

## **An Exploration of the Illegal Art Market of Australia**

**A Report Submitted to the Criminology Research Council**

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## ABSTRACT

This report represents a first exploration of the place of illegality in the art market of Australia. It draws upon qualitative data, including interviews and field observations involving over 300 respondents (dealers, museum personnel, police, insurance representatives, and other) to examine the general size and dimensions of theft and fraud in the art world. The report observes that both theft and fakery are persistent problems in the art market of Australia. The nature of the market tends to restrict somewhat the level of art theft, but issues of fakes and frauds tend to present major problems for those involved in the art trade. The Aboriginal art market poses its own particular issues, especially since there tend to be persistent issues of authorship and authenticity raised in this segment of Australia's art market. A number of issues regarding prevention, including the importance of developing an art theft register for Australia, are considered.

## **Executive Summary**

The general purpose of the research covered in this report was to undertake an initial exploration of the topic of art crime in Australia.. It was designed to address the following questions:

What is the size and volume of the illegal art market in Australia?

What is the shape of the market for illegal art, especially in contrast to other stolen property markets?

What are the specific processes where illegal art is passed into the legitimate art market ?

What is the place of Aboriginal art in the illegal art market of Australia?

To what extent does the illegal art market in Australia function as part of an international market for illegal art?

Finally, what does the analysis of the illegal art market suggest for general market models as a way of studying the movement of stolen property?

The research involved interviews with over 300 different informants who have some connection to the art market, these including art dealers, museum personnel, academics with knowledge about specific topics relating to art, police, persons connected with the insurance companies, and artists, among others. Interviews were conducted in many sites in Australia, including Adelaide, Alice Springs, Brisbane, Broom, Canberra, Darwin, Melbourne, Perth, Surfers Paradise, and Sydney in Australia, as well as London, New York and San Francisco overseas.

Regarding the issue of the size and volume of the illegal art market, this research found that both theft and fraud were persistent problems in the art market of Australia. Those in the market report that in their experience, faking and fraud are more significant problems than is theft. Unfortunately, there is no consistent reporting mechanism for art crime, so in this area there is a particular problem with what has sometimes been called the “dark figure of crime”, that is, the amount of crime that is unrevealed by the available official statistics. In fact, it is the nature of most forms of art crime that they are hardly ever recorded as such in official statistics from the criminal justice system. It shares, with terms like “white collar crime,” the problem that whatever examples of it that might be known to the criminal justice system will be imbedded in other categories of criminal behaviour, such as burglary, theft, or fraud. In a word, virtually all of art crime is in the “dark figure” category, and it is impossible to guess at the size or volume of art crime based on such statistics.

Nonetheless, there are notable examples of both theft and fraud in the art market of Australia. When compared to the workings of other criminal markets, some important

differences readily emerge. The market for burgled goods, for example, tends to be exceptionally rapid in terms of the movement of goods after the theft, and to be from theft to purchase a “hidden” and illicit market, since even buyers of burgled goods by virtue of price or venue of the purchase are likely to know that the goods have been obtained illicitly. This “market” also tends to be quite localised in the movement of the stolen goods. In contrast, much of the movement of illegal goods (both stolen and faked) requires that at some point the goods emerge onto the legitimate market, since the highest value for art works will be found either in auction houses or legitimate private galleries. Thus, a “portal” must be found so that such goods can be inserted into the market. Also, the movement of illegal art works is often exceptionally slow, and may take even years for successful insertion of illegal works into the legitimate market.

It appears that there are five factors that dictate the success or failure of ventures into illegal activity in the art market, these include:

1. The degree to which those attempting to move goods have information regarding the workings of the art market, and from that, knowledge about precisely how and where goods can be placed on the market.
2. How successful the individual is in gaining access to the goods to be moved, either in terms of material which is to be stolen, or faked works obtained from a source of such objects.
3. The extent to which the individual is able to develop a legitimate position within the art market, since those in the market are quite wary of dealing with unknown individuals, especially if the items in question are expensive.
4. The ability to obtain some form of “provenance” for the works, since successful insertion of works, especially those with large price tags, requires in most instances providing a plausible history for the work.
5. The degree of success in obtain access to a “portal” whereby the work can be moved onto the market in terms of either an auction sale or sale at a legitimate private gallery.

This investigation found that there are particular problems that are found in the Aboriginal art market of Australia. The issues of illegal activity in this market segment hardly ever deal concern the problem of theft, and are most likely to evolve around issues of faking and authenticity. There are a number of instances where claims have been made of what might be called “simple faking” where an artist who is not Aboriginal produces a work, and signs the name of a well known Aboriginal artist to the work, and then attempts to sell the material as a legitimate work of that Aboriginal artist. There were many claims made about such fakes made to the researchers in the course of their research, and there is a major case on this issue which is underway in New South Wales as this report is being written.

There are as well, however, a number of other issues that pivot around notions of “authenticity”. A number of individuals who were not Aboriginal, for example, have attempted (often quite successfully for at least some time) to pass their works off as Aboriginal art. This is the kind of problem that has provoked the movement toward the development of an “authenticity label” which will clearly identify works that are produced by those who are Aboriginal.

Unfortunately, this is only one part of the general problems that concern authenticity in Aboriginal art. Within Aboriginal communities, for example, there is a long tradition on collaboration in the production of material for various ritualistic ceremonies (material that comes to be defined in European culture as “art”), especially since this will be part of a teaching and learning of the key elements of the core values of the culture in a culture which does not transmit such material in written form. Furthermore, the roles of those who engage in this process may be complicated, and the ones responsible for much of the production may not be those who are the custodians or “owners” of the stories involved in the work.

Accordingly, works may go onto the art market in Australia where an individual identifies as the artist, when either (1) the signed artist was only a part of the group which prepared the work, or even (2) where the signed artist was not part of the physical production of the work, but is being simply acknowledged as the custodial or “owner” of the material in question. If either of these things happens, then the person in the non-Aboriginal world who purchases the painting may be buying a work that they believe has been produced by a given artist, but where in fact that artist has had little or nothing to do with the physical production of the work. As if these problems in themselves are not easy to resolve, then there is the added fact that has the production of Aboriginal art has become a major commodity with their communities, and where stories have shared ownership in any case, pressures may be put on more famous Aboriginal artists to sign the works of lesser known artists in hopes of inflating the prices.

In the course of our field work we found it of interest that these particular problems evolving around notions of authenticity rarely were a problem in work produced by the Aboriginal community art centres located in such communities as Fitzroy Crossing, Oenpelli, Warmun, Lajamanu, or in the current community of Utopia, to give but a few examples. There has not been a single case of fraud or fakery that has tainted the workings of these art centres. Put another way, virtually all of the problems around issues of authenticity have emerged in works that are placed for original sale in private galleries. The art centres by contrast are able to exert a form of quality control, and can also be a vehicle for education of both artists and the market about issues of authenticity, and these centres now have a well established history of assuring the proper attribution of work which is produced by their artists.

The general topic of crime prevention with respect to the problems posed by illegal art raises some interesting questions because of the specific character of the art market and its workings. Since it only takes one major illegal act, a large-scale theft, or a persistent and successful faker, to cause enormous damage, it is difficult to conceive of a process which, in the language of situational crime prevention, might have much impact on “reducing the pool of motivated offenders”. Instead, the prevention strategies must focus on the market itself, and on strengthen devices to prevent illegal material from flowing onto the legitimate market (that is, the prevention task involved various forms of “target hardening”).

