

# The State and the Art: the Plural Policing of Art Crime

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## Abstract

The role of private actors in policing has become a topic both in research and policy as police forces struggle with budgetary and expertise-related constraints. These challenges are evident in art crime policing, where even specialist units can find their resources limited. The necessary knowhow and resources are however present in the private sector. Accordingly, it has been suggested that art crime lends itself to police and private actors cooperating in the pursuit of crime control. There is, however, a paucity of empirical research on whether and why such art crime policing co-production occurs. This research addresses these questions. It does so by examining the policing of art crime in Belgium, the United Kingdom, and France; three case studies with varying police capacity for art crime, availability of private expertise, and profile in the global art market. These case studies were based on information gathered from semi-structured interviews, official documents and statements, and a review of the literature on plural policing and art crime. Comparing the case studies on the basis of themes identified in the literature, it was found that while limits to police capacity are an important driver for plural art crime policing and policing co-production, several other factors also significantly affect co-production. The findings implied that policing co-production cannot be considered a feature of art crime policing, because the relationships between the actors were not stable enough to consider them to be truly co-producing art crime policing.

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# Chapter I: Overview and Methodology

***“It can be argued that if sections of the public police do not want to, or cannot, give art owners adequate policing, then a private sector takeover is inevitable to fill the gap”<sup>1</sup>***

## 1.1 Introduction

So wrote John Kerr in his 2015 publication *“The Securitization and Policing of Art Theft: The Case of London”*, which was based on his doctoral research. Amidst the London Metropolitan Police’s decreasing involvement in art crime policing, Kerr questioned who performed, managed, governed and controlled the securitization and policing of art theft in London.<sup>2</sup> He concluded that the policing of art theft had become the purview of a complex amalgam of public and private entities.<sup>3</sup> In line with the above quote, Kerr established that the private sector was filling at least some of the policing gaps left by the police. But Kerr argued that this private involvement did not need to be hostile, and that policing was not a zero-sum game.<sup>4</sup> Policing could instead be co-produced, and a site of cooperation rather than confrontation. Co-production of public services can be defined as a situation in which the public sector and private actors make better use of each other’s assets and resources to achieve better outcomes or improved efficiency.<sup>5</sup> This is what Kerr envisaged: that the police and the private sector together provide art crime policing to the benefit of the protection of cultural property.<sup>6</sup>

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<sup>1</sup> John Kerr, *The Securitization and Policing of Art Theft: The Case of London* (Ashgate Publishing 2015) 106.

<sup>2</sup> Kerr (n 1) IX, 1.

<sup>3</sup> Ian Loader, ‘Plural Policing and Democratic Governance’ (2000) 9 *Social & Legal Studies* 324; Kerr (n 1) 169.

<sup>4</sup> Kerr (n 1) 106-107, 151, 153-154.

<sup>5</sup> Tony Bovaird and Elke Loeffler, ‘From Engagement to Co-Production: The Contribution of Users and Communities to Outcomes and Public Value’ (2012) 23 *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations* 1121; Elke Loeffler, *Co-Production of Public Services and Outcomes* (Springer Nature 2020) 27.

<sup>6</sup> Kerr (n 1) 172; Elke Loeffler and Tony Bovaird, ‘Assessing the Impact of Co-Production on Pathways to Outcomes in Public Services: The Case of Policing and Criminal Justice’ (2020) 23 *International Public Management Journal* 209-210.

The situation that prompted Kerr to posit the co-production of art crime policing is not particular to London or the United Kingdom. The most recent surveys of police forces throughout Europe indicate that in most European countries art crime is given a low priority by police forces and policymakers.<sup>7</sup> As a result many countries employ but small art crime policing units with significant limits on their capacities, or none at all. This lack of public engagement opens up opportunities for criminals. However, it also opens up a space for private art crime policing: in the absence of adequate police resources, private entities could fill the policing gap.<sup>8</sup> Even in countries where there are sizeable units with stable funding, private actors are often repositories of crucial art crime policing skills and knowledge: the ability to distinguish fake from genuine, the identification of the origins of a looted piece, and the most up-to-date information of suspect pieces circulating in the market.<sup>9</sup> As such, there are grounds to argue that there is substantial potential for the co-production of art crime policing beyond the UK. What is far less clear, is whether that actually takes place.

This study seeks to answer the questions of (a) whether policing co-production between specialised police units and the private sector is a feature of art crime policing and (b) why this is or is not the case. It does so by comparing three case studies, namely Belgium, the UK, and France. It is important art crime and its policing be addressed. Art crime is not an innocent nor victimless crime. Art is still stolen, forged, damaged, looted, and laundered, and its impact is still felt by nations, communities, and individuals across the globe.<sup>10</sup> Art crime robs archaeologists of the means to properly interpret

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<sup>7</sup> Ludo Block, 'Policing Art Crime in the European Union' in Duncan Chappell and Saskia Hufnagel (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives* (Routledge 2014) 189-197; Naomi Oosterman, 'Regional Overviews of the Policing of Art Crime in the European Union' in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Springer 2019) 216-226.

<sup>8</sup> Eva Willems-Hirsch, 'Kunst- en antiek- gerelateerde criminaliteit: Verslag van een onderzoek voor het Nationaal dreigingsbeeld 2012' ('Art and antiques-related crime: Report of a study for the National Threat Assessment 2012') 39-40; Kerr (n 1) 79, 106, 156; John Kerr, 'The Art of Risk Management: The Crucial Role of the Global Art Insurance Industry in Enabling Risk and Security' (2016) 19 *Journal of Risk Research* 332-333; Interpol, 'Assessing Crimes Against Cultural Property - Survey 2021' (Interpol 2021) 7.

<sup>9</sup> Saskia Hufnagel, 'De Aanpak van Kunstcriminaliteit in Europa ('The Approach to Art Crime in Europe')' (2021) 46 *Justitiële Verkenningen* 45-46.

<sup>10</sup> Bojan Dobovšek and Boštjan Slak, 'The Significance of Studying and Investigating Art Crime: Old Reasons, New World' (2012) 13 *Journal of Criminal Justice and Security* 398-399; Vicki Oliveri and others, 'Art Crime: Discussion on the Dancing Shiva Acquisition' (2020) 6 *Journal of Criminological Research, Policy and Practice* 307-319; Neil

our past, it corrupts the collections of public galleries, museums and libraries.<sup>11</sup> It undermines the legitimate trade and tears at the fabric of society, sucking money out of the legitimate economy whilst eluding taxation.<sup>12</sup> It has led to long-term societal destabilisation, particularly when no reparation, restitution, repatriation, compensation, or conviction follows.<sup>13</sup> This destabilisation threatens international security, and so does art crime's potential funding of terrorism.<sup>14</sup> It is thus not an innocent nor victimless crime.<sup>15</sup> Instead, art crime is serious, meriting rigorous academic attention and thorough policing.

## 1.2 Definitions

### 1.2.1 Policing

Before the above research questions and the co-production of art crime policing can be more deeply explored, some key concepts need explanation. To begin with, a study focusing on art crime policing needs to define what the word 'policing' means. Defining policing is complex. Policing scholar Robert Reiner has defined policing as *"the set of processes and activities [...] aimed at the protection or*

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Brodie and others, 'Why There Is Still an Illicit Trade in Cultural Objects and What We Can Do About It' [2021] *Journal of Field Archaeology* 1.

<sup>11</sup> Derek Fincham, 'The Fundamental Importance of Archaeological Context' in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger/ABC-CLIO 2009) 3-12; John Stubbs, 'Why Masterpieces Matter: Some Dogmatic Reflections' in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger/ABC-CLIO 2009) 232-234; Thomas Bazley, *Crimes of the Art World* (ABC-CLIO 2010) 101-102; Riah Pryor, *Crime and the Art Market* (Lund Humphries 2016) 53-58, 80.

<sup>12</sup> Kenneth Polk and Duncan Chappell, 'Fakes and Deception: Examining Fraud in the Art Market' in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (ABC-CLIO 2009) 83; Fausto Martin De Sanctis, *Money Laundering Through Art: A Criminal Justice Perspective* (Springer Science & Business Media 2013) 7; Vernon Rapley, 'The Police Investigation of Art Fraud' in Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves* (Palgrave Macmillan 2016) 35.

<sup>13</sup> Erik Nemeth, 'The Artifacts of Wartime Art Crime: Evidence for a Model of the Evolving Clout of Cultural Property in Foreign Affairs' in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger/ABC-CLIO 2009) 205; Alexander Gillespie, 'Intentional Destruction of Cultural Property' in Arthur Tompkins (ed), *Art Crime and its Prevention* (Lund Humphries 2016) 191-193.

<sup>14</sup> Erik Nemeth, 'Cultural Security: The Evolving Role of Art in International Security' (2007) 19 *Terrorism and Political Violence* 36-37; Erik Nemeth, 'The Relevance of Arts Trafficking for International Security' (*euractiv.com*, 4 March 2015) <<https://www.euractiv.com/section/languages-culture/opinion/the-relevance-of-arts-trafficking-for-international-security/>> accessed 22 March 2023; Matthew Bogdanos, 'Thieves of Baghdad and the Terrorists They Finance' in Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves*, (Palgrave Macmillan 2016) 123.

<sup>15</sup> Joris D Kila and Marc Balcells, 'Conclusion: Cultural Property Crime' in Joris D Kila and Marc Balcells (eds), *Cultural Property Crime* (BRILL 2014) 366-367.

*continuation of a particular social order, or social order in general*".<sup>16</sup> Social order is a concept lent from sociology than can be defined as the social status quo that emerges as a result of how the various components of a community or society interact to produce, by design or spontaneously, a social equilibrium.<sup>17</sup> Social order can emerge out of consensus or conflict, depending on the interaction between the different stakeholders and communities that constitute a society.<sup>18</sup> Through the mentioning of the protection and continuation of social order this definition connects to the concept of social control. Social control denotes "*the organised ways in which society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome or undesirable*".<sup>19</sup> Reiner emphasises that social control processes are *reactive* to threats to social order, and that this aspect is what makes social control a specific activity.<sup>20</sup> Policing, then, is a particular type of social control. It has been distinguished from social control because of its particular goal: policing is aimed at the *securitisation* of a particular social order while social control also encompasses the *production* of an order.<sup>21</sup> Reiner previously argued it is also particular through "*the creation of systems of surveillance coupled with the threat of sanctions*", though more recently he has omitted reference to specific policing instruments as a point of distinction.<sup>22</sup> The first key point of Reiner's definition is that policing is dynamic given social order itself is dynamic. The second key point is that policing is a reactive process aimed at the securitisation of a social order. Reiner's is not the only definition, however.

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<sup>16</sup> Robert Reiner, *The Politics of the Police* (OUP Oxford 2010) 5.

<sup>17</sup> Lawrence K Frank, 'What Is Social Order?' (1944) 49 *American Journal of Sociology* 472-474.

<sup>18</sup> Reiner (n 16) 5.

<sup>19</sup> Stanley Cohen, *Visions of Social Control: Crime, Punishment, and Classification* (Polity Press 1985) 1.

<sup>20</sup> Reiner (n 16) 4.

<sup>21</sup> Mark Button, *Private Policing* (2 edition, Routledge 2019) 8.

<sup>22</sup> Robert Reiner, 'Policing and the Police' in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (Oxford University Press 1997) 1005; Les Johnston, 'Private Policing in Context' (1999) 7 *European Journal on Criminal Policy and Research* 177-178; Reiner (n 16) 4; Tim Newburn and Robert Reiner, 'Policing and the Police' in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (Oxford University Press 2012) 808.

Clifford Shearing, who preceded Reiner, defined policing as *“the preservation of the peace”*.<sup>23</sup> Peace, as understood by Shearing, is a state of affairs in which *“people are free from unwanted interference so that they may go about their business safely”*.<sup>24</sup> What this means substantively depends on the social order: citing Spitzer and Gore, Shearing states that *“security always implies the preservation of an established order against whatever seems to threaten, disturb or endanger it [...] What threatens, disturbs, or endangers depends on the nature of this established order”*.<sup>25</sup> Policing thus consists precisely of those activities through which security is realised, but Shearing wants also to *“recognize the significance of peace as a “foundation order” on which other orders - for instance, the order of financial markets - depend, and policing as an activity that seeks to maintain this foundation”*.<sup>26</sup> By consequence, peace is not just order, and policing means more than the response to deviancy: policing *“realises an assurance of peace”*, going beyond a focus on breaches.<sup>27</sup> As such, in contrast to Reiner’s interpretation, Shearing’s concept of policing means more than a strict securing of order or peace by responding to deviancy, and more explicitly points towards preventative activities. Moreover, Shearing emphasises that he wants *“explicitly to recognize [...] that there may be multiple guarantees and guarantors of peace”*.<sup>28</sup> Most importantly for the present research, Shearing indicates that the limits concerning who does the policing in what way is itself also dependent on the social order established through the interaction of stakeholders. Policing is thus *“the outcome of a constellation of actors, agencies and processes both within and beyond the police organisation”*.<sup>29</sup> This adds a third key point for understanding the nature of policing.

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<sup>23</sup> Clifford D Shearing, ‘The Relation between Public and Private Policing’ (1992) 15 Crime and Justice 399-400; David H Bayley and Clifford D Shearing, ‘The Future of Policing’ (1996) 30 Law & Society Review 586; Johnston (n 22) 177.

<sup>24</sup> Shearing (n 23) 401.

<sup>25</sup> Shearing (n 23) 400.

<sup>26</sup> Shearing (n 23) 400.

<sup>27</sup> Shearing (n 23) 400-401.

<sup>28</sup> Shearing (n 23) 402.

<sup>29</sup> Adam Crawford, ‘The Police, Policing and the Future of the “Extended Policing Family”’ in Jennifer M Brown (ed), *The Future of Policing: Papers Prepared for the Stevens Independent Commission into the Future of Policing in England and Wales* (Routledge 2014) 1/16.

Jones and Newburn offer a practice-oriented definition of policing. They consider policing as *“organised forms of order-maintenance, peace-keeping, rule or law enforcement, crime investigation and prevention and other forms of investigation and information-brokering”* in the context of their investigation into the *“activities of those [...] bodies [...] part of whose defining purpose is to apply social controls”*.<sup>30</sup> Policing, in their estimation, is *“undertaken by individuals or organisations, where such activities are considered by them and/or others as a central or defining part of their purpose”*.<sup>31</sup> This definition further expands policing with preventative activities and information-brokering, and further foregrounds the policing entities’ own agency. These entities, by virtue of their own self-perception or by the perception they create in others, become part of the *“constellation of actors, agencies and processes both within and beyond the police organisation”* that determines who has policing responsibility.<sup>32</sup> In that sense, the act of policing remains an aspect of social control, mainly focused on responding to deviant behaviour. But it is equally an act which is by its nature is order-defining. By performing policing tasks entities can become recognised as policing entities, which ultimately affects the status quo regarding what policing is and who it can be done by<sup>33</sup>.

Button, finally, identifies six main policing functions. These are:

1. Keeping the peace,
2. Prevention of deviant acts,
3. Surveillance for deviant acts,
4. Investigation of deviant acts,
5. Applications of sanctions,
6. And referral for sanction for rule breaches.

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<sup>30</sup> Trevor Jones and Tim Newburn, ‘The Sociology of Policing’, *Private Security and Public Policing* (Clarendon Press 1998) 18.

<sup>31</sup> Jones and Newburn (n 30) 18.

<sup>32</sup> Crawford (n 29) 1/16.

<sup>33</sup> Michael Kempa and others, ‘Reflections on the Evolving Concept of “Private Policing”’ (1999) 7 *European Journal on Criminal Policy and Research* 198-199; Crawford (n 29) 2/16.

Button emphasises policing as dealing-with-crime. There are various entities that *regulate* (a) social order, such as professional sports bodies. However, policing is limited to responding to those breaches of social order that the law defines as criminal.<sup>34</sup>

All of the above approaches to defining policing fundamentally agree that policing is a set of activities related to the control of undesirable behaviour, and that it is not the exclusive purview of the police. These ideas lead to an understanding of policing independent from the police, thus opening the door for plural policing discussions.<sup>35</sup> Each of them adds specific nuances to these ideas. Reiner's definition makes clear that policing is dynamic. Shearing's approach highlights there is evolution not only towards what threats policing reacts to, but also towards who can police. Jones and Newburn further expanded the breadth of actions that can be considered policing, and emphasised policing entities' agency in the construction of that dynamic. Button, finally, adds emphasis on the criminal nature of the behaviour to which policing responds. Equipped with these core ideas, a policing definition for this research can be constructed. However, Jones and Newburn warn that the concept of policing is a *"broad and shifting notion incorporating the actions of a variety of individuals and agencies"*.<sup>36</sup> As such, the challenge is *"to develop a nomenclature that explicitly separates meanings that common usage distinguishes implicitly..."* -as the meaning of the word 'policing' can change depending on context- *"...while at the same time respecting the central features of this usage"*.<sup>37</sup> As such, policing definitions are instrumental rather than universal; any definition is as such a working definition.

As the overall topic of this research is the plural policing of art crime, its definition of policing is influenced by all of the above interpretations of the concept. The present research considers policing to be 'the set of activities and processes responding to criminal behaviour, done by entities which consider, or are considered to have, these activities and processes as part of their purpose'. This

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<sup>34</sup> Button (n 21) 9-10.

<sup>35</sup> Les Johnston, *The Rebirth of Private Policing* (Taylor & Francis US 1992) 4-7; Clifford D Shearing and Philip C Stenning, 'Reframing Policing' in Clifford D Shearing and Philip C Stenning (eds), *Private policing* (Sage Publications 1987) 11.

<sup>36</sup> Jones and Newburn (n 30) 18.

<sup>37</sup> Shearing (n 23) 399-400; Jones and Newburn (n 30) 18.

definition acknowledges the myriad forms policing can take by usage of the word ‘responding’ rather than ‘reacting’; preventative measures such as providing security assessment or police training can also be considered policing, for example.<sup>38</sup> The element of perception of purpose indicates policing entities’ agency, as well as the dynamic nature of policing. The definition does not require policing to be a central or defining purpose but rather *a* purpose, possibly among others, reflecting Stenning and Shearing’s determination that “*policing provision can be ‘embedded’ in other functions and occupations that do not have policing as their primary focus*”.<sup>39</sup> And of course, this definition has the idea of plural policing at its core.

### 1.2.2 Plural policing

The concept of plural policing has at its core the idea that there has been “*a shift from police to policing*”, which is to say the idea that policing is done by a diverse set of public and private institutions rather than solely or even primarily by the police.<sup>40</sup> In the common vernacular policing is often still understood to be “*what the police do*”.<sup>41</sup> This is a result of the police institution successfully taking the mantle of the legitimate guardian of society in the 18<sup>th</sup> century.<sup>42</sup> At the time, state-led forces dedicated to maintaining public order developed. By introducing these forces and in so doing taking steps towards the centralisation of order management, the decision-makers of that time not only more purposefully set about maintaining and/or controlling order, but also claimed the (sole) responsibility for doing so.<sup>43</sup> Their success led to that strong association between the new police

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<sup>38</sup> Colin Rogers, *Plural Policing: Theory and Practice* (1st edition, Policy Press 2016).6; Virginie Malochet, ‘La pluralisation du policing en France. Logiques d’hybridation, effets de tropisme et enjeux d’articulation’ (‘The Pluralisation of Policing in France. Logics of hybridization, effects of tropism and issues of articulation’) (2022) 16 *Sciences & Actions Sociales* 2/15.

<sup>39</sup> Clifford D Shearing and Philip C Stenning, ‘Governing Plural Policing Provision: Legal Perspectives, Challenges and Ideas’ in Monica den Boer (ed), *Comparative Policing from a Legal Perspective* (Edward Elgar Publishing 2018) 7.

<sup>40</sup> Ian Loader, ‘Plural Policing and Democratic Governance’ (2000) 9 *Social & Legal Studies* 323-324.

<sup>41</sup> Jones and Newburn (n 30) 2; Crawford (n 29) 1/16; Button (n 21) 7.

<sup>42</sup> Shearing and Stenning (n 35) 11-13; Ken Livingstone and Jerry Hart, ‘The Wrong Arm of the Law? Public Images of Private Security’ (2003) 13 *Policing and Society* 159-161; Jan Terpstra and Bas van Stokkom, ‘Plural Policing in Comparative Perspective’ (2015) 2 *European Journal of Policing Studies* 325-326.

<sup>43</sup> Johnston (n 22) 175-177; Kempa et al (n 33) 197-199; Mark Finnane, ‘The Origins of “Modern” Policing’ in Paul Knepper and Anja Johansen (eds), *The Oxford Handbook of the History of Crime and Criminal Justice* (Oxford



institution and the idea of policing.<sup>44</sup> Before the 18<sup>th</sup> century both ‘policing’ and ‘police’ meant “*the general regulation or government, the morals or economy of a city or country*”.<sup>45</sup> By the time the early police forces developed however, the word’s meaning had narrowed, and policing was understood, both in the UK and in continental Europe, as crime prevention and order maintenance.<sup>46</sup> But as police institutions grew in profile and policing became understood as what the police do, the practice became defined by the institution instead of the institution by the practice, putting the cart before the horse.

Thus, policing became a police affair, and the idea of non-police policing increasingly alien to both public and academic discourse. However, crimefighting dynamics in the second half of the 20<sup>th</sup> century were such that non-police policing again gained profile, attracting academic attention.<sup>47</sup> By the late 1970’s and early 1980’s, academics such as Draper, Shearing, Stenning, Jones, Newburn, and Clayton identified an explosive growth in private security, which prompted them to start analysing non-public policing.<sup>48</sup> Often, they presented their research as a “*rebirth*” or “*reframing*” of what they called ‘private policing’, indicating both how strongly the association between the police and policing had taken root, and the iconoclastic current flowing through this “*first cut*” of private policing research.<sup>49</sup> Driven by their identification of a boom in private security, private policing research focused on the types of spaces, sectors, and functions that the private security industry occupied.<sup>50</sup> The field has

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University Press 2016) 468-470; Cristian Mouhanna, ‘Police Centralization and Its Pathologies’ in Jacques de Maillard and Wesley G Skogan (eds), *Policing in France* (Routledge 2020) 72-73.

<sup>44</sup> Johnston (n 35) 4-24; Johnston (n 22) 177; Button (n 21) 7.

<sup>45</sup> Johnston (n 35) 3-4.

<sup>46</sup> Jones and Newburn (n 30) 4; Rogers (n 38) 3.

<sup>47</sup> Clifford D Shearing and Margaret B Farnell, *Private Security: An Examination of Canadian Statistics, 1961-1971* (Toronto: Centre of Criminology, University of Toronto 1977); Clifford D Shearing and Philip C Stenning, ‘Modern Private Security: Its Growth and Implications’ (1981) 3 *Crime and Justice: An Annual Review of Research* 194; Johnston (n 35) 4; Kempa et al (n 33) 197-199; Button (n 21) 7.

<sup>48</sup> Tom Clayton, *The Protectors: The inside Story of Britain’s Private Security Forces*. (London: Oldbourne 1967); Hilary Draper, *Private Police* (Harvester Press 1978); Shearing and Stenning (n 47) 198-209; Kempa et al (n 33) 198-207; Button (n 21) 39-40.

<sup>49</sup> Shearing and Stenning (n 35) 11; Shearing (n 23) 422-423; Johnston (n 35) vii, 4-6, 25; Kempa et al (n 33) 197-198.

<sup>50</sup> Kempa et al (n 33) 199-200; Jean-Paul Brodeur, *The Policing Web* (Oxford University Press 2010) 3; Button (n 21) 39-40.

broadened since to consider forms of private policing other than private security, such as vigilantism, community policing, and private investigation.<sup>51</sup> The relationship between public and private policing also became an important research topic from 2008 onwards.<sup>52</sup> It is at this point the term ‘plural policing’ emerges, the usage of which emphasises that the police is no longer considered the sole policing provider, and that policing is the purview of a sometimes-motley patchwork of entities which are not necessarily in enduring relationships with each other.<sup>53</sup>

### 1.2.3 The police

Although plural policing research emphasises the broad range of actors involved in policing, the police still play an important role. Reiner defined the police as a specific *“societal institution [...] tasked with a broad mandate of crime control, order maintenance and some negotiable social service functions”*.<sup>54</sup> That broad mandate can be explained by the fact policework typically takes place in emergency situations: the police are expected to act whenever *“something that should not be happening is happening and someone must do something about it now!”*.<sup>55</sup> Still, there are limits to this mandate, as what is and is not considered to require the police’s attention and the leeway it gets in the exercise of its duties are dependent on factors such as regulation, social interests, precedent, and the political agenda, which are themselves reflective of the social order.<sup>56</sup>

Even if the police no longer dominates policing as it might have in the past, the symbolic power of the police is not to be underestimated. The involvement, or not, of the police with combatting a certain crime has an important signalling function to the broader public as to how worthy of attention that

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<sup>51</sup> Kempa et al (n 33) 207; Chang-Hun Lee and Ilhong Yun, ‘Factors affecting likelihood of hiring private investigators (PI): Citizens’ traits and attitudes toward police and PI’ (2014) 37 *Policing: An International Journal of Police Strategies & Management* 712; Button (n 21) 115-151, 225-243.

<sup>52</sup> Dominique Boels and Antoinette Verhage, ‘Plural Policing: A State-of-the-Art Review’ (2016) 39 *Policing-an International Journal of Police Strategies and Management* 6.

<sup>53</sup> Johnston (n 35) **4-7**; Shearing and Stenning (n 35) **11**; Rogers (n 38) **23-24**.

<sup>54</sup> Reiner (n 16) 3-4.

<sup>55</sup> Domício Proença Júnior and Jacqueline Muniz, *“Stop or I’ll Call The Police!” The Idea of Police, or the Effects of Police Encounters Over Time*’ (2006) 46 *The British Journal of Criminology* 236; Newburn and Reiner (n 22) 809.

<sup>56</sup> Proenca Junior and Muniz (n 55) 236.

particular threat to social order is.<sup>57</sup> It also signals to other would-be policing actors that there is momentum to their fight. Moreover, the police remain a “*specialist resource*”: it is the police who have access to certain investigatory techniques and, fundamentally, the use of force.<sup>58</sup> Without these competences, and without the symbolic role of the police, policing can be severely hampered. And finally, the police are perhaps best placed to play a monitoring and organising role within policing networks.<sup>59</sup> It is for these reasons that Loader and Walker developed the theory of anchored pluralism, arguing that the state should remain a controlling force within the security landscape, functioning as the anchor in a pluralised policing landscape.<sup>60</sup> It is for these reasons the focus in this research is on the police. While other public institutions, such as ministries of culture, also play important roles in art crime policing, the police have specific competences that make police forces a crucial piece in any plural policing network, including those networks policing art crime. This is however not a normative statement that anchored pluralism is the way forward, but merely an acknowledgement of the police’s enduring role.

#### 1.2.4 The public and the private

As Shearing notes: “*Ever since the social world has been constituted through a political consciousness that recognized a public and a private sphere, policing has had a public and a private face*”.<sup>61</sup> It is worthwhile to spend a few pages examining these concepts to further clarify what this research’s focus is, and is not. The public-private distinction is considered one of the great dichotomies of

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<sup>57</sup> Brodeur (n 50) 65, 127, 304, 308.

<sup>58</sup> Egon Bittner, ‘Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police’ in Tim Newburn (ed), *Policing: key readings* (Willan 2005); Proença Júnior and Muniz (n 55) 234; Robert Reiner, ‘Who Governs? Democracy, Plutocracy, Science and Prophecy in Policing’ (2013) 13 *Criminology & Criminal Justice* 166.

<sup>59</sup> Hans Boutellier and Ronald van Steden, ‘Governing Nodal Governance: The “Anchoring” of Local Security Networks’ in Adam Crawford (ed), *International and Comparative Criminal Justice and Urban Governance* (Cambridge University Press 2011) 467.

