

ART CRIME AND PREVENTION: BEST PRACTICES

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*Paper presented at the Art Crime
Protecting Art, Protecting Artists and Protecting Consumers Conference
convened by the Australian Institute of Criminology
and held in Sydney, 2-3 December 1999*

What steps can be taken to protect the Australian art market from both theft and fraud? A number of possible answers to this question can be suggested from the viewpoint of a criminologist. Considerable thinking has been done about the issue of crime prevention within criminological theory, and certain aspects of these approaches are potentially helpful in terms of application to the art market. One stream of such thought has highlighted three components that might be considered in addressing the problem of crime and its prevention: (1) the pool of potential motivated offenders; (2) the nature of the opportunities for such crime, in the present case those opportunities referring not just to the gaining access to goods, but as well the access to a market for the disposal of illegal art; and (3) the presence of “capable guardians”, that is, individuals who have the position and capacity to prevent the criminal behaviour from occurring.

Interesting results obtain when these ideas are translated into the problems of the movement of illegal goods onto the market. Whereas in some other kinds of crime it may be important to consider how to reduce the supply of motivated offenders (for example, in terms of at least some “street crime” through the reduction of such factors as unemployment), in all likelihood, at least in the view of this writer, there is little that can be done with regard to the systematic reduction in the pool of those who might be motivated to engage in art crime. There are rarely very many of such offenders, and even one dedicated, knowledgeable and talented fraudster, as was shown in the Drewe case in the England, can create catastrophic levels of damage to the legitimate art market. The art market must be prepared, in sum, for the continual attempts by a small number of individuals to engage in both theft and fraud, and the tasks of prevention must shift to the question of how to limit the damage inflicted on the market by such individuals.

The prevention efforts thus can be two-pronged, aimed at both closing off as much as possible the opportunities for individuals to gain access to illegal art goods, and/or to move such goods successfully onto the market. One clear example of this is to create in Australia an Art Loss Register system for the recording of all stolen art works. If such a register were available to both dealers and auction houses, and further if the art consumers knew of its presence as well, then the routine checking of works would quickly identify stolen material, and thereby close off access to the art market of such illegal works.

The comparable restriction of opportunity for faked works is a much more complicated topic. One step is the continued expansion of the base of scientific work that has been undertaken by the conservators at the Ian Potter Museum of the University of Melbourne. In some cases, given their extensive files of material on known fakers working in the Australian market, it would be relatively easy to identify a nominated work as a fake, and thereby restrict the opportunity for that work to enter the market through either a legitimate dealer or a major auction.

There are two other kinds of registers that would be of help in this regard. Bearing in mind that the problem of faking only arises with established artists, one step that would be helpful would be to assure that the known works of established works are collated (including the images), then these could provide a bank of material against which the claims of any work might be compared (although the Drewe case demonstrates how important it is to maintain effective security over such archives). Such collections, of course, already exist for many artists, and the task then becomes assessing the best ways to increase access to the files for purposes of assessing the claims of a nominated work.

The second archive is somewhat more contentious, and would consist of a file that records all material that has been withdrawn from either sale or auction. The development of such a file would only be possible if the limits were carefully drawn, and it were clear that all that was being claimed was that the material had been withdrawn (turning it around, such a file emphatically could not be taken as a file of faked works). This collection of material would then serve to alert dealers especially as to the background of a given work, and would provide a file which could then be correlated with existing files of past auctions (where it can not be known simply from the catalogue that a work has been withdrawn from the auction).

There are numerous other steps that can be taken to further restrict the “opportunity” component in the prevention equation. In the art world, similar to any other markets, museums and dealers can have some effect by increasing security, thereby engaging in “target hardening” which would make it more difficult to steal valuable works. More could be done in terms of how works are displayed and stored both in galleries and in private collections, especially given that it has been observed that burglars selecting “targets of opportunity” are likely to leave bulky and unmanageable objects behind. Staff of auction houses, and of galleries as well, can be provided more training which would better equip them to identify quickly works that are either stolen or faked, thus making it more likely that illegal goods would be identified, and their entry to the legitimate market denied.