Some such prevention strategies are manifestly obvious. The Australian art market is unique in the developed world in not having available a stolen works register. Currently in Europe, the United Kingdom, and North America the Art Loss Register (ALR) maintains a huge register of stolen works that has resulted in making it exceptionally difficult to move stolen works onto the legitimate market anywhere where the ALR operates. It used to be possible, for example, to steal a work in a small city in say Denmark or Belgium, then immediately ship the work to the United States or London for a quick sale. This is much less likely today, given the speed and effectiveness of the ALR system, where that register works. While it is not necessarily an easy task to develop such a register (since considerable work has to be done to generate a large enough file of stolen works to make consultation with the register worth the time of dealers and

purchasers), it is the view of these writers that a high priority should be given to the task of preparing such a data file in Australia.

Turning to the problem of fakes, in the various interviews conducted for this research it was clear that many of the more experienced dealers have been quite aware for some time about the systematic movement of faked works onto the market, including knowing the names of particularly the dealers (who had position in the market) who were then able to successfully move the works onto the market, either through sale at auction or to other private dealers (that is, they were able to find portals for the sale of the works by virtue of their knowledge of which portals were vulnerable to their illegal operations). Since this knowledge has existed "in the market", it should be possible to mobilise ethical groups who have a stake in the market (such as the Australian Commercial Galleries Association) to form committees which can serve the function of collating material and generating action, by the criminal justice system if necessary, when such rumors begin to move through the art community.

In conclusion, the art market in Australia is vigorous and in general relatively free of illegal activity, either in the form of theft or frauds. There is a need, however, to consider in more detail the impact of illegal activity on the market. When potential customers, for example, become worried that there are large numbers of fake works on the market, this will undermine their confidence, and could reduce sales (in fact, one informant in London has suggested that this is precisely the effect of the stories which have emerged in the media about problems in the Aboriginal art market). There is, in short, more work which needs to be done by criminologists in terms of continued examination of illegal activities in the art market of Australia.

# **An Exploration of Illegal Activities in the Art Market of Australia**

## **Introduction**

This is a report of research on art crime undertaken with support from the Criminology Research Council. The research was initiated in the middle of 1998, and some threads evolving out of the initial work are continuing through at least the current year. A small sum, \$7,000 was obtained from the small grants scheme of the Australia Research Council to support work throughout 1999 on issues of illegality as these concern the market for Aboriginal art, and this report will include material derived from that research. Funding for the work in 2000 comes from a grant from the Australia Research Council, and will focus specifically on the topic of the structure of the illegal market for plunder antiquities. A proposal has been submitted in early 2000 which asks for further research funds from the Australia Research Council to support additional research for the purposes of examining the topic of art theft in more detail.

The general purpose of the research covered in this report was to undertake an initial exploration of the topic of art crime in Australia. While an obviously important issue to those in the art market, the topic previously had not been the focus of systematic research in this country, and relatively little had been done overseas. It was originally planned to address the following questions:

What is the size and volume of the illegal art market in Australia?

What is the shape of the market for illegal art, especially in contrast to other stolen property markets?

What are the specific processes where illegal art is passed into the legitimate art market ?

What is the place of Aboriginal art in the illegal art market of Australia?

To what extent does the illegal art market in Australia function as part of an international market for illegal art?

Finally, what does the analysis of the illegal art market suggest for general market models as a way of studying the movement of stolen property?

The research involved interviews with over 300 different informants who have some connection to the art market, these including art dealers, museum personnel, academics with knowledge about specific topics relating to art, police, persons connected with the insurance companies, and artists, among others. Interviews were conducted in many sites in Australia, including Adelaide, Alice Springs, Brisbane, Broom, Canberra, Darwin, Melbourne, Perth, Surfers Paradise, and Sydney in Australia, as well as London, New York and San Francisco overseas. Since the research is the first of its kind, the interviews were designed to be highly exploratory in nature, so that in some instance the

discussion might extend for two hours or more, while in others the conversations were quite brief (as in the case of many of the galleries which focus on contemporary art, and who report relative few problems with such matters as either theft or fraud).

One task early in the research was to develop a definition of the term "art crime". This is not necessarily an easy task, since this topic, like such topics as "white collar crime" is in fact a global one without clear legal referents. That is, like "white collar crime" a person would look in vain for an entry in a law book for any crime with this particular name. Instead, there are many specific forms of crime that are found in the world of art. What this means is that the definitional issue has to be dealt with in terms of component elements.

The present research has followed the lead of Conklin (1994) in defining, first, "art" as consisting of "...the kinds of objects typically displayed in museums of fine arts." Conklin went on to point out that sources such as the International Foundation for Art Research use such sub-categories as fine arts (including paintings, photographs, prints, drawings, and sculptures), decorative arts, antiquities, ethnographic objects, oriental and Islamic art, and miscellaneous category which includes armor, books, coins and medals. In the course of carrying out this investigation, it was found that in fact most of the effort concerned those aspects of fine art concerned with paintings, prints, drawings, and sculptures, and perhaps antiquities. There are specialist concerns, to be sure, with such objects as armor, books, coins, medals, and even stamps (the last being the topic of a paper at a recent conference on art crime in Sydney), but there seemed to be less concern for such items among the major players in the fine arts market as it is found in the major art dealers, the auction houses and the major museums.

Art crime, in turn, refers to a cluster of laws that fall into three major headings, at least as covered in the present research. First, there is art theft, which concerns, obviously, art which has been stolen, most commonly is a burglary of either a gallery or a house. Second, there is fraud in the world of art, which can take a number of forms, the most common one being the faking of works of art, although fraud can also involve situations where fraudulent claims are made to insurance companies about the loss of art. Third, there is the topic of the illegal plunder of antiquities, which refers in its most common form to the initial destruction of a site involving cultural heritage, with the plunder from that site flowing outward from a source country (often quite poor) through transition points and then onto the art markets which tend to be centred in such highly developed locales as London or New York.

The present report deals primarily with the first of these two topics: theft and fraud in the art world. The topic of the illicit traffic in plundered antiquities is the focus, as indicated above, of on-going research which will be completed sometime by the middle of 2001, and as such this issue will not be covered in much detail in the present analysis. Conklin (1994) mentioned another form of art crime, art vandalism, but that did not emerge as an issue in the present research, so it will not be a feature of this report.



## The Question of the Volume of Art Crime in Australia

### *Theft*

One of the first questions to be addressed in this research is to examine the size of the problem of art theft in Australia. According to the information that has been obtained from numerous sources in the art world, the theft of art is a persistent irritant in the Australian market. In general, there have been a relatively small number of thefts from the large public galleries in recent years, such as the affair involving Picasso's Weeping Woman which disappeared for a short time from the National Gallery in Melbourne under highly unusual circumstances in the 1980s, only to be returned a short time later. In 1976, there were thefts of works by Rees, Lindsay, Dobell, Streeton and Roberts from the Manly Art Gallery and Museum, and in 1990 a van Ruisdael was stolen from Melbourne University, and in 1995, 29 works by Heysen were stolen from the Hahndorf public gallery and museum (James, 1996). An important point to be made here is that even one theft of work which is a part of the distinctive cultural heritage may constitute a significant loss, as when there was a Vermeer stolen from a major gallery in Boston a decade ago (this painting, and the others taken in that theft, have not been recovered).

Information from our respondents leaves no doubt that there is a significant amount of art theft in Australia. Most of those interviewed who were closely connected to the art market knew of examples of theft or fraud in particular, and most had experienced directly at least some form of art crime. These accounts range from thefts of whole exhibitions (as happened to an entire special exhibition of one of Australia's best known women artists in 1977) or expensive collections, to the theft in October 1998 from a garden shed in a suburb of a small Australian city of a lawnmower, a grass trimmer, and several oil paintings alleged to be done by a leading Aboriginal artist (*The Melbourne Age*, 28 October, 1998: 5). While the figures are somewhat "rubbery" we have to date been able to count 58 examples of art theft, 42 examples of forgeries (and 3 other types of fraud), and 2 instances of vandalism.

