australian Museum gears up".

[1467] Bowyer, M., "Unsettled – An Unsettling Exhibition at Sydney's Australian Museum," *Rusty Compass,* 20 June 2021. https://www.rustycompass.com/blog/unsettled-an-unsettling-exhibition-at-sydneys-australian-museum-321#.YtovU-xBx25

[1468] Russell, S. A., "Unsettled." *Time Out,* 11 January 2022. Accessed 22 July 2022. https://www.timeout.com/sydney/things-to-do/unsettled

[1469] Bond, L., "Unsettled – Ghosts linger at the edge," 25 May 2021. Accessed 22 July 2022. https://thismagnificentlife.com/unsettled-ghosts-linger-at-the-edge/

[1470] Incidentally Sydney, "Unsettled." Accessed 22 July 2022. https://www.incidentallysydney.com/blog/unsettled-exhibition

[1471] Thorpe, K. and Booker, L., "Unsettled – seeing First Nations histories represented in the Australian Museum," *Pearls and Irritations – John Menadue's Public Policy Journal,* 17 June 2021. Accessed 22 July 2022. https://johnmenadue.com/kirsten-thorpe-and-lauren-booker-unsettled-seeing-first-nations-histories-represented-in-the-australian-museum/

ways. First, the methodologies of engagement and exhibition design employed by the curatorial team reflect the guiding principles introduced in section 3.1.2.f.i. By engaging widely with First Nations communities and designing the themes of the exhibition based on those consultations, the team showed respect to the self-determination of First Nations peoples and also ensured the exhibition was embedded in cultural safety, to avoid causing further colonial harm. The exhibition team and the Australian Museum also respected the lived experiences of First Nations people and their perspective of Australian history, rather than centering dominant ontologies of the past. This statement is best demonstrated by the fact that despite being a response to the anniversary of Captain Cook's arrival in 1788, "he is but a small footnote in Australia's true history" and this is reflected in the exhibition.[1472]

The "Unsettled" exhibition was also free to all and accessible via the website. This reflects the guidelines in section 3.1.3.j., which proposes that academic institutions provide opportunities for members of the public of all nations – especially in contexts where their cultural heritage is the focus of research or a collection – to engage with the tangible and intangible remains of the past for free. The fact that the exhibition was available, and remains available online, is especially important in the context of living First Nations communities. As of 2022 it is predicted that only 38% of First Nations people will live in major cities, while 44% will live in inner and outer regional areas and 17% live in remote and very remote areas.[1473] Simply put, travelling to Sydney from a remote First Nations community would be a significant undertaking even without contending with the state border restrictions of 2021.[1474] The accessibility of this exhibition is also important within the global context, with few people able to visit in 2021 due to the COVID-19 pandemic. The fact that the "Unsettled" exhibition can be experienced by First Nations peoples,[1475] non-Indigenous Australians, and global audiences regardless of their physical location is a sign of the Australian Museum's commitment to truth-telling.

The entirety of "Unsettled" is a rejection of existing and pervasive interpretations of Australian history. It identifies, critically reflects on and rejects the (neo)colonial framing of First Nations peoples and their cultures (section 3.1.4.l.i.) through subverting colonial-era records and contemporary narratives. It also centres the voices of First Nations peoples (section 3.1.4.l.ii.),

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[1472] Quoted in Gripper, "Australian Museum gears up".
[1473] Australian Institute of Health and Welfare, "Profile of Indigenous Australians." Accessed 23 July 2022. https://www.aihw.gov.au/reports/australias-health/profile-of-indigenous-australians
[1474] Even I was unable to attend and I live a four-hour drive to the museum, have my own car and free accommodation in Sydney.
[1475] I do acknowledge that many remote communities still do not have reliable internet access and therefore would not have been able to access the exhibition at all.

including numerous works of contemporary First Nations artists, quotes of First Nations individuals, and the audiovisual recordings of First Nations Elders recounting their lived experiences. Ultimately, the success of the Australian Museum's "Unsettled" exhibition and the culturally safe approach employed by the exhibition team demonstrates the potential role of Australian collecting institutions to perform in truth-telling, healing and reconciliation. To quote Laura McBride:

> [t]his requires a spirit of inclusiveness and a commitment to build strong relationships between First Nations peoples and collecting institutions which promote principles of Indigenous agency and self-determination.[1476]

o. Summary of case studies –

The above case studies are examples of current initiatives undertaken by the Australian Government, and Australian collecting and academic institutions. Whilst each of the three case studies is unique in its aims and methodologies, they all involve processes of decolonisation which work towards reckoning with the colonial complicity of each institution. They are also unified by their efforts to centre First Nations voices and work in partnership with Aboriginal and Torres Strait Islander peoples. The three case studies also demonstrate best practice for the repatriation, research and teaching, and exhibition curation processes respectively. At various points in this thesis, the potential for healing and reconciliation through these processes of decolonisation has been discussed. However, I have also highlighted the risks of causing further colonial harm and trauma if repatriation, research and teaching, and exhibition curation processes are not developed and implemented in a culturally safe way.

Each of the three case studies were selected for their respective success in reckoning with colonial complicity whilst working in partnership with First Nations peoples. They were also chosen for their alignment to the "Framework for Engagement with and Consumption of the Ancient World" presented in Chapter 3.1. To illustrate this claim, the below table identifies how each case study aligns with the principles and guidelines for ethical engagement with the antiquities market, ethical academic practice, and ethical consumption of the ancient world. In addition to providing a clear summary of the case studies, this table also demonstrates the applicability of the "Framework" through the enactment of its guidelines and principles in existing policy and programs.

[1476] The Australian Museum, "Unsettled."

Table 1. Summary of Australian Context Case Studies

Framework Section	Case study 1: Return of Cultural Heritage Initiative	Case study 2: Research Centre for Deep History	Case study 3: Australia Museum's "Unsettled" Exhibition
Foundational Principles (3.1.2.f.i.)	Yes	Yes	Yes
Guidelines for collectors and casual buyers (3.1.2.f.ii.)	N/A	N/A	N/A
Guidelines for dealers and casual sellers (3.1.2.f.iii.)	N/A	N/A	N/A
Guidelines for sales platforms (3.1.2.f.iv.)	N/A	N/A	N/A
Guidelines for collecting institutions (3.1.2.f.v.)	Yes	N/A	Yes
Guidelines for collectors and dealer associations (3.1.2.f.vi.)	N/A	N/A	N/A
Guidelines for general public (3.1.2.f.vii.)[1477]	Yes	Yes	Yes
Alternative collecting practices (3.1.2.g.)	No	No	Yes
Guidelines for ethical researching, publishing and teaching (3.1.3.h.)	Yes	Yes	To an extent[1478]
Guidelines for ethical interactions with the market (3.1.2.i.)	Yes	N/A	Yes
Guidelines for forging ethical relationships (3.1.3.j.)	Yes	Yes	Yes
Guidelines for avoiding neo-colonial framing (3.1.4.l.i.)	Yes	Yes	Yes
Guidelines for creating spaces for alternative voices	Yes	Yes	Yes

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[1477] Interpreted as the ways in which the case studies encourage or discourage best practice.
[1478] While the "Unsettled" exhibition does partially embody the recommendations presented in Section 3.1.3.h., more can be done in their efforts to educate the public about the collecting history of the Australian Museum and its colonial complicity. Issues with the presentation of First Nations artefacts without clear provenance was also discussed in the case study.