<sup>60</sup> Ian Loader and Neil Walker, ‘Necessary Virtues: The Legitimate Place of the State in the Production of Security’ in Jennifer Wood and Benoît Dupont (eds), *Democracy, Society and the Governance of Security* (Cambridge University Press 2006) 194.

<sup>61</sup> Shearing (n 23) 402.

Western thought.<sup>62</sup> The word 'public' is typically associated with collectiveness and the state, while the term 'private' connects to the individual and enterprise. The meaning of these two terms is thus relational as they derive substance from their opposition to another.<sup>63</sup> The two concepts of 'public' and 'private' do not have a single interpretation each, but rather represent families of connected meanings which vary depending on the context.<sup>64</sup> Thus, for example, individuals acting to advance their personal goals are today considered to be pursuing their private interests, while those serving the public interest strive for a collective good; information is considered public when it is generally available, while personal information is protected by privacy laws.<sup>65</sup>

Because it is so adaptive, the public-private distinction has proven a useful framework with which to approach societal organisation in its many forms, including policing. In policing discussions, 'public' tends to be used synonymous with 'state'. 'Public policing' is thus policing performed by state-associated entities, while 'private' policing means 'non-state' policing, i.e., companies or individuals policing independent of state involvement.<sup>66</sup> Initially, security firms were the main object of study in private policing literature, and the distinction between public and private was relatively straightforward along state/non-state lines.<sup>67</sup> As private policing research evolved into plural policing discussions, however, it became more challenging to use a strict public-private framework to describe state and non-state policing actors. Other entities do not fit so neatly into the public-private divide. Privatisation policies and novel management approaches have further complicated the picture.<sup>68</sup> How

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<sup>62</sup> Norberto Bobbio, *Democracy and Dictatorship: The Nature and Limits of State Power* (University of Minnesota Press 1989) 1; Jeff Weintraub and Krushan Kumar, 'The Theory and Politics of the Public/Private Distinction', *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy* (University of Chicago Press 1997) 1; Trevor Jones and Tim Newburn, 'The Public-Private Dichotomy', *Private Security and Public Policing* (Clarendon Press 1998) 29; Button (n 21) 12.

<sup>63</sup> Weintraub and Kumar (n 62) 2-4.

<sup>64</sup> Weintraub and Kumar (n 62) 5.

<sup>65</sup> Morton J Horwitz, 'The History of the Public/Private Distinction' (1982) 130 *University of Pennsylvania Law Review* 1423; Weintraub and Kumar (n 62) 5.

<sup>66</sup> Kempa et al (n 33) 197-198; Elizabeth E Joh, 'The Paradox of Private Policing' (2004) 95 *The Journal of Criminal Law and Criminology* 54-57; Button (n 21) 13.

<sup>67</sup> Rogers (n 38) 41.

<sup>68</sup> David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (OUP Oxford 2001) 116; Adam Crawford, 'Plural Policing in the UK: Policing beyond the Police' in Tim Newburn (ed), *Handbook of Policing* (Willan Publishing 2008) 155, 157; Trevor Jones, 'Governing Security: Pluralization, Privatization, and Polarization

to classify, for example, a government-recognised institution, partly subsidised by the state, partly self-funded, that provides advice to both government and private actors regarding the securitisation of religious heritage?<sup>69</sup> Such challenges have led to the public-private distinction being reframed as a spectrum rather than a binary distinction, making the question one of public- or *privateness*.<sup>70</sup>

At the extremities of this spectrum are clearly public institutions such as the police and clearly private actors such private security, leaving a more grey area in the middle.<sup>71</sup> This grey area has been given various monikers.<sup>72</sup> Johnston in 1992 identified a “*hybrid policing*” sector populated by state security-related bodies, special police forces, state departments, municipal bodies, and the catch-all category of “*regulatory and investigative*” bodies.<sup>73</sup> More recently, Rogers used the term “*quasi-policing*” to cover the performance of police functions by specifically empowered civilians.<sup>74</sup> He additionally discussed partnership between private entities as the police as a form of “*grey policing*”, and has explicitly acknowledged the “*patchwork of policing provision and authorisation which involves a mix of the police, municipal auxiliaries, commercial security, and the activities of the citizens*”.<sup>75</sup> It is thus clear that the middle of the spectrum between police and private security is broad and evolving.<sup>76</sup> Various conceptual tools have been developed to place actors along this public-private continuum.<sup>77</sup>

Jones and Newburn identify the mode of provision, the source of funding, the nature of the provider-user relationship, and the employees’ employment status as the most important factors to assess the

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in Crime Control and Policing’ in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (Oxford University Press 2012) 748-749; Rogers (n 38) 41; Button (n 21) 13.

<sup>69</sup> Button (n 21) 16-17; PARCUM, ‘About’ <<https://www.parcum.be/nl/over-parcum>> accessed 21 March 2023.

<sup>70</sup> Gary T Marx, ‘The Interweaving of Public and Private Police in Undercover Work’ in Clifford D Shearing and Philip C Stenning (eds) *Private Policing* (Sage 1987); Jones and Newburn (n 30) 36-40; Rogers (n 38) 41; Button (n 21) 16; Martin Nøkleberg, ‘The Public-Private Divide Revisited: Questioning the Middle Ground of Hybridity in Policing’ (2020) 30 *Policing and Society* 601-602.

<sup>71</sup> Johnston (n 35) 115-118; Jones and Newburn (n 30) 40; Rogers (n 38) 41; Button (n 21) 16; Nøkleberg (n 70) 603.

<sup>72</sup> Rogers (n 38) 24-25, 41-46; Button (n 21) 18-23; Nøkleberg (n 70) 603-604.

<sup>73</sup> Johnston (n 35) 116-119.

<sup>74</sup> Rogers (n 38) 41-42.

<sup>75</sup> Rogers (n 38) 46-54; Colin Rogers, ‘Plural Policing in England and Wales: Thoughts and Discussion’ (2018) Volume 6 *Forensic Research & Criminology International Journal* 398.

<sup>76</sup> Jones and Newburn (n 30) 203-208; Button (n 21) 20-21; Nøkleberg (n 70) 601.

<sup>77</sup> Rick Sarre, ‘Researching Private Policing: Challenges and Agendas for Researchers’ (2005) 18 *Security Journal* 60.

public or private status of an entity or activity.<sup>78</sup> The mode of provision differentiates between on the one hand the provision of goods of services to all rightsholders, and on the other the distribution via the market.<sup>79</sup> Source of funding relates to tax-funded versus charging fees, while the relationship between user and client is collectivised publicly or individualised (and thus possibly competitive) privately.<sup>80</sup> Finally, public servants often enjoy certain special employment protections which private employees do not have recourse to.<sup>81</sup> They also identified a set of boundaries in which the public-private dichotomy operates, namely sectoral (state vs. market), spatial (area of operation), legal (what powers are afforded to the entities policing), functional (what are the functions the entities fill), and geographical (local-national-international).<sup>82</sup> Button built upon the work of Jones and Newburn and other policing categorisation discussions to offer a contemporary categorisation toolkit for plural policing. He proposes five categories: location (whether an entity is part of the state or not), source of funding, nature of relationship (which is essentially mode of provision), status of staff (here denoting whether individuals receive special powers such as those afforded to a constable), and finally spatial context, which refers to whether the spaces in which the entities operate are public spaces open to all or private premises requiring a license, for example in the form of paying a fee, to enter.<sup>83</sup>

Debate continues over the usage of terms such as hybrid, public, and private in the context of policing, and on how to categorise entities using them, as it remains difficult to neatly sort entities in hermetic categories. Nonetheless, the terms public, private, and hybrid do allow for descriptions that are close enough to reality to allow different systems and entities to be compared.<sup>84</sup> They provide *“markers...which, despite their limitations, still help us to make sense of the complexity of forms”*.<sup>85</sup> Especially in a plural policing context the terms provide an analytical framework with which to examine

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<sup>78</sup> Jones and Newburn (n 30) 30.

<sup>79</sup> Jones and Newburn (n 30) 32.

<sup>80</sup> Jones and Newburn (n 30) 36.

<sup>81</sup> Jones and Newburn (n 30) 31-33; Button (n 21) 14.

<sup>82</sup> Trevor Jones and Tim Newburn, 'The Boundaries of Public and Private Policing' in Trevor Jones and Tim Newburn, *Private Security and Public Policing* (Clarendon Press 1998) 203.

<sup>83</sup> Button (n 21) 14-16.

<sup>84</sup> Jones and Newburn (n 30) 40-41.

<sup>85</sup> Jones and Newburn (n 30) 41.

and document plural policing as well as the co-production of policing.<sup>86</sup> This research utilises the terms public, hybrid, and private actors as a conceptual framework to approach plural policing with. It bases itself on Button's criteria for the categorisation of the actors it discusses as either public, hybrid, or private. His set of factors provides a contemporary toolset focused on policing that is grounded in the literature. Some of Button's denominators described above were not withheld, however. Button's first category of location is somewhat redundant, given public policing is considered state policing and private policing is considered non-state-policing. Having a category based upon being part of the state is thus somewhat superfluous, as the goal of designing a categorisation method is exactly to establish the factors which make an entity state or non-state. In his description, Button explains the differences between state bodies, NGO's, and for-profit actors, but these can also be distinguished as public, hybrid, or private, on the basis of the residual categories. Secondly, given the fact all art crime policing takes place across public and private spaces, including museums, auctions houses, storage spaces, art fairs, and galleries, spatial context was not withheld either.

The majority of the actors discussed in the case studies are clearly public or private. In terms of their source of funding, mode of provision, and legal powers, specialist police forces are fairly straightforwardly public.<sup>87</sup> Such police forces are, at least in principle, funded with state moneys, principally provide their services to the entire public, and are equipped with the special powers of the police. Private art insurers, private art security consultants, private stolen arts databases, and private investigators are clearly private. They make their money on the open market, provide their services in the market, and are afforded the legal competences of the ordinary business. One actor interviewed for this research could less straightforwardly be categorised; they are discussed further in the case studies. However, the goal here is not to develop an extensive taxonomy of entities policing art crime. The public-private distinction remains a useful framework with which to approach policing

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<sup>86</sup> Jones and Newburn (n 30) 34-35, 41

<sup>87</sup> Button (n 21) 14-16.

configurations as it distinguishes state and non-state policing, allowing for the examination of the allocation of responsibility between the two and the relationship they have to another.<sup>88</sup>

### 1.2.5. Art crime

The most straightforward academic definition of art crime can be found in John Conklin's 1994 book titled 'Art Crime'. He defined art crime as "*criminally punishable acts that involve works of art*".<sup>89</sup> While succinct, this definition leaves some definitional issues on the table. The first question that this definition throws up is what can and cannot be considered to be a 'work of art' in order to distinguish art crime from other crimes. In art crime literature, symbolic value is put forward as the characteristic which most distinguishes art works from other goods.<sup>90</sup> An object holds symbolic value when it represents something beyond itself.<sup>91</sup> Symbolic value is the result of social construction, as it is the interpretations society and society members accord to these objects which imbues them with symbolic value. Subtypes of symbolic value include historical, cultural, religious, and political value, and objects can hold several of these at once.

In the case of historic value, the object has an added cachet because of its age and/or past.<sup>92</sup> Cultural values connect the object to the broader ideas, customs, social behaviour, and artistic production of a particular people, community, or society.<sup>93</sup> Religious value connects the piece to a particular faith,

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<sup>88</sup> Kempa et al (n 33) 197-198.

<sup>89</sup> John E Conklin, *Art Crime* (Praeger 1994) 3.

<sup>90</sup> Stubbs (n 11) 225-231; Suzie Thomas and Louise Grove, 'Introduction' in Louise Grove and Suzie Thomas (eds), *Heritage Crime: Progress, Prospects and Prevention* (Oxford University Press 2014) 3; Gareth Fletcher, 'Fakes, Forgeries and Thefts' in Jos Hackforth-Jones and Iain Robertson (eds), *Art Business Today: 20 Key Topics* (Lund Humphries 2016) 112.

<sup>91</sup> Conklin (n 89) 7-8; Davide Ravasi and Violina Rindova, 'Symbolic Value Creation' in Daved Barry and Hans Hansen (eds), *The SAGE Handbook of New Approaches in Management and Organization* (SAGE 2008) 270-280; Dobovšek and Slak (n 10) 395; Andrew Sneddon, 'Symbolic Value' (2015) 50 *The Journal of Value Inquiry* 396-402.

<sup>92</sup> Alan H Goldman, 'Art Historical Value' (1993) 33 *The British Journal of Aesthetics* 17.

<sup>93</sup> Conklin (n 89) 16; César González-Pérez and César Parcero-Oubiña, 'A Conceptual Model for Cultural Heritage Definition and Motivation' in Mingquan Zhou and others (eds), *Revive the Past: Proceeding of the 39th Conference on Computer Applications and Quantitative Methods in Archaeology* (Pallas Publications 2011) 235-236.



while objects with political value connect to a certain political ideology or particular political interest.<sup>94</sup> Works of art by definition represent some social, emotional, or intellectual content, by dint of their creator's intention and/or by later interpretations of the meaning of the works.<sup>95</sup> There are thus many forms of symbolic value, and a broad ambit of objects can be considered symbolically significant. Consequently, the definition of works of art and as a corollary the definition of art crime frays somewhat around the edges.<sup>96</sup> But nonetheless, this approach to works of art provides a standard with which to distinguish them, and thus art crime, from other objects, and other forms of crime: art works are specific because of their capacity to hold many forms of symbolic value for many different people.

The second part of Conklin's definition, "*Criminally punishable acts*", refers to actions understood to be defined by criminal law, which attaches specific sanctions, such as fines or prison time, to specific actions done with specific intentions, because these are acts which lawmakers consider to be so reprehensible that they merit such sanctioning.<sup>97</sup> This discussion centres on criminal behaviour and not behaviour that is 'just' undesirable or unethical, such as aggressively speculative art acquisition. There is a relatively broad variety of crimes that affect art, but the five most archetypical art crimes are theft, looting, fraud, vandalism, and money laundering. Art theft is put simply, the stealing of works of art.<sup>98</sup> The term 'looting' is used to refer to either the illegitimate taking of cultural heritage during times of war or other distress, or the illegal excavation of objects.<sup>99</sup> Art theft and art looting, both of which involve the illegitimate taking of cultural property, are thus distinguished by context:

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<sup>94</sup> Gary Alan Fine and Deborah Shatin, 'Crimes against Art: Social Meanings and Symbolic Attacks' (1985) 3 *Empirical Studies of the Arts* 137-138; Sneddon (n 91) 412; Sam Hardy, 'Iconoclasm: Religious and Political Motivations for Destroying Art' in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Palgrave Macmillan UK 2019) 644-645.

<sup>95</sup> Dobovšek and Slak (n 10) 394.

<sup>96</sup> Mark Durney and Blythe Proulx, 'Art Crime: A Brief Introduction' (2011) 56 *Crime, Law and Social Change* 116.

<sup>97</sup> Conklin (n 89) 3; M Lynch, P Stretesky and M Long, 'Concerning the Definition of Crime', *Defining Crime: A Critique of the Concept and Its Implication* (Springer 2016) 1-6; Jonathan Herring, 'An Introduction to Criminal Law', *Criminal Law: Text, Cases, and Materials* (Oxford University Press 2020) 3-7, 24-30.

<sup>98</sup> Bazley (n 11) 21.

<sup>99</sup> Alia Szopa, 'Hoarding History: A Survey of Antiquity Looting And Black Market Trade' (2004) 13 *University of Miami Business Law Review* 59-61; Fletcher (n 90) 112.

art theft can happen anytime and anywhere, but the more specific crime of looting happens in the context of broader distress.

Art fraud is an umbrella term for crimes involving art that are perpetrated by misleading.<sup>100</sup> The two most frequently used terms to refer to fraudulent artworks are 'forgery' and 'fake'. The term forgery is used to refer to cases where a work is created with the intention to mislead.<sup>101</sup> A fake, on the other hand, is created when an existing work is altered to appear as made by another artist, for example by adding a signature.<sup>102</sup> An artwork's provenance, i.e. its record of ownership, may also be altered or forged, as well as any other certificate or documentation related to it.<sup>103</sup> Vandalism is the deliberate damaging of art.<sup>104</sup> Iconoclasm is a subtype of vandalism, defined as "*an act of attacking material manifestations of certain ideas and beliefs*" because of contrary ideas or beliefs held by the perpetrator.<sup>105</sup> Money laundering, finally, can broadly be defined as "*disguising or concealing of the illegal origin(s) of the proceeds of crime*".<sup>106</sup> Although it is unclear how prevalent art money laundering is in practice, it has become a major topic in art crime.<sup>107</sup> As the art market has been identified as a market vulnerable to money laundering practices the topic has also moved up the legislative agenda.<sup>108</sup>

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<sup>100</sup> Conklin (n 89) 49; Noah Charney, 'Four Art Crimes and Their Effect on the Art Trade' in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger/ABC-CLIO 2009) 108-109.

<sup>101</sup> Fletcher (n 90) 110; Rapley (n 12) 34.

<sup>102</sup> Conklin (n 89) 48; Charney (n 363) xiv; Bazley (n 11) 76-77.

<sup>103</sup> Polk and Chappell (n 12) 72.

<sup>104</sup> Christopher Cordess and Maja Turcan, 'Art Vandalism' (1993) 33 *The British Journal of Criminology* 95.

<sup>105</sup> Joris D Kila, 'From Crimes against Art to Crimes against Cultural Property: New Perspectives and Dimensions in Art Crime' in Joris D Kila and Marc Balcells (eds), *Cultural Property Crime: An Overview and Analysis of Contemporary Perspectives and Trends* (BRILL 2014) 171-174.

<sup>106</sup> Hannah Purkey, 'The Art of Money Laundering' (2010) 22 *Florida Journal of International Law* 114.

<sup>107</sup> Purkey (n 106); Petrus C van Duyne, Lena Louwe and Melvin Soudijn, 'Money, Art, and Laundering: Coming to Grips with the Risks' in Joris D Kila and Marc Balcells (eds), *Cultural Property Crime: An Overview and Analysis of Contemporary Perspectives and Trends* (BRILL 2014); Fausto Martin De Sanctis (n 12); Saskia Hufnagel and Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 131.

<sup>108</sup> Van Duyne, Louwe and Soudijn (n 107/108) 90, 94; Fausto Martin De Sanctis (n 12) 91-117; Publications Office of the European Union, 'Fighting Illicit Trafficking of Cultural Goods: Analysis of Customs Issues in the EU' (June 2017) 120.

## 1.3 Methodology

### 1.3.1 Data sources

The first source consulted in the development of this research was the existent academic literature on art crime policing. In the decades since the 1970's, a robust body of art crime research characterised has developed.<sup>109</sup> Classic topics include establishing the how and why of art theft, looting, fraud, and vandalism, as well as the role of the art market in facilitating crime and its legal implications.<sup>110</sup> The art crime literature is important for the current research as it guides its understanding of the size and nature of the art crime problem. But while the topics of looting, trafficking within the art market, art theft, art fraud, and in recent years art-related money laundering have all been the subject of significant academic interest, less attention has been paid to the distinct question of art crime policing.<sup>111</sup> Authors such as Hufnagel, Kila, Balcells, Yates, and Oosterman have been at the forefront of developing more interest in art crime policing specifically, not only by calling for more research in recent years, but more importantly by writing about it and/or supporting others doing so.<sup>112</sup> Notable precedents for this study include, but are not limited to, Kerr's research introduced above, Ludo Block's 2014 overview of art crime policing in Europe, and Oosterman's 2019 update on Block's work.<sup>113</sup> This nascent art crime policing research field is the second body of literature that was fundamental in guiding the current study. The literature on (plural) policing is the third tradition this research draws extensively from. This study lends from plural policing scholars the theories of fiscal

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<sup>109</sup> Durney and Proulx (n 96) 118; Vicki Oliveri, 'Art Crime Literature: A General Overview' in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Springer 2019) 73.

<sup>110</sup> Marc Balcells, 'One Looter, Two Looters, Three Looters... The Discipline of Cultural Heritage Crime Within Criminology and Its Inherent Measurement Problems' in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Springer 2019) 34-35; Oliveri (n 109) 56-73.

<sup>111</sup> Duncan Chappell and Saskia Hufnagel, 'Law Enforcement's Still Evolving Role in Art Crime: Some Introductory Remarks' in Duncan Chappell and Saskia Hufnagel (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives* (Ashgate Publishing, Ltd 2014) 2-4; Oliveri (n 109) 66.

<sup>112</sup> Joris D Kila and Marc Balcells (eds), *Cultural Property Crime: An Overview and Analysis of Contemporary Perspectives and Trends* (BRILL 2014); Hufnagel and Chappell (n 111); Naomi Oosterman and Donna Yates (eds), *Crime and Art: Sociological and Criminological Perspectives of Crimes in the Art World* (Springer International Publishing 2021).

<sup>113</sup> Block (n 7); Oosterman (n 7).

constraint and policing culture as potential drivers of, or obstacles to, plural policing. It also explores the definitional framework surrounding the concepts of policing, plural policing, and the concept of the police which have emerged in plural policing research, as already partly discussed above. Public management literature, finally, played an important role in shaping this study's conception of policing co-production.

A common challenge for art crime (policing) research is that there is a lack of empirical, quantitative information on the topic.<sup>114</sup> There are several reasons for this, including the non-registration of art crime by various police forces, the lack of attention paid to it by policymakers, and art world actors' reluctance to disclose they were victims of art crime for reputational and economic reasons.<sup>115</sup> Given the lack of quantitative data, art crime researchers have gravitated towards qualitative methods; case studies and interviews in particular.<sup>116</sup> In lieu of quantitative data, interviews provide a way to gather data from primary sources. This research is no different. Interviews were used to investigate how actors participated in art crime policing, or not, and why or why not they did so. Moreover, the attitudes that policing actors, public and private, have towards each other could be gauged more intimately using interviews. The approach to interviews is discussed further under subtitle 1.3.3 below.

Official publications such as government reports and policy papers were also a crucial source. Such documents provide information on policing that can be presumed to be accurate, while they also reflect how policymakers consider private policing, which has downstream effects on the co-

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<sup>114</sup> Robert Reiner, *Law and Order: An Honest Citizen's Guide to Crime and Control* (John Wiley & Sons 2013) 7-12; Mark Durney, 'Art Theft Statistics: Valuable Tools in Need of Reliable Measures' (2010) *Cultural Heritage & Arts Review* 13; Marc Balcells, 'Go Research an Art Thief: The Importance of Empirical Research on Art Theft' in Arthur Tompkins (ed), *Art Crime and Its Prevention* (Lund Humphries 2016) 33-36; Interpol, 'Protecting Cultural Heritage; an Imperative for Humanity' (2016) <<http://www.unesco.se/wp-content/uploads/2016/09/2016-Protecting-cultural-heritage.-An-imperative....pdf>> 13.

<sup>115</sup> Van Duyn, Louwe and Soudijn (n 107108) 81-82.

<sup>116</sup> Chappell and Hufnagel (n 111) 4-6; Marc Balcells, 'One Looter, Two Looters, Three Looters... The Discipline of Cultural Heritage Crime Within Criminology and Its Inherent Measurement Problems' in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Springer 2019) 47-49; Oliveri (n 109) 69; Neil Brodie and Isber Sabrine, 'The Illegal Excavation and Trade of Syrian Cultural Objects: A View from the Ground' (2018) *Journal of Field Archaeology* 74; Anya Eber, 'Guardians in the Antiquities Market' in Naomi Oosterman and Donna Yates (eds), *Crime and Art: Sociological and Criminological Perspectives of Crimes in the Art World* (Springer International Publishing 2021) 211-212

production of policing, including in areas such as art crime policing.<sup>117</sup> In some cases, such as the Belgian Senate's extensive 2018 report on art theft, there is explicit and in-depth discussion of plural art crime policing in particular.<sup>118</sup> Reports and other official publications also reflect government policy towards prioritisation of art crime and as a corollary towards the funding of specialist police capacity, which is an important factor in art crime policing co-production as well. The study also examined relevant law. The law is itself a reflection of the openness towards private policing, and its framework can facilitate policing co-production, or not, as will be discussed below.

Newspaper articles and other online articles were the final data source. A significant number of media outlets focus on art and the art market. These specialist outlets, such as the Art Newspaper, provide relatively reliable and up-to-date reporting on art crime and related topics, often written by journalists that have developed a track record and expertise on these topics.<sup>119</sup> Generalist news sources, such as broadsheet newspapers, also occasionally cover art crime and its policing. There also exist several specialist blogs, such as the one maintained by the Association for Research into Art Crime.<sup>120</sup> Specialist police forces have used these outlets as a tool, for example to air their views on collaboration with the private sector in the context of art crime policing.<sup>121</sup> These sources can however be sensationalist and perpetuate untrue assumptions surrounding art crime. Even when they provide direct quotes, the individuals cited often have a specific agenda in providing those quotes which may

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<sup>117</sup> AJG Tjihuis, 'Transnational Crime and the Interface between Legal and Illegal Actors: The Case of the Illicit Art and Antiquities Trade' (PhD, Universiteit Leiden 2006) 112.

<sup>118</sup> Belgian Senate, 'Verslagrapport Bestrijding van Kunstroof (Report on the Fight against Art Theft)' (Belgian Senate 2018) <[http://www.senate.be/informatieverslagen/6-357/Senaat\\_verslag\\_kunstroof-2018.pdf](http://www.senate.be/informatieverslagen/6-357/Senaat_verslag_kunstroof-2018.pdf)>.

<sup>119</sup> Kerr (n 1) 15-16.

<sup>120</sup> Lynda Albertson, 'ARCAblog' <<https://art-crime.blogspot.com/>> accessed 22 March 2023.

<sup>121</sup> 'Met to Recruit Trade in Bid to Beat Art Crime' *Antiques Trade Gazette* (5 June 2006) <<https://www.antiquetrade gazette.com/news/2006/met-to-recruit-trade-in-bid-to-beat-art-crime>> accessed 22 March 2023; 'Who Stopped the Robbery at the Empress Eugenie's Musée Chinois? An Exclusive Interview with the French Central Bureau for Combatting the Trafficking of Cultural Property' (*napoleon.org*, 2020) <<https://www.napoleon.org/en/magazine/interviews/who-stopped-the-robbery-at-the-empress-eugenie-musee-chinois-a-close-up-on-the-french-central-bureau-for-combatting-the-trafficking-of-cultural-property/>> accessed 22 March 2023.

blur the objective picture.<sup>122</sup> Even so, media reports provide a source of information that cannot be discounted given the broader lack of empirical research on art crime and its policing.

### 1.3.2 Sampling

The goal of this research is to establish whether and why art crime policing is or is not co-produced. A multiple case study design was selected, as this approach, which instrumentalises case studies in other to examine a problem, fits well with the aims of this research.<sup>123</sup> The case study method can be defined as exploring “multiple real-life, contemporary multiple bounded systems (cases) over time, through detailed, in-depth data collection involving multiple sources of information and reports a case description and case themes”.<sup>124</sup> A generic purposive sampling approach was followed as criteria emanating from the research question were used to identify appropriate cases.<sup>125</sup> The research question meant selecting case studies in which the environment for art crime policing was sufficiently different with regards to factors including the police capacity for art crime policing, the institutional attitudes towards policing co-production, the likely presence of a private sector capable of delivering art crime policing, and legislation, to allow the identification of the common and diverging factors that influence the co-production of art crime policing.

The choice was made to examine the co-production of art crime policing in three countries, namely Belgium, the United Kingdom, and France. The focus is thus on Europe. The European art market is one of the most important worldwide, and the art markets of Belgium, the United Kingdom, and France are among the most prominent within it.<sup>126</sup> London remains one of the top three art market hubs in the world, while Paris and Brussels house their own vibrant art markets.<sup>127</sup> This brings with it

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<sup>122</sup> Tjihuis (n 117) 117-118; John Kerr, ‘The Securitization and Policing of Art Theft in London’ (PhD, 2013) 15-16.