Opinions among those working in the art market about the significance of these figures vary considerably. One dealer commented that he had been attending meetings of the Australian Commercial Gallery Association:

... for over ten years and I can't remember this issue [art crime] being raised, ever. Which would suggest that it is not an issue which affects members.

Another commented that even where there were thefts in commercial galleries, it was likely that the target of the crime was not art work:

The gallery had one burglary. They stole office furniture and equipment, the computer, and a collection of art books, but none of the art work.... I have had money stolen from my bag in the gallery, but not art... Two thefts in 25 years of owning galleries, open 7 days a week, is a pretty good record.

Another dealer observed:

I used to look after [a well-known Australian artist's] house. Before I was his caretaker he was broken into five times. He had a million dollars worth of art in that house and they never took a piece of it. They took the TV, the video, jewelry, the microwave...

On the other hand, most of the persons interviewed had experienced some form of theft or burglary, and there appears to be a somewhat polarised view of the importance of theft depending upon their own experience. One insurance valuer, for example, perhaps because of his view resulting from dealing directly with the loss of art stated:

There would be 20 paintings by known artists stolen each month...20 major paintings... I would get at least one inquiry a week from a loss adjuster about the value of art works stolen from the greater metropolitan area of Melbourne.

Some dealers recognise that art theft may be a more frequent occurrence than suggested by their own experiences. According to one dealer, art theft happens:

... quite often but I don't think we hear about it as often as it happens. You just hear about the larger ones... in the newspaper and television.

At this point then, we can note that there is some amount of art theft that does occur. In fact, the handful of police interviewed for this report all had some experience with such art crimes. Most dealers indicated at least some direct experience with theft of art works. At this point, however, it does not appear that art theft involves the large sums in Australia, as apparently is the case in the international markets centred in the United States and Great Britain.

It was found, however, that for some players in the art market theft was virtually a non-existent problem. There are some galleries, for example, where there is little incentive to steal the art. Many of the most interesting of the Australian commercial dealers trade exclusively in the art of new and emerging artists, whose works are of such modest value on the market that there is little reason to take the risks involved in stealing and trading in stolen art.

One of the major findings of the present study is that as matters currently stand, it is not possible in fact to give a good answer to the question of the volume of art theft, or art crime in general, in Australia. There are three reasons for this. First, there is no consistent and routine way for police to record art theft or other art crimes. Instead, crime involved with art, if it is reported at all, will be contained within other reporting categories.

This research found that there is a distinctive "dark figure" problem in the study of art crime, especially in Australia. Basically, most art crime falls into the "dark figure" category. For crimes such as assault, robbery and burglary, there are likely to be a

number of sources of data, including official statistics, perhaps victimisation studies, and even in some jurisdictions some form of self-report data. The classic discussion of the "dark figure," of course, tends to be focused on the difference between the figures available in official statistics and the "true" level of the crime. Where there are no data at all, then, as Blum (1995) suggested, we face the problem of the dark figure "writ large". The one possible exception that may exist in some countries consists of data regarding charges brought under various acts and treaties concerning trade in illicit antiquities and property that qualifies as "cultural heritage" (for example, see Burnham, 1978: 96-97), but these offences are not common enough in Australia to have generated data in statistical reports. Apparently in the City of New York the police prepare some data on art theft (Ho, 1998), and some empirical data are available on art theft in North America (Burnham, 1978; Ho, 1998)) and in England by Barelli (1986; cited in Ho, 1998).

For art crime in Australia, however, there are no official statistics that can throw light on either the size or the nature of the problem of art crime. There is no annual report from any police or justice agency on the amount of art crime, nor to date have there been any victimisation studies which focus on this form of crime. To be sure, there will be crimes involving art which are reported, such as burglary when paintings are stolen from dwellings, or some form of fraud when allegations are made of fakery. There are, further, some police who have an interest in art crime (Hanley, 1999), and there have been notable cases of art crime which have come to the attention of specific policing units, such occurred in the prosecution of the theft by Joffe of a number of paintings by Albert Tucker in Victoria, or the vandalism and theft involved in the theft of dinosaur prints from a site near Broome. In general, however, official police and court statistics as currently constructed offer few clues to the size and nature of the problems of art crime in Australia.

A second reason for the difficulty in assessing the dimensions of the problem specifically of art theft is that there is not present in Australia, as there is in virtually all countries in Europe and North America, a system of whereby there is systematic and consistent reporting of art theft. Overseas, the Art Loss Register serves as a major repository of information about stolen art. More comment on the implications of not having an art loss register system will be found later in this report. Finally, the essentially qualitative and exploratory nature of the present investigation did not lend itself to the task of enumerating all known thefts of art because of the huge task entailed in addressing the methodological requirements of such an undertaking (a request has been submitted to the Australian Research Council for funds to undertake precisely such a study in 2001). Our respondents, gallery owners, public gallery personnel, police, and insurance representatives indicate that art thefts do occur on a systematic basis, and while not common, it is obvious that thefts of major works are a concern for those entrusted with protecting our cultural heritage. More research is needed, however, if we are to have a better understanding of the specific volume of art theft in Australia.

### ***Fakes and Frauds***

Uniformly, our respondents in the art market believe that the problem of fakes in the market is much greater than the problem of theft. It must be pointed out that the faking of art is hardly a new problem. Younger and less well-known artists over the centuries have found that there was money to be made if they could reproduce the works of better known artists. One of the more famous examples of faking was the successful passing off by a Dutch painter van Meegeren of his works as those of Vermeer in the 1930s and 1940s. The artist/faker became unstuck when charged by the Dutch after WWII with crimes against the nation for selling the supposed Vermeers to the Germans during the occupation of Holland, whereupon he confessed the fraud, only to be forced to paint Vermeers in prison to prove his claims (Conklin, 1994: 72). Closer to home, in February, 1999, a major Melbourne art dealer, Lauraine Diggins, shocked a started Melbourne with claims on the front page of the leading Sunday newspaper that she had been taken in by three faked paintings, and she further estimated that art fraud costs buyers millions of dollars a year (Maslen and Daly, 1999: 1). This followed extensive coverage of the revelations of the artist Will Blundell in mid-1998 that he had done numerous what he called "innuendoes" that were replicas of works by major Australian artists such as Streeton or Whiteley, which Blundell alleges had then been introduced by others into the market as works by the more famous artists. One of the accompanying stories described how one buyer had purchased for a bargain price what he thought was a painting by Condor, only to find later that it was one of Blundell's innuendoes (Hills, 1998: 11).

How much art fraud is there in Australia? The actual number is unknowable. A decade ago, one observer noted that:

There are a number of person who now make their living from the creation of fakes and forgeries. The favourites for forgers and fakers include Streeton, McCubbin, Gill, Heyesen, Withers, Gruner, Lindsay, Rees, Drysdale, Nolan and Hart. (Simpson, 1988: 796)

The estimates by the Melbourne dears of millions per year is consistent with an estimate given by an owner of a Sydney gallery who in 1987 similarly argued that the forgery market in Australia ran into millions per year (Maslen, 1995: 29). There have been innumerable instances of suspected works being pulled from sales at the major auction houses, including a faked Whiteley in a Phillips auction in mid-1998. The Conservation Centre of the Ian Potter Museum at the University of Melbourne, which carried out the scientific tests that proved the paintings that Diggins held were not authentic, estimates that there are at least 15 known fakers whose works are on the Australian market.

