

ESTABLISHING LICIT MARKETS IN ANTIQUITIES: THEORY AND STRUCTURE



**MSTD 297.11 SPECIAL TOPICS: CULTURAL
PROPERTY**

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INTRODUCTION



- What is a “licit” market and what does it look like?
- Review scholarly literature regarding licit markets.
- Look at variety of policy approaches which encourage the establishment of licit markets.

INTRODUCTION



- Licit markets are a compromise between absolute prohibition and unregulated trade.
- Some of the more promising approaches emphasize creating incentives rather than imposing consequences.
- A universal commitment to transparency, authenticity and education will foster development of a licit trade in antiquities.

THE CASE FOR LICIT MARKETS



- The debate over the trade in antiquities is highly emotional and contentious.
- Scholarship splits down predictable value-based lines.

THE CASE FOR LICIT MARKETS



- The focus has been on controlling the movement of antiquities through use of export controls and import restrictions.
- There is near universal agreement among scholars that unduly restrictive export controls are counter-productive and may even encourage illicit trade.
- The best reason for establishing licit markets is that they provide an alternative to the black market.

THE CASE FOR LICIT MARKETS



- Recent scholarship is rethinking the debate in terms of mutually shared interest in preserving archaeological record.
- Complicating factors:
 - Free markets
 - Ownership
 - Sovereignty
 - Transparency

THE CASE FOR LICIT MARKETS



- Need for a comprehensive approach.
- Address values:
 - “A legal trade in properly documented materials, under the auspices of the nations whose objects they are, can in fact serve the interests of many of the groups concerned with cultural property, and at the same time aid the fight against looting and illicit trade.” -- Alexander Bauer
- Create incentives:
 - “There is a paucity of heritage scholarship on the function and effectiveness of ... rewards systems.” – Derek Fincham

APPROACHES TO CREATING LICIT MARKETS



- The legal framework regulating the trade in antiquities is a patchwork of international laws and treaties, national patrimony laws, export controls, import restrictions, and criminal prosecutions, forfeiture proceedings and repatriation claims.
- Other tools include discovery and reporting laws, national and international registries, tax incentives, partage and modified partage schemes, the sale of duplicates, and suggestions for the management of archaeological sites.

APPROACHES TO CREATING LICIT MARKETS



- Lack of empirical research on the effectiveness of alternative approaches.
- Complexity and variety of individual national laws.
- International Cultural Property Ownership and Export Legislation (ICPOEL) Database --
www.ifar.org/icpoel.php

APPROACHES TO CREATING LICIT MARKETS



- International laws and treaties
- National patrimony laws
- Export controls
- Import restrictions
- Criminal enforcement, forfeitures and repatriation claims
- Discovery and reporting laws
- Tax incentives
- Partage
- Sale of Duplicates
- National and international registries
- Management of archaeological sites

CONCLUSION



- The international market for antiquities continues to grow.
- Each country has a unique approach to cultural property policy.
- The central issue is whether the regulatory scheme of a particular country functions in a way that best promotes the preservation of the archaeological record and encourages the legitimate trade in antiquities.
- Comprehensive schemes which provide a combination of consequences, incentives, transparency, and education can promote the establishment of licit markets.