<sup>123</sup> John W Creswell and Cheryl N Poth, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (SAGE Publications 2016) 98.

<sup>124</sup> Creswell and Poth (n 123) 97-98.

<sup>125</sup> Alan Bryman, *Social Research Methods* (OUP Oxford 2012) 418-424.

<sup>126</sup> Clare Mcandrew, ‘The Art Market 2022: An Art Basel & UBS Report’ (Art Basel & UBS 2022) 28, 31; Anna Mosna, ‘Give Art Market Regulation a Chance’ (2022) 29 *Maastricht Journal of European and Comparative Law* 309.

<sup>127</sup> Mcandrew (n 126) 30-31.

an increased risk of art crime: it is often through the conduit of the art market that art crime takes place, and vibrant art markets, given the money involved in them, are considered to attract art crime.<sup>128</sup> Reliable statistics on art crime are hard to find, but “*outline indicators*” such as survey responses, auction house sales, and the numbers in official police statements on law enforcement confiscation of cultural objects indeed strongly imply that the European market plays a very significant role in the illicit art trade.<sup>129</sup> Europe’s proximity to the Levant leaves it vulnerable to looted Middle Eastern antiquities penetrating its art market, while Eastern Europe has been cited as a major hub for organised crime involved with art crime.<sup>130</sup> Two thirds of seizures of cultural objects made in 2020 took place in Europe.<sup>131</sup> Fraud and theft cases also regularly surface; per the Belgian government agency for economy up to 90% of archaeological objects sold on Belgian markets are fake.<sup>132</sup> These numbers also indicate that, generally speaking, art crime is currently not under control nor abating.<sup>133</sup>

To combat these phenomena there have been art-crime related legislative initiatives at the level of the European Union, which despite the United’s Kingdom’s exit from the Union still apply in each of the case study countries at the time of writing.<sup>134</sup> These laws, through the imposition of certain

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<sup>128</sup> Conklin (n 89) 45-46; Bojan Dobovšek, ‘Art, Terrorism and Organised Crime’ in Noah Charney (ed) *Art and Crime: Exploring the Dark Side of the Art World*, (1st ed, Praeger/ABC-CLIO 2009) 64; Bazley (n 11) 9; Simon Mackenzie, ‘The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organised Crime in the International Antiquities Market’ in Stefano Manacorda and Duncan Chappell (eds), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property* (Springer 2011) 82-83; Interpol, ‘Creating a National Cultural Heritage Unit’ (2017) 4.

<sup>129</sup> Neil Brodie, Donna Yates and Gabriëlle op ’t Hoog, ‘Illicit Trade in Cultural Goods in Europe: Characteristics, Criminal Justice Responses and an Analysis of the Applicability of Technologies in the Combat against the Trade: Final Report.’ (2019) 83-96; Brodie et al. (n 10) 1.

<sup>130</sup> Dobovšek (n 128) 64-71; Sasha Kuhar, ‘Criminal investigation of art crime in the Republic of Slovenia’ (2016) *Revija za kriminalistiko in kriminologijo*; Naomi Rea, ‘New EU Proposal Aims to Halt the Trafficking of Antiquities That Fund Terrorism’ (Artnet 20 July 2017) <<https://news.artnet.com/art-world/new-eu-proposal-crack-down-trade-in-blood-antiquities-1026071>> accessed 22 March 2023.

<sup>131</sup> French Presidency of the Council of the, European Union and French Presidency of the EU Council, ‘Trafficking of Cultural Goods’ <<https://media.euobserver.com/44de758b238106775a19fe064f3eab83.pdf>> accessed 3 February 2022.

<sup>132</sup> The Brussels Times, ‘Belgium Has Become a European Hub for Stolen Antiques’ *The Brussels Times* <<https://www.brusselstimes.com/218585/belgium-as-a-european-hub-for-stolen-antiques>> accessed 22 March 2023.

<sup>133</sup> Brodie et al (n 10) 1.

<sup>134</sup> Including Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, Council Directive 2014/60/EU of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State, Regulation (EU) 2019/880 on the introduction and the import of cultural goods, and Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849

obligations on art market participants, enlist the latter in art crime policing activities, such as due diligence, which is the process through which the legal and ethical credentials of pieces and clients are verified, paving the way for more public-private interaction.<sup>135</sup> Even so, the art market and art crime remain relatively unregulated. Historically, Europe has been at the forefront of dedicated art crime policing. It saw the establishment of the first dedicated art crime police unit in the world with Italy's Carabinieri Command for the Protection of Cultural Heritage beating the London Metropolitan Police's Arts and Antiques Unit by a few months.<sup>136</sup> France's unit was not far behind in 1974, but it took until 1991 for Belgium's Bureau for Art and Antiques to start operations.<sup>137</sup> This means specialised art crime police units have been in operation in these countries for decades, meaning they have theoretically had the time to build up art crime policing networks and develop co-productive practices.<sup>138</sup> As such, the European context is a key region for developments within art crime policing, as a comparatively early adopter of specialised art crime policing currently still at the forefront of the fights against art crime, while a significant need for effective art crime policing persists.

Despite their common context, the police capacity for art crime policing, the legislative and policy approach to plural policing, and the structure of the art crime units vary significantly across these countries today. The Belgian, British, and French art crime police units represent three archetypes: a unit with no funding, a unit with some funding, and a unit with significant funding respectively. There are also significant differences in the size of the art market in these three countries. The UK's art market takes up the third largest share of the global art market in terms of value.<sup>139</sup> France's art

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on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (known as the 5th anti-money laundering Directive).

<sup>135</sup> Mosna (n 126) 317-319.

<sup>136</sup> Laurie Watson Rush and Luisa Benedettini Millington, *The Carabinieri Command for the Protection of Cultural Property: Saving the World's Heritage* (Boydell & Brewer 2015) 7; Pranay Gupte, 'Artful Thieves' *The New York Times* (22 July 1979) <<https://www.nytimes.com/1979/07/22/archives/artful-thieves.html>> accessed 22 March 2023; Oosterman (n 7) 226.

<sup>137</sup> Belgian Senate, 'Informatieverslag Betreffende de Optimalisering van de Samenwerking Tussen de Federale Overheid En de Deelstaten Inzake de Bestrijding van Kunstroof (Report on the Optimisation of the Cooperation between the Federal Government and the Federal States as Concerns the Fight against Art Crime)' (Belgian Senate 2018) 7; Belgian Senate (n 118) 25; Oosterman (n 7) 219.

<sup>138</sup> Albeit intermittently in the case of the London Metropolitan Police's Arts and Antiques Unit.

<sup>139</sup> Mcandrew (n 126) 28.



market sits in fourth place and is growing.<sup>140</sup> Belgium's art market is much smaller than these two. This, as well as differences in size and population, affects the number of private actors to participate in plural policing. The differences and commonalities between these three countries are useful to identify whether policing co-production is a feature of art crime policing at large, or whether art crime policing co-production is instead significantly context-specific.

Some convenience sampling and snowball sampling were also present.<sup>141</sup> The researcher was based in London, United Kingdom, and Leuven, Belgium, during the research and thus these countries were relatively easy to visit. The fact I am fluent or at least competent in English, Dutch, and French allowed for the consultation of resources in their original language, and to conduct interviews with interviewees in their native language. This helped with more accurately identifying the meanings of interviewee responses, policy documents, and literature, and to access information that would otherwise be barred.<sup>142</sup> Moreover, while art crime is a worldwide phenomenon, creating a global overview of public-private cooperation in art crime policing is too broad a task for one doctoral thesis. Finally, interviewees were invited to suggest other relevant actors for future interviews, as such references are especially useful in the relatively small and tight-knit network of art crime policing.

At the participant level, the focus was on interviewing members of the countries' respective specialised art crime police units, supported by interviews with private actors likely familiar with aspects of art crime policing. The choice to focus on specialised police units was made for practical reasons as well as substantive ones. On the practical front, there was already a relationship with some of the relevant officers in Belgium and the UK, due to previous contacts in a research setting.<sup>143</sup> This provided ease of access to the specialist art crime units, particularly in Belgium. On a substantive level,

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<sup>140</sup> McAndrew (n 126) 28, 31.

<sup>141</sup> Bryman (n 125) 201-2003, 424-425.

<sup>142</sup> Bob Hoogenboom and Maurice Punch, 'Developments in Police Research: Views from Across the North Sea' in Tim Newburn and Jill Peay (eds), *Policing: politics, culture and control* (Hart Publishing 2012) 84.

<sup>143</sup> Richard Van Herzeele, 'The Future of Art Crime Policing: Perspectives on Fighting Art Crime.' (Master Thesis, Sotheby's Institute of Art London 2017).

art crime police units often function as a nexus for art crime policing in their countries and can thus be considered the crucial actor in any potential co-production of art crime policing.<sup>144</sup> The profiled units have been in operation for decades and can be counted among the most well-known in the field. More broadly, focusing on specialist art crime police units recognises the important role the police continue to have in crimefighting. This also provides the opportunity to home in on the effects of a presence of a specialised police unit in a time and environment where the question of the value of such units is pertinent, given the limited resources often afforded to art crime police units.

On the private front, the primary targets were actors that previous research had established to be involved with the policing of art crime, such as private security agents, insurance companies, and former unit officers.<sup>145</sup> The goal was to target actors that could have a substantial and potentially enduring relationship with the specialist art crime units. The choice to interview multiple types of private actors was influenced by the idea that art crime policing may be *“embedded in other functions and occupations that do not have policing as their primary focus”*.<sup>146</sup> Moreover, various private actors have various types of expertise and capacities relevant for art crime policing, and as such it made sense to go beyond profiling solely loss adjusters or private security companies, especially given that plural policing research itself has recently emphasised the broad range of private actors that can be involved in policing.<sup>147</sup> These participants were then interviewed to supply information for the development of the case studies, alongside information from other sources. Nonetheless, the primary focus is on entities that more readily consider themselves to be policing, such as private security agents.

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<sup>144</sup> Block (n 7) 196; Oosterman (n 7) 227.

<sup>145</sup> Kerr (n 122) 64-65, 159-167.

<sup>146</sup> Shearing and Stenning (n 35) 7.

<sup>147</sup> Johnston (n 35) 4-7; Shearing and Stenning (n 35) 11; Rogers (n 38) 23-24.

### 1.3.3 Interview approach

In-depth interviews can be defined as a qualitative research technique which involves conducting intensive individual interviews with respondents to explore their perspectives on an idea, program, or situation.<sup>148</sup> Depending on the flexibility given to interviewees in responding to interviewer questions, and how much of the interview is determined beforehand, interviews can be categorised as structured, semi-structured, or unstructured.<sup>149</sup> This research made use of semi-structured interviews. Interviews were approached with an interview guide consisting of a set of questions that were asked of each interviewee in the same order. They were provided with sample questions as well as an outline of the research focus. The guide included questions on, for example, whether the respondents had experience with public-private cooperation in art crime policing, why so or why not, what policies were on public-private interaction, and how interviewees would like the situation and approaches to change in the future. These questions were designed to avoid unduly influencing interviewee's responses in order to construct as clear and objective of a picture as possible about art crime policing networks, and to provide a comparable structure across interviews. However, interviewees were granted leeway in their replies, and additional questions were asked when prompted by interviewee responses.<sup>150</sup> The decision to utilise this semi-structured interviewing method was made to strike a balance between this study's exploratory nature, as it seeks to gather new empirical information on art crime policing, and comparability of responses.<sup>151</sup>

The position of an active interviewer was adopted during the interview. The active interviewer attempts to keep a balance between neutral observer and engaged collocutor, and acknowledges their role as a participant to the interview process by actively trying to elicit meaningful answers while taking care to avoid suggesting ideas or lines of thinking to the interviewees.<sup>152</sup> The goal was to appear

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<sup>148</sup> Bryman (n 125) 207-208.

<sup>149</sup> Gina Wisker, *The Postgraduate Research Handbook: Succeed with Your MA, MPhil, EdD and PhD* (Macmillan International Higher Education 2007) 194-196; Bryman (n 125) 212-213, 470-471.

<sup>150</sup> Bryman (n 125) 471.

<sup>151</sup> Wisker (n 149), 194-196.

<sup>152</sup> James Holstein and Jaber Gubrium, *The Active Interview* (SAGE Publications, Inc 1995) 38-51.

knowledgeable, professional, and conscientious to the interviewees.<sup>153</sup> The latter was particularly important given the sensitive nature of the topic of discussion, which is crime and how it is dealt with. It was however also necessary to take a critical position, aware of interviewees' own interests influencing the decision to allow access for interviews and the information they chose to disclose during interviews, and to verify their information.<sup>154</sup> Equally, when devising the interview guide, before the interview, during the interview, and after the interview, care was taken to maintain an open position towards the interviews and interviewee responses.

The interviewees were targeted for their first-hand experience with, or knowledge of, public private art crime policing.<sup>155</sup> As many of them thus act as gatekeepers to the world of art crime policing, it was important to keep relations cordial in the interest of this research and of future researchers.<sup>156</sup> The art world, and the market in particular, can be tight-lipped, and the growing popular suspicion of the market has further incentivized its wariness of outsiders.<sup>157</sup> At all times interviewees were given the option to have their comments made anonymous or off the record. When securing the interviews and after their conclusion, interviewees were shown the appropriate gratitude for their willingness to participate in the process.<sup>158</sup> This was done out of courtesy, but also to ensure future access.

While interviews are a critical source of information, interviewee responses are to an extent subjective and contextual. As Tjihuis has noted, certain ideas or figures are often repeated within the art world without a solid empirical basis.<sup>159</sup> A classic example of this is the notion that art crime is the third most

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<sup>153</sup> Steinar Kvale, *InterViews: An Introduction to Qualitative Research Interviewing* (SAGE Publications 1996) 124-129, 148-149; Bryman (n 125) 475.

<sup>154</sup> Tjihuis (n 117) 115-116; Kerr (n 122) 75-78.

<sup>155</sup> Barney Glaser and Anselm Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine 1967) 45.

<sup>156</sup> Kerr (n 122) 69.

<sup>157</sup> Gregory Day, 'Explaining the Art Market's Thefts, Frauds, and Forgeries (And Why the Art Market Does Not Seem to Care)' (2014) 16 *Vanderbilt Journal of Entertainment & Technology Law* 477-478; Tom Flynn, 'The Art World: Compliant Victim?' in Arthur Tompkins (ed), *Art Crime and Its Prevention* (Lund Humphries 2016) 23-26; Pryor (n 11) 11-12.

<sup>158</sup> Kerr (n 122) 69.

<sup>159</sup> Tjihuis (n 117) 115.

lucrative type of crime in the world.<sup>160</sup> This observation also extends to ideas related to art crime policing.<sup>161</sup> Interviewees' own interests are at play as well. Police forces are for example incentivized to emphasise their successes as their funding is under constant, quantitative data-based review, and this dynamic is reflected in interviewee responses regarding what they consider to be the police's legitimate role in plural art crime policing.<sup>162</sup> On the other hand, private interviewees also have various interests and aims which influence the ideas, opinions, and narratives they present in their interviews. Basing the case studies not only on interviewee responses, but also on official reports, academic literature, journal articles, and news articles provided a means for triangulation to increase credibility and validity.<sup>163</sup>

### 1.3.4 Analytical approach

Epistemologically, the research adopts a critical realist position. It rejects both the positivist assertion that (social) reality is only knowable through a value-free application of the tools of the natural sciences, and the interpretivist position that the subject matter of the social sciences necessitates a focus on the subjective meaning(s) of social action as they are experienced by those studied. Unlike the positivist tradition, the position is taken here that there are processes at work that are not *"directly amenable to observation"*, while unlike the interpretivist tradition it is asserted that the subjects of people and their behaviour, in this case towards policing, is not so distinct that it requires an approach focusing on *"empathetic understanding"* of human behaviour rather than its explanation by way of identifying the forces which act upon it.<sup>164</sup> Critical realists aim to *"identify the structures at work that generate [the social world] [...], structures not spontaneously apparent in the observable pattern of events [...] that can only be identified through the practical and theoretical work of the social sciences"*.<sup>165</sup> This means recognising both that there is a direct truth in observable data points such as

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<sup>160</sup> Brodie et al (n 10) 5.

<sup>161</sup> Tijhuis (n 117) 115.

<sup>162</sup> Brodie et al (n 10) 1.

<sup>163</sup> Kerr (n 1) 70.

<sup>164</sup> Bryman (n 125) 28, 30.

<sup>165</sup> Roy Bhaskar, *Reclaiming Reality: A Critical Introduction to Contemporary Philosophy* (Routledge 2010) 2

interviewee responses, but that there might also be mechanisms at play which are not directly observable in reality.<sup>166</sup> This position matches well with the aims of the research, which as stated include the identification of those “*generative mechanisms*” that influence the occurrence of co-production of art crime policing.<sup>167</sup> It also aligns with the researcher’s personal intuition that an approach that balances the positivist focus on observable facts and the interpretivist call for appreciating that studying social phenomena requiring some interpretive work is best suited to address the topic of (art crime) policing.<sup>168</sup>

Critical realism is associated with “*retroductive reasoning*”.<sup>169</sup> Retroductive reasoning is neither inductive nor deductive, as it involves making inferences about the mechanisms behind and responsible for observed phenomena. In other words, it offers explanations based on identified patterns under which observations can be organised and categorised.<sup>170</sup> This approach is neither deductive, as these mechanisms are not strictly hypotheses to be empirically tested, nor inductive, as some mechanisms can already be hypothesised before starting data gathering.<sup>171</sup> This research started with a literature review to identify some of the factors previously identified as generative of co-production, as will be discussed in chapter two, but others developed with the case studies. The approach was also geared towards developing a “*more meaningful appreciation of the phenomena*” or a “*a set of possible explanations*” rather than a conclusive theory on (art crime) policing co-production.<sup>172</sup> The latter also implied an initial intention to adopt a grounded theory approach was dropped.

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<sup>166</sup> Bryman (n 125) 29.

<sup>167</sup> Bryman (n 125) 29.

<sup>168</sup> Virginia Braun and Victoria Clarke, ‘Can I Use TA? Should I Use TA? Should I Not Use TA? Comparing Reflexive Thematic Analysis and Other Pattern-Based Qualitative Analytic Approaches’ (2021) 21 *Counselling and Psychotherapy Research* 38.

<sup>169</sup> Bryman (n 125) 29, 715.

<sup>170</sup> Richard Paul Chaney, ‘Comparative Analysis and Retroductive Reasoning or Conclusions in Search of a Premise’ (1973) 75 *American Anthropologist* 1369, 1371.

<sup>171</sup> Bryman (n 125) 617.

<sup>172</sup> **Norwood Russell Hanson, *Patterns of Discovery: An Inquiry into the Conceptual Foundations of Science* (First Edition, Cambridge University Press 1958) 90.**

Grounded theory was initially considered because it is a widely used framework for qualitative data analysis with relatively clear practices.<sup>173</sup> The approach features an iterative process of data collection, analysis, collection, and analysis again in order arrive at a point of saturation at which a theory is generated from the data and the recursive analysis.<sup>174</sup> As it became apparent the research goal was not to develop a unified theory on (art crime) policing co-production, the grounded approach was abandoned, thus following a path similar to the one trodden by John Kerr in his research on the securitisation of art in London.<sup>175</sup> A second crucial reason for discarding grounded theory was the impossibility of the “*suspension of awareness of relevant theories or concepts*” that grounded theory demands.<sup>176</sup> My previous unfamiliarity with important criminological ideas necessitated a literature review early on in conducting the research in order to properly orient it. This literature then deeply shaped the research design and the thinking presented here. As such, suspending awareness of the literature and the ideas expressed therein was not possible. Nonetheless, the initial grounded theory approach guided the research into looking into the generative mechanisms of art crime policing co-production, shaping its research question. The recursive character of grounded theory was also retained, as throughout the research ideas and research question(s) were refined by continually reflecting on the growing case study information, the literature, and the analysis.<sup>177</sup>

This research employs a thematic analysis in lieu of a grounded theory approach. Thematic analysis can be performed in various ways, but always involves the search for identifiable themes within data which are then grouped to form concepts or ideas.<sup>178</sup> Such themes are established based on the identification of repeating topics within the data, often using concepts from the relevant literature as well as the focus of the research itself as a baseline guide for theme interpretation.<sup>179</sup> As such, thematic analysis is not focused on theory generation *per se*, but it does involve theorising about what

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<sup>173</sup> Bryman (n 125) 567.

<sup>174</sup> Bryman (n 125) 38.

<sup>175</sup> Kerr (n 122) 62.

<sup>176</sup> Bryman (n 125) 574.

<sup>177</sup> Kerr (n 122) 62.

<sup>178</sup> Bryman (n 125) 578-579; Boels and Verhage (n 52) 4-5.

<sup>179</sup> Bryman (n 125) 580.

the themes connected to a research topic are, and how these themes may be connected, Interpreted, or explained. Beyond these core features, however, thematic analysis is a flexible method of analysis, which does not have a single standardised set of rules to observe.<sup>180</sup> Users of thematic analysis must, however, stay mindful of the specific type of thematic analysis they wish to employ, as *“methodological incoherence beckons when researchers seemingly unknowingly mash together different approaches to [thematic analysis]”*.<sup>181</sup> These approaches can be grouped in three categories:

1. *“Coding reliability”* approaches that emphasis stricter guardrails in the structural approach to analysis out of a wariness of researcher bias, thus aligning closer to positivist perspectives,
2. *“Reflexive approaches”* that *“embrace researcher subjectivity as a source for research”*, meaning they embrace analysis as an interpretative practice, thus aligning closer to interpretivist stances,
3. And *“Codebook approaches”* which take up a middle ground between the previous two, using a coding frame to bring structure to the thematic analysis, but for the purposes of charting the developing analysis rather than determining reliability.<sup>182</sup>

This does not mean these approaches need to be followed *“like baking recipes”*.<sup>183</sup> Moreover, the above categorisation developed in reflexive comments on thematic analysis practices in research areas other than policing or art crime studies. But it is important in the interest of methodological coherence to be explicit about why thematic analysis as a method was chosen here, and how it will be employed.<sup>184</sup>

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<sup>180</sup> Bryman (n 125) 580; Virginia Braun and Victoria Clarke, ‘Reflecting on Reflexive Thematic Analysis’ (2019) 11 *Qualitative Research in Sport, Exercise and Health* 592; Virginia Braun and Victoria Clarke, ‘Toward Good Practice in Thematic Analysis: Avoiding Common Problems and Be(Com)ing a Knowing Researcher’ (2023) 24 *International Journal of Transgender Health* 1-2.

<sup>181</sup> Braun and Clarke (n 180 (2023)) 2.

<sup>182</sup> Braun and Clarke (n 168) 38-39; Braun and Clarke (n 180 (2023)) 2.

<sup>183</sup> Braun and Clarke (n 180 (2019)) 589; Braun and Clarke (n 180) 2.

<sup>184</sup> Braun and Clarke (n 180 (2023)) 2.



The basic features of thematic analysis were found to mesh well with the pattern-recognition associated with the identification of generative mechanisms this research pursues. This research seeks to establish not only whether art crime is a site of the co-production of art crime policing between specialised police units and the private sector, but also why this is or is not the case. It is in the pursuit of an answer to these questions that thematic analysis was considered a good fit, as it allows for the aforementioned *“meaningful appreciation of the phenomena”* by offering *“a set of possible explanations”* for them.<sup>185</sup> Finding a meaningful appreciation of the phenomenon is thus pursued in the appreciation of whether co-production can be said to be a feature of art crime policing, and the establishment of generative mechanisms through the identification of themes supports this appreciation by offering a set of explanations. The flexibility of thematic analysis was also considered a good fit because this research has an important explorative dimension, as it examines a hitherto not often discussed topic.

The specific method of thematic analysis used here does stray from following any of the three templates listed above. It aligns closest with the codebook approach, with its combination of a reflexive stance and early theme development using topic summaries. Since this research required an initial immersion in policing and art crime literature, early themes were unavoidably identified during this literature review before moving onto data gathering and further analysis. This took the form of organising the literature and summarising it in order to find the key drivers for plural policing and policing co-production as expressed in the literature.<sup>186</sup> These ideas shaped the research as it developed. This was ultimately considered a natural consequence of the research path rather than the introduction of problematic biases into the research project. As such, the thematic analysis became *“infused with theoretical assumptions”*.<sup>187</sup>

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<sup>185</sup> Chaney (n 170) 1371.

<sup>186</sup> Braun and Clarke (n 180 (2023)) 2-3.

<sup>187</sup> Braun and Clarke (n 168) 38.

These literature themes then became a lens through which the interviews were approached, though equally care was taken to let the interviews flow for the possibility of new themes emerging from them.<sup>188</sup> Thus, in a second layer, initial themes were tested, refined, and challenged by new emergent themes during data gathering. They were thus applied to practice.<sup>189</sup> It is in this later phase that the fundamentally reflexive, iterative nature of the process came to the fore. However, unlike more traditional codebook approaches, the coding frame was but a loose one, built on the identification of themes within the literature. This, again, was due to the explorative and iterative aspects of the conduction of this research. It was also done for pragmatic reasons, including unfamiliarity with codebook approaches and time constraints.<sup>190</sup> Ultimately, this approach thus seeks to balance methodological coherence and the demands of the research focus and process. Undeniably, the researcher took an active role in identifying and interpreting themes, and is thus not a fully neutral conduit, but at the same time it is asserted that concepts and ideas generated throughout the research process correspond to an observable reality.<sup>191</sup>

## 1.4 Research contribution

By examining art crime policing co-production this research broadens policing research with “*a new thing to look at*”, as art crime policing has hitherto not been a common research focus.<sup>192</sup> There is a lack of empirical studies of art crime policing.<sup>193</sup> Criminologists, for whom policing is a core topic, have been slow to engage with the topic of art crime.<sup>194</sup> By consequence, Kerr’s statement that “*it is well established that securitization and policing in general are undertaken by an array of public and private*

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<sup>188</sup> Bryman (n 125) 580.

<sup>189</sup> Braun and Clarke (n 180 (2023)) 2-3.

<sup>190</sup> Braun and Clarke (n 168) 38.

<sup>191</sup> Braun and Clarke (n 180 (2023)) 4.

<sup>192</sup> Crawford (n 68) 148; Jones (n 68) 743.

<sup>193</sup> Chappell and Hufnagel (n 111) 2-4; Oliveri (n 109) 66.

<sup>194</sup> Tijhuis (n 117) 4; Edwin H Sutherland, Donald R Cressey and David F Luckenbill, *Principles of Criminology* (AltaMira Press 1992) 3-4; Ian Loader and Richard Sparks, ‘Situating Criminology: On the Production and Consumption of Knowledge about Crime and Justice’ in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (5th edn, Oxford University Press 2012) 4; Naomi Oosterman and Donna Yates, ‘Introduction’ in Naomi Oosterman and Donna Yates (eds), *Crime and Art: Sociological and Criminological Perspectives of Crimes in the Art World* (Springer International Publishing 2021) 1-3.

agencies and locations. What is less known, especially in the under-researched field of art security, is how it actually works in practice” still rings true today.<sup>195</sup> The statement also hints towards research gaps in the broader plural policing literature. A robust body of academic work on plural policing exists, but non-empirical, contemplative work is overrepresented.<sup>196</sup> The focus has tended to be on theory rather than empirics.<sup>197</sup> As such, theories explaining why plural policing and/or policing co-production do or do not occur have been developed, but these theories are typically posited in the abstract. Meanwhile, what empirical plural policing research exists is fragmented, with an array of relatively disparate topics related to plural policing discussed across disparate contexts.<sup>198</sup> This complicates the identification of trends or themes.<sup>199</sup>

There is thus a need for more empirical research, as well as studies that bridge the gap between contemplative and theoretical material on the one hand and the empirical and context-focused on the other.<sup>200</sup> Art crime policing has been identified as “an area of securitization and policing that encapsulates many of the challenges faced by modern security governance”.<sup>201</sup> As such, art crime presents itself as not only a worthy subject in its own right, but also as a potential platform for reflection on broader plural policing research. In this way, the current research design addresses all three research gaps. It studies art crime policing, it examines plural policing and policing co-production empirically in a specific setting, and it (re-)examines theoretical frameworks from contemplative policing research by assessing their application and explanatory power to the co-production of art

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<sup>195</sup> Kerr (n 1) 169.