Conclusion –

As a non-Indigenous Australian and beneficiary of colonialism, my understanding of the ancient world has been dictated by methodologies and value systems which fail to reflect the diversity of this country and its history. Being part of the British Empire/Commonwealth, Australia's national history has always been a European history. Since first contact colonisers have exploited the lands, waters, and heritages of Aboriginal and Torres Strait Islander peoples, reworking and shaping their cultures through the lenses of Victorian belief systems. In many cases this process also involved the erasure of traditional ways of living and knowing, and replacing them with European economic, political, legal, and sociocultural worldviews.

Any attempt to develop ethical relationships with the ancient world in modern-day Australia requires recognising and challenging these (neo)colonial discourses which are embedded within our dominant ontologies of the past. Ironically, ancient world studies in Australia have always been concerned with the history of "Western" and "Eastern" civilisations, whilst neglecting to include in its purview the most ancient culture on Earth. The reframing of our ownership, study, and depictions of antiquity in Australia includes both decolonising collections antiquities originating from overseas locations and those belonging to Aboriginal and Torres Islander Peoples. In other words, it involves addressing the local problems, as well as the "faraway problems".[1479] This confrontation can only be accomplished in partnership with First Nations peoples. The repatriation of artefacts from local and overseas collections, and the truth-telling of both Australia's pre- and post-contact history must always be First Nations-led and adhere to the principles of self-determination.

[1479] Land, *Decolonizing Solidarity,* p. 247.

DISCUSSION AND CONCLUSION

But don't say in the years to come that you would have lived your life differently if only you had heard this story.

You've heard it now. (Thomas King)[1480]

Introduction –

This thesis has told a story. Or rather, it has told many stories which collectively underpin the origins and environment of the modern market for antiquities. The thematic links between these narratives include the recurrence of harm in our ontologies of the past: against individuals and peoples, both living and deceased, and objects. The "Framework for Engagement with and Consumption of the Ancient World" is a response to the harmful practices and values that are inherent in this illicit market. It presents a series of guidelines to aid in the fostering of ethical relationships with the past, including the tangible objects and intangible belief systems that mediate these relationships.

These guidelines are to be implemented not only by antiquities market participants but also the wider public. Based on the belief that best practice is determined by broader notions of harm, the "Framework" proposes behaviours and values to foster more ethical relationships with the past. But the modern antiquities market and other modes of consuming antiquity are complex issues which cannot be resolved in a single approach. Simply put, it would be naïve to assume that an ethics-based methodology could reform centuries of harmful practices and beliefs in one fell swoop.

This final chapter thus explores the limitations of the "Framework for Ethical Engagement with and Consumption of the Ancient World" presented in Part 3 of this thesis. The first section of this chapter explores three key limitations observed in the "Framework", including its reliance on self-regulation of the antiquities market, the challenges presented in implementation, and the exclusion of descendent communities and countries of origin. These criticisms are all valid. But they do not detract from the overall value of the suggestions offered by the "Framework for

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[1480] King, *The Truth About Stories.* p. 29.

Ethical Engagement with and Consumption of the Ancient World." Rather, they highlight a need for implementation of these guidelines within a broader context of market regulation and reform, and the decolonisation of our ontologies of the past. In other words, the "Framework" is just part of a multi-faceted system of solutions we require to combat the illicit trafficking of antiquities and to decolonise our relationship with the ancient world.

This chapter also includes a reflection on future implications for the antiquities market, including a discussion of the possibility of an ethical antiquities trade. Ethical consumerism and ethical consumption markets are becoming increasingly popular with modern audiences. Within this model, ethics and morals dictate the purchasing choices of buyers, from our diets to our wardrobes. In recent years the viability of this model has been explored as an option for reforming the illicit antiquities trade. But the possibility of an ethical antiquities market requires a number of considerations, including the need to address existing – and problematic – ethics discourses held by market participants; models of enforcement and ensuring compliance; and how the need to reconcile with colonial complicity interacts with market ethics. This chapter explores these issues, ultimately highlighting the need for further research and policy work in this area.

1. Limitations of the "Framework for Ethical Engagement with and Consumption of the Ancient World" –

There are three key limitations which can be identified in the "Framework for Ethical Engagement with and Consumption of the Ancient World" presented in Chapter 3.1. They are the reliance on self-regulation of the antiquities market, the challenges presented in implementation, and the exclusion of descendent communities and countries of origin in the design of the guidelines presented in the "Framework". In this section, each of these shortcomings will be examined and balanced against counter-arguments which aim to demonstrate the potential of the "Framework for Ethical Engagement with and Consumption of the Ancient World". Almost all of these rebuttals highlight the need for the guidelines presented in Chapter 3.1 to be implemented alongside other attempts to regulate and reform the modern antiquities market. They also fit within the wider project of decolonisation that beneficiaries of colonialism must undertake to reckon with their complicity with colonial systems.

A response to the modern antiquities market which encourages participants to fulfil more than just their legal obligations is undeniably informed by the theory of market self-regulation. According to Neil Brodie, self-regulation of the antiquities market comprises the "adoption by

antiquities dealers of voluntary codes of practice and ethics."[1481] It is distinct from the theory of market autoregulation which emerged in the late 1990s as a potential regulatory mechanism for the illicit trade of antiquities. Autoregulation in the antiquities market denotes the "aggregate effect of customer preference for good provenance, with price forging a legal market. It does not imply moral agency on the part of customers or dealers."[1482] Market self-regulation, on the other hand, requires participants to identify their own boundaries for professional conduct based on individual moral beliefs and shared community ethics.