One of the problems in fixing the size of art faking is that some copying of other artists can be quite legitimate. Young art students copy works of established painters as a way of learning painting technique. Some people quite openly buy copies of original works, and there is even a gallery in Sydney which specialises in selling replicas of known artists such as Van Gogh, Streeton and McCubbin, among many others. Nonetheless, it does appear that the problem of faking is not only large, but one that persists in the art market of Australia. As is true with theft, much more work will have to be done if before it

becomes possible to give any precise estimates to the exact amount of faking, and other kinds of fraudulent activity, are found in the art market of Australia

## **Art Theft Viewed as an Example of an Illegal Property Market**

A second objective of the present research was to explore specifically the degree to which the issue of art crime could be examined as a form of illegal market activity. There are many different ways that criminologists might examine issues relating to the theft of property. One traditional method is to focus on the characteristics of those who steal, as was true in the research of Cressey (1953) which examined embezzlers and the motivations that led to their crimes. Another and quite different approach examines theft as a market subject to the influences of any other economic market. Freiberg, for one, has argued that for an approach which would view:

...property crime not as a series of discrete individual and unrelated events, but as a market for goods and services, which, like any other market, is subject to the influences of supply and demand and government regulation. (Freiberg, 1997: 237)

A similar view has been taken to a recent study of the nature of the market for stolen goods, which opened with an observation that by and large little is known about such markets:

...very little has been written about the factors which influence demand for stolen goods...There has been little research to determine how and where goods are disposed of, or how often and in what circumstances people are offered stolen goods. Further, there has been little research to date on the roles played by thieves, fences and consumers in the overall redistribution of stolen goods. (Sutton: 1998: 1)

In a commentary made over two decades ago, Walsh and Chappell (1974) argued that much could be gained from shifting criminological attention from characteristics of criminals and crimes to the organisational arrangements among criminals (see also Chappell and Walsh, 1974). One potential benefit noted by such writers is the possibility that such information might lead to what Sutton (1998) refers to as a “market reduction approach” to the task of crime prevention. In what follows, the analysis will examine the extent to which illegal activity in the art world can be examined usefully as functioning as a form of criminal market activity. One starting point is to compare the criminal market for art with that of a perhaps more common form of property crime: burglary. For this we draw upon an analysis of the market activity made up of the trade for goods obtained in burglaries.

Illegal market transactions are stamped indelibly by their very illicit character. Initially an individual one way or another engages in an act that results in the possession of an illegal good. Assuming that the person wants to convert the item or items into some other resource such as cash, other goods, or drugs, the movement of that article or those articles from that point will be determined by how those within the various steps of the

market are knowledgeable or complicitous regarding the illegal character of the goods. Sutton (1998: 66) argues that in general markets for stolen goods are small and fragmented. This is because those involved in moving stolen goods must control the critical information about the nature of the origins of the goods, and in particular limit the flow of information to sources which might lead to the police learning of the workings of the market. With stolen goods, at least, it is inconceivable that there could be a large and integrated market place of initial goods providers, processors, wholesalers, and then a network of retail outlets that are a feature of such contemporary retail organisations such as supermarkets. Sutton claims that:

Stolen goods markets are unable to expand very far as they need to remain hidden from the attention of law-abiding members of the public and particularly from the police. Thus, they are most likely to be small, local and transitory. (Sutton, 1998: 70)

A recent study of the stolen goods market in New South Wales (Stevenson and Forsythe, 1998) provides some insights into how such markets work in Australia. The investigation derived its data from interviews with a large number of burglars who were in prison, who were asked about their past behaviour as thieves. The study found that the most frequent targets for burglaries were personal residences (houses and flats) followed by shops, factories and sheds. The most common items stolen were, in order of frequency VCRs, gold rings, CD players, power tools and computers. Adults were more likely to burgle alone, while juveniles more commonly burgled with accomplices.

Burglars were likely to use a variety of different avenues for disposal of their stolen goods. The most common avenue, involving over two-thirds (70%) of the respondents, was to trade the stolen goods for drugs. There were some interactions with age, the nature of the goods, and the specific drugs involved in the trades, as, for example, the finding that juveniles were more likely to trade VCRs for marijuana, while adults would trade VCRs for heroin (Stevenson and Forsythe, 1998: 33). One of the most interesting findings was the speed of the market movement, in that nearly half of the respondents who disposed of the burgled goods through a dealer exchanged their stolen goods for drugs within one hour of the theft.

The next most common avenue of disposal, reported by 62.8 % of respondents, was through family, friends and acquaintances. Unfortunately, since further information might compromise those close to the informants, the study was unable to gain further information regarding this avenue of movement of stolen goods. It would seem reasonable, however, that the ultimate consumers in this case would have in most circumstances some reason to be aware of the possible illegal nature of the origins of the goods obtained.

Close behind were fences, who were employed by 62.0 percent of the convicted burglars. In turn, the respondents were asked how the fences disposed of the goods, and the great majority (94%) claimed that the fence either kept the goods, or sold or gave away the goods to family friends and acquaintances. Only a small minority (5.1%) was of the opinion that the goods would be resold through a business.

These avenues can be viewed as those where the buyers are likely to know the goods are illegal, so that the whole chain from theft to consumer forms a coherent and illegal enterprise. But, burglars are also likely to use apparently legitimate outlets for their goods as well. Roughly half (50.8%) indicated that they had sold goods to legitimate business, and 17 percent said that they used this avenue most of the time. Interestingly, it was claimed by the burglars that in nearly all of the cases (94%) the business purchaser knew that the goods were stolen (Stevenson and Forsythe, 1998: 37). The most frequent business was the mixed business local corner store, followed by jewelry stores (30.8%), wreckers-mechanics (18.3%), tradesmen (12.5%) and computer stores (12.5%), to list the major types.

In terms of how these businesses disposed of the goods, there were marked differences by type of business. The respondents thought that the corner stores were likely to dispose of goods through a network of family, friends and acquaintances, while jewelers were claimed to melt down any gold traded, tradesmen were likely to use the goods, typically, in their occupation (e.g., power tools). In contrast, businesses as computer and office machine stores, antique shops, tobacconists and the like were thought by these burglars as likely to purchase the goods either for direct use or for resale through their business (Stevenson and Forsythe, 1998: 38). While at least some of the sales to pawnbrokers were organised so that the purchasing businessman had reason to believe that the sale was legitimate, these respondents suggested that two-thirds of the pawnbrokers knew the goods were stolen. Interestingly, the sales through pawn shops were not as rapid as with other avenues (24.7% selling to pawnshops within an hour of the burglary, 63.0% within the same day), the money obtained was less than through other outlets, and as a result "...pawn and second-hand shops were often sales points of last resort" (Stevenson and Forsythe, 1998: 40). Only negligible numbers of these respondents sold goods at either markets, garage sales, auctions, or by advertising in the *Trading Post*

This investigation also found that over three-quarters (77.2%) of these burglars had stolen to order, including almost one third (31.0%) who stole stolen good on order "most of the time". The orders were most likely (in order of choice) to have been family, friends & acquaintances (58.7%), drug dealers (41.3%), fences (30.7%, legitimate businesses (18.5%), and pawn and second hand shops (4.8%) (Stevenson and Forsythe, 1998: 43). The most common good ordered were consumer electrical goods (81.3%), jewelry (34.2%), vehicle parts (20.3%) and clothes and shoes (11.8%).

For the burglar, there were differences in the prices one could obtain in terms of the avenues of disposal. The highest prices were likely to be paid by legitimate business and fences, with lower prices being paid by drug dealers, and the lowest prices by pawn and second hand shops.

One of the striking findings of this research was the observation on the time of disposal. In general the burglars disposed of their goods very rapidly, with about half of respondents indicating that they disposed of the stolen items within four hours of the burglary. As indicated above, trading through drug dealers was especially rapid, with

close to half (43.1%) of the goods being disposed of within one hour of the burglary, while there was slower disposal through pawn and second-hand shops (although even here just under two-thirds, 63.0%, were disposed of within 24 hours).