<sup>196</sup> Boels and Verhage (n 52) 5; Button (n 21) 27-41; Anne-Marie Singh and Matthew Light, ‘Constraints on the Growth of Private Policing: A Comparative International Analysis’ (2019) 23 *Theoretical Criminology* 296.

<sup>197</sup> Adam Crawford, ‘Networked Governance and the Post-Regulatory State? Steering, Rowing and Anchoring the Provision of Policing And Security’ (2006) 10 *Theoretical Criminology* 450.

<sup>198</sup> Trevor Jones and Tim Newburn, *Plural Policing: A Comparative Perspective* (Psychology Press 2006) 1-3; Boels and Verhage (n 52) 6-7, 9, 12-13; Jacques de Maillard and Sebastian Roché, ‘Studying Policing Comparatively: Obstacles, Preliminary Results and Promises’ (2018) 28 *Policing and Society* 389-392; Singh and Light (n 196) 296-297.

<sup>199</sup> Singh and light (n 196) 296-97.

<sup>200</sup> Boels and Verhage (n 52) 13; Martin Nøkleberg, ‘Examining the How of Plural Policing: Moving from Normative Debate to Empirical Enquiry’ (2020) 60 *The British Journal of Criminology* 681-682.

<sup>201</sup> Kerr (n 1) 169.

crime policing on the basis of the case studies.<sup>202</sup> This approach supports building or refining “a set of possible explanations” for plural policing co-production and the identification of themes within policing co-production while providing original empirical material.<sup>203</sup>

The multi-case approach further supports these goals. It is only through the examination of multiple cases that “grand narratives can be tested and refined”.<sup>204</sup> This applies to plural policing even more, as the grand narratives of plural policing have been developed primarily on the basis of research focusing disproportionately on the UK and US.<sup>205</sup> This issue has been thematised in policing research in recent years, and there has been an influx of research that does look beyond the US, the UK and single-country-based approaches. In particular, there has been a wave of research “rooted in the experiences of Continental Europe”.<sup>206</sup> Such research helps “despecify national experiences and to demystify others”, opening up and refining plural policing thinking.<sup>207</sup> This research fits in this growing academic field and brings it to art crime policing research.<sup>208</sup>

This European focus however also limits the generalisability of the research outcomes. While the multiple case study approach provides the opportunity for more robust conclusions and the testing of theory, this research is still limited in that it focuses on three West-European countries and a somewhat limited set of actors in a specific setting. As such, it is reiterated that while this research certainly aims to help refine the understanding of policing co-production, it is not occupied with the development of conclusive theory on the ‘whether’ and ‘why’ of (art crime) policing co-production.<sup>209</sup>

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<sup>202</sup> Kerr (n 1) 169; Boels and Verhage (n 52) 13; Nøkleberg (n 200) 681-682.

<sup>203</sup> Chaney (n 170) 1371; Bryman (n 125) 72.

<sup>204</sup> David Smith, ‘Editorial: Criminology and the Wider Europe’ (2004) 1 *European Journal of Criminology* 13-14.

<sup>205</sup> Jones and Newburn (n 198) 2; Trevor Jones, Ronald van Steden and Hans Boutellier, ‘Pluralisation of Policing in England & Wales and the Netherlands: Exploring Similarity and Difference’ (2009) 19 *Policing and Society* 284; Hoogenboom and Punch (n 142) 81-84; Pieter Leloup and Adam White, ‘Questioning Anglocentrism in Plural Policing Studies: Private Security Regulation in Belgium and the United Kingdom’ [2021] *European Journal of Criminology* 2.

<sup>206</sup> Singh and Light (n 196) 298-299; Vigneswary Pranava Rasahugan and Samihah Khalil, ‘Systematic Literature Review on Private Security Governance by Government’ (2021) 0 *Journal of Applied Security Research* 5; Leloup and White (n 205) 2-4.

<sup>207</sup> De Maillard and Roché (n 198) 386.

<sup>208</sup> Elke Devroe and Jan Terpstra, ‘Plural Policing in Western Europe: A Comparison’ (2015) 2 *European Journal on Policing Studies* 235-236; Boels and Verhage (n 52) 5-6; Leloup and White (n 205) 2.

<sup>209</sup> Chaney (n 170) 1371.

Heeding Crawford's warning that the finding of "*new things to look at*" must not become conflated with "*a new way of looking at things*", this research's primary aim is to examine "*what makes it possible to observe phenomena as being of a certain sort, and as related to other phenomena*" rather than the generation of conclusive theory.<sup>210</sup> As such, it aims to more meaningfully interpret phenomena in order to present conclusions, but these conclusions are not presented as necessarily universally applicable. The core question at hand is whether and why art crime policing can or cannot be considered a site of the co-production of art crime policing between specialised police units and the private sector, rather than the question of when and how policing co-production takes place.<sup>211</sup>

Additionally, a clearer picture of what does and does not facilitate policing co-production can support better policymaking around plural (art crime) policing at a time where policymakers are considering plural policing as a way to shore up art crime policing capacities without have to devote additional funding to police efforts.<sup>212</sup> Research can assist the development of best practices, thus supporting practitioners in the field.<sup>213</sup> While the goal is not to make normative statements about who should be policing art crime in what way, the research does aim to provide material that can support policymaking and art crime policing on the ground. And this remains important, given the strong indications that art crime remains a significant issue.

## 1.5 Research overview

With the basic definitions for key terms in this research established, chapters II and III discuss the themes related to the co-production of art crime policing emerging from policing literature and art crime literature respectively. Chapter II begins with a more in-depth examination of how the idea of plural policing emerged in academia. This leads into the discussion on policing co-production: how this

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<sup>210</sup> Crawford (n 68) 148; Jones (n 68) 743.

<sup>211</sup> Chaney (n 170) 1371.

<sup>212</sup> Sandra Laville, 'Met's Art Theft Squad Has to Go Cap in Hand' *The Guardian* (20 April 2007) <<https://www.theguardian.com/uk/2007/apr/21/ukcrime.artnews>> accessed 22 March 2023; Willems-Hirsch (n 8) 42.

<sup>213</sup> Terpstra and van Stokkom (n 42) 327; De Maillard and Roché (n 198) 386.

idea developed, what its academic roots are, and how policing co-production is defined for the rest of the research. This done on the basis of not only plural policing literature, but also by bringing in key ideas from Routine Activity Theory as well as the literature on public service co-production which developed in the academic field of public governance. As co-production is a core concept for this research as well as a multifaceted one, it needed in-depth disambiguation, which is why it is discussed in chapter II and not in the current chapter. Chapter II then continues by identifying the main themes that were found in the policing literature regarding why policing co-production does or does not occur. Fiscal constraint, policing culture, legislation, and public policy were all identified as major factors the literature suggests as drivers or inhibitors of public-private policing. As such, the chapter builds a large part of the basic theoretical infrastructure needed to address whether and why policing co-production takes place.

Chapter III follows and focuses on art crime and art crime policing. It opens with a review of the academic literature on art crime to illustrate how this has become a fully-fledge academic topic. This Throughout this review the main themes of the art crime literature are touched upon. These are then further developed in the rest of the chapter, which is focused on the question of what distinguishes art crime policing, and by extention how this may impact its co-production. The first step towards answering this question is an examination of the distinct causes for art crime. Then, time is devoted to discussing the role of the art market in facilitating art crime, before the specific modi operandi of art crime are considered. All these elements, together with the specific impact of art crime, together explain what makes art crime distinct. In the final part of chapter III, these ideas are then used to consider why art crime policing is a specialised type of policing, and how private actors play a role in fighting art crime. By describing art crime and its characteristics this chapter leads towards the competences needed to police it. These competences, as will be discussed, are not all present in either specialised police units or private actors, and thus the potential for policing co-production emerges.

Chapters IV, V, and VI deal with the art crime policing configurations in Belgium, the United Kingdom, and France respectively. These chapters present a case study of the art crime policing context in each of these countries. Each case study was approached and structured in the same way. They start out with a discussion of the legal regime for both art crime and plural policing in each of these countries. This entails examining whether there is specific legislation for art crime, which is an indicator of what the priority for art crime is and discussing the legislation for both police forces and non-police policing. Then, the respective countries' policy with respect to both art crime and plural policing is discussed. After this, the art crime units in Belgium, the UK, and France are profiled. These units' histories, organisation, capabilities, personnel numbers, and current status are canvassed. Finally, the art crime policing networks in each of the countries are profiled. This means introducing potential private art crime policing actors and the way in which they participate in art crime policing.

The seventh chapter is the culmination of the previous six. The differences and commonalities between the countries' approach to art crime policing are analysed against the background of the factors identified in chapters II and III. Going beyond the case study descriptions presented in chapters IV, V, and VI, it integrates the interviewee comments, thus centring their voices and agency in the analysis, which factor by factor discusses and analyses art crime policing on the ground. It compares the art crime policing networks in these countries and examines to what extent theories explaining private policing also hold explanatory power in this specific context. The framework allowed for a common understanding of the themes as they were found in the interviewees' responses. The comparative framework allowed for the confrontation of theory to practice. Ultimately, this provided an answer to both the research questions. The final conclusions in chapter eight discuss the answers to the research questions, as well as practical, and research implications.

## Chapter II: Public and Private Policing

*“Policing, internationally and nationally, is a complex knit of agencies, public and private, with different motivations”<sup>214</sup>*

### 2.1 Introduction

There are two elements to this research’s central question. The first is whether art crime policing co-production takes place, and the second is why it does or does not. This chapter introduces the literature containing potential answers to these two elements of the research question. This literature also leads to the definition of co-production for this study. Private policing first became a research focus during the 1970’s.<sup>215</sup> Since then, the literature has shifted away from a narrow focus on private security providers to a more holistic approach to policing as an activity and a crime governance system in which a broad and varied range of actors participate.<sup>216</sup> This shift ultimately led to the concept of ‘plural policing’. The academic field has, from its beginning, also shown a particular interest in whether and why police forces gradually lost their erstwhile stranglehold on policing, allowing non-police and non-governmental actors to take up policing roles. Concurrently, other academic traditions also developed ideas and hypotheses relevant to these questions. Two traditions of particular interest are the literature on co-production which mainly developed in public management research, and routine activity theory literature (RAT). The latter focuses on an aspect of routine activities theory, which is a major criminological theory for the incidence of crime. These theories are discussed presently and serve as the framework for this research and as touchstones for the thematic analysis.

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<sup>214</sup> Kerr (n 1) 31.

<sup>215</sup> Kempa et al (n 33) 197-207; Peter K Manning, ‘The Study of Policing’ (2005) 8 Police Quarterly 24-27.

<sup>216</sup> Kempa et al (n 33) 197-199; Boels and Verhage (n 52) 1.



## 2.2 Assessing plural policing

The idea of a policing shift away from the police was key to the development of the early private policing literature. Driven by an identification of a boom in private security, private policing research focused on the types of spaces, sectors, and functions that the private security industry occupied.<sup>217</sup> To substantiate claims of private policing's growth and buttress the emerging academic field a lot of effort was, and still is, devoted to assessments of the number of personnel private security employs. Accurately estimating the size of private security has proven difficult, however, due to differences across nations in defining the private security sector, the resultant divergences in official statistics, and some nations not collecting information on private security at all.<sup>218</sup> At the same time, the research brought researchers to other private policing actors such as private detectives, private regulators, community wards and the like.<sup>219</sup> This broadening of the research is a major through line of the second wave of private policing research. This second wave questioned some of the presuppositions made in the first wave. Crucially, second wave researchers started questioning whether there actually was a revolutionary private security boom in the 60's and 70's.<sup>220</sup> This criticism was existential, as it was precisely the determination that private security had taken up an important role within the larger policing system which led academics to posit that a "*paradigm shift*" had occurred.<sup>221</sup>

The second wave meant a reassessment of private policing, both in the sense of what the nature of plural policing was as well as the extent to which it took place. A key point of criticism towards the initial construct of private policing was that "*diversity and plurality of [policing] provision had been the*

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<sup>217</sup> Kempa et al (n 33) 199-200; Brodeur (n 50) 3; Mark Button, 'The "New" Private Security Industry, the Private Policing of Cyberspace and the Regulatory Questions' (2020) 36 *Journal of Contemporary Criminal Justice* 39-40.

<sup>218</sup> Nigel South, 'Privatizing Policing in the European Market: Some Issues for Theory, Policy, and Research' (1994) 10 *European Sociological Review* 220-221; Kempa et al (n 33) 200; Button (n 21) 160-164.

<sup>219</sup> Kempa et al (n 43) 207; Lee and Yun (n 52) 712.

<sup>220</sup> Guus Meershoek and Bob Hoogenboom, 'Drieënvijftig Tinten Grijs: Afnemende Verantwoording van en Controle op Hybride Politiewerk' ('Fifty three Shades of Gray: Declining Responsibilisation for and Control of Hybride Police Work') (2012) 38 *Justitiele Verkenningen* 13.

<sup>221</sup> Shearing and Stenning (n 35) 9-10; Kempa et al (n 33) 200-203; Reiner (n 16) 15; Button (n 217) 39-40.

*historical norm*".<sup>222</sup> This argument exists on both a practical and theoretical level. On the practical level, a significant number of private security providers were already active a decade before the supposed rebirth of private policing took place.<sup>223</sup> Looking further into the past, the state domination of policing is the historical exception rather than the rule.<sup>224</sup> On the theoretical level, the point was made that that "*policing has always consisted of a varying balance between public, private and hybrid elements*", and that that balance correlated with "*complex social, political and economic circumstances and changes*".<sup>225</sup> This meant a more structural appraisal of changes in policing instead of the cesura thinking implied by the first cut of private policing research.<sup>226</sup>

Beyond the question of whether the original identification of a growing private involvement in policing was true, more and more attention went towards the question of whether any supposed growth in plural policing was truly global.<sup>227</sup> The first cut of private policing based its claims on research that was primarily done in the US and the UK.<sup>228</sup> Due to the initial lack of international studies a gap in the literature emerged, and the question of to what extent the findings of private policing research applied to contexts and regions beyond the US and the UK was left on the table. Even after the substitution of 'private policing' with 'plural policing', there remained a need for research that looks to verify whether or not plural policing has gone global, so that overgeneralisations of the convergence of policing as well as overly myopic views based on single case studies can be avoided.<sup>229</sup> Continental Europe has been a prime benefactor of attention to this problem, and more research on the specifics of European policing exists than for other regions.<sup>230</sup> Nonetheless, there is still much to explore.

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<sup>222</sup> Johnston (n 22) 177; Trevor Jones and Tim Newburn, 'The Transformation of Policing? Understanding Current Trends in Policing Systems' (2002) 42 *The British Journal of Criminology* 130; Crawford (n 29) 1; Boels and Verhage (n 52) 1.

<sup>223</sup> Jones and Newburn (n 222) 134-135.

<sup>224</sup> Johnston (n 2235) 177; Kempa et al (n 33) 198; Jones and Newburn (n 222) 136; Crawford (n 68) 147.

<sup>225</sup> Boels and Verhage (n 52) 1.

<sup>226</sup> Jones and Newburn (n 222) 135-136; Crawford (n 68) 151-154; Jones, van Steden, and Boutellier (n 205) 283; Boels and Verhage (n 52) 1.

<sup>227</sup> Kempa et al (n 33) 201-202; Jones, van Steden, and Boutellier (n 205) 283.

<sup>228</sup> Jones, van Steden, and Boutellier (n 205) 284; Singh and Light (n 196) 297.

<sup>229</sup> De Maillard and Roché (n 198) 385-386; Singh and Light (n 196) 296-297.

<sup>230</sup> Singh and Light (n 196) 298-299; Rasahugan and Khalil (n 206) 5; Leloup and White (n 205) 2-4.

The debate on private policing continues. There is, however, a general agreement on several points. Firstly, the current consensus is that private security employs a number of individuals greater than the police in the UK and the US.<sup>231</sup> To this extent, the initial impetus for private policing research is preserved. Secondly, more recent studies seem to indicate that there is, at least in Western societies, a common shift towards more private involvement in policing.<sup>232</sup> Thirdly, the reconceptualization of policing as plural has held, and the idea that policing is performed by a much greater multiplicity of actors than recognised previously has “*acquired a central position in the criminological literature*”.<sup>233</sup> Finally, research indicates the multilateralization of policing occurs in different ways, at different speeds, and to different extents even within the western world, and that elements of convergence and divergence may be present concurrently.<sup>234</sup> As such, the ‘whether plural policing’ question remains pertinent.

The literature’s shift away from discussing private policing towards the broader notion of plural policing and the identification of a common shift towards plural policing in Western countries frame the current research. It follows the framing of plural policing, which opens the door to the co-production of policing, which will be discussed under the next subtitle. It also subscribes to the idea that policing has always experienced a shifting balance between state and private actors, and that this balance is influenced by broader societal dynamics. The co-production of policing is embedded in this framework. If policing is not only done by the police, but also by private professionals and ultimately civil society at large, then that opens up a range of ways these various actors can relate to each other. They may cooperate, they may coexist, and they may be in conflict. The idea of policing co-production leans towards the first of these options.

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<sup>231</sup> South (n 218) 221-222; Joh (n 66) 50; Newburn and Reiner (n 22) 823-824.

<sup>232</sup> Kempa et al (n 33) 202; Jones (n 68) 764; Button (n 217) 41.

<sup>233</sup> Boels and Verhage (n 52) 1.

<sup>234</sup> De Maillard and Roché (n 198) 38.

## 2.3 Policing co-production

References to the idea of the “*co-production*” of policing are prominent in Kerr’s research and present in other writing on art crime policing.<sup>235</sup> The precise understanding of ‘co-production’ is however rarely stated in detail in these publications. The term is usually used to indicate some form of cooperation or coordination between public and private art crime policing actors. This means there is a lack of clarity around policing co-production. There is, however, a substantial body of literature on co-production that describes the concept in depth. It can be found outside of plural policing research. This co-production literature is presented here to better support the further discussion on art crime policing co-production that follows in the further discussion, as co-production is central to the research question. Nonetheless, the literature on plural policing also has relevance, as does, finally, the criminological literature on routine activity theory. These three together form the basis of the way in which the concept of co-production is interpreted and applied in this study. The approach is thus multidisciplinary. It integrates ideas drawn from criminology and public management literature. In doing so, it develops a specific and explicit definition of policing co-production in line with the context and goals of this study.<sup>236</sup>

The idea of co-production between public and private actors emerged as an academic topic within the public administration literature of the 1970’s.<sup>237</sup> It is commonly ascribed to Nobel Prize-winning economist Elinor Ostrom. She and her contemporaries posited the argument that the receiver of a government service is as much a part of the production of that service as the state service provider,

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<sup>235</sup> Naomi Oosterman, ‘Policing Art Crime’ (*EconomistsTalkArt.org*, 2 June 2020) <<https://economiststalkart.org/2020/06/02/policing-art-crime/>> accessed 1 March 2021; Siv Rebekka Runhovde, ‘Perspectives on Police Specialization in Art Theft Investigations’ (2021) 15 *Policing: A Journal of Policy and Practice* 1729.17137; Eber (n 116) 215-218.

<sup>236</sup> Shearing (n 23) 399-400; Jones and Newburn (n 30) 18; James Thomas and Angela Harden, ‘Methods for the Thematic Synthesis of Qualitative Research in Systematic Reviews’ (2008) 8 *BMC Medical Research Methodology* 46.

<sup>237</sup> Stephen P Osborne, Zoe Radnor and Kirsty Strokosch, ‘Co-Production and the Co-Creation of Value in Public Services: A Suitable Case for Treatment?’ (2016) 18 *Public Management Review* 640; Maria Francesca Sicilia and others, ‘Facilitating Co-Production in Public Services: Management Implications from a Systematic Literature Review’ (2019) 39 *Public Money & Management* 233.

as public service providers depend on service receivers for the implementation and delivery of these services.<sup>238</sup> The initial focus of the co-production literature was on how “*citizen*” consumers participated in the production and delivery of public services.<sup>239</sup> From that starting point researchers, predominantly on the North-American continent and in Europe, developed and expanded Ostrom’s ideas. The participating citizen-receiver was gradually recast as an active customer, and eventually into a co-producing partner.<sup>240</sup> Interest also grew in associated topics such as the facilitation of co-production, the incentives for co-production, and how citizens may participate in the formulation of co-production strategies.<sup>241</sup>

Despite these developments a consensus interpretation of what co-production precisely entails has not yet been definitively established. Co-production has been deemed “*one of a series of woolly-words*”.<sup>242</sup> Recent publications have sought to address this issue and provide a clear definition of co-production. These attempts have a few core tenets in common:

- Framing co-production as a “*policy good*” in pursuit of better public service delivery<sup>243</sup>,
- An appreciation of the broad range of actions that could be considered co-production<sup>244</sup>,
- The belief that drawing in a broader community of service co-providers leads to the improvement of service delivery<sup>245</sup>,

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<sup>238</sup> Roger B Parks and others, ‘Consumers as Coproducers of Public Services: Some Economic and Institutional Considerations’ (1981) 9 Policy Studies Journal 1001; John Alford, ‘The Multiple Facets of Co-Production: Building on the Work of Elinor Ostrom’ (2014) 16 Public Management Review 300; Taco Brandsen and Marlies Honingh, ‘Distinguishing Different Types of Coproduction: A Conceptual Analysis Based on the Classical Definitions’ (2016) 76 Public Administration Review 428; Osborne et al. (n 237) 640.

<sup>239</sup> Alford (n 238) 300.

<sup>240</sup> Alford (n 238) 302; Loeffler and Bovaird (n 6) 205.

<sup>241</sup> Alford (n 238) 300; Sicilia et al. (n 237) 235-239.

<sup>242</sup> Osborne et al. (n 237) 640.

<sup>243</sup> Sicilia et al. (n 237) 233; Osborne et al. (n 237) 644.

<sup>244</sup> Sicilia et al. (n 237) 233.

<sup>245</sup> Bovaird and Loeffler (n 5) 1121; Osborne et al. (n 237) 644; Sicilia et al. (n 237) 233.

- And an argument for a move away from top-down public service delivery towards a more horizontal model wherein reciprocity is centered.<sup>246</sup>

In 2016 Brandsen and Honingh, both public administration faculty at the Nijmegen University at the time, published a conceptual analysis of co-production based on Ostrom's original concept and developments since.<sup>247</sup> Their contemporary definition provides a useful standard for co-production going forward. Brandsen and Honingh argued for a narrow interpretation of co-production as a relationship between (public service) professionals and citizens or groups of citizens where there is an active and direct contribution by the latter to that service.<sup>248</sup> At the same time, they strongly argued that various forms of co-production exist, and that researchers should make explicit *their* definition of co-production as it is used in their research, rather than that it being incumbent on researchers to present *a* definition of co-production.<sup>249</sup> The first two elements of Brandsen and Honingh's definition are:

- Co-production implies an active involvement on the non-state actors' part, which needs to be more than the passive reception or use of the service<sup>250</sup>,
- Co-production implies a direct impact on the public service, meaning for example advocacy work is beyond its ambit.<sup>251</sup>

The third element in Brandsen and Honingh's definition poses a challenge. They posit that co-production occurs between public agencies and individual citizens or citizens that have formed citizen groups.<sup>252</sup> This means that collaborations between public agencies and professional organisations or individuals in their capacity as members of professional organisations would fall outside the ambit of co-production. This is a problem, given art crime researchers have highlighted the fundamental roles

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<sup>246</sup> Bovaird and Loeffler (n 5) 1121; Osborne et al. (n 237) 640-641.

<sup>247</sup> Brandsen and Honingh (n 238) 427.

<sup>248</sup> Brandsen and Honingh (n 238) 428, 433.

<sup>249</sup> Brandsen and Honingh (n 238) 427-428, 431-433.

<sup>250</sup> Brandsen and Honingh (n 238) 428.

<sup>251</sup> Brandsen and Honingh (n 238) 428-429.

<sup>252</sup> Brandsen and Honingh (n 238) 428, 431.

private security firms, insurance companies, and art market participants could play in art crime policing.<sup>253</sup> On the private side it is such entities that this study focuses on. In-keeping with their broader argument that it is counterproductive to chase one all-encompassing definition of co-production, however, Brandsen and Honingh do not close the door on inter-organisational co-production, stating that other approaches to co-production are not “*mistaken or irrelevant*”.<sup>254</sup> They refer to the work of Bovaird and Loeffler for an understanding of co-production that brings in inter-organisational collaboration.<sup>255</sup> They note that the latter’s work has sought to integrate various academic traditions in pursuit of an understanding of co-production. Others have done so too.<sup>256</sup> Moreover, plural policing literature has a history of integrating viewpoints from other academic traditions.<sup>257</sup> There is thus precedent not only for integrating various traditions in the context of policing research, but also for bringing professionals into a (policing) co-production analysis.

There are clear parallels between the literature on co-production in public management and the literature on plural policing. Both topics started receiving attention during the 1970’s, both present a shift in thinking towards more diversified public-private systems, and both decentre the role of the state in service provision and champion non-state involvement in public functions. Both also tend to present this shift in a positive light. The idea of non-public actors filling up gaps in service provision is also present in both traditions.<sup>258</sup> Policing was moreover a topic very early on in co-production research, and it has since occasionally discussed policing.<sup>259</sup> Plural policing research on its part has always been interested in interorganisational collaboration. This literature has empirically determined that non-state professionals can and do contribute significantly to policing. But the policing literature

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<sup>253</sup> Dorit Straus, ‘Insurance and Art Crime’ in Arthur Tompkins (ed), *Art Crime and Its Prevention* (Lund Humphries 2016) 134; Kerr (n 8) 331; Anja Shortland and Andrew Shortland, ‘Governance under the Shadow of the Law: Trading High Value Fine Art’ (2020) 184 *Public Choice* 163-168; Vicki Oliveri and others, ‘Art Crime: The Challenges of Provenance, Law and Ethics’ (2022) 37 *Museum Management and Curatorship* 189-192.

<sup>254</sup> Brandsen and Honingh (n 238) 428.

<sup>255</sup> Brandsen and Honingh (n 238) 428.

<sup>256</sup> Osborne et al. (n 237) 640.

<sup>257</sup> Fabio Scarpello, ‘Toward the Political Economy of Plural Policing: Taking Stock of a Burgeoning Literature’ (2017) 19 *International Studies Review* 409.

<sup>258</sup> Parks et al. (n 238) 1003, 1009; Loeffler and Bovaird (n 6) 205-206; Sicilia et al. (n 237) 233.

<sup>259</sup> Parks et al. (n 238) 1001.

and the art crime policing niche have so far not clearly outlined what is precisely meant by co-production of policing. It is here that co-production literature can be of help. It offers a more detailed appraisal of co-production, while the plural policing literature, at least when it comes to policing, highlights the important role non-state professionals play in the delivery of policing.

A final set of ideas from which this study draws inspiration for its understanding of co-production is found in the criminological literature on routine activity theory (RAT) and guardianship. RAT is a theory explaining the occurrence of crime. Crime is typically seen as the outcome of a cost-benefit analysis on the part of the criminal, in which they find that risks associated with committing the crime are deemed to be outweighed by its potential benefits.<sup>260</sup> RAT, which remains one of the most influential theories of its kind, goes beyond a focus on the offender by drawing attention to the impact of factors beyond the characteristics of the criminal individual.<sup>261</sup> It posits that for crime to occur there must not only be a motivated offender, but also a suitable target, and the absence of capable guardians against a violation.<sup>262</sup> As such, RAT literature, like the co-production and plural policing literatures, takes an agnostic view on who should do the policing. It too opens the door to more pluralised policing, and emphasises the idea of a broad range of actors being potential contributors to the fight against crime. But RAT theory has more of a focus on what the actions are that these actors undertake.

