



## The Scale of the Legal and Illegal Trade of Cultural Objects

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## Abstract

This paper is about the scale of the legal and illegal trade of cultural objects

## Keywords

Art trade, cultural objects

## 1. Introduction

The aim of today's discussion is to present the scale of the legal and illegal trade of cultural objects in the UK.

'The correlation between arts, financial markets and economies is demonstrated by the scale of the circulation of art as a commodity (its commercialization). This scale is illustrated by figures in the trade of reproducible and performing arts rather than in unique artefacts. The question that should be addressed is whether art has the same characteristics as other commodities' (Chatzidi, 2024:72).

Art markets are arguably among the most internationalized goods markets: Van Gough's paintings can be admired in New York, a large collection of Egyptian art is found in Berlin, Nirvana's CDs are sold throughout the world, and American movies and books have global coverage" (Schulze, 1999: 109). Hence the art market is a globalized one and can be examined through international economics. It can be analyzed either by cultural nationalism or cultural internationalism. Art trade constitutes one important part of cultural economics that has been neglected.

Art trade is distinguished in live performing arts like plays, operas, unique art such as antiquities, etc. and reproducible art such as films. Unique art is correlated with national heritage. Cultural goods are characterized by uniqueness which confers monopoly to those who possess them. 'Uniqueness means that, even if a cultural object is copied, it could never be the same as the genuine one. In economic terms this means that there are no close substitutes for these goods. They can provoke hysteresis effects' (Chatzidi, 2024: 76).

"Government intervenes in the art market by imposing regulations in order to prevent negative externalities of monopoly and to capture the advantages of monopoly. The intervention of Government in the trade of unique artefacts is similar to that in public goods of great necessity, such as water" (Peacock & Rizzo, 1994). The actors may choose according to their interests to act either inside the official or the unofficial trade.

The trade system in art differs from source to market countries according to domestic legislation which happens to be stricter in the first than the second ones where the cultural objects can be circulated more freely.

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Art has an economic aspect as Peacock and Rizzo (1994) note: 'the arts need an economic base to flourish'. The statistics about the profits from art trade that are provided by representatives of this trade like auction houses, museums, collectors, associations of dealers of cultural goods and the scale of illicit trade in unique artefacts that are published by Interpol illustrate the above statement' (Chatzidi, 20024: 79-80). Demand and supply determine how the art trade functions. "Culture is in danger today, it is threatened by the rule of money and commerce and by a mercenary spirit that takes many forms "(Bourdieu, 2003: 64). "Politicians that sign international agreements consigning cultural goods to the common fate of interchangeable commodities subject to the same laws that apply to corn, bananas, or citrus fruit, are contributing to the abasement of culture and minds " (Bourdieu, 2003: 64).

But which are the main international actors that determine the supply and demand in art trade? These are mainly state and private museums, Government, galleries, art dealers, auction houses. They are all interact with each other trying to achieve the greatest economic profits. International museums play a great role in this trade and how it is formed.

Coming to our boundaries, the European market for cultural goods is considered to be the most fragmented one. That is why it is difficult to compete with the international one. It is composed by the national markets in countries such as Greece, Italy that are interested in the protection of their cultural heritage in contrast with market nations like the United Kingdom, Switzerland etc. that act in a more liberalized way. The Single European Market with the establishment of the free circulation of goods has put into risk cultural heritage and that is why there have been into force the Regulation 3911/92 and Directive 93/7 of the EU for the protection of cultural patrimony. The prices of artefacts are formed by the taste, preference, their value and how scarce they are. Of course an artefact is valued economically in its birthplace.