Another important finding of this research was the general complicity of the various participants in the market in what they presumably know is the disposal of stolen goods. Most of the intermediaries, in particular drug dealers and fences, were clearly themselves playing illegal roles in the market for stolen property. The ultimate buyers, often according to this study drug dealers again, or persons close to the thief, such as family friends and acquaintances, were also presumably aware that they were buying stolen property. This complicity leads to a number of further observations. For one, it clearly is part of a strategy on the part of burglars to avoid detection, since burglars are obviously most vulnerable to arrest either while they are stealing the goods, or when they dispose of them. By dealing with persons close to them, as Stevenson and Forsythe (1998: 52) point out, they reduce the probability of detection by the police. For another, it clearly complicates any strategy of burglary reduction which is based on "market hardening" procedures, such as the newly established procedure requiring more rigorous documentation of second hand goods by established dealers. That is, if there are widely used informal avenues of disposal available, the increased difficulty of disposing of goods in some shops may have the likely effect of putting pressure on burglars to widen the existing disposal through such avenues as drug dealers, family, friends and acquaintances, and "shonky" dealers who develop techniques to avoid new schemes of regulation.

### ***The Movement of Illegal Art As an Example of a Criminal Market***

When we shift attention to the question of illegality in the art market of Australia, some sharp differences emerge when it is compared to the movement of goods through an illegal property market such as that of burgled goods. Critical to the understanding of this is that much of the movement of the goods is likely in the case of art to require that the art works move through the hands of legitimate (or apparently legitimate) dealers or outlets (such as auction houses), and from them onto the regular art market if the goods are to achieve a reasonable market value. Put another way, many criminal markets remain criminal from source to destination, since even the ultimate purchaser may be clearly aware of the illegal character of the goods being traded (as is seen when "friends" buy burgled goods at rates well below market value, or in the case of drugs where the whole chain of activity is marked by its illicit character). While there is some amount of sale to what are known in the trade as "gloaters" (that is, persons who are willing to purchase art which they know they will have to keep hidden), in fact much of the movement of both stolen, and faked, art (as well as the much of the trade in illicit antiquities) ultimately leads to the open and public sale of the goods on the legitimate market.

The reasons for this are simple. Art works are selling for huge amounts of money on the legitimate market today, and at least to date there is little indication of any development of a hidden or criminal movement of art of any size where there are large sums of money



involved (although there may be developing such markets in some objects, such as antique jade items in Asia, and there are occasional rumours of “thefts to order” by “gloaters”). If a thief, or a faker, is to realize the full value of the effort involved in the illegal art goods, it is likely that an attempt will be made to move the goods into the legitimate market where the full value may be realized.

There are not, however, a wide range of venues where art goods can be sold, especially in terms of places where items of great value are sold. For example, while there may be a large number of auction sites of various kinds for all manner of goods, there are in fact only a small number of auction houses that handle art goods of any significant value, and these few tend to concentrate their activities in Melbourne and Sydney (for examples, the international firms Sotheby’s and Christies, and the Australian firms such as Leonard Joels and Deutscher-Menzies). Further, there are only a certain number of dealers who will handle the re-sale of art works of any value, although to be sure this number is large than the number of auction houses, and most cities of any size will have galleries where are is sold. Since these outlets, both the auction houses and dealers, are operating mostly within the legitimate business world, and selling works which they will in one way or another guarantee, they have to be wary of any attempt to move either stolen or faked art through their establishment.

Thus, a critical distinction between the market for illegal art goods and many other illegal markets is that most illegal art will have to move onto the legitimate art market for its ultimate sale, and as a result they must pass through relatively narrow “portals” or gateways whereby illegal goods can take on the appearance of legitimate works of art.

There are, then, three characteristics of this art market in Australia that pose problems for those trying to pass illegal art (either fakes or stolen works) through the available portals. First, the secondary market (where works of artists with established reputations are re-sold) in Australia is actually relatively small, and within it rumors about suspect works circulate rapidly, and tends to be concentrated in a handful of major cities. Second, those who sell works with large price tags are likely to develop a wariness that is part of being a successful dealer or collector. As said above, most refuse to buy “off the street” from persons they do not know. Many even state they rarely trust “runners”, preferring that they deal directly themselves with the source of works for sale. Third, the market is a relatively insulated and isolated market, especially in terms of its focus on Australian art. While there is some demand for Australian artists overseas (especially Aboriginal artists), in general the greatest value for Australian art will be realised if the works are sold in Australia. Further, while there are a few collectors of major European works in Australia, in general there is not a great demand exerted from Australia for the work of overseas artists, especially on the secondary market.

There are a number of factors that can be argued to be part of any successful entry into illegal activity in the art market. First, the person involved will need **information** including knowledge about how the art market works, what is valuable, how its value can be realised, and where goods can be sold with the least risk, among other things. Second, there will need to be **access to illegal goods**, either through theft or forgery. Third, the

individual will need a **position** that provides some entry into the art market, since the art market is not a place that provides easy access for strangers. When it comes to valuable works of art in particular, individuals within the market are unwilling to deal with persons that do not have some location with the market itself. Fourth, it is highly likely, especially for valuable items, that some **provenance** will have to be provided for the works. For works to realize their maximum value in the legitimate art market, the purchasers are likely to expect that the work be accompanied by documentation that provides evidence that the work is what it appears to be, and that it has been legitimately acquired. Fifth, the individuals involved will have to select an **access point** to gain entry into the commercial market, that most likely consisting of sale at an art auction or sale through a commercial gallery.

In sum, there are many differences between the dynamics of the illegal art market and other criminal markets. There is much more specialised knowledge needed for the successful movement of art about the items to be stolen and where they are located. The typical burglar, in contrast, is likely to cruise, looking for targets of opportunity where safe entry can be obtained, and where readily convertible goods (videos, mobile telephones, computers, TVs, and jewelry) can be taken. The successful art thief must have a reasonable idea of what art is valuable, and a venue from where the art is located and from which it can be stolen. The successful art faker must have considerable knowledge of the nature of the works being fakes, their chemical composition of the paints, the characteristics of the canvas or wood used, the method of stretching, and a host of other items, let alone the skill in art work required to pass one's work off as that of a more famous artist. Furthermore, in contrast to a wide an informal range of possible disposal options available to the burglar, for art work the portals into the market are quite narrow, and the successful negotiation of these requires considerable sophistication in the approach selected.

Put another way, unlike the situation for other kinds of goods stolen in a burglary, there is not a large pool of potential buyers who are available to purchase major works of art at cut-rate prices, from suspect sellers, when the purchaser has reason to assume that the work has been stolen. As indicated earlier, there are tales in the art trade of "gloaters" who do purchase what they know to be stolen art, even to the point of commissioning their theft, but there is little evidence of this operating in any systematic and major way in the Australian art market. Most of the ultimate consumers who buy the works of established artists on the secondary market will expect to find that art either in an auction or at a commercial art gallery. Most are, in the most exacting sense of the words, what are known in law as "*bona fide* purchasers", or "good faith purchasers".

Consequently, the task of placing a stolen work into the market is not an easy one, nor is it likely to move rapidly (in contrast to the market for burgled goods). Works of art, especially those of significant value, can not be sold onto the legitimate market quickly, so that those holding stolen works and trying to pass them into the market will have to hold them for some time, that very act of retaining the works in their possession extending the risk of their being "caught with the goods" if for any reason they are

questioned by the police. Those with a need for immediate cash are not likely to find much satisfaction in the theft of art work.