If offender motivation is treated as a given, there are then two ways to decrease crime: decreasing target suitability and ensuring the presence of capable guardians. Target hardening means *“decreasing the suitability of the target for crime by making changes to the targets (whether these are*

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<sup>260</sup> Travis C Pratt, ‘Rational Choice Theory, Crime Control Policy, and Criminological Relevance Fines, Threats of Incarceration, and Deterrence: Policy Essay’ (2008) 7 *Criminology and Public Policy* 43; Ray Paternoster, Chae Mamayek Jaynes and Theodore Wilson, ‘Rational Choice Theory and Interest in the “Fortune of Others”’ (2017) 54 *Journal of Research in Crime and Delinquency* 848.

<sup>261</sup> Meghan Hollis-Peel and others, ‘Guardianship for Crime Prevention: A Critical Review of the Literature’ (2011) 56 *Crime, Law and Social Change* 54; Fernando Miró, ‘Routine Activity Theory’, *The Encyclopedia of Theoretical Criminology* (John Wiley & Sons, Ltd 2014); Danielle Reynald and others, ‘Changing Perspectives on Guardianship against Crime: An Examination of the Importance of Micro-Level Factors’ (2018) 20 *Crime Prevention and Community Safety* 3-4.

<sup>262</sup> Lawrence E Cohen and Marcus Felson, ‘Social Change and Crime Rate Trends: A Routine Activity Approach’ (1979) 44 *American Sociological Review* 589; Hollis-Peel et al. (n 261) 54; Eber (n 116) 208-211.



people, places, or objects) to make them less attractive to the potential offender".<sup>263</sup> Capable guardianship entails the presence, physical or symbolic, of individuals to deter criminal activity, intentionally or not.<sup>264</sup> It is assured by having people present at the premises that need protection, but if "would-be offenders perceive that guardians are present or interested in protecting against crime, they will be dissuaded even if their fears of detection are not justified".<sup>265</sup> Where target hardening is primarily object-based, guardianship is people-based. Even so, both require human intervention.<sup>266</sup> Both also imply a degree of knowhow. The capable guardian must be able to intervene when necessary, to supervise, to project that capability.<sup>267</sup> While initially the guardianship concept was focused on physical presence, more recent literature has emphasised capacity to supervise and intervene more than physical presence.<sup>268</sup> Effective target hardening, meanwhile, also requires object knowledge, spatial knowledge, and the ability to effectively implement measures. It is through connecting these skills to the public service provider that more effective policing could be realised, by promoting the right person for the right task.<sup>269</sup> As such, skills, co-production, and effectiveness are connected.<sup>270</sup>

RAT, co-production, and the plural policing literature all consider private participation into policing as a way to more effective policing, by leveraging their capabilities in tandem with public efforts.<sup>271</sup> The three literatures intersect here, but it is RAT that most strongly considers what makes actors effective

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<sup>263</sup> Hollis-Peel et al (n 261) 58.

<sup>264</sup> Hollis-Peel et al (n 261) 54; Meghan E Hollis, Marcus Felson and Brandon C Welsh, 'The Capable Guardian in Routine Activities Theory: A Theoretical and Conceptual Reappraisal' (2013) 15 *Crime Prevention and Community Safety* 73-76.

<sup>265</sup> Hollis et al (n 264) 67.

<sup>266</sup> N Tilley and others, *Target Suitability and the Crime Drop: Chapter 5 from The Criminal Act: The Role and Influence of Routine Activity Theory* (Springer Nature 2015) 64-68; Reynald et al. (n 261) 5-6.

<sup>267</sup> Hollis, Felson, and Welsh (n 264) 66, 73, 75-76; Meghan E Hollis-Peel and Brandon C Welsh, 'What Makes a Guardian Capable? A Test of Guardianship in Action' (2014) 27 *Security Journal* 320-337; Danielle M Reynald, *Guarding Against Crime: Measuring Guardianship within Routine Activity Theory* (Routledge 2016) 10, 20.

<sup>268</sup> Marcus Felson, 'Those Who Discourage Crime' in JE Eck and D Weisburd (eds), *Crime and Place*, vol 4 (1995) 53-55; Reynald (n 267) 20.

<sup>269</sup> Russell Brewer and Peter Grabosky, 'The Unraveling of Public Security in the United States: The Dark Side of Police-Community Co-Production' (2014) 39 *American Journal of Criminal Justice* 144.

<sup>270</sup> Bovaird and Loeffler (n 5) 1121.

<sup>271</sup> Loeffler and Bovaird (n 6) 206; Brandsen and Honingh (n 238) 427.

in policing. The co-production of policing is thus a way to assure the most capable actor is put in the right place to assure optimum policing. They can contribute to more effective policing by for example reducing opportunity for crime, offering crime detection capacities, help reduce costs of policing, and improving police legitimacy.<sup>272</sup> By bringing all the above elements together a concept of co-production for policing emerges with the following characteristics:

1. It takes place between a broad range of public agencies and private actors.
2. The contribution of the private actors is active and direct.
3. There is an active engagement between these parties, which does not have to be a full partnership but is more than chance encounters.
4. It is aimed at leveraging each party's respective skills in the pursuit of crime reduction.

As such, policing co-production as interpreted here is the situation in which private actors provide an active and direct contribution to public actors' policing activities, as part of a stable relationship between the two, that is aimed at leveraging each other's abilities in the pursuit of delivering more effective policing together. This definition goes beyond the approaches in each of the literatures discussed under this subheading. It integrates them, having found overlaps between them, delivering an interpretation tailored to the research focus.<sup>273</sup> It places the relationship between the public sector and private actors somewhere between co-existence and cooperation. However, if any of the above four elements are absent, there is no co-production. Co-production is also not presented as a necessary good: it is an approach to policing that can or cannot be pursued. That does not occur in a vacuum. Many factors influence whether co-production occurs. These range from the structural to the personal: policing is *"the outcome of a constellation of actors, agencies and processes both within and beyond the police organisation"*.<sup>274</sup>

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<sup>272</sup> Loeffler and Bovaird (n 6) 209-210, 212-213, 214, 217; Brandsen and Honingh (n 238) 427.

<sup>273</sup> Thomas and Harden (n 236) 46.

<sup>274</sup> Crawford (n 29) 1/16; Alford (n 238) 305.

## 2.4 Facilitating of policing co-production

### 2.4.1 Fiscal constraint

Several theories have emerged for the emergence of plural policing. These theories offer explanations for the diversifying policing landscape, and by extension, suggest structural factors which drive plural policing (co-production). Much of the analysis of why there has been a growth in private policing since the second half of the 20<sup>th</sup> century points towards changes in the role of the nation state. In the more distant past, rulers such as Louis XIV had claimed the right and capacity to govern a vast array of people and circumstances. This idea of sovereignty which championed a powerful state was inherited by the nation states of modern times.<sup>275</sup> Police forces were one emanation of the modern state's assertion that it could take full responsibility of controlling its territory. They were given the professional monopoly over the use of force and tasked with crime control and the keeping of order.<sup>276</sup> The police were thus put at the centre of both policing and the state assertion of power and legitimacy. However, in the second half of the 20<sup>th</sup> century, the nation states' claim to fully control their territory came under pressure.<sup>277</sup>

As the world became more interconnected due to the advances in communication and transport, crime also found it easier to cross borders. New crimes, such as cybercrime, also emerged as a result of technological advancements.<sup>278</sup> Such developments exposed police difficulties in adapting to changing circumstances, not only because they challenged the overall state system, but also because they laid bare a lack of the resources and knowhow necessary to tackle these issues.<sup>279</sup> By 1996,

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<sup>275</sup> David Garland, 'The Limits of the Sovereign State - Strategies of Crime Control in Contemporary Society' (1996) 36 *British Journal of Criminology* 448.

<sup>276</sup> Garland (n 275) 447-449.

<sup>277</sup> Button (n 21) 27-29.

<sup>278</sup> Susan W Brenner, 'Private-Public Sector Cooperation in Combating Cybercrime: In Search of a Model' (2007) 2 *Journal of International Commercial Law and Technology* 58; Yvonne Jewkes and Majid Yar, 'Policing Cybercrime: Emerging Trends and Future Challenges' in Tim Newburn (ed), *Handbook of Policing* (Willan Publishing 2008) 580-582, 597; Meershoek and Hoogenboom (n 220) 14-15, 21; Hugo Rosemont, 'Public-Private Security Cooperation: From Cyber to Financial Crime' (2016) 6-11.

<sup>279</sup> Trevor Jones and Tim Newburn, 'The Growth of Private Security' in Trevor Jones and Tim Newburn, *Private Security and Public Policing* (Clarendon Press 1998) 103; Meershoek and Hoogenboom (n 220) 21.

academics argued the decline of state policing capacity. Starting from the observation that *“in the course of the last 30 years, high crime rates have become a normal social fact [...] in most contemporary western societies”*, academics argued that states, or at least the US and the UK, found themselves confronted with their limits, and that this laid bare the *“the myth that the sovereign state is capable of providing security, law and order, and crime control within its territorial boundaries”*.<sup>280</sup> It was then argued that this decline in state authority created space for private involvement, because private actors do have the necessary funds, manpower, and/or skills.<sup>281</sup> While there is discussion surrounding the extent and the nature of the state’s retreat from policing, it is now broadly accepted that the state’s role in policing has changed from the period in which the police were established, and that forms of private policing have entered what was traditionally ‘state territory’.<sup>282</sup> This does not necessarily mean that the state has no or but a small role to play, but it does mean that the paradigm of policing can shift.<sup>283</sup> As such, this line of thinking is in line with the structuralist plural policing approach that followed the first cut of private policing research.

Fiscal constraint theories build upon these observations.<sup>284</sup> Proponents of fiscal constraint theory assert that the state no longer has the wherewithal to meet policing demand.<sup>285</sup> Radical versions of the theory see the lack of funds that fuels private policing as a consequence of capitalist logic.<sup>286</sup> Proponents of this approach argue that states’ legitimacy erodes as they enter the later stages of capitalism, as policies such as austerity, which are a consequence of the capitalist logic, lead to an inability to meet citizen demands. As capitalism dictates that the state and the police are put under expectations of efficiency and cost-effectiveness, available budgets and the way in which these

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<sup>280</sup> Garland (n 275) 446-449.

<sup>281</sup> Garland (n 275) 451-456; Tim Newburn, ‘Policing Since 1945’ in Tim Newburn (ed), *Handbook of Policing* (Willan Publishing 2008) 105; Scarpello (n 257) 415; Button (n 21) 27-29.

<sup>282</sup> Button (n 21) 28.

<sup>283</sup> Brodeur (n 50) 3; Sohail Inayatullah, ‘The Futures of Policing: Going beyond the Thin Blue Line’ (2013) 49 Futures 5; Scarpello (n 257) 410-412.

<sup>284</sup> Jones and Newburn (n 279) 98; Button (n 21) 33-37.

<sup>285</sup> Jones and Newburn (n 279) 97-104; Button (n 21) 33-34; Singh and Light (n 196) 297-298.

<sup>286</sup> Jones and Newburn (n 279) 102.

budgets are deployed are affected.<sup>287</sup> Other variants focus less on capitalism and more on the increasing width and complexity of crime, or on structural shifts within (western) societies which affect traditional power dynamics and policing.<sup>288</sup> Fundamental to all of them is the police's inability to meet policing demand creating space for plural policing.

Police forces can privatise themselves by for example charging for some services.<sup>289</sup> They may also seek to 'shed the load' of various aspects of policing, which involves "*the transfer of responsibility for service provision from the police to the private sector*" as the police chooses to no longer perform certain functions as part of a priorities assessment in a context of constraint.<sup>290</sup> This can happen directly, when the police transfers roles to the private sector.<sup>291</sup> The police have several options for this transfer of responsibility. It can take the form of police interest in partnerships or collaborative schemes.<sup>292</sup> Police forces may also seek to contract out or franchise certain police services to private entities.<sup>293</sup> The police may also hybridise itself by the in-housing of private actors as civilians into the police force.<sup>294</sup> Such private involvement is then a tool with which to shore up state/police legitimacy.<sup>295</sup> In other cases, the police may choose to stop policing certain crimes altogether.<sup>296</sup> Indirect load-shedding occurs when the police's failure to meet policing demand causes private entities to increase their policing activities.<sup>297</sup> In-keeping with radical analyses, some scholars have posited that private policing was the result of the private sector seeking to become more involved in

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<sup>287</sup> Garland (n 275) 455-456; Jones and Newburn Jones and Newburn (n 279) 101.

<sup>288</sup> Button (n 21) 34-37.

<sup>289</sup> Button (n 21) 55-59.

<sup>290</sup> Johnston (n 35) 60; Jones and Newburn (n 279) 98-99; Kavil Ramachandran, 'Market Approach to Policing - Some International Trends' (2005) 52 *Academy Journal* 44-45; Button (n 21) 48-51.

<sup>291</sup> Mark Button and Les Johnston, 'Private Policing or Public Policing?', *Debates in Criminal Justice: Key Themes and Issues* (Routledge 2013) 62-64.

<sup>292</sup> James S Kakalik and Sorrel Wildhorn, 'Private Police in the United States: Findings and Recommendations' (RAND Corporation 1971) 20-21; Shearing (n 23) 411-413.

<sup>293</sup> Johnston (n 35) 61-67; Button (n 21) 52-54.

<sup>294</sup> Johnston (n 35) 60-61; Elke Devroe, 'The Power of the Locality. Does Plural Policing Really Exist in Belgium?' (2015) 1 *Forensic Research & Criminology International Journal* 6-7/9.

<sup>295</sup> Garland (n 275) 455-456; Jones and Newburn (n 279) 101.

<sup>296</sup> Mark Button and others, 'New Directions in Policing Fraud: The Emergence of the Counter Fraud Specialist in the United Kingdom' (2007) 35 *International Journal of the Sociology of Law* 197-198; Button (n 21) 48-51.

<sup>297</sup> Button and Johnston (n 291) 62-64.

policing not only because the state was increasingly failing to meet their needs, but also because the private sector sought to claim its own capacity and authority to police.<sup>298</sup> Other scholars focus more narrowly on the idea of unfulfilled policing needs driving private actors to take it upon themselves to “fill the policing gap”.<sup>299</sup> In that approach, it is more a case of private actors seeing an opportunity or need and taking it, and less an ideological position these actors are taking with regards to policing.

In summary, fiscal constraint theory focuses on state limits as a driver for private policing.<sup>300</sup> It is striking that its various incarnations mostly treat public and private policing as communicating vessels. Less state means more plural policing and vice versa. This may create the impression that public and private policing is a zero-sum game. However, a more interconnected relationship is also possible.<sup>301</sup> Fiscal constraint creates opportunities for co-production. It can push a distressed police force towards private partners. The latter can see themselves emancipated. Fiscal constraint has remained an influential thesis in the policing literature generally. While it is habitually offered as a universal driver for private policing, its occurrence, extent, and impact vary across different contexts.<sup>302</sup> As such, while these developments may to some extent indicate factors across what could be called the Western world, the degree to which they affect policing vary.

## 2.4.2 Policing culture

Because local context matters: “Developments in policing occur within the context of a complex mesh of local, national and international influences, as well being shaped by historical traditions”.<sup>303</sup> Here, the term ‘policing culture’ is used to refer to this complex mesh of historical influences which impact the trajectory of policing within a given context. These ingrained, institutional customs establish of

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<sup>298</sup> Shearing and Stenning (n 47) 228-229; Bayley and Shearing (n 23) 600-601; Button (n 21) 36

<sup>299</sup> Jones and Newburn (n 279) 98-99; Inayatullah (n 283) 5; Button (n 21) 34-35,40-41.

<sup>300</sup> Jones and Newburn (n 279) 98; Yvonne Jewkes, ‘Public Policing and Internet Crime’ in Yvonne Jewkes and Majid Yar (eds), *Handbook of Internet Crime* (Willan 2013) 525, 538-539; Button (n 21) 33-37.

<sup>301</sup> Johnston (n 22) 179.

<sup>302</sup> Trevor Jones and Tim Newburn, ‘Urban Change and Policing: Mass Private Property Re-Considered’ (1999) 7 *European Journal on Criminal Policy and Research* 241; Singh and Light (n 196) 297.

<sup>303</sup> Jones, van Steden and Boutellier (n 205) 283-284, 292-295; Terpstra and van Stokkom (n 42) 327; Singh and Light (n 196) 307-308.

default attitudes that exist within a police force, including towards private policing.<sup>304</sup> They contribute to more or less openness towards private policing, and thus to more or less appetite for policing co-production.<sup>305</sup> This is reflected in the histories of French and British policing,

Before the 17th century, policing had been a non- or semi-governmental affair involving an amalgam of entities. As more hierarchical, centralised state systems developed, these ‘proto-police forces’ were replaced by state-dominated varieties.<sup>306</sup> The earliest example of this is the Paris police, which Louis XIV set up in 1667 by creating the office of General Lieutenant for Paris.<sup>307</sup> This lieutenant was placed at the head of a reformed Paris police, combining the judicial and criminal competences that were previously held by the “*lieutenant civil*” and “*lieutenant criminel*”. The already existing “*commissaires*” were given the status of public servant, granting them a regular income while submitting them to the authority of the new lieutenant.<sup>308</sup> Louis XIV wanted to create uniform, hierarchical, and disciplined institutions under a central authority tasked with the upkeep of public order. The motivation for reform was thus twofold: to prevent disturbances of public order and persecute infringements, but also to tighten the state’s grip on the body politic.<sup>309</sup> It was an assertion of public power.<sup>310</sup> The Paris police would become a model for other police forces, particularly for continental Europe.<sup>311</sup> But there was a fair amount of resistance to it in Great Britain.

The modern iteration of the British police has its roots in the early nineteenth century, long after the French reforms of 1677.<sup>312</sup> It was a period of civil unrest in Britain. Aggressive army and Yeomanry

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<sup>304</sup> Manning (n 215) 31-32.

<sup>305</sup> RI Mawby, ‘Models of Policing’ in Tim Newburn (ed), *Handbook of Policing* (Willan Publishing 2008) 22; Brodeur (n 50) 37.

<sup>306</sup> Cyril D Robinson and Richard Scaglione, ‘The Origin and Evolution of the Police Function in Society’ (1987) 21 *Law & Society Review* 113-142; Newburn and Reiner (n 22) 808; Brodeur (n 50) 44.

<sup>307</sup> Brodeur (n 50) 44; Cyrille Fijnaut, *Criminologie En Strafrechtsbedeling* (Intersentia 2014) 40; Finnane (n 43) 457-458.

<sup>308</sup> Brodeur (n 50) 48-50; Fijnaut (n 307) 40; Finnane (n 43) 458-459.

<sup>309</sup> Brodeur (n 50) 53-54; Fijnaut (n 307) 40-41.

<sup>310</sup> Jean-Marc Berlière and René Lévy, ‘The Evolving Organization of Policing: From the Ancien Régime to De Haulle and the Police Nationale’ in Jacques de Maillard and Wesley G Skogan (eds), *Policing in France* (Routledge 2020) 33.

<sup>311</sup> Fijnaut (n 307) 41-42.

<sup>312</sup> Fijnaut (n 307) 117.

interventions increased antipathy and mistrust towards a centralised police force with militaristic attributes. The so-called Peterloo Massacre of 1819, where Yeoman cavalry charged into a large crowd that had gathered to demand parliamentary reform at St Peter's Field in Manchester, proved a catalyst for reform.<sup>313</sup> The starting point was London, where Home Secretary Robert Peel established the London Metropolitan Police in 1829.<sup>314</sup> Previously, a mixture of parish constables and watchmen, supplemented by private prosecution, policed the city.<sup>315</sup> This system was replaced by the centrally controlled, uniformed London Metropolitan Police initially focused on supervising the streets.<sup>316</sup> This is broadly similar to Louis XIV's reforms. But Peel took measures to make his reforms more palatable to a wary public. The police officer was cast as a "citizen in uniform", exercising their power as a fellow citizen, with the citizenry's consent.<sup>317</sup> The London Metropolitan Police was also designed for prevention over repression.<sup>318</sup> Peel sought a balance between an effective force on the one hand and on the other the protection of private liberty, in the context of public resistance against the centralised continental approach. The result was a less overtly politicised and more citizen-facing police force.

The French and English models are traditionally presented as the twin models for Western police forces, with the French model the blueprint for continental European police forces, while the English model influenced the Anglo-Saxon sphere.<sup>319</sup> The Belgian force, for example, has its origin in the statist French policing model, as it traces back to the French occupation of the region between 1794 and

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<sup>313</sup> Fijnaut (n 307) 180-181.

<sup>314</sup> Eric H Monkkenon, 'History of Urban Police' [1992] *Crime and Justice: A Review of Research* 549-553; Clive Emsley, 'The Birth and Development of the Police' in Tim Newburn (ed), *Handbook of Policing* (Willan Publishing 2008) 72.

<sup>315</sup> Monkkenon (n 314) 549; Philip Rawlings, 'Policing Before the Police' in Tim Newburn (ed), *Handbook of Policing* (Willan Publishing 2008) 56-57.

<sup>316</sup> Robinson and Scaglione (n 306) 146-148; Monkkenon (n 314) 549; Emsley (n 314) 73; Fijnaut (n 307) 181.

<sup>317</sup> Robert Reiner, 'Policing and the Media' in Tim Newburn (ed), *Handbook of Policing* (Willan Publishing 2008) 318-319; Clive Emsley, *The English Police: A Political and Social History* (Routledge 1996) 21-27; Emsley (n 314) 73; Fijnaut (n 307) 181.

<sup>318</sup> Emsley (n 317) 25; Emsley (n 314) 74-75; Adam Crawford and Karen Evans, 'Crime Prevention and Community Safety' in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (Oxford University Press 2012) 770.

<sup>319</sup> Monkkenon (n 314) 549-552; Brodeur (n 50) 43; René Lévy, 'Du Bon Usage Des « modèles » de Police' ('On the Proper Use of Police « Models »') (2012) IX *Champ pénal* 4/9; Fijnaut (n 307) 178-179.



1815.<sup>320</sup> The histories of the French and English police have a number of things in common. In both countries a diverse set of proto-police organisations was supplanted by an integrated, centralised, uniformed police force. Moreover, the new police were employed and governed by the state, which underpinned their authority and ability to use force.<sup>321</sup> The final similarity is that police tasks were narrowed to a more specific remit of crime control and the preservation of order, rather than the broad governance functions proto-police forces undertook. But there are also fundamental differences, chief among which the higher centralisation of the French police and its more overt use as a society *management* tool by the state versus the more citizen-adjacent ideals of the Peelian police. The French model's greater concentration of power fostered "*an administrative culture of top-down centralization characterized by its rigidity*", which has lasted until today.<sup>322</sup> Thus, the French police has been considered "*a centralized, state-controlled force whose main purpose was to spy on political foes [...] starkly contrasting with the decentralized British system, based on popular consent*".<sup>323</sup> In Britain the view was that the London Metropolitan Police was an evolution rather than a revolution of policing arrangements, which updated rather than abolished existing traditions, and which remained much less hierarchic, distant, and forceful. The (self-) perception of the English police forces remains based on this account of history which is known as the traditionalist account of Anglo-Saxon policing.<sup>324</sup>

In more recent years the revisionist account of British policing has challenged this traditionalist version of events, with researchers warning against "*ideology as history*".<sup>325</sup> They argue this history has been constructed in ways to advance particular ideological viewpoints.<sup>326</sup> But if police models are placed on

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<sup>320</sup> Elke Devroe and Paul Ponsaers, 'Reforming the Belgian Police System between Central and Local' in Nicholas R Fyfe, Jan Terpstra and Pieter Tops (eds), *Centralizing Forces? Comparative Perspectives on Contemporary Police Reform in Northern and Western Europe* (Eleven International Publishing: The Hague 2013) 1-2/15.

<sup>321</sup> Brodeur (n 50) 103-115; Newburn and Reiner (n 22) 809.

<sup>322</sup> Mawby (n 305) 51.

<sup>323</sup> Berlière and Lévy (n 310) 31.

<sup>324</sup> Brodeur (n 50) 57-58.

<sup>325</sup> Finnane (n 43) 457; Cyril D Robinson, 'Ideology as History: A Look at the Way Some English Police Historians Look at the Police' (1979) *Police Studies: The International Review of Police Development* 35.

<sup>326</sup> Susan A Lentz and Robert H Chaires, 'The Invention of Peel's Principles: A Study of Policing "Textbook" History' (2007) 35 *Journal of Criminal Justice* 69.

a continuum with on the one extremity a state dominated system, where the police is decidedly an arm of the state focused on controlling the populace, and on the other a community-oriented system, French policing is firmly situated near control-dominated extremity, and the British approach more towards the community-oriented side.<sup>327</sup> This distinction remains the popular account of policing in Europe, and is the bedrock of the dichotomy of the French versus the English model.<sup>328</sup> And while the benign Peelian police might be a myth, it is a powerful myth, which influences the policy choices made in policing.<sup>329</sup> In the UK this historical tradition holds space for private policing due to self-perception of being closer to the citizen. The reverse is true in the French model, where a deeply entrenched culture of centralism makes police forces typically wary of diversification.<sup>330</sup>

As such, norms borne out of historical precedent influence contemporary policing trajectories across nations, even if they are under many of the same pressures.<sup>331</sup> By extension, if policing culture is an influence on policing as suggested, then co-production of policing would be more likely in the UK than it is in France, as the historical customs would be more positive towards it.<sup>332</sup> Fiscal constraint and policing culture thus provide structural conditions that frame decisions and attitudes, but these decisions and attitudes themselves also remain “*empirical particulars*” that form the “*complex mesh of local, national and international influences*” on policing beyond historical traditions.<sup>333</sup> Beyond and between broader structural forces, “*empirical particulars*” also play an important role.<sup>334</sup> They exist beyond the broader structural factors, as they can be independently observed, but also between

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<sup>327</sup> Mawby (n 305) 37-38.

<sup>328</sup> Brodeur (n 50) 62-63, 77.

<sup>329</sup> Mawby (n 305) 37-39; Newburn and Reiner (n 22) 808; Ian Loader, ‘In Search of Civic Policing: Recasting the “Peelian” Principles’ (2016) 10 *Criminal Law and Philosophy* 429.

<sup>330</sup> Mathieu Zagrodzki, ‘Police Reforms in France: 40 Years of Searching for a Model’ (2017) 2 *Securitologia* 46; Mouhanna (n 43) 82-83.

<sup>331</sup> Virginie Malochet and Frédéric Ocqueteau, ‘Gouverner la sécurité publique. Le modèle français face à la pluralisation du policing’ (‘Governing public security. The French model in the face of the pluralisation of policing’) (2020) 9 *Gouvernement et action publique* 10; Ronald van Steden, ‘Theorising and Illustrating the Collaborative Practices of Plural Policing: An Analysis of Three Cases in the Netherlands and Belgium’ (2023) 47 *International Journal of Comparative and Applied Criminal Justice* 25.

<sup>332</sup> Leloup and White (n 205) 5.

<sup>333</sup> Jones, van Steden and Boutellier (n 205) 283-284, 292-295; Terpstra and van Stokkom (n 42) 327; Singh and Light (n 196) 307-308.

<sup>334</sup> Jones, van Steden and Boutellier (n 205) 285-286.

them, as they are linked to structural factors and can be an emanation of them. Policing culture is the deep level of convictions regarding policing based on historical tradition. This deep level influences policy and legislation, but these latter more contingent elements are more flexible and reactive to contemporary pressures. This means that while influenced by policing culture, they can also diverge, and through that divergence create more or less opportunity for policing co-production. Key particulars are the legislative framework and public policy. A final contingent element is the agency of the individuals and organisations involved.