These regulatory approaches are not new to the antiquities market, with codes of practice and ethics commonly maintained by destination communities and institutions. However, the content and enforceability of these self-regulation attempts are open to criticism, including their ambiguous wording which is "open to misinterpretation" and "poorly developed" due diligence advice.[1483] There are also issues with the embedding of regulatory loopholes in ethics codes, such as the "cuneiform exception" in the American Society of Overseas Research's "Policy on Professional Conduct" discussed in section 2.2.1. Another example of these regulatory loopholes is the 1970 provenance threshold, examined in sections 2.1.4.h and 2.2.3.h. Collectively, these issues result in measures which have questionable levels of success in ensuring the ethical behaviour and practice of demand market participants.

These ethics codes can also reinforce neocolonial beliefs and practices through the dissemination of narratives which undermine the rights of descendent communities and countries of origin. These narratives are often shaped by the use of the neutralisation techniques and shared denial narratives examined in section 2.1.2.e. However, the reception of these narratives is becoming more fraught as both market participants and the wider public are have become more cognisant of the myriad of issues related to cultural heritage crime. As discussed throughout this thesis, there is increasing pressure on public and private individuals and institutions to decolonise their collections and collecting practices. Put simply: people increasingly want to know where objects – artworks, artefacts, and especially human remains – have come from. Further, they want to know that this acquisition was not only legal, but also ethical. An example of this movement in practice is the recent petition requesting the German authorities make the details of their inventories and archives of African objects housed in

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[1481] Brodie, "Provenance and Price," p. 428.

[1482] Mackenzie et al., *Trafficking Culture,* p. 95. For further discussion of market autoregulation and its limitations, see: Brodie, "Provenance and Price".

[1483] Mackenzie et al., *Trafficking Culture,* p. 118.

collecting institutions available to the public.[1484] Commenting on this petition, Kwame Okopu considers "the substance of the request as applicable to all Western museums and institutions that hold African artefacts and other objects".[1485]

For self-regulation to work in the antiquities market, there needs to be some form of impetus for action. It would be naïve to assume that individuals and institutions would undergo these financially and emotionally expensive processes without some form of motivation. This demand from museum goers and the wider public to decolonise antiquities collecting is just one example. Political leaders, especially in the countries of former-colonial powers, are under the same pressures as collecting institutions and private collectors to create market reform. They are also increasingly expected to make amends for the harms of the colonial era, potentially by repatriating looted antiquities to their countries and descendent communities of origin.

Mechanisms of self-regulation fit within a broader environment of market regulation, and can even co-exist with more formal enforcement measures.[1486] Legal frameworks, especially in demand or destination countries, continue to play a vital role in fighting illicit trafficking. The introduction of more stringent laws, including serious punitive consequences for law-breaking, can help reinforce the need for market participants to change behaviours and practices. But even the strictest laws do not always have the desired effects on regulating illicit markets or in changing behaviours more broadly. To quote regulatory theorists Ian Ayres and John Braithwaite:

> [w]hen punishment rather than dialogue is in the foreground of regulatory encounters, it is basic human psychology that people will find this humiliating, will resent and resist in ways that include abandoning self-regulation.[1487]

Regulation thus requires a balance between measures of punishment and persuasion, between enforcement and encouragement, and between state regulation and self-regulation.[1488] The

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[1484] Open Inventories, "Open the museums' inventories of African objects!" Accessed 25 July 2021. https://doodle.com/poll/6vigsgt2hwm83dcy

[1485] Okopu, K., "Appeal to German Museums' Inventories on African Objects," *Modern Ghana,* 15 October 2019. Accessed 25 July 2021. https://www.modernghana.com/news/961408/appeal-to-open-german-museums-inventories-on-afri.html

[1486] Enforced self-regulation and meta-regulation in the antiquities market will be discussed in the next section of this chapter.

[1487] Ayres, I. and Braithwaite, J., *Responsive Regulation – Transcending the Regulation Debate.* New York: Oxford University Press, 1992. p. 25. This argument is informed by psychiatrist Melvin Lanksy's "holding down" theory, which contends that being held down by a regulation movement, or a physical or chemical restraint results in "a type of overregulation that humiliates the patient and complicates the return of self-regulation." Lanksy, M., "Violence, shame and the family" *International Journal of Family Psychiatry* 5 (1984), p. 23.

[1488] Influenced by Ayres and Braithwaite's theory of Responsive Regulation. See: Ayres and Braithwaite, *Responsive Regulation;* Freiberg, A., *The Tools of Regulation.* Alexandria, NSW: Federation Press, 2010; and

"Framework for Ethical Engagement with and Consumption of the Ancient World" is one tool of many that can be used to change the unethical behaviour of antiquities market participants.

Ultimately, the success of self-regulation in this space is dependent on whether an ethical antiquities market is even possible. Can a market with such a fraught colonial and illicit origins ever exist without perpetuating some form of harm? This discussion has taken many iterations, with market commentators and participants alike weighing in on the future of antiquities collecting. Due to the complexity and significance of this dialogue, and its centrality to the "Framework", it will be dealt with in its own section at a later point in this chapter.

It is necessary to acknowledge that there are also significant challenges faced in the implementation of the guidelines presented in Chapter 3.1. Whilst there are recurring issues and themes, the experience of different communities, nations, and peoples in relation to the illicit antiquities market is not universal. Nor is the reception of history and heritage, both tangible and intangible, in the belief and knowledge systems of descendant communities and countries of origin. Even between market countries there are variances in how they have mediated relationships with the ancient world; differences which are manifested in *inter alia* legal systems, collecting institutions, and educational syllabi. Some countries, including Australia, represent both supply and demand in the antiquities market. All of these factors create an environment in which a universal application of the "Framework for Ethical Engagement with and Consumption of the Ancient World" would not only be ineffective at combatting the illicit antiquities market, but might actually perpetuate more harm through its failed implementation.

The "Framework" was designed with the intent that it would inform the design and delivery of policy and programs at the local level. It was deliberately presented in a decontextualised fashion to highlight that alterations would always be necessary when applying the guidelines to a specific context. Chapter 3.2 examined how the "Framework for Ethical Engagement with and Consumption of the Ancient World" could potentially be applied to the Australian context. This chapter considered the country's settler-colonial history and how it has manifested in role in its collecting institutions and cultural heritage legal frameworks. It also highlighted the importance of First Nations-led initiatives in the project of decolonising Australian collections and collecting practices. The three case studies at section 3.2.6. illustrate the effectiveness of these practices, in the form of existing initiatives undertaken by the Australian Government,

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Kolieb, J., "When to Punish, When to Persuade and When to Reward: Strengthening Responsive Regulation with the Regulatory Diamond," *Monash University Law Review* 41.1 (2015), pp. 136 – 162.

and collecting and academic institutions. Ultimately, the chapter's goal was to demonstrate how to translate the suggestions in Chapters 3.1 to a country's "local problems" – a task which would be required in the design and delivery of policy and programs informed by the "Framework".