'All the different kinds of arts constitute an important part of economics and they are related to other economic activities (Rodgers in Chatzidi, 2024:96). Arts contribute to economic growth as they can create more jobs and attract capital in various ways. Hence art trade constitutes a commercial activity with many inputs and outputs, and auction houses, museums, and galleries can be seen as firms' (Chatzidi, 2024:96). The British art market is the largest one followed by the US, France and Germany (Chatzidi, 2024: 195). The statistics on the legal EU art trade are given by the European Fine Art Foundation (TEFAF) which is 'the world's preeminent organization for fine art, antiques and design' where they are presented the number of the legally-exported/imported cultural objects which include all works of art, collectors' pieces and antiques estimating their economic value. The Antiquities Dealers Association provides more details in the licit trade of antiquities.

What about the scale of the illegal trade? In which ways is it estimated? Interpol (International Criminal Police Organization) is the main actor to collect every year statistics about stolen artifacts by its member states. Are these statistics accurate and complete? It all depends on whether all member states give back reports to Interpol. One question that may be risen is whether these official statistics on the illegal trade include everything. It is obvious that they do not due to the form of this criminality that many times it gets the facet of the legality through money laundering.

## **2.A case study on the UK**

It is worth examining the case study of a market country on the trade of cultural objects such as the UK in order to understand better how this trade works. But what we mean by saying a market country? At this point I want to say that we distinguish a market country from a source one that is rich in cultural heritage and history. Which are the crucial questions that should be addressed so as to understand how this market regime functions? These questions are:

- What is the past and current regulation system on the legal / illegal trade in cultural objects in the UK?
- Has it changed and why?
- What is the size of the British art market?

### **2.1 The British legal system**

The British legal system has been constructed on a common law tradition in contrast to civil codified law. 'It relies on the precedent of court decisions and statutes. Therefore the key element in common law system is the legal judgements of the judiciary. Hence precedent creates the law' (de Cruz, 1999 ; Gallagher, Laver and Mair, 2005 in Chatzidi, 2024). As Dr. Bland notes 'There is a very different approach though I think to ownership and to the law of this country compared with other European countries. The common law tradition as opposed to the Roman law tradition if you like. In England, it's legal to do anything you want unless there is the law that actually prohibits it...So we have a tradition of having much less regulation' (Dr. Bland in Chatzidi, 2024: 181-182).

Coming to the UK, the regulation of the protection of cultural heritage more specifically antiquities differs in England, Wales and Northern Ireland from Scotland. English law together with Northern Ireland are 'based on a common law tradition, whereas Scottish law has Roman law origins' (Chatzidi, 2024: 182). This is due to the fact that British national identity is composed by different national identities as it was formed in 1707 and 1801. 'There is no British history as the history of an entity. Because of this lack of history, Britain has been characterized as a society without a state since it is not unified' (Pocock, 1975 in Chatzidi, 2024: 184). 'Hence there is no unified British law regulating cultural property. Until 2003, the existing British law on cultural property was much more flexible than the legislation on protecting cultural heritage in source countries. The new law of 2003 replaced this flexible system with a more rigid one' (Chatzidi, 2024: 182).

### **2.2. Dealing in Cultural Objects Act 2003**

How were we driven to the first enactment of Act of Law on the protection of cultural heritage? What is the role of antiquities for the British nation?

It is true that British classical antiquities have not been appreciated in the same way as classical antiquities. The British Museum was against in its establishment in 1753 towards the acquisition of British antiquities. Until 1882 (Ancient Monument Protection Act) there has not been any Governmental initiative in the protection cultural heritage apart from Treasure Trove of 1858. During the 18<sup>th</sup> and 19<sup>th</sup> century Great Britain has started to import classical antiquities through the Gand Tour that were considered to be more important than the British ones. The

Grand Tour gave the opportunity to British aristocrats to travel to countries rich in cultural heritage to meet ancient civilizations. 'This neoclassical movement was expressed through the acquisition of classical antiquities from the Grand Tour which formed an essential part of British elite education and social status, the construction of the educated gentlemen. Classical education was very important for the British aristocrats' (Chatzidi, 2024: 192-193).