### 2.4.3 The particulars of policing contexts

Legislation contains the rules of the police's operation, the actions subject to criminal sanctions, and the limits to the police's powers.<sup>335</sup> This can help or hinder policing co-production; for example, more stringent rules on the information police can share with outside institutions complicate efficient co-production.<sup>336</sup> On the other side of the coin, legislation also expands or limits the room private policing actors have to manoeuvre. It for example limits the policing activities private actors may undertake or sets lower or higher training standards. Generally, more lenient private security legislation is thought to promote private policing, by extension facilitating plural policing and policing co-production. If the reverse is true, and more stringent rules are put in place for private policing, then there tend to be fewer private policing actors active, and by result the scope for policing co-production diminishes.<sup>337</sup> Legislators may also directly address the police-private relationship: Spain, for example, has had legislation designed to integrate the private sector as a complement to the state, thus instrumentalising the private sector rather than making it a (potential) partner.<sup>338</sup> Finally, even

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<sup>335</sup> David Dixon, *Law in Policing: Legal Regulation and Police Practices* (Clarendon Press 1997); Nicola Lacey and Lucia Zedner, 'Legal Constructions of Crime' in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (Oxford University Press 2012) 159-181.

<sup>336</sup> Nøkleberg (n 70) 601-617; Van Steden (n 331) 26.

<sup>337</sup> Mark Button, 'Assessing the Regulation of Private Security across Europe' (2007) 4 *European Journal of Criminology* 10; Singh and Light (n 196) 307.

<sup>338</sup> Button (n 337) 118; Brandsen and Honingh (n 238) 432.

stringent legislation can also serve to legitimise private sector, by promoting trust in it through implementing quality controls.<sup>339</sup>

Public policy operates in similar and associated ways. Public policy, briefly put, is the governmental approach to which problems it prioritises and the ways in which it decides to attempt to tackle these problems. While the state has been decentred in recent policing discussions, the policy it proposes is still crucial as it sets out at least the basic direction the police would be expected to follow when it comes to plural policing and policing co-production. As such, it creates part of the framework in which co-production takes place. Policy is linked to historical traditions, as precedent will influence policy trajectory, but it is more malleable than ingrained customs: governments can and have decided to change a formerly long-held policy course in light of contemporary challenges.<sup>340</sup> It can take time for such policy changes to take hold, and they need to garner support and effective implementation. Nonetheless, they exert influence on police-private policing relations and policing co-production.<sup>341</sup> They can for example set a course towards policing co-production which encourages state actors to find ways to collaborate with private entities, which it can help emancipate and legitimise to that end. Legislation and policy are of course linked: in a policy environment where plural policing is encouraged legislation to facilitate such is more likely to follow. Legislation sets out the rules of the game, but policy influences the ways in which the game will be played.

A final element is the attitudes of the individuals involved. Personal opinion, professional ethos, and internal group dynamics all have an influence on whether policing co-production occurs and succeeds. It has been observed that state actors, particularly police officers, can prove wary of co-production. It is still considered risky by many within police forces, as the behaviour of the co-producing private actors is perceived to be more unpredictable, and any public-private relationship unstable.<sup>342</sup> Moreover, public actors have been known to resist private involvement for fear of losing status,

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<sup>339</sup> Leloup and White (n 205) 11.

<sup>340</sup> Malochet and Ocqueteau (n 331) 9-10.

<sup>341</sup> Mawby (n 305) 37.

<sup>342</sup> Bovaird and Loeffler (n 5) 1130.

'territory', and 'control'.<sup>343</sup> If feeling threatened by an increased private presence in policing, police officers can react by complicating co-production through reticence and distrust. This distrust can also grow out of a (perceived) conflict of interest between public and private parties. While the police are conditioned and expected to work for the good of the society in which they operate, private policing is "*client-oriented*".<sup>344</sup> The pursuit of fulfilling a client's need may not align with what could be considered to be the common good, and as such police officers may feel wary of private actors, while private actors might feel public policing by definition does not suit their needs and hampers their abilities to deliver policing. Resentment may also build in private actors when they feel they are not being treated as valuable contributors or partners.<sup>345</sup> When these actors feel they can do more but remain relegated to an extension of, rather than a partner to, the state, they can over time become less eager to collaborate with the state.

As such, in various ways founded and unfounded suspicions of the policing actors on either side of the public-private aisle may develop and fester. This can cause actors to refrain from collaborations which would be to each other's objective benefit, since police and private actors can have complementary skills. But this relationship needs to go beyond an instrumentalised approach where each partner sees the other merely as a tool to leverage their own goals and interests. A 'devil's pact' is not true co-production, as in such a scenario the relationship is relatively unstable and there is no truly joint pursuit. Key in all these issues is the idea of trust. Trust can be defined as the stable positive expectation that actors A and B have of each other that they will refrain from opportunistic behaviour, and that they will mutually take each other's interests into account.<sup>346</sup> It is this sense of reciprocal confidence that makes true co-production possible. If this trust is damaged, or absent, co-production becomes difficult.

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<sup>343</sup> Bovaird and Loeffler (n 5) 1130; Van Steden (n 331) 33.

<sup>344</sup> Joh (n 66) 62.

<sup>345</sup> Loeffler and Bovaird (n 6) 219; Van Steden (n 331) 33.

<sup>346</sup> Loader (n 329) 435; Van Steden (n 331) 25, 29.

Building trust takes time, and is best served by an approach in which all the above factors, from policing culture to the attitudes of those involved, are taken into account.<sup>347</sup> Policing actors and their behaviours cannot be considered in isolation, but are part *“wider sets of actors, logics, and relational dynamics”*.<sup>348</sup> There is a push and pull between all of the above factors shaping behaviour, and behaviour driving all of these factors. These factors can be independently identified and analysed but are at the same time highly interrelated: policing culture and fiscal constraint are structural pressures that influence the contemporary particulars of legislation, policy, and individual attitudes. As such, as Shearing states: *“What happens will in part be a consequence of emerging material, structural conditions, but it will also be a product of the agency of people responding to, and acting within, these structures and the “tiny theatres” of power they make possible”*.<sup>349</sup> In other words, while it can be posited that fiscal constraint, policing culture, policy, legislation, and personal factors all have a distinguishable impact on policing co-production, they do not predetermine the course of action taken by policing actors. The latter still retain their own agency, which must be considered in analyses of policing co-production.

## 2.5 Conclusion

Policing co-production is the situation in which private actors provide an active and direct contribution to public actors’ policing activities, as part of a stable relationship between the two, formal or informal, that is aimed at leveraging each other’s abilities in the pursuit of delivering more effective policing together. The literature provides explanations for whether and why policing co-production does or does not take place. Degrees of fiscal constraint affect the police’s capacity to meet policing needs and conversely create space for plural policing. Policing culture influences the attitudes of all policing actors, affecting the likelihood of plural policing and policing co-production. These policing cultures

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<sup>347</sup> Van Steden (n 331) 23, 25.

<sup>348</sup> Scarpello (n 257) 408.

<sup>349</sup> Shearing (n 23) 427.

are resistant to sudden shifts in approach: a culture which is wary of private policing will not suddenly open up to it.<sup>350</sup> Nevertheless, customs are subject to evolution, and so is policing.<sup>351</sup>

Policy, legislation, and the personal attitudes of the actors involved are areas in which agency comes to the forefront, but all factors are interconnected. The three cases these findings are applied to in the rest of this research are that of Belgium, France, and the UK. The social order, at the least regarding policing, is different across nations, affecting the dynamics of policing co-production.<sup>352</sup> But before moving on to these case studies, the next chapter examines art crime. If policing is a process reactive to undesirable behaviour, then that behaviour will shape the policing. Crimes have specific characteristics, such as motives, methods, and targets, which necessitate specific approaches and skills to successfully police them. As this research focuses on art crime policing, it is art crime and its features that are to be understood in order to address art crime. And the nature of art crime not only dictates its policing, but also what the possibilities are for plural policing.

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<sup>350</sup> Elizabeth E Joh, 'The Forgotten Threat: Private Policing and the State' (2006) 13 *Indiana Journal of Global Legal Studies* 388-389; Malcolm K Sparrow, 'Managing the Boundary Between Public and Private Policing' (September 2014) 3-5.

<sup>351</sup> Tim Prenzler, 'The Privatization of Policing' in Rick Sarre and John Tomaino (eds), *Key Issues in Criminal Justice* (Australian Humanities Press 2004) 271; Sarre (n 77) 62; De Maillard and Roché (n 198) 391.

<sup>352</sup> Devroe (n 294) 3/9.

## Chapter III: Art Crime

*"The police will always need the art market and independent experts to be successful"*<sup>353</sup>

### 3.1 Introduction

In chapter one art crime was defined as criminally punishable acts that involve works of art. On the basis of this definition the distinguishing factor between art crime and other crimes is the involvement of works of art. This is, however, a somewhat superficial distinction. It considers any crime that involves a work of art an art crime, even if that involvement is only incidental and has no effect on why and how the crime is committed. This chapter delves further into what distinguishes art crime. Hufnagel and King, discussing art money laundering, argue that *"the distinguishing factor for determining that a crime falls within art crime is [...] that the modus operandi is art specific. To count other crimes committed through art as being part of the field of art crime it hence needs to be proven that they distinguish themselves clearly through the use of art for the commission"*.<sup>354</sup> Following their argument, art crime is distinct not only because art is involved, but also because the involvement of art works shapes the crimes themselves in distinct ways. The relative ease with which art can cross borders, the opacity of the art trade, the vagaries of art valuation, gaps in art security, and a lack of oversight of the market will all be discussed as key elements that distinguish the ways in which art crime occurs.<sup>355</sup>

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<sup>353</sup> Rapley (n 12) 38.

<sup>354</sup> Hufnagel and King (n 107) 150.

<sup>355</sup> Nelson (n 107) 197-201; Gisela Bichler, Stacy Bush and Aili Malm, 'Bad Actors and Faulty Props: Unlocking Legal and Illicit Art Trade' (2013) 14 Global Crime 360-361; Hufnagel and King (n 107) 150; Brodie et al. (n 10) 2-10; 'Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art' (US Department of the Treasury 2022) 19-24.



In the final part of this chapter, the distinctiveness of art crime policing is discussed. Art crime policing is a specialist form of policing due to the specificity of art crime. Effective art crime policing requires the legal and investigatory capacities any successful crime investigation and prosecution requires, but it moreover also necessitates a degree of art and art world knowledge. Art fraud, for example, is difficult to establish without the capability to identify forgeries, which requires significant specialist expertise and knowhow. Because the art world in various ways motivates and facilitates the commission of art crime, it is also necessary to be familiar with it to identify art crime trends more effectively as well as target suspects and vulnerabilities.<sup>356</sup> As such, *“art crime is not the type of work any officer can perform with a little training”*.<sup>357</sup> As a result, private actors can play a significant role in art crime policing. It is they who have the art knowledge and the knowledge of the art market’s operation. Given such expertise is typically not or not adequately present within police forces, the latter have an incentive to engage with the private sector, as the above quote by former Arts and Antiquities Unit leader Vernon Rapley plainly states. This is the moment at which policing co-production and art crime first connect. For all this, art crime only relatively recently became the subject of sustained, systematised academic discussion.<sup>358</sup> In the following paragraphs, the literature on art crime up to this moment is overviewed, as a basis for the discussion of art crime and art crime policing that then follows.

## 3.2 Art crime: a research topic

In his book on policing art theft in London, published in 2015, John Kerr wrote that *“until recently there was little chance of a researcher being terrorized by the literature, as a lack of prior research has forced the few previous criminological researchers into foraging around a range of sources”*.<sup>359</sup> Hufnagel and

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<sup>356</sup> Bichler, Bush and Malm (n 355) 360-361, 372-376; Hufnagel and King (n 107) 150.

<sup>357</sup> Sara K Mazurek, ‘The Invisible Crime: Exploring How Perceptions of Victimhood and the Art Market May Influence Art Fraud Reporting’ (2019) 26 *International Journal of Cultural Property* 429.

<sup>358</sup> Durney and Proulx (n 96) 115, 118; Marc Balcells, ‘Art Crime as White-Collar Crime’ in Joris D Kila and Marc Balcells (eds), *Cultural Property Crime* (BRILL 2014) 103; Chappell and Hufnagel (n 111) 4.

<sup>359</sup> Kerr (n 1) 4.

Chappell wrote in 2019 that *“looking back at the arena of criminological research and writing of the last century, it does seem rather remarkable that it did take so long for any scholarly work to emerge about art crime at large”*.<sup>360</sup> Criminologists have been surprisingly slow to enter the discussion about art crime, given the topic’s links to core interests of criminologists, such as white-collar crime, organised crime, and the relation between the licit and illicit.<sup>361</sup> However, the criminological field itself was still in development in 1994, with teaching of criminology still limited to a few master programmes at the start of the 1980’s.<sup>362</sup>

Going one step further, Noah Charney has stated that when he founded the Association for Research into Art Crime in 2007 *“no one was studying the nature and history of art crime with the academic discipline required by other fields”*.<sup>363</sup> A dearth of data and research is indeed a regular complaint within the literature.<sup>364</sup> There is much to be said for more research on art crime, especially at a time when the international community is increasingly attentive to threats to global heritage in the wake of large scale destruction of cultural heritage in the fight against ISIS, the potential for money laundering using (the) art (market), and amidst increasing mobilisation towards restitution of objects taken in colonial times.<sup>365</sup> But statements such as Charney’s need nuance. There does, in fact, exist a body of research on art crime which *“incorporates many styles and perspectives, reflecting the multi-faceted and interdisciplinary nature of this topic”*.<sup>366</sup>

The beginnings of the art crime literature can be traced to the 1960’s. In 1964, the United Nations Educational, Scientific and Cultural Organization (UNESCO) dedicated an entire issue of its quarterly

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<sup>360</sup> Hufnagel and Chappell (n 111) 4.

<sup>361</sup> Kila and Balcells (n 15) 366-367; Hufnagel and Chappell (n 111) 4.

<sup>362</sup> Loader and Sparks (n 194) 8-9.

<sup>363</sup> Noah Charney, ‘Introduction’ in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (ABC-CLIO 2009) xiv.

<sup>364</sup> Bazley (n 11) ix-x; Francesco Francioni and James Gordley, ‘Introduction’ in Francesco Francioni and James Gordley (eds), *Enforcing International Cultural Heritage Law* (Oxford University Press 2013) 2; Kila and Balcells (n 15) 366.

<sup>365</sup> Hufnagel and Chappell (n 111) 6.

<sup>366</sup> Oliveri (n 109) 73.

journal *Museum* to the topic of 'The Protection of Museums Against Theft'.<sup>367</sup> The issue recapitulated the results of an Interpol survey concluded in 1959, and discussed in a practical manner the ways in which museums could securitise their collections.<sup>368</sup> One year later, in 1965, 'The Rape of Art: the Story of Hitler's Plunder of the Great Masterpieces of Europe' was published, which focused on the looting of cultural goods during WWII.<sup>369</sup> Another year later, in 1966, 'The Art Stealers' was released, a book discussing major historical art theft cases and the thieves involved.<sup>370</sup> In 1969 Clemency Coggins contributed an article titled 'Illicit Traffic of Pre-Columbian Antiquities' to the *Art Journal*.<sup>371</sup> This article remains pivotal because it drew attention to the ethicality of the acquisition by well-known museums of objects known to (likely) have been looted and/or vandalised; this remains a major topic of the art crime literature.<sup>372</sup> It is remarkable how much ground these early art crime contributions cover: between them, they discuss art theft, fraud, looting, vandalism, and the role of the art market. All of these remain central topics of art crime research. The multidisciplinary nature of the field is also already apparent, with art historians', museum security experts', and legal perspectives represented. In that sense, it is similar to the multiple disciplines that have discussed policing.

The 1960's also saw the founding of the International Foundation for Art Research (IFAR), a New York based not-for-profit organisation founded in 1969 to "offer [...] information on authenticity, ownership, and other artistic, legal, and ethical issues concerning art objects".<sup>373</sup> IFAR would become one of the first dedicated amplifiers of art crime research. The next important milestone was in 1975, when art historian Bonnie Burnham's book 'The Art Crisis' was published, which contained three chapters focusing on "Stolen Art", "The Antiquities Crisis", and "The Art Boom".<sup>374</sup> Like journalist Karl

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<sup>367</sup> André F Noblecourt, 'La Protection Des Musées Contre Le Vol' ('Protecting Museums from Theft') (1964) XVII *Museum* 170; Durney and Proulx (n 96) 117.

<sup>368</sup> Noblecourt (n 367) 171-183.

<sup>369</sup> David Roxan, Ken Wanstall, and Mazal Holocaust Collection, *The Rape of Art; the Story of Hitler's Plunder of the Great Masterpieces of Europe*, (Coward-McCann 1965).

<sup>370</sup> Milton Esterow, *The Art Stealers* (Macmillan 1966).

<sup>371</sup> Clemency Coggins, 'Illicit Traffic of Pre-Columbian Antiquities' (1969) 29 *Art Journal* 94.

<sup>372</sup> Paul M Bator, 'An Essay on the International Trade in Art' (1982) 34 *Stanford Law Review* 278-279; Durney and Proulx (n 96) 118; Oliveri (n 109) 57.

<sup>373</sup> IFAR, 'About IFAR' (2019) <<https://www.ifar.org/about.php>> accessed 22 March 2023.

<sup>374</sup> Bonnie Burnham, *The Art Crisis* (Collins 1975).

Meyer did in 'the Plundered Past', Burnham looked at the relationship between the art market and the illicit trade, focusing on antiquities.<sup>375</sup> The book remains resonant, especially its discussion of the art dealers' responsibility regarding the illicit trade.<sup>376</sup> Later that year, Bonnie Burnham became the executive director of IFAR, and her 1978 follow-up book to 'The Art Crisis, namely 'Art Theft: Its Scope, its Impact and Its Control' was published by the Foundation.<sup>377</sup> Still, art crime related publishing research activity remained sporadic, and published work was limited to a trickle, until the mid-1980's.<sup>378</sup>

In 1984, Ellen Herscher provided 'News and Commentary on the Illicit Traffic in Antiquities' in the *Journal of Field Archaeology*.<sup>379</sup> 'Ethics and Values in Archaeology', an edited volume, was also published in that same year, contributors to which grappled with the responsibilities of archaeologists towards their profession and the broader public. The book's reflective approach towards institutional practices is arguably a continuation of the line of thought Coggins began.<sup>380</sup> In the following year, 1985, 'Who Owns the Past?' bundled papers presented at the Annual Symposium of the Australian Academy of the Humanities concerning legal issues surrounding the ownership of cultural artefacts, a conference which gathered scholars to discuss and learn about art crime related issues.<sup>381</sup> In 1986 'Two ways of thinking about cultural property' was published, an article in *The American Journal of International Law* written by John Merryman.<sup>382</sup> The two ways of thinking Merryman outlined were cultural property as part of the common heritage of mankind versus cultural property as inseparably linked a specific place, community, or context. Merryman connected these approaches to the divide

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<sup>375</sup> Karl Ernest Meyer, *The Plundered Past* (Atheneum 1977).

<sup>376</sup> Burnham (n 374) 87; Hufnagel and Chappell (n 111) 4; Oliveri (n 109) 57.

<sup>377</sup> Bonnie Burnham, *Art Theft: Its Scope, Its Impact and Its Control* (International Foundation for Art Research 1978); Bureau of Public Affairs Department of State. The Office of Electronic Information, 'Bonnie Burnham' <<https://2001-2009.state.gov/p/io/unesco/members/49182.htm>> accessed 22 March 2023.

<sup>378</sup> Oliveri (n 109) 56.

<sup>379</sup> Ellen Herscher, 'The Antiquities Market: News and Commentary on the Illicit Traffic in Antiquities' (1984) 11 *Journal of Field Archaeology* 223.

<sup>380</sup> Ernestene L Green (ed), *Ethics and Values in Archaeology* (Free Press 1984).

<sup>381</sup> Isabel McBryde (ed), *Who Owns the Past? Papers from the Annual Symposium of the Australian Academy of the Humanities* (Melbourne: Oxford University Press 1985).

<sup>382</sup> John Henry Merryman, 'Two Ways of Thinking About Cultural Property' (1986) 80 *The American Journal of International Law* 831.

between what he called “*market nations*”, where the demand for cultural property exceeds the supply, and “*source nations*” where the reverse is true. The former tend to lean towards the ‘world heritage’ view, while source countries tend to resist losing what they consider to be “*their*” heritage.<sup>383</sup> These tensions are still relevant, as scholars argue that when “*the source nation is relatively poor and the market nation wealthy*” the drive to acquire cultural goods can combine with the challenges source nations face in protecting their heritage to create a situation ripe for criminal exploitation.<sup>384</sup>

A year after Merryman’s text, in 1987, DeGraw put ‘Art theft in Perspective’, discussing not only notable art theft cases and the criminals committing them, but also the motives of thieves, problems with collecting art theft data, the law enforcement response to art theft, and issues with adequate art security.<sup>385</sup> At the end of the decade, in 1989, ‘The Ethics of Collecting Cultural Property’ contained several essays on the topic of the legality of importing pre-Columbian artefacts, and also discussed the US implementation of the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention).<sup>386</sup> This Convention remains a cornerstone of international heritage protection. The publications during the eighties evidence the increasing sophistication of thought surrounding art crime. The scattered bits of previous art crime research were built upon, and ideas were becoming more complex and refined.

At the start of the 20<sup>th</sup> century’s last decade, the *Journal of Field Archaeology* again focused on antiquities crime with an article, spread over two issues, on the antiquities market and looting.<sup>387</sup> International choice of law and law enforcement was examined in 1993 to determine why the

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<sup>383</sup> Merryman (n 382) 831-833.

<sup>384</sup> Merryman (382) 832; Oliveri (n 109) 57-58.

<sup>385</sup> Melvin E DeGraw, ‘Art Theft in Perspective’ (1987) 31 *International Journal of Offender Therapy and Comparative Criminology* 1.

<sup>386</sup> Phyllis Mauch Messenger (ed), *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?* (UNM Press 1989).

<sup>387</sup> Timothy Kaiser, ‘The Antiquities Market: Dealing for Dollars’ (1990) 17 *Journal of Field Archaeology* 205; Timothy Kaiser, ‘The Antiquities Market: The Thieves of Time and Their Accomplices’ (1991) 18 *Journal of Field Archaeology* 87.

marketplace for stolen arts was *“active, profitable, and undeterred by the criminal law system”*.<sup>388</sup> These contributions evidence how legal interest in issues connected to art crime grew and that the narrative linking the art market to crime had become firmly established, especially for antiquities looting. In 1994 criminologist John Conklin’s ‘Art Crime’ was published.<sup>389</sup> Conklin’s book ran the gamut of art crime research: fraud, theft, looting, trafficking, and vandalism, as well as the responses to art crime. Moreover, his research *“opened the way for art crime to be researched from a criminological perspective”*.<sup>390</sup> Since Conklin’s contribution criminologists have increasingly added to art crime research, building on his foundations. After his text and during the 2000’s, the pace of art crime publishing picked up significantly. For example, the Association for Research into Art Crime (ARCA) has been publishing its own ‘Journal of Art Crime’ since 2009, alongside several books discussing the topic.<sup>391</sup> The result is that art crime has now become *“a well-established area of serious scholarship”*.<sup>392</sup>

This is thus the broader context for the quotes at the beginning of these paragraphs. Kerr’s as well as Hufnagel and Chappell’s statements remain correct: while the situation is improving, there has been relatively little criminological research on art crime.<sup>393</sup> Charney’s assertion is however on shakier ground: this literature review shows that in 2007 there were multiple academics rigorously researching art crime, as well as a substantial body of art crime research. This literature review has demonstrated that art crime is a complex and multifaceted field, which gathers under its umbrella a broad range of topics and disciplines. In many of the contributions presented above structural

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<sup>388</sup> Robin Morris Collin, ‘The Law and Stolen Art, Artifacts, and Antiquities’ (1993) 36 Harvard Law Journal 17.

<sup>389</sup> Conklin (n 89).

<sup>390</sup> Simon Mackenzie, ‘Criminal and Victim Profiles in Art Theft’ (2005) X AAL 353; Durney and Proulx (n 96) 118, 126; Bazley (n 11) 6; Chappell and Hufnagel (n 111) 3; Mita Kumiko, ‘Art Crimes and International Security’, *CSPC (Center for the Study of the Presidency and Congress) International Fellows Program* (2015) 4-5; Oliveri (n 109) 58.

<sup>391</sup> ‘Journal of Art Crime’ (ARCA) <<http://www.artcrimeresearch.org/journal-of-art-crime/>> accessed 22 March 2023; Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (ABC-CLIO 2009); Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves* (Palgrave Macmillan 2016); Arthur Tompkins (ed), *Art Crime and Its Prevention* (Lund Humphries 2016).

<sup>392</sup> Durney and Proulx (n 96) 118.

<sup>393</sup> Kila and Balcells (n 15) 366-367

dynamics loom large, as the structures of both the art market and the art world more broadly leave it exploitable by criminal enterprise.<sup>394</sup> This literature review has also highlighted the deeper distinguishing characteristics of art crime beyond the involvement of works of art: the causes for art crime, the role of the art market in facilitating it, and the impact of art crime.

## 3.3 Distinguishing art crime

### 3.3.1 Causes for art crime

The reason why art crime can be said to have specific causes is related to the art involved. The motivations for art crime are particular as works of art hold symbolic value; criminals target art works specifically as “*manifestations of certain ideas and beliefs*”.<sup>395</sup> This was, for example, the case when Italian nationalist Vincenzo Peruggia stole the Mona Lisa from the Louvre in August 1911.<sup>396</sup> Peruggia mistakenly believed that the piece had been illegitimately taken from Italy by Napoleon, and presented his actions as being motivated by patriotism.<sup>397</sup> The case is an example what John Kerr identified as politically motivated art crime. Because art “*remains an important source of meaning for people who want to show the power of the state and, also, for those who want to challenge this power*”, it is targeted in order to serve political causes.<sup>398</sup> As such, the crime is perpetrated because the political dimension of the symbolic value of the art has symbolic value. Art may also be targeted because its symbolic value connects to religion. In this case, the work of art is broken to neutralise the values it represents which are considered religiously unacceptable. This goal can also be achieved

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<sup>394</sup> Tjihuis (n 117) 111-112; Blythe Alison Bowman Balestrieri and Duncan Chappell, ‘The Antiquities Licit-Illicit Interface’ in Saskia Hufnagel (ed), *The Palgrave Handbook on Art Crime* (Springer 2019) 81-84.

<sup>395</sup> Kila (n 105) 171-174.

<sup>396</sup> Duncan Chappell and Kenneth Polk, ‘The Peculiar Problem of Art Theft’ in Duncan Chappell and Saskia Hufnagel (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives* (Routledge 2014) 40.

<sup>397</sup> Though Peruggia did later attempt to sell the Mona Lisa, indicating his actions may also have been motivated by profit.

<sup>398</sup> John Kerr, ‘Taking Culture and the Balancing Act of Power’ in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Springer 2019) 882-883.

through “*transformation, subordination and/or humiliation*” of the objects.<sup>399</sup> Other symbolic values that could be the motivation for art crime include cultural, social, and historical value.

A second driver for art crime is the aesthetic value of art. The possession and exclusive enjoyment of a piece can be a big part of the appeal of art crime. A subset of art criminals wants to “*live with [the art] view it in detail, repeatedly and at [their] leisure*”.<sup>400</sup> Typically thieves, these criminals want to have the art because they feel themselves drawn to the artistry of the pieces they crave to possess.<sup>401</sup> These individuals additionally might feel they are able to appreciate the piece more deeply than others, thus justifying their criminal actions and neutralising their potential sense of guilt.<sup>402</sup> Similarly ego-driven are forgers, for which there is a “*remarkable consistency of motivations*”.<sup>403</sup> Forgers often crave validation. Many of them failed as conventional artists. They then set out to garner the praise they feel they are owed, and in the process “*show up those snooty so-called experts*”.<sup>404</sup> By expertly imitating master artists, and having their own works successfully be sold in the art world, in some cases to major collections, they achieve vindication.