Finally, the "Framework for Ethical Engagement with and Consumption of the Ancient World" presented in Chapter 3.1 did not include guidelines directly aimed at descendent communities or countries of origin. Whilst there is nothing in the "Framework" which would prohibit its application in these contexts, individuals and institutions in destination market countries are the intended audience of these guidelines. The reason for this approach was established in the introduction and reinforced throughout this thesis, and can be reduced to the following statement: colonial collections and collecting practices are the responsibility for colonisers and the beneficiaries of colonialism. The onus should not be on those who have been harmed by the antiquities market to change normative standards or decolonise existing collections. Further, it is not my right as a non-Indigenous person to dictate how Indigenous peoples form relationships with or manage their cultural heritages.

However, this belief does not exclude descendent communities and countries of origin in playing a significant part in bringing about change to the unethical consumption of the past. They can, and do, perform a vital role in developing systems for preserving cultural heritage within their nations, communities, and institutions. These systems do not only include the building of infrastructure, such as museums and archives, which preserve and display tangible cultural heritage, but also the strategies which are designed to foster local pride in traditional knowledges, beliefs, and (his)stories.

Individuals and institutions from descendant communities and countries of origin also have a part to play in working with market participants to reform the antiquities market. As outlined in the "Framework for Ethical Engagement with and Consumption of the Ancient World", antiquities market participants should work in partnership with descendant communities and countries of origin. Shared decision-making arrangements, supported by formal partnerships, can be used to guide the process of decolonising existing collections and collecting practices. They also have a place in educational institutions and other contexts where work needs to be done to decolonise our ways of understanding the past. Finally, public and private institutions – both educational and collecting – should always endeavour to have representation from

descendant communities and countries of origin in their workforces, especially in positions of leadership and governance structures.

Before moving to a discussion of the possibility of an ethical antiquities market, it is worth reiterating that the "Framework for Ethical Engagement with and Consumption of the Ancient World" is not designed to exist in isolation. Cultural heritage crime and colonial collections of antiquities are complex, multi-faceted issues which cannot be addressed with a single approach. Solutions which are tailored to specific institutions, communities, and nations which use a range of complementary regulatory tools and educational strategies would be far more successful in changing unethical practices and behaviours. Where possible, these approaches should also be designed and implemented in partnership with descendant communities and First Nations peoples. Finally, addressing the issues of cultural heritage crime and colonial collections must fit within the broader project of decolonising our systems and ontologies of the past.

2. Future Implications: An Ethical Antiquities Market?

In 1975, Bonnie Burnham asked whether it was "indeed possible to buy art without getting involved in the vicious circle of pillage and destruction."[1489] Burnham was one of the first to have written about the "unprecedent pillage, theft, and destruction" experienced by objects of cultural significance.[1490] Whilst not a criminologist, Burnham's knowledge of museum affairs and the illicit art and antiquities market emerged from her work for the ICOM. She was the special coordinator of a project entitled "Ethics of Acquisition", which campaigned against acquisitions of looted antiquities and undocumented art in museums.[1491] Nearly five decades on, her question remains central to the issues of cultural heritage crime and colonial collections.

From Burnham's initial question stems additional lines of inquiry, including: what does an ethical antiquities market actually looks like in practice? How would it differ from existing ideas of ethics in the antiquities market? What sort of transformations need to take place in order for the market to separate itself from its problematic origins? How could an ethical antiquities market be encouraged and how could it be enforced?[1492] How do market participants reconcile with their colonial complicity when owning, commodifying, displaying, and even researching antiquities? And finally, is an ethical antiquities market even possible?

[1489] Burnham, *The Art Crisis,* p. 16.
[1490] Burnham, *The Art Crisis,* p. 13.
[1491] Burnham, *The Art Crisis,* p. 15.
[1492] Mackenzie et al., *Trafficking Culture,* pp. 115 – 126.

a. Existing Ideas of Ethics in the Antiquities Market –

In Chapter 2.1 the idea of antiquities dealer ethics was introduced in relation to the business practices of internet antiquities dealers. This discussion referred to research I have conducted into the performance of legal awareness of internet antiquities dealers and how this awareness does not always translate to ethical behaviours.[1493] Studying the ethics discourses of antiquities dealers, many of whom were also collectors, reveals that market participants generally believe themselves to be behaving in accordance to both legal frameworks and codes of ethical conduct. When these beliefs, however, are compared to the demonstrated actions of the studied dealers, there was a clear disconnect. Instead of acting as a "tool that operates as checks and balances of behaviour", the display of legal and ethical obligations is reduced to a performance which "support the dealer's reputation in the market."[1494]

Antiquities dealers thus have an existing view of what it means to be ethical and law-abiding. But this self-perception does not always align with the realities of the modern and historic antiquities trade; with a market which is embedded in colonialism, conflict, and crime. This statement could also be extended to include other market participants, including collectors and collecting institutions. As discussed in sections 2.2.3.h and 3.1.f.v, museums in particular have a legacy of not meeting their legal and ethical obligations. Codes of ethics and conduct held by organisations, associations, and other professional communities are not fully implemented or complied with. Further, these policies are often designed with loopholes which limit their effectiveness and have negative effects on normative standards, such as the 1970 provenance threshold highlighted above.[1495] An ethical antiquities market would therefore require a recalibration of how ethics are currently understood by market participants.