Further, if it is to be disposed of "on the market", a false provenance will have to be provided to cover up the fact that the work has been stolen. Discerning buyers under most circumstances today will want documents which establish the history of the painting, including a list of recent owners and how the painting has moved in and out of the art market. The market has become increasingly demanding about details of provenance, and while it is still possible to generate flimsy or false provenances for works, for this to be done successfully requires providing details of the history of the painting that will stand reasonable scrutiny.

Given this list of requirements, it should come as no surprise that in fact there is an extensive history of unsuccessful thefts of art. For one example, Graeme Fricke (personal communication) tells a story of a thief whose reading of the news suggested to him in the 1980s that art works were increasing greatly in value, and thus there might be money in the theft of art. Accordingly, he identified a location of a collector living in a country area outside of Melbourne who had among his holdings what was claimed to be a Raphael. After a period of careful scrutiny of the premises where the goods were kept, the thief and his associates were able to successfully steal the painting and a number of other valuable objects from the collector. Unfortunately, the thief had not thought through the next steps, and found himself unable to divest himself of the painting, and was caught in the process of attempting to negotiate a ransom of the goods. His problem was a simple one: how do you sell a stolen Raphael into the art market of the size of the city of Melbourne?

In terms of the items listed previously, while this thief had some information about the location of potentially valuable art, he was not in possession of the important information about how the art market works, and, in particular, how difficult it is to sell an unprovenanced Old Master painting where the market for such sales is exceptionally small. He certainly did not have either the knowledge or the skills to forge a false provenance for the work. Further, once the painting was in his possession, he did not have available to him a position, or an agent who had position, within the market, from which some access might be gained into the legitimate commercial art market.

This is, in fact, a common tale. There are many stories of criminals who are successful in large art thefts, only to find they are unable to successfully negotiate the sale of the goods. There was in early 1999 a major theft from the public gallery in York in Great Britain, where a number of important paintings were stolen, with the alleged thieves being apprehended some months later still in possession of the goods which they had not been able to sell, successfully, onto either an illegitimate or the legitimate art market. In Melbourne in 1998, a small McCubbin was stolen during routine business hours from a commercial gallery, only to be found a few hours later where it had been dumped, presumably because the thief had found it impossible to sell the work after it had been stolen.

Fake art presents somewhat different problems for those attempting to pass works onto the market. As with stolen art, the works must obtain some form of "provenance" or authenticity so that they may be passed into the legitimate market. The major portals for faked works appear to be either the auction houses or dealers who are either ignorant or duplicitous. Details recently emerged in Australian newspaper regarding how fake art can be organised on a rather large scale. An artist who specialised in the production of fakes of well known Australian artists, which he called "innuendoes," claimed to have sold them to persons who knew that they were his creations. Apparently one of his biggest customers was a major dealer who purchased large numbers of these "innuendoes" and then went around Australia inserting some of these into legitimate outlets, such as the smaller auction houses, attributing these to the better known artists. As a result, large numbers of fakes have been introduced into the Australian markets.

The conditions of auctions make these a particularly favoured source of movement of fake art in Australia. The typical art auction will contain hundreds of works, and it is difficult for the auction houses to examine each work offered for sale carefully. Further, as one of our police informants observed, auction staff "...don't do as much checking as they should." Interviewees also described the reluctance of auction houses to act when they are discovered to be handling faked art, commenting about the reaction of one auction house when a claim had been made that a work was faked:

They waited until the last minute after the fuss had been made before they withdrew it. But really they should be the ones who are vetting the work and should know before putting them before the public. And it just makes you wonder how many forgeries they put through... because it is only when it is drawn to their attention in a very public way that they withdraw.

At times it seems that, at least in some of the auction houses, they may actually know that the works are questionable. For one example, a fake Streeton, which was offered to a dealer who refused to handle it, turned up shortly afterwards in a major auction. According to that dealer, the auction house:

Happily passed it off as a Streeton... Because it wasn't a major work and it wasn't going to bring a huge price, they may have thought: "who's going to notice?"

The issues here are complicated. It must be kept in mind that many of the art forgers are quite skilled as artists, and that the output of the legitimate artists can vary in quality. As one dealer commented:

When you are in the trade, going up to Sotheby's or Christies to say this is definitely not by the artist is really hard. You've got psychological difficulties there. You might make a mistake there, too. You might think you are an expert but every artist has a bad day too. You might be wrong. Or, he might have painted it when he was 16.

One of our commercial dealers who was most concerned about the impact of fakes on the market and on dealers, called our attention sale in 1995 at an auction house in Brisbane where it was reported to the newspapers that there were a large number of fakes among the offerings, a view that was substantiated by experts called in by the newspapers to verify the claims. In an interesting twist to this story, our interviews with police in Brisbane turned up the fact that the police actually attempted to move on this case, seizing over a dozen of the suspect paintings. Despite the expert views about these paintings being fakes, forensic examinations conducted by the police were unable to establish whether the works were fake or authentic.

There is, as well, the interesting problem of what happens to a work after it has been exposed. For example, if a work is claimed to be a fake after it has been listed in a catalogue of an auction, and is then withdrawn from the auction, it is almost never destroyed. Then, and given the peculiar workings of the art market, its actual listing in the catalogue of the auction can subsequently be used by others as a way of verifying the authenticity of the work when it is sold on at a later time. Since the work is not destroyed, when it comes up for sale at a much later date perhaps in a distant city, the catalogue listing which makes no reference to the painting being withdrawn from the auction, can be an important part of the list used to substantiate the provenance of the painting.

Looking now at the movement of both stolen and faked art, we can see that the market works in somewhat different ways that the general models for stolen property posed by Sutton or Freiberg. Only rarely will avenues such as bartering, hawking, or even pawnshops be used as avenues for the sale of illegal art. One does not buy Raphaels or Streetons out of the boot of cars, or, in general, in places like pubs (although one noted magistrate found himself in trouble a number of years ago for doing just that: buying what turned out to be stolen art "at a pub"). A major difference, then, is that purchasers are not willing to purchase under conditions where a "good price" might carry with it the strong possibility that there is something shady about the sale.

The result is that there are restricted portals by means of which illegal art can be moved into the market. Our data to date suggests that the most common portal of entry is likely to be an auction house, especially those operating at the lower end of the market. The next most likely point of entry in terms of frequency will be a commercial dealer. It needs to be emphasised that neither of these sources may be aware of the fact that they are participating in the "passing" process. Often at auction in some of the more peripheral auction houses large lots of diverse material are on offer (household goods, electrical equipment, silverware and jewelry, for example), and the auctioneers may have only limited expertise regarding art works. As we have pointed out, the nature of the auction activity is one where there is likely to be a high volume of fairly rapidly moving goods, with limited time for careful inspection of individual works. Further, most dealers we have interviewed are cautious in terms of their sources. While they may buy from other dealers, from auctions, or from "runners" who frequent out-of-the-way sales and auctions, in general they will not buy from persons who are unable to provide a satisfactory provenance for works they are attempting to sell.

Further, one factor which can not be portrayed in the market model is that art works develop “provenance” often as a consequence of several iterations of the sale process. Thus, a work which has been offered successfully at a number of different points of sale with the same description and characteristics can build up a successful identity as a legitimate work of art, even if it has been stolen or faked at some earlier point. A work, in other words, can gradually build up “provenance” even from questionable origins.

Reputable dealers who know the trade will not accept an initial sale through a small auction house specialising in household furniture by itself as providing legitimate provenance for an art work. If the object moves from there through successive sales, finally moving through one of the major auction houses or private galleries, it develops a higher probability of being accepted as a legitimate work (although commercial dealers who have spent years in the trade may still avoid a work that does not “look right” to them).