All this notwithstanding, profit is the most common motivation for art crime.<sup>405</sup> Put simply, the prices the art market generates and the narrative of money surrounding it signal to the unscrupulous that there is money to be made.<sup>406</sup> For example, price spikes in the art market during the early 1960’s and 1970’s preceded waves of art thefts in the following years.<sup>407</sup> The art market can be divided between the dealer market, comprising sales involving gallerists, and the auction market, comprising sales

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<sup>399</sup> Hardy (n 94) 625-626.

<sup>400</sup> Mackenzie (n 390) 355; Mark Durney, ‘Understanding the Motivations behind Art Crime and the Effects of an Institution’s Response’ (2009) 2 *Journal of Art Crime* 84.

<sup>401</sup> Mackenzie (n 390) 356.

<sup>402</sup> Mackenzie (n 390) 355; Durney (n 400) 84.

<sup>403</sup> Noah Charney, ‘Profiling Art Forgers’ in Saskia Hufnagel (ed), *The Palgrave Handbook on Art Crime* (Springer 2019) 289.

<sup>404</sup> Charney (n 403) 289-290.

<sup>405</sup> Conklin (n 89) 45-46; Dobovšek (n 128) 69; Nelson (n 107) 197-199; Flynn (n 157) 21-23; Interpol (n 128) 4.

<sup>406</sup> Nikos Passas, ‘Cross-Border Crime and the Interface between Legal and Illegal Actors’ (2003) 16 *Security Journal* 16-17; Tijhuis (n 117) 20; Durney and Proulx (n 96) 117; Tom Flynn, *The A-Z of the International Art Market* (Bloomsbury 2016) 11; Oliveri (n 109) 55-56. Hufnagel and King (n 107) 135.

<sup>407</sup> Bazley (n 11) 9; Pryor (n 11) 15-16; Toby Bull, ‘Methods of Profit: Ransoms, Rewards and Buy-Backs - Knowing the Rules of Engagement’ in Arthur Tompkins (ed), *Art Crime and its Prevention* (Lund Humphries 2016) 46.



involving the auctioneering process.<sup>408</sup> Works are then categorised across market sectors such as Old Master works, Chinese decorative art, and antiquities.<sup>409</sup> In 2019, before Covid triggered the biggest recession in the art market since the 2008 financial crisis<sup>410</sup>, the bulk of the art dealer trade happened at prices below \$5000, although pieces sold for above one million dollars accounted for almost half of the market value.<sup>411</sup> Similarly, almost half of the sales in the auction market were at prices below \$1000, but more than half of the market's value was made in sales above one million dollars, with one fifth created by sales over ten million dollars.<sup>412</sup> In 2021 the auction market rebounded strongly from the COVID recession, but the dealer market remained below 2019 levels in terms of value.<sup>413</sup> The current record for the most expensive artwork sold is held by *Salvator Mundi*, painted by Leonardo Da Vinci, which sold for 450 million dollars at Christie's auction house New York in 2017.<sup>414</sup> Art prices have continued to escalate since.

Of course, other crimes are committed for reasons of symbolism, prestige, or profit. However, art crime is unique in the specific types of symbolic crimes and the specific types of prestige-seeking involved. Much like the participants in the art world and art market, criminals are drawn by art because it is simultaneously a commodity and a "sacred good".<sup>415</sup> It is this tension that also facilitates the commission of art crime. Profit-motivated art crime and the art market are not only entwined because the money in the art market attracts criminals, but also because the way in which that value is created within the market creates specific opportunities for the would-be criminal. This is a secondary motivation for art crime: while the primary motivation for art crime is typically profit, prestige, or

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<sup>408</sup> Iain Robertson and Derrick Chong, 'Introduction to Studies in Art Business' in Iain Robertson and Derrick Chong (eds), *The Art Business* (Routledge 2008) 2-8; Mcandrew (n 126) 15-16.

<sup>409</sup> David Bellingham, 'Art Market Sectors' in Jos Hackforth-Jones and Iain Robertson (eds), *Art Business Today: 20 Key Topics* (Lund Humphries 2016) 60-68.

<sup>410</sup> Mcandrew (n 126) 30.

<sup>411</sup> Clare Mcandrew, 'The Art Market 2020: An Art Basel & UBS Report' (Art Basel & UBS 2020) 67.

<sup>412</sup> Mcandrew (n 411) 137.

<sup>413</sup> Mcandrew (n 126) 14-15.

<sup>414</sup> Christie's, 'Leonardo's *Salvator Mundi* Makes Auction History' (5 November 2017) <<https://www.christies.com/features/Leonardo-and-Post-War-results-New-York-8729-3.aspx>> accessed 22 March 2023.

<sup>415</sup> Olav Velthuis, 'Symbolic Meanings of Prices: Constructing the Value of Contemporary Art in Amsterdam and New York Galleries' (2003) 32 *Theory and Society* 183.

symbolism, the secondary motivation is that art crime is relatively low risk.<sup>416</sup> This in in a large part because of structural features of the way art is valued, marketed, and traded.

### 3.3.2 The dynamics of trading art

Price-setting within the art market is a result of various interconnecting influences. On the supply side, art is scarce.<sup>417</sup> Producing art is skilled, time-consuming labour, so new art cannot be easily or quickly produced.<sup>418</sup> Art is moreover created by individuals or groups of individuals as distinct, individual pieces, meaning pieces of cultural property can be but imperfect substitutes for each other.<sup>419</sup> And when the artists are deceased supply is fixed in perpetuity.<sup>420</sup> Additionally, certainly for older work, the stock of pieces is often already held by private collectors or in museum collections, and these owners may be very reluctant or, in the case of the latter, forbidden, to sell their pieces.<sup>421</sup> From a demand perspective, artworks are positional goods.<sup>422</sup> Positional goods can be defined as *“goods of which it is true that for some of the members of a society part or all of the satisfaction derived from possessing them is the enhancement of social status due to the fact that such satisfaction is possible only for a minority”*.<sup>423</sup> Collecting art is often conspicuous consumption: consumption not for practical utility, but to project affluence.<sup>424</sup> Ownership does not only advertise economic power in and of itself,

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<sup>416</sup> Durney and Proulx (n 96) 126-127

<sup>417</sup> William J Baumol, ‘Unnatural Value: Or Art Investment as Floating Crap Game’ (1986) 76 *The American Economic Review* 10-11; Nathalie Buelens and Victor Ginsburgh, ‘Revisiting Baumol’s “Art as Floating Crap Game”’ (1993) 37 *European Economic Review* 1352; Luc Renneboog and Christophe Spaenjers, ‘Buying Beauty: On Prices and Returns in the Art Market’ (2013) 59 *Management Science* 50.

<sup>418</sup> Day (n 157) 465-466.

<sup>419</sup> Baumol (n 417) 10-11; Louis-André Gérard-Varet, ‘On Pricing the Priceless: Comments on the Economics of the Visual Art Market’ (1995) 39 *European Economic Review* 510; Olav Velthuis, ‘Art Markets’ in Ruth Towse (ed), *A Handbook of Cultural Economics* (2nd edn, Edward Elgar Publishing 2011) 45; Françoise Benhamou, ‘Artists’ Labour Markets’ in Ruth Towse (ed), *A Handbook of Cultural Economics* (2nd edn, Edward Elgar Publishing 2011) 55; Günther G Schulze, ‘International Trade’ in Ruth Towse (ed), *A Handbook of Cultural Economics* (2nd edn, Edward Elgar Publishing 2011) 237; Day (n 157) 466.

<sup>420</sup> Baumol (n 419) 10.

<sup>421</sup> Velthuis (n 419) 35; Robert Kirkwood Paterson, ‘Museums and the Dilemmas of Deaccessioning’ (2013) 5 *Transnational Dispute Management* 2-5; David Bellingham and Tom Christopherson, ‘Ethics’ in Jos Hackforth-Jones and Iain Robertson (eds), *Art Business Today: 20 Key Topics* (Lund Humphries 2016) 30-39.

<sup>422</sup> Velthuis (n 419) 34.

<sup>423</sup> Fred Hirsch, *Social Limits to Growth* (Routledge 2005) 27-28; Michael Schneider, ‘The Nature, History and Significance of the Concept of Positional Goods’ [2016] *History of Economics Review* 62.

<sup>424</sup> Thorstein Veblen, *The Theory of the Leisure Class* (Courier Corporation 2012) 43-62; Schneider (n 423) 69-70.

but also the capability to outmanoeuvre the competition.<sup>425</sup> An increase in price can thus even positively impact demand.<sup>426</sup> These dynamics are further enhanced by the fact that ownership of an individual piece can be made exclusive.<sup>427</sup> Artworks also position their owner as cultured, and art collections are an important signifier for the social elite.<sup>428</sup> This all leads to an intense, competitive demand for a limited art supply, which drives prices upwards.<sup>429</sup>

The price of art is also the result of deliberate value creation. Art appreciation is subjective.<sup>430</sup> Tastes can be manipulated: while the fundamental characteristics of art works drive prices, the art world reinforces and at times supercharges pricing through marketing and presentation.<sup>431</sup> The term 'art world' refers to the complex network of artists, professional art traders, public institutions, collectors, and academics involved in the creation, distribution, and appreciation of cultural property.<sup>432</sup> They are the critics that elevate one piece over another, the auction house marketeers that drive big sale events, the dealers who act as gatekeepers for new entrants to the art market. They have taste-making power through the respect they command and the marketing techniques they employ.<sup>433</sup> These parties also have the best information on the market. The fair market value of an object can be defined as the price at which *"the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy and sell and both having knowledge of relevant facts"*.<sup>434</sup>

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<sup>425</sup> Marina Bianchi, 'Positional Goods', *Encyclopedia of Consumer Culture* (SAGE Publications, Inc 2011) 1114-1115.

<sup>426</sup> Hirsch (n 423) 28.

<sup>427</sup> Hirsch (n 423) 18-20; Christian Knebel, 'Anomalies in Fine Art Markets - Three Examples of an Imperfect Market for Perfect Goods' (PhD, Universität Paderborn 2007) 12.

<sup>428</sup> Christine Alder and Kenneth Polk, 'Stopping This Awful Business: The Illicit Traffic in Antiquities Examined as a Criminal Market' (2002) 7 *Art Antiquity and Law* 39; Ravasi and Violina (n 91) 276-277; Velthuis (n 419) 34.

<sup>429</sup> William D Grampp, *Pricing the Priceless: Art, Artists and Economics* (First Printing edition, Basic Books 1989) 38.

<sup>430</sup> Olivier Chanel, 'Is Art Market Behaviour Predictable?' (1995) 39 *European Economic Review* 51; US Department of the Treasury (n 355) 19-20

<sup>431</sup> Velthuis (n 415) 181-215.

<sup>432</sup> Pierre Félix Bourdieu, *The Field of Cultural Production: Essays on Art and Literature* (Columbia University Press 1993) 76-78; K Marshall, 'A Framework for Identifying Factors That Influence Fine Art Valuations from Artists to Consumers' (2011) 117-119; Dominique Sagot-Duvaurox, 'Art Prices' in Ruth Towse (ed), *A Handbook of Cultural Economics* (2nd edn, Edward Elgar Publishing 2011) 43-44.

<sup>433</sup> D Sagot-Duvaurox, S Pflieger and B Rouget, 'Factors Affecting Price on the Contemporary Art Market' in Ruth Towse and Abdul Khakee (eds), *Cultural Economics* (Springer 1992) 91-102.

<sup>434</sup> William M Speiller, 'The Favored Tax Treatment of Purchasers of Art' (1980) 80 *Columbia Law Review* 227.

But because the seller usually has a significantly better access to this information, the buyer is put at a particular disadvantage in the art market. As a result, sellers are incentivised to keep information hidden to maximise this information advantage: this maximises their ability to create value.<sup>435</sup> At the same time, the information asymmetry creates opportunities for misbehaviour as it can be exploited: for example, when selling a forged artwork.<sup>436</sup> The relative dearth of supply and the intensity of demand does lead to legitimate enterprise such as the search for so-called “sleepers”: misattributed works that have been undervalued in the past.<sup>437</sup> Art traders generally distinguish themselves through their ability to source the pieces the market and their clients are looking for.<sup>438</sup> But the pressure to continuously provide pieces for clients, and maintain business liquidity and profitability while doing so, means art market traders and collectors have strong incentives to take risks in acquisition.<sup>439</sup>

### 3.3.3 The grey market

In *Kurtha v Marks*, the England and Wales High court found that “a dealer in valuable works of art who pays in large amounts of cash, keeps no records, and asks no questions as to provenance of his supplier, exposes himself, and those who buy from him, to other very serious risks”.<sup>440</sup> US courts have recognised that “it is a basic duty of any purchaser of an object d’art to examine the provenance for that piece”.<sup>441</sup>

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<sup>435</sup> Day (n 157) 463-467.

<sup>436</sup> Maria Marchenko, Anne-Sophie V Radermecker and Francesco Angelini, ‘How to Deal with Fakes in the Art Market? A Theoretical Model Exploring Labeling and Price-Setting Strategies at Auction’ (2021) 1; Francesco Angelini and Massimiliano Castellani, ‘Price and Information Disclosure in the Private Art Market: A Signalling Game’ (2022) 76 *Research in Economics* 14.

<sup>437</sup> Naomi Rea, ‘Meet Eric Turquin, the Art Historian-Detective Who Keeps Finding Multimillion-Dollar Old Masters Hiding in Plain Sight’ (*Artnet News*, 23 March 2022) <<https://news.artnet.com/art-world/eric-turquin-profile-2085629>> accessed 22 March 2023.

<sup>438</sup> Naomi Oosterman, Simon Mackenzie and Donna Yates, ‘Regulating the Wild West: Symbolic Security Bubbles and White Collar Crime in the Art Market’ (2022) 3 *Journal of White Collar and Corporate Crime* 9.

<sup>439</sup> Christine Alder, Duncan Chappell and Kenneth Polk, ‘Perspectives on the Organisation and Control of the Illicit Traffic in Antiquities in South East Asia’ in Stefano Manacorda (ed), *Organised crimes in Art and Antiquities* (Milan: International Scientific and Professional Advisory Council of United Nations Crime Prevention and Criminal Justice Programme 2009) 97; Simon Mackenzie, ‘Identifying and Preventing Opportunities for Organized Crime in the International Antiquities Market’ in Stefano Manacorda (ed), *Organised crimes in Art and Antiquities* (Milan: International Scientific and Professional Advisory Council of United Nations Crime Prevention and Criminal Justice Programme 2009) 160; Eber (n 116) 216-218; Brodie et al. (n 10) 2; Oosterman, Mackenzie and Yates (n 438) 9.

<sup>440</sup> *Kurtha v Marks* [2008] EWHC 336 (QB) para 140.

<sup>441</sup> *Hufnagel and King* (n 107) 135.

Nonetheless, art world professionals and institutions have been found to have turned a blind eye to the red flags in objects' appearance, provenance, and legal track record.<sup>442</sup> Some behaved as so-called “*Janus figures*”, after the two-faced Roman god, with one face towards illicit smuggling and the other towards global art market, acting as fences; acquiring illicit art, laundering it, and selling it on up the art market food chain.<sup>443</sup> The question whether there is a clear division between a licit art market and an illicit black market, or whether the market as a whole is better described as grey, acting as a conduit for both licit and illicit trading, is at the core of the debate around the nature of the market, art crime, and art crime policing.<sup>444</sup> On one side of this argument, proponents separate the legal art market, in which the large majority of the trade happens, from the illegal market, opining that art crime cases involve “*bad apples*” unrepresentative of the market as a whole.<sup>445</sup> On the other side of the debate, critics emphasise how the market structurally facilitates criminal behaviour.<sup>446</sup> The two sides of the debate roughly correspond to the two archetypes of the licit/illicit interface identified by Passas: the antithetical and the symbiotic relationship.<sup>447</sup>

In antithetical relationships criminals seek to “*infiltrate, extort, or bankrupt legal enterprises*”.<sup>448</sup> This is the way in which the “*bad apple*” side of the debate see the situation: bad actors harming legitimate businesses. This evidently happens in the art world: thefts from museums, galleries, and collectors are evident examples of an art crime with an antithetical relationship to the market.<sup>449</sup> It aligns with the

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<sup>442</sup> ‘Collectors Linked to Controversy over Counterfeit Russian Artworks Arrested in Belgium’ (*Artforum*, 3 January 2020) <<https://www.artforum.com/news/collectors-linked-to-controversy-over-counterfeit-russian-works-arrested-in-belgium-81809>> accessed 22 March 2023.

<sup>443</sup> Durney (n 400) 85; Tess Davis and Simon Mackenzie, ‘Crime and Conflict: Temple Looting in Cambodia’ in Joris D Kila and Marc Balcells (eds), *Cultural Property Crime: An Overview and Analysis of Contemporary Perspectives and Trends* (BRILL 2014) 180.

<sup>444</sup> Tijhuis (n 117) 143-166, 167-192; Blythe A Bowman-Proulx, ‘Transnational Crimes Against Culture: Looting at Archaeological Sites and the “Grey” Market in Antiquities’ (2008) 24 *Journal of Contemporary Criminal Justice* 233; Brodie (n 457) 20-21; Balcells (n 358) 104-108; Simon Mackenzie and Donna Yates, ‘What Is Grey About the “Grey Market” in Antiquities?’ in Jens Beckert and Matías Dewey (eds), *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy* (Oxford University Press 2017) 70-73, 80-83.

<sup>445</sup> Mackenzie (n 128) 70-74; Mackenzie and Yates (n 444) 73.

<sup>446</sup> Bowman-Proulx (n 444) 233; Kimberly L Alderman, ‘Honor amongst Thieves: Organized Crime and the Illicit Antiquities Trade’ (2012) 45 *Indiana Law Review* 618-623.

<sup>447</sup> Passas (n 406) 20.

<sup>448</sup> Passas (n 406) 22.

<sup>449</sup> Passas (n 406) 21.

idea that the art world and art market is primarily the victim of a few bad actors. But in other cases, the relationship is not so black-and-white. Given that *“illegal markets operate because there is a demand for what they offer”*, and that *“very often their clients are conventional and respected actors”*, symbiotic relationships also occur.<sup>450</sup> Passas identifies various types of symbiotic relationships based on the mutuality or one-sidedness of benefits, awareness of the links, the intent of participants and the degree of collaboration. Among these, the reciprocal symbiotic relationship and the relationship of systemic synergy are particularly apt descriptors for the art market.

The reciprocal interface is *“the most common interface, whereby legitimate or conventional actors are the clients for goods and services offered by criminals”* as there are *“consciously mutual benefits between the legal and illegal actors”*.<sup>451</sup> According to a French police officer working for the nation’s arts and antiques police unit, all art criminals *“have direct or indirect ties to art market professionals”*.<sup>452</sup> This can be observed in several high-profile cases where art market professionals were directly working with fraudsters and looters. The most well-known of these is perhaps the Medici case, in which art dealer Giacomo Medici for years worked with tomb raiders in Italy to source antiquities he sold on the art market.<sup>453</sup> Medici pieces ended up in high-profile institutions such as the Metropolitan Museum of Art, and auction houses, collectors, museums, and galleries continue to run into trouble for dealing in suspected Medici pieces to this day.<sup>454</sup>

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<sup>450</sup> Passas (n 406) 22-25.

<sup>451</sup> Passas (n 406) 23.

<sup>452</sup> Pablo Agnan, ‘OCBC : portrait d’un office spécialisé dans le trafic d’art’ (‘OCBC: portrait of an office specialised in art trafficking’) [2020] *Gendinfo.fr* <<https://www.gendinfo.fr/sur-le-terrain/immersion/2020/ocbc-portrait-d-un-office-specialise-dans-le-traffic-d-art>> accessed 22 March 2023.

<sup>453</sup> Neil Brodie, ‘The Antiquities Trade: Four Case Studies’ in Duncan Chappell and Saskia Hufnagel (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives* (Routledge 2014) 16-23.

<sup>454</sup> David WJ Gill and Christos Tsirogiannis, ‘Polaroids From the Medici Dossier: Continued Sightings on the Market’ in Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves* (Palgrave Macmillan 2016) 229-236; ‘Artifacts Seized from Prominent New York Collector as US Authorities Push to Return Looted Treasures - ICIJ’ (6 December 2022) <<https://www.icij.org/investigations/hidden-treasures/artifacts-seized-from-prominent-new-york-collector-as-us-authorities-push-to-return-looted-treasures/>> accessed 22 March 2023; Claire Yoon, ‘Authorities in New York Return 14 Looted Artefacts Valued at \$2.5m to Italy, Including a Black-Figure Hydria by the Renowned Priam Painter’ *The Art Newspaper - International art news and events* (3 February 2023) <<https://www.theartnewspaper.com/2023/02/03/repatriation-14-looted-antiquities-new-york-italy>> accessed 22 March 2023.

In the case of systemic synergy, “legal and illegal actors benefit each other while they go about their business independently promoting their interests and objectives”.<sup>455</sup> Passas notes “there may be no knowledge, intent or even reasonable suspicion of such a link” but also acknowledges that “in some cases, of course, suspicions may be ‘cured’ by efforts to avoid any knowledge”.<sup>456</sup> This quote is echoed in Neil Brodie’s comments on the art market: “Collectors and institutions are forced to choose whether to believe that all unprovenanced antiquities are illicit, unless proven otherwise, or that they are all licit, unless proven otherwise. Many if not most have in the past chosen the latter assumption, falling back on [...] the principle of ‘innocent unless proven guilty’”.<sup>457</sup>

All of this is aided by the fact the art market is relatively unregulated. This is not to say fully unregulated: civil and criminal law of course apply.<sup>458</sup> And some legislation designed with art crime and the art world specifically in mind does exist.<sup>459</sup> There has been an increasing impetus to address primarily the looting of antiquities in the wake of Daesh’s destruction and looting of ancient sites in the Levant, with its associated suspicions of terrorist funding through the illicit trafficking of antiquities.<sup>460</sup> Art money laundering has also moved up the legislative agenda.<sup>461</sup> But tailored criminal law remains rare.<sup>462</sup> Meanwhile, art market participants themselves have created codes of ethics to

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<sup>455</sup> Passas (n 406) 24.

<sup>456</sup> Passas (n 406) 24.

<sup>457</sup> Brodie (n 453) 20.

<sup>458</sup> Hufnagel and King (n 107) 132-133.

<sup>459</sup> David Bellingham, ‘Ethics and the Art Market’ in Iain Robertson and Derrick Chong (eds), *The Art Business* (Routledge 2008) 176-177; Duncan Chappell and Kenneth Polk, ‘Unraveling the “Cordata”: Just How Organized Is the International Traffic in Cultural Objects?’, *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property* (2011) 101; Bert Demarsin, *Knelpunten Bij de Koop van Kunst- En Cultuurvoorwerpen* (Issues with the Purchase of Art And Cultural Objects ) (Bernard Tilleman and Alain-Laurent Verbeke eds, Intersentia 2015) 3.

<sup>460</sup> UNGA Res 69/281 GAOR 69<sup>th</sup> session Supp 49; UNGA Res 70/76 GAOR 70<sup>th</sup> session Supp 49; UNGA Res 70/178 GAOR 70<sup>th</sup> session Supp 49; Robbie Gramer, ‘UNESCO Fights Back As ISIS Tries to Stamp Out Culture’ (*Foreign Policy*) <<https://foreignpolicy.com/2017/04/12/unesco-united-nations-isis-islamic-state-cultural-antiquities-trade-irina-bokova-refugees-heritage/>> accessed 22 March 2023; European Parliament, ‘European Parliament Legislative Resolution of 12 March 2019 on the Proposal for a Regulation of the European Parliament and of the Council on the Import of Cultural Goods’ (12 March 2019).

<sup>461</sup> Directive (EU) 2018/843 (n 134); US Department of the Treasury (n 355); Mosna (n 126) 304-305.

<sup>462</sup> Stefan Gruber, ‘Perspectives on the Investigation, Prosecution and Prevention of Art Crime in Asia’ in Duncan Chappell and Saskia Hufnagel (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives* (Routledge 2014) 225-226.

self-govern, but these often remain aspirational and are usually not strictly sanctioned.<sup>463</sup> It has made for a system reliant on peer review and social control for policing, lacking in external objectivity.<sup>464</sup> The market eschews increased external controls, arguing there is no need for cumbersome bureaucracy, seeking to protect well-worn trade customs, and warning against measures damaging the legitimate market more than they deter criminal activity.<sup>465</sup>

The market has developed a culture of trust, enabling participants to bank on the idea that someone else among previous owners will have done the requisite due diligence.<sup>466</sup> And if it can be established that a previous owner failed due diligence in selling works on, damages can be recovered from them, and blame displaced.<sup>467</sup> This makes for a context in which *“trust networks develop into privacy networks, which devolve over time into secrecy networks, where crime routines can remain hidden from regulatory scrutiny while being well understood and routinely practiced by the participants on the inside”*.<sup>468</sup> Indeed, it is a type of crime that tends to draw in, with or without direct intent, persons and institutions *“of respectability and high social status in the course of his occupation”*, leading it to be characterised as a classic example of white-collar crime.<sup>469</sup> And because trust and reputation are so important, not all victims of art crime report the crime. They often fear the reputational and by consequence economic damage that can result from it becoming public knowledge that a theft occurred, or a piece was discovered to be forged or looted.<sup>470</sup> As a result, much art crime goes undetected, making it difficult to establish the size of the problem.

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<sup>463</sup> Bellingham (n 459) 177.

<sup>464</sup> Flynn (n 157) 23-24; Pryor (n 11) 142.

<sup>465</sup> Pryor (n 11) 146; Hufnagel and King (n 107) 137, 141.

<sup>466</sup> Oosterman, Mackenzie, and Yates (n 438) 9.

<sup>467</sup> Oosterman, Mackenzie and Yates (n 438) 10-13.

<sup>468</sup> Oosterman, Mackenzie and Yates (n 438) 8.

<sup>469</sup> Balcells (n 358) 97.

<sup>470</sup> Tjihuis (n 117) 116-117; Flynn (n 157) 23; Patrick J O’ Keefe, ‘Difficulties in Investigating Art Crime and Recovering Its Proceeds: An International Perspective’ in Duncan Chappell and Saskia Hufnagel (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives* (Routledge 2014) 153; Hufnagel (n 9) 43-45.



Besides the art market being hermetic, there is also an endemic lack of transparency in the art market.<sup>471</sup> Not only are traders incentivised to gatekeep information, but confidentiality has been a key feature of the art market since the Italian Renaissance.<sup>472</sup> This is also true on the collector side of things: while collectors may want to signal their wealth by collecting art, they do not necessarily want to signal this wealth to the public at large for fear of painting a target on their back. This makes for a non-transparent market, and “today, it is not unusual for one transaction to use several intermediaries, without disclosing the names of the buyer and seller”.<sup>473</sup> Shell companies are also used to ensure anonymity.<sup>474</sup> This appetite for anonymity has gone hand in hand with an aversion to formality: art deals are still often made without written contracts, and there is a notable informality in how the market operates considering the amount of money that is involved.<sup>475</sup> The associated lack of thorough record-keeping significantly complicates the establishment of good title in later disputes.<sup>476</sup> Another aspect in which the market is non-transparent is the way in which art moves throughout the world. The art market has gone global, and accordingly art works move across borders. Art itself is also relatively easy to move, and customs forces do not always have sufficient expertise to spot a suspicious work of art or questionable paperwork.<sup>477</sup>

### 3.3.4 The art crime *modus operandi*

Art criminals exploit all of these vulnerabilities in the market in various ways.<sup>478</sup> Given the subjectivity and malleability of art prices criminals can more easily manipulate the price of artworks presented on

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<sup>471</sup> Jeremy Eckstein, ‘Investing in Art: Art as an Asset Class’ in Iain Robertson and Derrick Chong (eds), *The Art Business* (Routledge 2008) 80; Durney and Proulx (n 96) 121; O’ Keefe (n 470) 151; Flynn (n 157) 19-30.