Suggestions on how market participants can develop more ethical behaviours and practices are the focus of the "Framework for Ethical Engagement with and Consumption of the Ancient World". Whilst there are specific actions which could be taken by different market actors depending on their role and responsibilities, there are broader principles which should be employed by anybody who interacts with the antiquities market. These include respect for the self-determination of all peoples, both living and deceased; being transparent about what is and isn't known about the provenance of antiquities; and that best practice is not only determined by what is legal or illegal, but by broader notions of harm. Ultimately, an ethical antiquities

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[1493] Dundler, "Still covered in sand".
[1494] Dundler, "Still covered in sand", pp. 2323 – 2324.
[1495] The 1970 provenance threshold was discussed in sections 2.1.4.h and 2.2.3.h.

market is a market which critically reflects on its problematic origins and rejects the use of neutralisation techniques and shared denial narratives. This step is crucial to transforming normative standards and existing ideas of ethics in the market, as it requires market participants to confront their own practices and behaviours as well as the belief systems which inform the modern and historic trade of antiquities.

b. Enforcing and Encouraging an Ethical Antiquities Market –

Throughout this thesis, the limitations of formal legal frameworks in regulating the illicit trade of antiquities has been discussed at length. The "Framework for Ethical Engagement with and Consumption of the Ancient World" was designed in response to these existing regulatory gaps. It encourages market participants to change their behaviours and practices not only in accordance to the law, but in response to broader notions of harm. It requires actors to not only consider their legal obligations, but their ethical responsibilities to living and deceased peoples. In other words, it seeks to influence normative standards for the antiquities market by changing social norms. To quote legal scholar Derek Fincham:

> [s]ocial norms regulate when the law is ineffective – and because the antiquities trade works hard at every turn to evade scrutiny, these norms serve as a de facto regulation of the sale of antiquities in many cases.[1496]

Moving toward an ethical antiquities market within the parameters of the "Framework" requires self-regulation. However, as discussed in the previous section, the success of self-regulation has been limited due to issues with compliance. Ensuring compliance in self-regulating markets is not an issue unique to the antiquities trade. The limitations of self-regulation have thus been addressed with the introduction of hybrid-models of regulation, which include varying degrees of government oversight. Examples of these types of self-regulation include coregulation – industry-association self-regulation with some degree of oversight and/or legislation from the government[1497] – and enforced self-regulation – an extension of coregulation which subcontracts "regulatory functions to private actors."[1498]

[1496] Fincham, D., "Social Norms and Illicit Cultural Heritage," in F. Francesco and J. Gordley (eds), *Enforcing International Cultural Heritage Law.* Oxford: Oxford University Press, 2013. pp. 206 – 227.
[1497] Ayres and Braithwaite, *Responsive Regulation,* p. 102. See also Grabosky, P. and Braithwaite, J., *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies.* Melbourne, VIC: Oxford University Press, 1986.
[1498] Ayres and Braithwaite, *Responsive Regulation,* p. 103.

In their book published in 2020, the Trafficking Culture research consortium – Simon Mackenzie, Neil Brodie, Donna Yates and Christos Tsirogiannis – discuss the potential of a form of enforced self-regulation, known as market meta-regulation. Market meta-regulation is an intermediary between the two poles of regulation: "(strong) command and control regulation and (weak) self-regulation".[1499] Meta-regulation in this context strengthens "self-regulation through oversight and enforcement by a designated third party, thus reducing the opportunity for non-compliance."[1500] Neither market meta-regulation nor enforced self-regulation have been applied to the modern antiquities market, but the Trafficking Culture team see it as a possible approach to regulating the illicit trade.

One solution to the illicit antiquities market informed by market meta-regulation is the model of the "ethical consumption" or "fair trade" market. The concept of ethical or fair trade consumption emerged in the early 2000s in response to the issues of exploitation and power imbalances synonymous with the deregulated global marketplace.[1501] These models present a combined socio-economic approach to the producer-consumer relationship which "aims at equality of exchange within a partnership approach, underpinned by a developmental, rather than confrontational agenda."[1502] At the core of the ethical or fair trade market models are the tenets of transparency, sustainability, co-operation rather than competition, and the elimination of harmful practices.[1503] "Ethical consumption," says Peter Gourevtich,

> has to do with the way a product is made: whether it pollutes, exploits children, hurts animals, and/or consumes too much energy. These are all characteristics of the production process, not the use value of the product.[1504]

Within ethical consumption or fair trade markets, consumers are willing to pay a premium price to ensure the products or services they are purchasing are not harmful. In the context of the antiquities market, non-harmful includes antiquities which were not looted, stolen, or acquired under otherwise exploitative actions. These criteria would not only cover antiquities which entered the market prior to the 1970 UNESCO Convention, they would also include any

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[1499] Mackenzie et al., *Trafficking Culture,* p. 123.
[1500] Mackenzie et al., *Trafficking Culture,* p. 123.
[1501] Nicholls, A. and Opal, C., *Fair Trade. Market-Driven Ethical Consumption.* London, California, and New Delhi: Sage Publications, 2005.
[1502] Nicholls and Opal, *Fair Trade,* p. 7.
[1503] Nicholls and Opal, *Fair Trade*.
[1504] Gourevitch, P., "The Value of Ethics. Monitoring Normative Compliance in Ethical Consumption Markets," in J. Beckert and P. Aspers (eds), *The Worth of Goods: Valuation and Pricing in the Economy.* New York: Oxford University Press, 2011. p. 86.

antiquities taken from their countries of origin during periods of colonial invasion. As discussed throughout this chapter and thesis, we are already beginning to see this demand for transparency about colonial theft emerging from museum-goers. Applying the ethical consumption market model to the antiquities trade would involve an extension of these consumer preferences to the buying and selling of antiquities.

However, the Trafficking Culture Research consortium acknowledge that holistically applying the ethical consumption model to the antiquities market would be inappropriate. This process would

> entail legalizing and commercializing archaeological excavation and trade at source so that profits derived from the destination market could be passed down to pay excavators or be used by appropriate agencies in heritage protection. Legalisation would most likely be used by dealers to increase market demand, and any money passed back would be soaked up by developing the human and physical capacity necessary for ensuring competent, well-documented standards of excavation along with matching standards of conservation and curation of found objects.[1505]

In response to these concerns, the Trafficking Culture team advises that there would have to be limitations on which antiquities could be offered for sale in the ethical consumption market. There would need to be an increase in market transparency including the introduction of a formal standard of provenance and legality, and mechanisms in place to ensure dealers complied with advertised codes of practice and ethics. Ultimately, "a workable [ethical consumption market] would need to diminish the damaging externalities of the illicit trade by increasing the volume of demonstrably licit trade."[1506]

Another limitation of fair trade or ethical consumption that needs to be considered here is the risk of market participants exploiting ethical consumers. These practices have become endemic in the markets for "green products", with corporations engaging in "selective disclosure" or misleading advertising campaigns to mask their harmful environmental impacts.[1507] Widely known as greenwashing,[1508] the phenomenon can be broadly understood as "the dissemination of false or deceptive information regarding an organization's environmental strategies, goals,

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[1505] Mackenzie et al., *Trafficking Culture,* p. 124.
[1506] Mackenzie et al., *Trafficking Culture,* p. 125.
[1507] Marquis, C., Toffel, M. W. and Zhou, Y., "Scrutiny, Norms, and Selective Disclosure: A Global Study of Greenwashing," *Organization Science* 27.2 (2016), pp. 233 – 504.
[1508] Whilst the term greenwashing has become quite popular in recent years, it was in fact coined in the 1980s by environmentalist Jay Westerveld. See: Orange, E. and Cohen, A. M., "From Eco-Friendly to Eco-Intelligent," *The Futurist* 44.5 (2010), pp. 28 – 32.

motivations, and actions."[1509] Depending on the regulatory mechanisms in place, dealers and sellers of "antiquities could employ techniques similar to greenwashing strategies to deceive collectors and buyers into believing the antiquities offered for sale were acquired ethically.