From the above discussion it can be seen that there are actually two factors which tend to narrow the portals of movement in the art world. Vigilant buyers may not always themselves be able to judge the legitimacy of a work, but they will want assurance that their money is being safely invested. Furthermore, the legitimate commercial dealers and larger auction houses have various forms of guarantees that guide their behaviour. Reputable dealers will return the funds of customers who have purchased what transpires to be illegal art, and the major auction houses (Sotheby’s and Christies) have a five year guarantee for works purchased through them (the fact that some of the smaller auction houses only have a two week guarantee, then, serves as a force which influences “market” decisions regarding how illegal art is able to move through the art market). Those who set about to move either stolen or fake art into the market have to have some sophistication and skill to manage to negotiate around these major hubs in the market where there is a strong disincentive to allow the passage of illegal art.

### **Illegal Activity in the Aboriginal Art Market of Australia**

One of the most important components of the Australian art market is that made up of Aboriginal art. In order to investigate this particular component, time was spent not only in the major art galleries in Adelaide, Brisbane, Canberra, Melbourne, Perth and Sydney which specialise in Aboriginal art, but in addition an extensive research field work trip was undertaken which called for a visit to a number of major Aboriginal communities where art is produced (including Fitzroy Crossing, Lajamanu, Oenpelli, Utopia, Victoria River, Warmun, among others) and galleries in towns with important galleries dealing in Aboriginal art (Alice Springs, Broome, Darwin and Katherine and Kununurra).

Two observations are important about this component of the research. First, it is clear that Aboriginal art represents a major component of Australian art, especially in terms of its overseas market. Allegations regarding fraud in Aboriginal art can have a devastating effect on the demand for Aboriginal art overseas, and on dealer in London reported to us that sales of the art were down as a result of some of the early allegations raising

questions about the authorship of Aboriginal art. Second, there has been considerable attention given to the problems of illegal activity regarding Aboriginal art, that attention being focused primarily upon the issue of fakes and frauds (our research identified only rare instances of theft of Aboriginal art works). In our work, therefore, we have paid particular attention to issues of authenticity and faking in this part of the Australian art market.

### ***Aboriginal Art, Authenticity and Fakes***

It does not take long in the field to begin to realise that raising questions about authenticity in Aboriginal art leads to a number of quite different possible problems. A first set of concerns can be considered as addressing the question: "Is the named artist responsible for the work in question?" Even with what appears to be one specific question, in fact the issue breaks down into a number of possible further specifications.

One such is the situation where the work is sold in the artist's name, but the artist has never seen the work, and has had no connection with it. This is the classic situation of art faking, and has occurred, or it has been alleged that it has occurred, in a number of instances related to Aboriginal art. In late 1999, for example, a well known dealer in Aboriginal art was arrested and charged with the faking of a large number of works by Clifford Possum. There have been rumors for years, in fact, of faked Clifford Possums circulating in the market, and we spoke to a dealer (to be sure not a major player) in Alice Springs who had to return money to clients who had purchased some of the faked works of Possum. Other informants, dealers who had spent some years working in this art market, alleged that in addition to this artist, there were clear fakes circulating in the market which were alleged to be by such noted artists as Rover Thomas, Emily Kame, Turkey Tolson, and fakes of works in the style of Western Arnhemland. One disturbing part of this story was that in one case a very experienced and knowledgeable informant further alleged that such paintings were finding their way into the major auction houses, despite advice being given to the auction houses about the dubious authenticity of the works.

A second and quite different situation is where the work is alleged to have been done by one person, but then signed by a better known artist. In late 1999 and early 2000, a story emerged of how Ginger Riley, an artist who produces his works in the remote areas of East Arnhemland, had been pressured in Riley's camp site to sign works produced by others who had stayed with him for a few days. There have been other situations where the claim has been made that lesser known family members will ask a more famous member to sign a painting on the assumption that the work will gain in value by virtue of the name of the artist in question.

A third, and sometimes closely related situation is where the work in question is produced collaboratively within the community, but the work when it comes onto the market bears the signature of a well known artists, rather than the unknown collaborators. One of the better known instances of this involved a well-known artist who had received the Aboriginal artist of the year award in the Northern Territory. The de facto husband of

the artist, who is not Aboriginal, made the claim that he was responsible for much of the work of this artist. After subsequent research, a committee of inquiry appointed by the Northern Territory museum decided that the award could justifiably be made to the woman artist. Their investigations included a close analysis of her previous works and they in essence concluded that the painting was recognisably a development of her earlier work, with a recognisable style and use of icons and story.

It is important to be clear in these different circumstances of the potential for misunderstanding that can arise in the inherent conflict of understandings that will arise because of the differences in the treatment of this material by the white art community and the Aboriginal community which produces the works. A number of points need to be considered. One, the initial impulses which produce the works are about Aboriginal ceremonies and rituals, and in their original forms (which have long ago been transformed) there was no conception of the artifacts produced as "art". Two, the concept of ownership can become clouded because of the fact that within the Aboriginal communities, what is literally "owned" by particular individuals are the rights associated with particular thematic materials, such as representations of particular geographic places, or of specific totemic animals. We were told the story, for example, in one community where one woman demanded half of the money from the sale of a painting which was done entirely by another woman because the thematic material in that painting "belonged" did not belong to the artist. Put simply, the icons and ritualistic material of a painting (and therefore the painting itself) may be viewed as being "owned" by persons other than those who have produced the work. Three, the role of what is called "art" in the Aboriginal community has long been associated not with artistic expression, but with the basic teaching and learning tasks of a culture which is not literate. Further, the collective production of what are called "works of art" has long been a fundamental part of the cultures of many Aboriginal peoples, and is central to the tasks of teaching younger members of the community the important stories that form the core beliefs of the community.

It would appear that some who have entered into the controversy over these issues are not necessarily sympathetic to these problems which can arise in the clash of cultures. Certainly, it can be said that purchasers should have a clear idea of what it is that they are buying, and the process that has been involved in its production.

One potential source of that information are the community art centres. In many of the Aboriginal communities there can be found a strong and vigorous community art centre, often funded by ATSIC. One of the most important functions of these is to serve as an important gatekeeper in terms of the communication about a given work. It is interesting that there was not one single instance of art faking or fraud that we have been able to identify in works that have come out of the community art centres. These centres maintain detailed records of the works produced, including files which record the name of the artist, the date of the work, a description of the work including dimensions, type of work (paper or canvas, for example), and a photograph of the work. Further, the coordinators at the centre become familiar with the styles of the various artists, and can thus assure correct attribution of the authorship of the painting.



Unfortunately, there are many pressures operating on the centres, one of the important ones being that they often are starved for funds to pay their artists. What this produces in turn is pressure for the artists, and this obviously will be true for the better known artists, to turn to private dealers for the sale of the works. It has to be acknowledged that, as has been true throughout history, on the one hand, private dealers provide an important source for the sale of major works of art, but on the other hand, there may be inherent tensions between the competing interests of dealers (who, as business persons, want to buy for the lowest cost feasible and sell at the highest price they can obtain on the market), and the interests of individual artists, especially when the artists reside in remote Aboriginal communities.

It is significant that we did not encounter one single case of fraud or faking connected with any of the Aboriginal community art centres. Put another way, all of the examples of problems having to do with faking or claims of authorship in Aboriginal art arose in connection with art which had been placed on the market through private dealers.