Improving the Capacity of the Guardians

It has been pointed out previously that one of the important characteristics of the Australian art market is that it is in many ways quite small. While there are literally thousands of shops and other venues that sell art in Australia, there are in fact only a relatively small number of dealers who work consistently at the high end of the secondary art market. While to be sure not all of these dealers either know each other or necessarily feel inclined in general to be cooperative toward their competitors, legitimate dealers are not likely to feel any gain when faked works are known to be circulating in the art world. There are as well associations, such as the Australian Commercial Galleries Association, which have taken a principled stand regarding ethical behaviour of their members. It is also the case that often many dealers tend to know when suspicious works are coming onto the market, and they often feel frustrated in terms of what they can do. One prominent dealer, for example, went to the lengths of bidding successfully for what he knew to be a faked work at an auction, then ripping up the work after his bid was successful, in essence challenging the person who had placed the work on the market to take action against him (the dealer was correct in assessing that no action would be taken). Dealers are also likely to learn over time that other dealers are open to engage in suspicious trading.

While it will not be possible to pull all of this knowledge of dealers and the established auction houses together, certainly much more can be done to mobilise major players in the market to take action when illegal works come onto the market. An art market well mobilised to respond quickly to both thefts and questions of faking and authenticity will be difficult to penetrate by any but the most sophisticated and knowledgeable criminal scheme.

Best Practice and Understanding the Market

One of the striking features of the art market from the viewpoint of the criminologist is the way that the legal and illegal markets blend into each other. While not totally unusual, many of the more prominent illegal markets, such as those for drugs or for burgled goods (at least in Australia), are from point of origin to sale basically illegal and therefore those moving the goods are constrained to keeping their activities away from the view of the criminal justice system. For expensive works of art to realise their full market value, in all probability (“gloaters” aside) illegal art goods must somehow be placed onto the legitimate art market.

Many of the more powerful crime prevention techniques will be based in an understanding of how narrow the portals are for the movement of art goods onto the market. There are only particular kinds of places where an expensive art can be sold, such as an established dealer or a major auction house. There are other places where works of art can be sold, to be sure. Occasional stories are told of valuable objects surfacing in a flea market, or in an obscure auction of a household of furniture. A feature of such stories, of course, is that the works are then obtain for a fraction of their value. A person who has gone to the trouble to fake, or to arrange for a fake, of a major artist will simply not realise any profit through sales which follow these courses. While perhaps a relatively safe way of disposing of goods, since the risks of discovery might be quite low, there is no profit in it.

The recognition that the profit will only be achieved through moving the works through the limited outlets of established dealers or auction houses increases considerably the possibilities of effective restriction of the flow of illegal goods. In fact, there are many ways that the market works “naturally” which serve as forms of “narrowing” the available portals. For one example, few of the established dealers that were interviewed in this study would buy works of art “off the street”, that is, from persons trying to sell art object whom they don’t know and who simply approach them in their establishments in the course of a business day. Similarly, some dealers may develop a reputation for engaging in questionable art, and because of this other dealers may learn not to deal with them.

One direction to be followed by steps at crime prevention would simply consist of strengthening these existing market mechanisms. An art loss register system, for example, would enhance considerably the difficulty of moving a stolen work onto the market by closing off access of registered objects to the major dealers and auction houses who would routinely run potential purchases through the register.

Put another way, one of the major bits of leverage that is available for prevention of the movement of illegal art is that in much of the market there is a convergence of interests of retailers and consumers to assure that art being purchased is legitimate. Art dealers can be badly burned if they are put in a position to make good the costs of a painting which turns out to be either a fake, or stolen so that it has to be returned to an original owner. Consumers, too, can lose considerable money if they have purchased illegal works.

Ultimately, one of the most effective ways of preventing loss is through the creation of highly informed consumers. Such consumers would know art, and thus be able to judge the quality of works on offer, and might learn to spot the difference between faked and authentic works of art. Informed consumers as well will know how to read provenances, and thus be able to gauge whether the provenance provided for a given work is adequate. Together, then, more diligent dealers and better informed consumers might provide an important mechanism for protecting the market, at least in terms of the more gross forms of fraudulent activity.

It is important to conclude with the observation that the current art market in Australia is actually quite vigorous and healthy. There is an exceptional array of high quality art available, through a wide range of sources such as individual artists, commercial dealers, auction houses, special exhibitions, and art fairs, among others. Whenever there is a high volume of expensive works flowing through a market, one must anticipate that there will be some individuals tempted to enter that market with either stolen or faked goods. This has happened in the distant and recent past, it has been reported in the current market, and it must be anticipated that it will happen in the future. Those in the market, both dealers and consumers, are ultimately the ones with the most to gain by assuring that they arm themselves with the best techniques and knowledge available to restrict as much as possible the impact of illegal art on the market. There is wonderful art on offer in Australia today, and without question informed dealers and consumers can obtain marvellous works of art with reasonable confidence that those works are not just appealing artistically, but free from any taint of illegality.