Applying the ethical consumption model to the antiquities market may face similar issues experienced in the attempts to regulate the global market for diamonds. Regulatory reform in the market for diamonds began when the Kimberley Processing Certification Scheme (KPCS) entered into force in 2003. The KPCS is an international agreement between 56 participants,[1510] who have committed to removing conflict diamonds from the global supply chain.[1511] Whilst the chair of KPCS attests to their participants successfully preventing 99.8% of the worldwide trade of conflict diamonds,[1512] there are limitations to the effectiveness of this regulatory regime.[1513]

The issue which raises the most parallels with an ethical antiquities market is related to provenance and monitoring compliance in global supply chains. In 2017, journalist Brian Clark demonstrated how one some of the largest online diamond suppliers – Blue Nile and Brilliant Earth – fail to use industry-recognised methods to ensure conflict-free stones.[1514] His investigation highlighted the challenges in proving the origins and conflict-free status of diamonds in the global supply chain, leading to the conclusion that

> if the De Beers scam was the greatest ever perpetuated in the diamond industry, this new promise of 100-percent certainty in proving the origin of individual stones deserves an honorable mention.[1515]

[1509] Becker-Olsen, K. and Potucek, S., "Greenwashing," in S. O. Idowu et al. (eds), *Encyclopedia of Corporate Social Responsibility, 2013 Edition.* Heidelberg: Springer-Verlag Berlin, 2013. p. 47.
[1510] The 56 participants represent 82 countries, with the European Union and its Member States counting as a single participant. Kimberley Process, "KP Participants and Observers". Accessed 31 July 2021. https://www.kimberleyprocess.com/node/49
[1511] The KPCS defines conflict diamonds as "rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments". Kimberley Process, "KPCS Core Document". Accessed 31 July 2021. https://web.archive.org/web/20190111094647/https://www.kimberleyprocess.com/en/kpcs-core-document
[1512] Kimberley Process, "What is the Kimberley Process?" Accessed 31 July 2021. https://www.kimberleyprocess.com/en/what-kp
[1513] Such limitations include the narrow definition of conflict diamonds and the lack of enforcement of the requirements of the regime. See Global Witness, "The Kimberley Process" in *Conflict Diamonds Briefing* (2013).
[1514] These legitimate measures include laser etchings or marking diamonds with the Canadamark. See Clark, B., "Inside the 'conflict-free' diamond scam costing online buyers millions (Updated)," *The Next Web,* 17 June 2017. Accessed 31 July 2021. https://thenextweb.com/news/shady-online-diamond-dealer-proves-conflict-free-is-no-guarantee
[1515] Clark, "Inside the 'conflict free' diamond scam".

As the antiquities trade is already characterised by poor provenance standards and a lack of transparency, it is reasonable to assume an ethical consumption market for antiquities would face similar problems.

c. Colonial Complicity in the Ethical Antiquities Market –

There is one final line of inquiry to explore in relation to an ethical antiquities market and that is the question of whether it is possible for market participants to reconcile their colonial complicity. This thesis has consistently examined the connections between the modern and historic antiquities market and (neo)colonialism. Increasingly these origins which cannot be contemplated "without horror" are becoming part of public discourses.[1516] This growing awareness of colonial collecting practices have resulted in demands for decolonising the antiquities market and existing collections of antiquities. But are these actions enough for market participants to reconcile with their colonial complicity?

The idea of colonial complicity in this context emerges from the work of Clare Land, who herself identifies as a beneficiary of colonialism.[1517] Throughout this thesis – but particularly in section 3.1.1.b – the need for antiquities market participants to reconcile with their complicity with colonialism has been a recurring theme. This work involves the process of decolonising existing antiquities collections and collecting practices. But it also requires the decolonising of the wider ontologies of the past which inform our relationship with the ancient world. Further, this process of decolonising is required for all antiquities market participants, but it is particularly relevant for the owners and custodians of colonial-era collections.

Reckoning with complicity always faces the paradox of confronting complicity with colonialism whilst operating within colonial systems.[1518] This statement is especially true for antiquities market participants as the antiquities trade is undeniably a product of colonialism. The question this paradox evokes, then, is whether it is ever possible for antiquities market participants to reconcile their complicity with colonialism if they are continuing to operate in and benefit from colonial systems? In other words, is it even possible for the antiquities market to be ethical within these parameters?

[1516] Benjamin, *Illuminations,* p. 256.
[1517] Land, *Decolonizing Solidarity.*
[1518] Land, *Decolonizing Solidarity.*

There are many colonial institutions that are difficult to avoid engaging with: schools and universities, legal and justice systems, government structures and services, and so on. Realistically, the antiquities market does not fit into this category for most people. Directly engaging with the trade of antiquities is a conscious choice made by consumers and prospective consumers. The continued support and facilitation of the trade is not only often illegal, but almost always involves perpetuating harmful colonial practices. The most ethical way forward is to avoid these interactions and instead consider alternative, less harmful ways of consuming the past.[1519] For some, adopting less harmful consumption practices will be a straightforward process. Others, especially those whose livelihoods are reliant on the trade of antiquities, the path towards more ethical relationships with the past will require more work, resources, and time.

Conclusion –

This thesis has identified a number of ethical and legal issues synonymous with our engagement with and consumption of the ancient world. It has also argued that our ontologies of the past can be harmful to both the living and deceased. The modern market for antiquities is the product of colonial and imperial collecting practices and behaviours which can be traced to antiquity. Since the ancient world the "spoils carried along in the procession" have been used by conquering armies and colonial governments in a performance of victory and authority.[1520] For the conquered peoples and their descendent communities, this display of heritage objects is a continuous reminder of violence, dispossession, and other forms of colonial harm.