### *Aboriginal Art and the Question of "Authenticity"*

A rather different set of concerns arises when we shift the question slightly and ask: is the consumer of Aboriginal art buying what they think they are buying?" Basically the set of questions here hinge on whether or not the work in question can be viewed as "authentic" in the sense that it has been produced by an Aboriginal artist. But even here there are a number of separate issues that need to be addressed. One of the first is whether or not the work identified as "Aboriginal art" has, in fact, been produced by an Aboriginal artist. Our fieldwork turned up numerous instances of work produced and sold as "Aboriginal" where the artists in question certainly were not Aboriginal. This can range from artists who take on an Aboriginal pseudonym to produce works (as in the case of Elizabeth Durack), to situations where artifacts such as didgerdoos and carved animals have been produced wholesale by non-Aboriginal artists (often overseas) and are then sold in shops in major tourist destinations as Aboriginal artifacts. It is the latter situation, of course, which has produced the recently introduced "Label of Authenticity" for what purports to be Aboriginal material.

A rather different question can arise in the situation where the artist in question is certainly Aboriginal, but the material that is produced is not of the type or style to which the artist can properly claim. In our field work in one major centre in the West, for example, we found an example of a young Aboriginal woman who was developing an interesting style of painting with considerable success, but then questions were raised about the work when an Aboriginal elder from another community saw the work and questioned whether the artist could properly paint in the style she was using. Similarly, in the Northern Territory our field work turned up some interesting sculpted objects which were produced by a person from one set of islands who was essentially copying the style work from another island. Here the issues can become very knotted indeed. Obviously, historically in art one cannot copyright, or lay exclusive claim to a general style such as impressionism, expressionism or surrealism. Thus, it can be claimed that

the dot painting styles that originate from the Central Desert regions represent and general style that might be available for incorporation into the techniques of other artists elsewhere, both Aboriginal and non-Aboriginal. Here there are two distinct questions to be raised. A first is whether or not the artist makes untrue claims that their work is "Aboriginal" when it is not. A second, and perhaps more complicated one, is whether or not the material that is copied contains sacred material that the Aboriginal community would not put on public display. Here there has been some relief available for Aboriginal artists who claim that specific totemic material has been copied (as when paintings are placed on T-shirts), and that thereby their copyright has been violated.

A third variant of this concerns the degree to which it is possible to connect the Aboriginal art work with a "story". It is the nature of much of the what passes onto the art market as fine art, as in paintings, that the Aboriginal artist has in mind a kind of story line that connects up the objects in the work, or at least the purchaser has come to expect there may be such a story. There are a number of problems that arise in this connection. Those who have studied Aboriginal art have pointed out that within Aboriginal understandings of a work there reside not one set of meanings, but instead a progressively complex set of interpretations which one learns through the cumulative steps of initiation, which assures that individuals may be well into their maturity before the full "inside" of the stories are revealed. By definition, then, the aspects of the stories which are told to outsiders, in this case those who purchase the art who are not part of the Aboriginal community, will be only the most visible and "outside" contours of the stories. There are likely to be, in other words, differences in the views of purchasers about what the painting "means" when these are contrasted with those of the artist. In some cases, we have found that artists have not provided stories, in which case, we have found that some dealers maintain a file of standard "stories" which relate to the common icons, which then become attached to the story by the dealer in order to satisfy the expectation by the purchaser that there will be such a story about the work.

### ***Questions That Arise About Aboriginal Art: In Conclusion***

From the foregoing it should be obvious that there are a number of important and difficult issues which arise in regard to illegal or unethical behaviour concerning Aboriginal art. Many of these issues are hardly unique to Aboriginal art. There is a simple reason why the art of such painters as Rover Thomas, Clifford Possum or Turkey Tolson are faked and that is that the work of these artists, as is true with European artists whose works are faked, commands high prices. Furthermore, there is a long tradition in art whereby some famous artists establish large studios which produce a large number of works, many of which while they may be done "under the direction" of the artist significant parts of the work are done by others (for example, the works of Paul Rubens).

There are, however, a number of concerns that do arise out of some combination of the inherent clash of understandings because of the cultural differences between Aboriginal and non-Aboriginal communities, which in turn may be aggravated by the exceptional poverty of many of the Aboriginal communities. Since the overseas market is important to Aboriginal art, it will be important in the future to address as clearly as possible the

problems that have been observed regarding authenticity and Aboriginal art. Vigorous police action, for example, will be required when fakes are uncovered. Further, given the reasonable demands of the purchasers, it is to be expected that more stringent understandings of authorship need to be established, especially with respect to the sales of art by private dealers. There should be little difficulty, for example, in establishing when works have been produced by a collective of individuals, since certainly the artists will know both who "owns" the story and who has produced the paintings.

## **Australian Art as Part of Wider International Art Markets**

The work we have undertaken up to this point suggests only limited penetration of the Australian art market into overseas markets, with the exception of Aboriginal works which are sold in major galleries in England, North America and European centres. To be sure, there are some notable exceptions. Alan Bond, for example, made notable attempts to enter the international art market, and, of course, it was criminal behaviour with respect to transaction concerning an impressionist painting that ultimately led to his conviction. Australian collections, further, account for a significant number of the private holdings of Apulian Red Figure vases which have been traded out of Italy (Elia, 1999). And, Australians can be caught up in foreign scams of various kinds. One informant (a major dealer) spoke of being approached by a representative of a supposed collector in Spain who wanted to off-load a large number of European paintings at a suspiciously low price. Catterall (1987, 1992), in his account of the Dali scam spoke of Australians as being victims of the fraudsters in that scheme who were focusing their operations on tourists passing through Hawaii (although a huge proportion of the victims were Americans, often highly qualified professions). There are hints as well that Australians participate to some degree in the illicit traffic in plundered antiquities, especially out of the transition ports of South East Asia.

In general, however, one of the basic characteristics of much of the Australian art market is that the goods are emphatically a domestic product. Both in terms of primary sales, and the secondary market, the greatest demand, especially in the trade of fine arts (painting, drawings, and sculptures), is for material produced by artists working in Australia. This becomes, as indicated above, one of the defining features, then, of the Australian art market, and helps to frame the responses that might be suggested to increase the controls over both theft and fraud.

## **Market Models and Crime Prevention**

One major objective of the present research has been to bring about a general discussion of market models for the analysis of criminal behaviour, and from that an analysis of potential methods of crime prevention. This research suggests that one major advantage of the market approach is that it not only throws into sharp relief the differences between various forms of criminal markets, but emerging from such an analysis are suggestions regarding specific points where policy intervention is appropriate. A characteristic of many criminal markets is that at both demand and supply points, the activity is illicit. This is obviously true in the illicit traffic in drugs, where producers, transporters, retail

and wholesale sellers and the ultimate consumers all are engaging in legally prohibited behaviour. The analysis of the market for burgled goods in New South Wales also reported by inference the interesting finding that even there it is likely that the consumers have reason to believe that their purchases involve what are likely to be stolen goods, by the very nature of the price and setting where the goods are purchased. Throughout the previous analysis, we have argued that the present research suggests that a point of difference for the movement of illegal goods in art, be they stolen goods, fakes or illicit antiquities, is that a major flow of those goods is through relatively narrow "portals" onto the legitimate art market where they are purchased by consumers who have reason to believe that the goods are legal artifacts and which are purchased in good faith.

What does such an analysis suggest regarding the steps that might 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 criminological analysis of crime prevention. 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 these writers, 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. In the language of crime prevention, there is probably little to be gained by efforts to "reduce the pool of motivated offenders".

The prevention-efforts instead 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 the first of these would be 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 to a considerable degree access to the art market of such illegal works. Again, it must be kept in mind that a fundamental feature of the present art market is that most illegal goods are going to

have to move onto the legitimate art market to achieve their highest value, and what a theft register would do would serve to narrow considerably the portals for the passage of stolen 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 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 professional and commercial 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***

It is the view of these researchers that 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 venues, of course, is that the works are then obtain only 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 realize 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. A distinctive feature of the Australian art market, in contrast to European and North American markets, is the glaring absence of such a register of stolen art.

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. 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.

## **Conclusion**

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.

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