### **2.3. The size of the British art market**

The British art market is one of the dominant ones in the EU followed by this of the US. 'Art sales are divided between sales by dealers and sales in auction houses' (Chatzidi, 2024: 197). At this point we should note that all three main auction houses namely Christie's, Sotheby's, Bonhams have been established in the UK. For centuries the British art market had been working on the notion of trust. This concept of trust was changed radically in 1997 due to the reveal of Sotheby's scandal and its connection with the illicit trade of antiquities from Italy. The investigator Peter Watson with his research on Sotheby's coming out with the book *Sotheby's: The Inside Story* together with the Medici Conspiracy and the programme on Channel 4 uncovered this scandal and forced Sotheby's to close the Department of Antiquities and reopen it to New York. As Professor Renfrew noted 'Sotheby's was highly embarrassed when they were caught selling antiquities that have been illegally exported from Italy and so on. And Peter Watson's book *Sotheby's: The Inside Story* and the associate television programme exposed them. So Sotheby's then stopped having auction sales in London, simply transferred to New York. There is no moral change, it was just a change of convenience. Christie's and Bonham's still have sales in London, but they are very much aware that they are under scrutiny' (Chatzidi, 2024: 210-2110).

Sotheby's scandal affected the way until that time the British art market was operating. It was more than obvious that it could not work in the way it was until now. There was a need for clearer rules and regulation so as to prevent such incidents that had caused embarrassment and lack of confidence. This need for 'investing safe and in good faith when there is clear provenance' (Chatzidi, 2024: 212) has come more urgent with the looting of the Bagdad Museum in 2003 and the import of its illegally acquired antiquities to London's art trade. That was the first time in 2003 that the British Government has enacted the first law on prohibiting illegal trade of cultural objects even if the incident has happened outside the British territory namely 'Dealing in Cultural Objects Act 2003'. This Act of Law came as the result of public outcry.

As Mr. Ede stated the London art market is still 'a successfully strong market, within the guidelines of law. The London art market is of course extremely important, is by far the most important art market in Europe' (Chatzidi, 2024: 210). Since 2006 the US has become the dominant player in legal art trade even though the UK was considered to be a larger employer in the art industry. It is worth giving an example of statistics in order to realize the size of the British legal art trade. 'In 2001, the British art market, with 754 auction houses, 9,463 dealers and 37,063 employees made sales totaling 6,7 million euros (half derived from auction houses and half from dealers). In 2006 the British art market had a 60% share of the European art market and a 27% of the global art market' (Chatzidi,2024: 199-202).

It is obvious that the British legal art market is a strong one that nowadays operates in legality and tries to operate through the existence of Codes of Ethics and the existence of due diligence. Treasure Trove was the only law to cover the protection of cultural heritage for centuries. 'It took a long time for the British state to react and take measures against the illegal trade in antiquities. Hence the British state preferred to rely on moral suasion and economic incentives rather than regulation and, to the extent that there was no regulation, to prefer self-regulation' (Chatzidi, 2024: 251). For the UK the art trade is vital.

I want to conclude that regulation cannot always prevent this kind of criminality. Criminals will always find new ways of acting and achieving of what they aim for. 'That is why what matters is the change of the way we think about these things' (Chatzidi, 2024: 252). Education of the public of the great importance of the protection of cultural heritage is the key element to all these.

### **3. The notion of the illegal trade of cultural objects**

What about the illegal trade? How do we define it? Is it countable? Illegal trade of cultural objects is everything that violates the law of a state. It is true that it is not something novel. It has always existed during the centuries. For example the plundering of Greek art by Romans, by the Latin Christians with the 4<sup>th</sup> Crusade, the Napoleon's and Hitler's pillaging with the more recent incidents of looting of artefacts in Iraq, Syria and periods of war.

It is difficult to obtain accurate statistics on the illegal trade of artefacts as they become legal through money laundering. Interpol is the main international actor to collect each year statistics on the illegal trade of cultural objects acquired by its member states.

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