Once accepted and celebrated, the loot and plunder of cultural objects has become criminalised. The industrial scale looting of archaeological and heritage sites since the 17th century led to affected countries developing regulatory responses to combat these destructive practices. The 20th century saw the emergence of international legal frameworks, which first introduced protections for cultural objects and sites during periods of conflict. The 1970 UNESCO Convention – and later 1995 UNIDROIT Convention[1521] – became part of the transnational effort to curb the illicit trade of antiquities. However, as discussed throughout this thesis, the existing regulatory framework for the modern antiquities market has struggled to achieve its aims of preventing the looting, destruction, and trafficking of cultural heritage.

[1519] For example, see section 3.1.2.g.
[1520] Benjamin, *Illuminations,* p. 256.
[1521] 1995 UNIDROIT Convention.

The limitations of this regulatory environment were an impetus for the "Framework for Ethical Engagement with and Consumption of the Past." So too was the growing pressure on collectors and collecting institutions to decolonise combined with the increasing prevalence of antiquities and human remains being offered for sale on the internet. In other words, the problems associated with the modern antiquities market and colonial consumption of the past are urgent issues which require solutions. The guidelines presented in the "Framework" are thus intended to sit within, and potentially inform, the legal, policy, and social reform needed to improve normative standards of antiquities market participants.

The "Framework for Ethical Engagement with and Consumption of the Ancient World" has potential implications for the design and delivery of policy in a number of areas. It provides practical recommendations that could inform the internal policies of collecting and educational institutions, as well as the codes of conduct of communities and associations. The suggestions for reframing and representation introduced in section 3.1.4.i. can also be used to direct curricula at all stages of education. The "Framework" could be adapted into government policy and programs, and even the development of cultural heritage legislation. It can also be used by individuals to develop their own personal and professional model of best practice.

This thesis started with a personal reflection about the challenge of changing my own relationship with the ancient world. It is only fitting that the final paragraphs provide an update on the status of how I have been addressing that challenge. The process of researching, writing, and reworking this thesis over the past four years is only part of my story. Alongside this work I have pursued a career in First Nations cultural heritage protection, advising on the design and delivery of policy for the Australian Government. It is a role that requires me to constantly confront the history of violence and dispossession which is synonymous with settler-coloniser relationships with First Nations peoples.

As an ancient historian formally educated about the history of Western civilisation and its influence on the modern world, this career path might be considered unusual. I was never taught about the ancient history of the land I was born and raised on. Any teachings about Aboriginal and Torres Strait Islander peoples were delivered in the context of modern Australian history – which always started in 1788 upon the arrival of the First Fleet. Anything that happened or anyone who came before that moment in time was firmly categorised as out of scope. Aboriginal and Torres Strait Islander peoples did not have a history, I was told, because they never recorded anything in the written word.

It was during the process of writing this thesis, however, that I was invited to reflect on the "local problems" created by colonialism. Learning about the 1948 American-Australian Scientific Expedition to Arnhem Land discussed in section 3.2.1 from Dr Rachel Yuen-Collingridge initiated this new direction for my research. Prior to that moment I had always considered issues with cultural heritage crime and colonial collections as part of "faraway problems". Whenever anybody asked if I looked at these issues locally I'd ignorantly respond that Australia could not be considered an area of major concern in the illicit trade of antiquities.

Since that moment of (re)discovery, I have been on a journey of (re)learning. This process has involved (re)considering the ways in which I viewed the ancient world, the antiquities market, and the history of my own country. It has also involved exploring new career pathways, outside of academic institutions, that would allow me to apply my skillset as an ancient historian to the issues in my own backyard. But for a non-Indigenous person living on stolen land, my challenge in reckoning with my colonial complicity and fostering a more ethical relationship with the past is never truly over. I continue to benefit from my privilege as a beneficiary of colonialism and white woman. I continue to live, work, and research in colonial systems. This is the contradiction that I factor in and reflect upon continuously.[1522]

Forging ethical relationships with the ancient world necessitates more than just returning objects to their countries of origin and descendant communities. Instead, it requires both individuals and institutions to engage in the personal and professional work of decolonising their ways of viewing, knowing, and accessing the past. The "Framework" is thus a challenge to antiquities market participants and the wider public to reconsider the broader nature of their interactions with the ancient world and its (in)tangible remains. It is a challenge to identify and reject (neo)colonial behaviours, practices, and policies which cause harm to both living and deceased peoples. Most of all, it is a challenge for those of us in the present to put ourselves in service to the past.

[1522] Land, *Decolonising Solidarity,* p. 229.

APPENDIX

The "Framework for Ethical Engagement with and Consumption of the Ancient World"

The following pages set out in schematic form the guidelines introduced in Chapters 3.1 and 3.2 to facilitate the reading of the "Framework". The contexts and arguments for these propositions may be found earlier in the corresponding chapters.

The general principles and guidelines in the "Framework" emerged in the drafting of the Markers of Authenticity ethics framework, by Rachel Yuen-Collingridge, Malcolm Choat, Richard Bott, and myself.

Section 3.1.2.f.i.

All ethical engagement with and consumption of the ancient world is should be guided by the following principles:
1. Respect the self-determination of others, which includes both living and past communities, peoples, individuals, and nations.
2. Recognise other modes of knowledge and ways of understanding the past, particularly those of all relevant stakeholders.
3. Best practice should always be determined by broader notions of harm, rather than legality.

Section 3.1.2.f.ii.

Collectors and casual buyers of antiquities should:
1. Avoid purchasing antiquities that meet any of the following criteria:
    (a) a lack of verifiable export documents from the country of origin,
    (b) can be identified as a type of cultural object which has been deemed at risk of looting and trafficking according to an ICOM Red List of Cultural Objects at Risk,
    (c) can be identified as a cultural object which has been stolen from an archaeological, heritage site, museum, or art gallery according to the INTERPOL Stolen Works of Art Database,
    (d) can be identified as a cultural object which has been stolen or a type of cultural object which has been deemed at risk of looting and trafficking according to the country of origin or descendant community of origin,
    (e) or can be sourced to an archaeological context associated with significant levels of organised looting, including both modern- and colonial-era looting.
2. Endeavour to establish the ethical status of existing collections. This process can involve consulting the aforementioned databases including the INTERPOL Stolen

Works of Art Database, the ICOM Red Lists of Cultural Objects at Risk, and similar resources from the source countries that the antiquities are believed to originate from.
3. Return looted or illicitly acquired antiquities identified to the rightful owners, the source country or descendant community.

Section 3.1.2.f.iii.

Dealers and casual sellers of antiquities should:
1. Avoid purchasing and selling antiquities which meet the same criteria identified in section 3.1.2.f.ii.
2. Endeavour to establish the ethical status of existing collections. This process can involve consulting the aforementioned databases including the INTERPOL Stolen Works of Art Database, the ICOM Red Lists of Cultural Objects at Risk, and similar resources from the source countries that the antiquities are believed to originate from.
3. Set a benchmark for transparent and open communication with source countries and descendant communities.
4. Communicate their personal and professional ethics to buyers and potential buyers.
5. Include the proposed disclaimer in the UNESCO/ICOM/INTERPOL 2006 "Basic actions concerning Cultural Objects being offered for Sale over the Internet":

> *"With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: i) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported; ii) request evidence of the seller's legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM".*

Section 3.1.2.f.iv.

All sales platforms which facilitate the sales of antiquities should:
1. Adopt their own internal ethical guidelines concerning the trade of antiquities, in addition to abiding by the relevant legal requirements. These guidelines must be explicitly communicated to users and potential users.
2. Consider the criteria outlined in section 3.1.2.f.ii. as the benchmark for all antiquities traded through the platform.
3. Adopt a philosophy of transparency and open communication with source countries and law enforcement agencies.
4. Communicate the relevant legal and ethical issues associated with the illicit antiquities trade.
5. Consider consulting with hiring heritage experts when designing software which monitors sales pages.

Section 3.1.2.f.v.

Collecting institutions, both private and public, should:
1. Avoid purchasing and selling antiquities which meet the same criteria identified in section 3.1.2.f.ii.
2. Set a benchmark for transparent and open communication with source countries and descendant communities.
3. Set a benchmark for educating the world about the realities of the antiquities market and the impacts of illicit antiquities trafficking.
4. Develop a collections policy which is made available to the public. Ideally it should be available on their websites.
5. Endeavour to establish the ethical status of existing collections. This process can involve consulting the aforementioned databases including the INTERPOL Stolen Works of Art Database, the ICOM Red Lists of Cultural Objects at Risk, and similar resources from the source countries that the antiquities are believed to originate from. The results of this research should also be made available to the public.
6. Be transparent about new acquisitions, deaccessioning, and all other changes to existing collections.
7. Undertake the necessary work of reckoning with their complicity with colonialism and antiquities crime.

Section 3.1.2.f.vi.

Collectors and dealer associations/communities should:
1. Go beyond merely revising existing policies to incorporate the general principles as well as the guidelines for both collectors and dealers introduced above.
2. Avoid reinforcing shared denial narratives which undermine the rights of source communities and descendent communities.
3. Educate members and the wider public of their ethical and legal responsibilities, as well as introducing them to alternative collecting practices

Section 3.1.2.f.vii.

Members of the general public should:
1. Approach interactions with antiquities collections with a critical awareness of the realities of the modern and historic antiquities market, as well as of the systemic colonialisms and neocolonialisms involved in depictions of the antiquity.
2. Challenge their ways of understanding the past, rather than reinforcing harmful and paternalistic relationships with living and ancient cultures.

Section 3.1.2.g.

Antiquities market participants should consider adopting alternative collecting practices, including:

1. Purchasing and displaying replicas of ancient objects, including those made from 3D- scans of antiquities.
2. Respectfully supporting living artists and artisans who maintain the traditions they have inherited from the past, as well as contribute to the formation of new heritage practices through their innovation and creativity.

Section 3.1.3.h.

All occasions of researching, publishing, or teaching information about the ancient world should:

1. Contribute both positively and meaningfully to the wellbeing of communities, peoples, individuals and nations.
2. Endeavour to educate within the academy and beyond about the destructive impact of antiquities looting and smuggling that is driven by market demand.
3. Acknowledge the explicit and implicit wishes of ancient peoples. This includes not engaging in activities which contravene these beliefs.
4. Respect relevant international conventions and the laws of the nation states in which artefacts are discovered.
5. Subject any artefact being presented or published to thorough investigation of its provenance, provenience, and authenticity. The results of this investigation should be made as transparent as possible – in a way that does not interfere with active legal investigations – to the public.
6. Audit existing collections for antiquities that have been acquired through illicit or otherwise dubious means. The results of this investigation should be made available to the public, and if illicit artefacts are identified as part of this process, the academic individual and institution must collaborate with the appropriate authorities concerning their return and/or transfer of guardianship.

Section 3.1.3.i.

In order to ensure that interactions with the antiquities market are legal and ethical, academic institutions and individuals should:

1. Acknowledge the sovereignty of nations and maintain respect for living and past individuals, communities, and peoples.
2. Avoid interactions with the market that may assign economic value to cultural objects, subsequently transforming them into commodities that can be traded.
3. Endeavour to provide ethical alternatives for market participants when engaging with the ancient world.

Section 3.1.3.j.

Forging ethical relationships with the past for academic individuals and institutions involves:
1. Maintaining a sincere respect for the self-determination of others, whether they be communities, peoples, individuals, nations, now or at any stage of the past.
2. Promoting respect for intangible cultural heritage, including not misappropriating ancient ideas, works, and practices, and respecting the privacy of individuals and communities.
3. Educating ourselves on uses of the ancient world, and its tangible and intangible remains, in contemporary society and combat any misuses encountered.
4. Recognising that all people of all nations have the right to access and control their own cultural heritages.
5. Provide opportunities for members of the public of all nations – especially in contexts where their cultural heritage is the focus of research or a collection – to engage with the tangible and intangible remains of the past for free.
6. Recognising that any and all engagement with the ancient world has the potential to shape market narratives and wider perceptions of the past.

Section 3.1.4.l.i.

Identifying, critically reflecting upon, and ultimately rejecting neocolonial framing of the ancient world involves avoiding:
1. Neoocolonial language when talking about the past and its (in)tangible remains.
2. Harmful clichés and stereotypes, which perpetuate colonial systems and cause harm to peoples.
3. Narratives which depict cultural heritage and historiographical issues without subverting the dominant colonial approaches to the ownership of the ancient world and its (in)tangible remains.

Section 3.1.4.l.ii.

Creating space for alternative voices in our consumption and commodification of the ancient world involves:
1. Accepting that the ancient world and its remains – antiquities, sites, and ideas – do not exist purely in the purview of white people.
2. Including diverse voices in the creation, portrayal, and reception of interpretations of the ancient world.
3. Considering how such texts and objects will be received by these individuals and communities, and effort put into creating media in the primary languages of the peoples being represented.
4. Including diverse methodologies, microhistories, oral storytelling, and

perspectives which challenge the mainstream Eurocentric depictions of the ancient world.

5. Approaching interpretations of the past and its tangible remains with a critical awareness of (neo)colonial frameworks and their ongoing influence on the epistemology of historical knowledge.

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