<sup>472</sup> Tjihuis (n 117) 116-117; Flynn (n 157) 23.

<sup>473</sup> Hufnagel and King (n 107) 135.

<sup>474</sup> US Department of the Treasury (n 355) 20-21.

<sup>475</sup> Antony Dapiran, ‘Art Law Self-Help: Contracting without a Contract’ *ArtAsiaPacific* 167; Demarsin (n 459) 3; Flynn (n 157) 25.

<sup>476</sup> Neil Brodie, ‘Introduction’ in Neil Brodie and Kathryn Walker Tubb (eds), *Illicit Antiquities: The Theft of Culture and the Extinction of Archaeology* (Routledge 2002) 2-3; O’ Keefe (n 470) 156-158; Rothfield (n 521) 255-256.

<sup>477</sup> Eber (n 116) 212-213; US Department of the Treasury (n 355) 4, 18-19.

<sup>478</sup> Tjihuis (n 117) 192; Nikos Passas and Blythe Proulx, ‘Overview of Crimes and Antiquities’ in Stefano Manacorda and Duncan Chappell (eds), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property* (Springer 2011) 63.

export papers without being caught.<sup>479</sup> For example, Edemar Cid Ferreira, the Brazilian Banco Santos owner who unlawfully used Banco Santos funds for his own interest, illegally imported a work of art estimated to be worth eight million US dollars into the United States from the Netherlands with an invoice that valued the work at a mere hundred US dollars before later being caught.<sup>480</sup> Here, too, the trail can be obscured.<sup>481</sup> Objects are often moved via free ports.<sup>482</sup> The more relaxed rules for import and export that apply to freeports make it difficult to establish exactly what is being stored in them by whom, and so freeports can be used to obfuscate the illicit origins of art or facilitate money laundering through art.<sup>483</sup>

Art criminals also prey on the intense demand for art. There continues to be a demand for illegally acquired art, especially antiquities, and so art criminals continue to have a clear avenue to monetise their crimes. They can exploit the pressures art professionals are under for their own gain: as the market systematically incentivises risk-taking in acquisition, art fraudsters, thieves, looters, and launders find it easier to find willing clients. Collectors are conditioned to accept incomplete information about the market and potential acquisitions, and so criminals find it easier to find buyers for their pieces, especially if they mimic the presentation common in the art market. The opacity of the market makes it easier for criminals to cover up the crime. The commonality and acceptance for anonymous intermediaries in the market makes it easier for criminals to disappear amongst the crowd. The informality within the market and the lack of written contracts and paper trails further

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<sup>479</sup> US Department of the Treasury (n 355) 4

<sup>480</sup> Fausto Martin De Sanctis (n 12) 104-109; US Department of the Treasury (n 355) 4.

<sup>481</sup> Nelson (n 107) 197-201; Brodie et al. (n 10) 2-10; US Department of the Treasury (n 355) 19-24; Bichler, Bush and Malm (n 356) 360-361, 372-376; Hufnagel and King (n 107) 136.

<sup>482</sup> Fiona Greenland, 'Free Ports and Steel Containers: The Corpora Delicti of Artefact Trafficking' (2020) 29 *History and Anthropology* 15; Mirosław Michał Sadowski, 'Mapping the Art Trade in South East Asia: From Source Countries via Free Ports to (a Chance for) Restitution' (2021) 34 *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* 674-675

<sup>483</sup> Bowman-Proulx (n 444) 233; Alderman (n 446) 618-623; Hufnagel and King (n 107) 136; Mosna (n 126) 311-313.

compounds these opportunities.<sup>484</sup> Weak regulatory systems, finally, diminish the chances of getting caught.

All of this said, many art market and art world participants do their best to apply due diligence, and work in the belief that they have a duty as custodians to take good care of the art they handle. However, it is clear that there are structural vulnerabilities in the art market for criminals to exploit. As such, the truth is in the middle: while the problem is larger than a few bad apples, it is unfair and substantially untrue to paint the entire market with the same brush. The way the market operates makes for a specific and ambiguous context for art crime to take place: a context where, structurally, the line between the legitimate and the dubious can be thin. The relative ease with which art can cross borders, the opacity of the art trade, the vagaries of art valuation, gaps in art security, and the lack of oversight of the market all contribute to the distinct ways in which art crime occurs.<sup>485</sup> Works of art can be the subject, the object, or the means to commit a wide variety of crimes.<sup>486</sup> This is true for other objects, and other high-end markets exhibit similar vulnerabilities, but only in the art world are they present to these levels.<sup>487</sup> It is the association with the unique market in art which leads to the specific *modi operandi* for art crime.

### 3.3.5 The impact of art crime

A final thing to note regarding the distinctiveness of art crime is its impact. Art crime is not a ‘victimless’ crime.<sup>488</sup> In the first place, art crime threatens the world’s heritage, and what those objects represent: a connection to our past and a path to understanding our identities.<sup>489</sup> Trafficking

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<sup>484</sup> Hufnagel (n 9) 43

<sup>485</sup> Nelson (n 107) 197-201; Bichler, Bush and Malm (n 356) 360-361, 372-376; Hufnagel and King (n 107) 150; Brodie et al. (n 10) 2-10; US Department of the Treasury (n 355) 19-24.

<sup>486</sup> Hufnagel (n 9) 41.

<sup>487</sup> Mazurek (n 357) 418; Hufnagel and King (n 107) 136.

<sup>488</sup> Kila and Balcells (n 15) 366; Chappell and Hufnagel (n 110) 3-4; Noah Charney, ‘Introduction to Part I’ in Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves* (Palgrave Macmillan 2016) 3.

<sup>489</sup> Stubbs (n 11) 232-234; Tracey Citron, ‘Working with Art Detective Charley Hill’ (*The Art Detective’s Muse*, 21 January 2013) <<https://theartdetectivesmuse.wordpress.com/2013/01/21/my-first-three-mont-working-with-art-sleuth-charley-hill/>> accessed 22 March 2023; Kerr (n 1) 7; Rapley (n 12) 35-36.

antiquities reduces to mere commodities art works that for their people of origin are imbued with deep meaning.<sup>490</sup> Art's symbolic value thus makes art crime's impact deeper and more widely felt.<sup>491</sup> But there also more prosaic consequences to art crime. Illegally excavating antiquities destroys crucial archaeological context.<sup>492</sup> This is of lesser concern to looters, who ignore objects they deem worthless while not properly recording the location of their digs.<sup>493</sup> Without precise information on the location and context of finds, however, crucial information for the understanding of the past is lost. Fakes and forgeries, meanwhile, lead to false inclusions to artist's oeuvres, resulting in the corruption of public galleries, museums, and libraries' records.<sup>494</sup> This affects consumer confidence, which in turn damages the legitimate market, which remains a significant economic generator.<sup>495</sup> When objects are damaged or destroyed, they are irretrievably lost.<sup>496</sup> When they are stolen from public collections, they are lost to the public. As such, the victims of art range far beyond the wealthy, and art crime has a wide-ranging impact that goes beyond the purely monetary.

Even so, public policy, has, so far, not shown itself as concerned with art crime. The most recent surveys of art crime policing in Europe indicate that in most countries art crime policing is given low priority.<sup>497</sup> One of the reasons for this is the lack of quantitative data on art crime. Crime is, by its nature, secretive, and as such there is always a dark figure comprising crimes that have gone undetected.<sup>498</sup> The problem is particularly pressing for art crime, however, as many police forces do

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<sup>490</sup> Stephen Nall, 'An Australian Art Dealer's Perspective on Art Crime' in Duncan Chappell and Saskia Hufnagel (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime: Australasian, European and North American Perspectives* (Routledge 2014) 101.

<sup>491</sup> Dobovšek and Slak (n 10) 395-396.

<sup>492</sup> Fincham (n 11) 3-8.

<sup>493</sup> Fincham (n 11) 3-6; Pryor (n 11) 78.

<sup>494</sup> Rapley (n 12) 36; Flynn (n 157) 29-30; Pryor (n 11) 80.

<sup>495</sup> Polk and Chappell (n 12) 83; Fausto Martin De Sanctis (n 12); Kerr (n 1) 7-8; Rapley (n 12) 35.

<sup>496</sup> Gillespie (n 13) 191-206; Francesco Rutelli, 'The Return of Iconoclasm' in Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves* (Palgrave Macmillan 2016) 143-149.

<sup>497</sup> Oosterman (n 7) 216-227; Runhovde (n 235) 1737

<sup>498</sup> Mike Maguire, 'Criminal Statistics and the Construction of Crime' in Mike Maguire, Rod Morgan and Robert Reiner (eds), *Oxford Handbook of Criminology* (5th edn, Oxford University Press 2012) 207-218, 221; Balcells (n 114) 33; Neil Brodie et al. (n 10) 1.

not differentiate crimes involving art from other crimes in their records.<sup>499</sup> By consequence, only “*outline indicators*” of the size of the problem are available, such as the arrest and seizure figures the police release upon the completion of art crime operations or the size of stolen arts databases.<sup>500</sup> Due to the lack of clarity on the size of the art crime problem, many police forces find it difficult to justify the deployment of resources necessary to combat it effectively. This then increases the difficulty detecting art crime, and decreases the risk for art criminals.<sup>501</sup> It is a vicious cycle: it is difficult for police and government to invest in art crime policing without hard numbers supporting that decision, but those are not produced when police and government do not invest the resources and time necessary for comprehensive statistics.<sup>502</sup> But these resources are necessary, because art crime policing requires skills beyond the standard police repertoire.

## 3.4 Policing art crime

### 3.4.1 A specialist task

According to the experiences of the members of EU CULTNET, a network involving police officers active in art crime policing, the “*efficient*” policing of art crime requires “*a specialised police unit or at least a few specialised staff members [within the police force] with the necessary expertise*”.<sup>503</sup> Art crime investigations require a range of skills. In the first place, many of these skills are necessary for any successful prosecution of crime: investigators need to gather evidence and pursue suspects.<sup>504</sup> The extensive powers of the police, including the ability to search suspects and premises, obtain

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<sup>499</sup> AJG Tjhuis, ‘Who Is Stealing All Those Paintings?’ in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger/ABC-CLIO 2009) 41; Bazley (n 11) 13-14; Passas and Proulx (n 478) 60; Balcells (n 114) 33; Naomi Oosterman and Francesco Angelini, ‘One Flew Over the Cuckoo’s Clock: Selling Exclusivity Through Conspicuous Goods on Evolution’ in Naomi Oosterman and Donna Yates (eds), *Crime and Art: Sociological and Criminological Perspectives of Crimes in the Art World* (Springer International Publishing 2021) 282.

<sup>500</sup> Brodie et al. (n 10) 1.

<sup>501</sup> Block (n 7) 189-197; Christa Roodt and Bernadine Benson, ‘Databases for Stolen Art - Progress, Prospects and Limitations’ (2015) 2015 SA Crime Quarterly 8-10; Oosterman (n 7) 216-226; Oosterman and Angelini (n 499) 269; Brodie et al. (n 10) 1.

<sup>502</sup> Brodie et al. (n 10) 7; Runhovde (n 235) 1733, 1740.

<sup>503</sup> Belgian Senate (n 137) 127-128.

<sup>504</sup> O’ Keefe (n 470) 156; Gruber (n 462) 225; Bull (n 407) 50-59; Interpol (n 128) 8.

records, and utilise surveillance techniques, provide it with a formidable toolkit to pursue investigations.<sup>505</sup> Even so, the police must always be able to justify the usage of these techniques per the applicable laws and police regulations. If evidence is successfully gathered, it must still meet the requisite burden of proof to arrive at successful prosecution.<sup>506</sup> This can be especially challenging in art crime cases, for example for fraud because intent to deceive is hard to prove in the opaque art world or for art looting and trafficking because it is difficult to prove where and when an object was looted.<sup>507</sup> Art crime investigators also need an additional awareness of the relevant cultural property legislation, both on the national and international level.<sup>508</sup> This includes laws regarding state ownership of art and heritage protection law.<sup>509</sup> Art crime also often crosses borders, which brings with it the challenges of bridging multiple legal regimes and policing approaches.<sup>510</sup> Nonetheless, to a significant extent, conventional investigation methods apply.<sup>511</sup>

But policing art crime also requires skills that go beyond the conventional police toolkit. It requires subject expertise. In the first place, the objects themselves require specific expertise to handle and police. If art works are seized or retrieved during an investigation, they must be stored pending resolution. This requires expert, object-based knowledge as well as the appropriate facilities.<sup>512</sup> Art-related expertise is also necessary to combat the crimes themselves. Authenticating an artwork is a

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<sup>505</sup> Rapley (n 12) 37; Runhovde (n 235) 1734.

<sup>506</sup> Derek Fincham, 'Transnational Forfeiture of the Getty Bronze' in Joris D Kila and Marc Balcells (eds), *Cultural Property Crime: An Overview and Analysis of Contemporary Perspectives and Trends* (BRILL 2014); O' Keefe (n 470) 152; Rapley (n 12) 35.

<sup>507</sup> Lisa J Borodkin, 'Economics of Antiquities Looting and a Proposed Legal Alternative' (1995) 95 *Columbia Law Review* 395; Dobovšek and Slak (n 10) 401; Rapley (n 12) 35; Mazurek (n 357) 431; Hufnagel (n 9) 60.

<sup>508</sup> Patty Gerstenblith, 'The Meaning of 1970 for the Acquisition of Archaeological Objects' (2013) 38 *Journal of Field Archaeology* 365; Stefano Manacorda, 'Criminal Law Protection of Cultural Heritage: An International Perspective' in Stefano Manacorda and Duncan Chappell (eds), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property* (Springer 2011) 30; Patrick J O' Keefe and Lyndel V Prott, *Cultural Heritage Conventions and Other Instruments: A Compendium with Commentaries* (Institute of Art And Law 2011) 64-65; O' Keefe (n 470) 164-165; Janet Blake, 'Trafficking in Cultural Property: Where Cultural Heritage Law and the International Fight Against Transnational Organized Crime Coincide', *Intersections in International Cultural Heritage Law* (Oxford University Press 2020) 159-162.

<sup>509</sup> Hufnagel (n 9) 46.

<sup>510</sup> O' Keefe (n 470) 163-164

<sup>511</sup> Runhovde (n 235) 1734-1735.

<sup>512</sup> O' Keefe (n 470) 162-163.

complex affair.<sup>513</sup> Traditionally, connoisseurship was considered the cornerstone of establishing authenticity.<sup>514</sup> This was a task for art experts, who by dint of their ‘expert eye’, trained by years of engagement with the oeuvre of the artist(s) they focused on, were expected to be able to establish which works were made by those artist(s) and which were not. But the expert eye is subjective, and has been fooled.<sup>515</sup> In more recent times the rapidly developing forensic method of analysis of art fraud has come to the forefront, especially since the Wolfgang Beltracchi case, in which a prolific fraudster was caught due to scientific analysis revealing a Beltracchi forgery of a Heinrich Campendonk piece contained a pigment that did not exist during Campendonk’s lifetime.<sup>516</sup> As a result, the expert eye is currently no longer considered the sine qua non for art fraud investigations.<sup>517</sup>

A third element in authenticating an artwork is its provenance, which is its record of ownership. Provenance records can be and have been forged, thus requiring the skills to identify fraud here as well.<sup>518</sup> But interpreting even genuine provenance is a complex task.<sup>519</sup> And good records are often absent.<sup>520</sup> It is hard to determine which pieces were excavated illegally and which were not, and their origins are extremely difficult to trace, if the looting parties did not keep quality records of their

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<sup>513</sup> Robyn Sloggett, ‘Considering Evidence in Art Fraud’ in Duncan Chappell and Saskia Hufnagel (eds), *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime* (Routledge 2014) 125-133; Rapley (n 12) 37; Katie Dixon and Zachary Shufro, ‘Risky Business: Fraud, Authenticity, and Limited Legal Protections in the High Art Market Notes’ (2020) 10 *New York University Journal of Intellectual Property & Entertainment Law (JIPEL)* 261-268.

<sup>514</sup> Jos Hackforth-Jones, ‘Connoisseurship’ in Jos Hackforth-Jones and Iain Robertson (eds), *Art Business Today: 20 Key Topics* (Lund Humphries 2016) 93; Dixon and Shufro (n 513) 262.

<sup>515</sup> Jonathan Lopez, *The Man Who Made Vermeers: Unvarnishing the Legend of Master Forger Han Van Meegeren* (Mariner Books 2008).

<sup>516</sup> Hackforth-Jones (n 51413) 95; Jos Hackforth-Jones, ‘Authenticity’ in Jos Hackforth-Jones and Iain Robertson (eds), *Art Business Today: 20 Key Topics* (Lund Humphries 2016) 100-102; Saskia Hufnagel and Duncan Chappell, ‘The Beltracchi Affair: A Comment and Further Reflections on the “Most Spectacular” German Art Forgery Case in Recent Times’ in Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves* (Palgrave Macmillan 2016) 12-13; Rapley (n 12) 36-38; Charney (n 403) 298; Saskia Hufnagel, ‘Case Study 1: Beltracchi and the History of Art Fraud in Germany’ in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Springer 2019) 337-338.

<sup>517</sup> Vincent Noce, ‘Frans Hals Court Case May Be Settled but It Raises Questions over Science, Scholars and Contracts’ *artnet News* (30 April 2019) <<http://theartnewspaper.com/news/frans-hals-court-case-questions-science-scholars-and-contracts>> accessed 22 March 2023.

<sup>518</sup> Borodkin (n 507) 383; Dixon and Shufro (n 513) 269-272; Oliveri et al (n 253) 189-191.

<sup>519</sup> Johannes Gramlich, ‘Reflections on Provenance Research: Values – Politics – Art Markets’ (2017) 1 *Journal for Art Market Studies* 1-14; Oliveri et al (n 253) 180.

<sup>520</sup> Fincham (n 11) 3-6; Pryor (n 11) 30; Flynn (n 157) 26-27.

operations.<sup>521</sup> Without good inventory practices, it can take years to establish a piece has been stolen in the first place. Expertise is needed to establish a place of origin of looted objects in spite of these challenges, as well as to identify stolen objects circulating in the art market.<sup>522</sup>

Beyond art-historical skills, it is important to be aware of the way in which the art market operates, given the way this conditions art crime itself. As the illegal art market reflects the legal market, art crime policing actors need to know the latter in order to plug gaps in art security. Without a sense of the art market, it is much more difficult to track and analyse developments in art crime and identify (repeat) offenders.<sup>523</sup> For example, combatting art money laundering takes insight into the way freeports operate, how art is valued, and how art travels to spot red flags the uninitiated might miss.<sup>524</sup> But information can be difficult to come by. The art trade remains an opaque and secretive world which often will not be willing to disclose information that could be crucial for art crime policing, such as the identity of the consignor for a stolen piece appearing at auction, unless compelled.<sup>525</sup> In this context it takes time and skill to identify which actors can be worked with and which cannot; the risk of conflicts of interest is significant and all participants to cooperative schemes risk significant reputation and legitimacy damage if some are later found to have acted unethically or worse.<sup>526</sup>

Art crime is not unique in requiring such subject expertise.<sup>527</sup> Other forms of crime, such as drugs trafficking, are also a specialist subject matter.<sup>528</sup> Nonetheless, the confluence of expertise and skills needed make art crime policing a specialised form of policing. It is clear that the police, with their

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<sup>521</sup> Fincham (n 11) 3-12; Pryor (n 11) 30; Lawrence Rothfield, 'Antiquities Crime as a Policy Problem' in Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves* (Palgrave Macmillan 2016) 258.

<sup>522</sup> Durney and Proulx (n 96) 116; Laurie Watson Rush, 'Illicit Trade in Antiquities: A View "From the Ground"' in Francesco Francioni and James Gordley (eds), *Enforcing International Cultural Heritage Law* (Oxford University Press 2013) 73-74; O' Keefe (n 470) 156-159; Lynda Albertson, 'Repatriation: The Case of the Stolen TEFAF Buddha' (*ARCAblog*, 15 August 2018) <<http://art-crime.blogspot.com/2018/08/repatriation-case-of-stolen-tefaf-buddha.html>> accessed 22 March 2023.

<sup>523</sup> O' Keefe (n 470) 154-155; Runhovde (n 235) 1737.

<sup>524</sup> Hufnagel and King (n 107) 136.

<sup>525</sup> O' Keefe (n 470) 151-152; Pryor (n 11) 146.

<sup>526</sup> Hufnagel (n 9) 46.

<sup>527</sup> Martin Innes, 'Investigation Order and Major Crime Inquiries' in Tim Newburn, Tom Williamson and Alan Wright (eds), *Handbook of Criminal Investigation* (Willan Publishing 2007) 263-264.

<sup>528</sup> Mazurek (n 357) 429-430.



crime investigation capacities and their authority to use force, will continue to have a crucial role in policing art crime: “If cultural heritage has a future, police power will be integral to how it is imagined and experienced”.<sup>529</sup> This is especially true for specialised art crime police units, who combine generalist investigatory knowhow with specialist training and built-up expertise.<sup>530</sup> This allows such units to play a leading role.<sup>531</sup> But despite the attention art crime attracts and specialised units’ advocacy for continued investment into combatting the issue, most European countries give art crime a low priority.<sup>532</sup> As a corollary many police forces do not have all the skills necessary for combatting art crime available in-house. And even specialist units encounter limits to their knowhow. Thus, expertise must be found elsewhere.<sup>533</sup> It can be found with private actors.

### 3.4.2 Plural art crime policing

Policing, as a set of activities and processes responding to criminal behaviour, encompasses activities that prevent art crime from taking place as well as activities that seek to remedy art crime.<sup>534</sup> Such activities and processes are not only done by police forces. The concept of plural policing emphasises the broad and varied set of entities that police. This extends to the art world and art crime policing. Private entities perform various aspects of art crime policing, independently from any association with the police. They can have art crime policing as a primary focus. Such is the case for private art security companies. Site security is crucial in art crime.<sup>535</sup> Per Routine Activity Theory, crime occurs in the situation where there is a motivated offender, a suitable target, and an absence of a capable

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<sup>529</sup> Bazley (n 11) 170; Pryor (n 11) 107-109; Fiona Greenland, ‘Art Crime and the Myth of Violence Foundational Questions for a Critical Analysis of Art Policing’ in Naomi Oosterman and Donna Yates (eds), *Crime and Art: Sociological and Criminological Perspectives of Crimes in the Art World* (Springer International Publishing 2021) 173-174.

<sup>530</sup> Greenland (n 529) 174.

<sup>531</sup> Greenland (n 529) 173-174; John Kerr, ‘The State of Heritage and Cultural Property Policing in England & Wales, France and Italy’ (2020) 17 *European Journal of Criminology* 445.

<sup>532</sup> Block (n 7) 187-205; Oosterman (n 7) 216-226.

<sup>533</sup> Willems-Hirsch (n 8) 39-40; Kerr (n 1) 50, 108-109, 140, 144-145; Interpol (n 128) 7.

<sup>534</sup> Rogers (n 38) 6; Malochet (n 38) 2/15.

<sup>535</sup> Donald L Mason, *The Fine Art of Art Security: Protecting Public and Private Collections against Theft, Fire, and Vandalism* (Van Nostrand Reinhold Co 1979).

guardian.<sup>536</sup> Private art security companies intervene in the latter two aspects: they decrease the suitability of the target by implementing target hardening measures or help make sure there are capable guardians on site.<sup>537</sup> This is their primary business. Private art detectives also have art crime policing activities as their primary occupation, including gathering intelligence on crimes and assisting in recovery.<sup>538</sup> Notably, some of the most high-profile private art detectives have previous history working for specialised art crime units.<sup>539</sup> Private databases such as the Art Loss Register and Artive host stolen art databases, allowing checks of whether pieces in the market were possibly stolen. Some of these databases also offer recovery services.<sup>540</sup>

More commonly, though, art crime policing is a secondary or tertiary focus embedded in other functions.<sup>541</sup> Most of these embedded activities are preventative. The first of these is due diligence. The concept of due diligence is present in various legal instruments, case law, and is also found in industry self-regulation and ethical rules. It can be, as stated above, broadly defined as the process through which the legal and ethical credentials of pieces and clients are verified. Nonetheless, there exists no standardised definition of due diligence in the art market, and the precise scope of due diligence has not been definitively enumerated.<sup>542</sup> The Responsible Art Market initiative, a non-profit art market organisation founded in Geneva to *“raise awareness amongst art businesses of risks faced by the art industry in Switzerland and abroad and to provide practical guidance and a platform for the sharing of best practices to address those risks”*, identifies three main aspects to art market due diligence in the due diligence toolkit hosted on its website.<sup>543</sup> The first of these is client due diligence,

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<sup>536</sup> Conklin (n 89) 119; Balcells (n 358) 100-101.

<sup>537</sup> Bazley (n 11) 181-182.

<sup>538</sup> Derek Fincham, ‘An Empty Frame: Thinking about Art Crime’ (2010) 3 *Journal of Art Crime* 87; Noah Charney, ‘Understanding Art Crime’ (2020) 24 *Journal of Art Crime* 38.

<sup>539</sup> Interview Charley Hill d.d. 30/10/2020; Interview private consultant d.d. 30/11/2020.

<sup>540</sup> Roodt and Benson (n 501) 10.

<sup>541</sup> Shearing and Stenning (n 35) 7.

<sup>542</sup> Olivia Sladen, ‘Faking History: How Provenance Forgery Is Conning the Art World’ (2010) 3 *Journal of Art Crime* 48; Sandrine Giroud and Charles Boudry, ‘Art Lawyers’ Due Diligence Obligations: A Difficult Equilibrium between Law and Ethics’ (2015) 22 *International Journal of Cultural Property* 403-406.

<sup>543</sup> ‘Art Transaction Due Diligence Toolkit’ (*Responsible Art Market*) <<http://responsibleartmarket.org/guidelines/art-transaction-due-diligence-toolkit/>> accessed 22 March 2023.

which entails checking client's identities, the nature of and people involved with any legal person involved, and finally clients' roles and authority to act. The second aspect, artwork due diligence, entails the establishment of the authenticity, condition, legal circumstances, ownership, provenance, location, and recent movements of any artwork an art business is considering handling. The third is transaction due diligence, which is the ascertainment of the background and purpose of the art transaction itself. While the precise requisites of each of these three aspects of due diligence may vary depending on the precise context of the specific art transaction, these three elements are always part of a good faith due diligence process.<sup>544</sup>

The 5<sup>th</sup> EU Money Laundering Directive has imposed some aspects of client and transaction due diligence. The Directive obligates any *"persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses"* as well as *"persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports"* to, amongst other obligations, perform customer background checks and monitor and report potentially suspicious activity, if the *"value of the transaction or a series of linked transactions amounts to EUR 10 000 or more"*.<sup>545</sup> For object due diligence, experts, including art historians, archaeologists, restorers, and provenance researchers are crucial. They can identify pieces, distinguish fake from genuine, establish whether an object was likely looted, and advise on vandalism. Such experts are on-hand in the academic world as well as in museums, auction houses, and galleries, or are working independently. Legal experts also play an important role regarding legal title and due diligence overall: they advise clients on potential risks associated with art transactions and under specific circumstances are obliged to notify the authorities of criminal activity.<sup>546</sup> As such, a broad range of actors can be involved with due diligence, and it is in due diligence that art crime policing expertise is operationalised, as subject knowledge is applied to specific challenges.

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<sup>544</sup> Giroud and Boudry (n 542) 406.

<sup>545</sup> Article 1 Directive (EU) 2018/843 (n 134).

<sup>546</sup> Giroud and Boudry (n 542) 407-410.

A second form of preventative policing is ascertaining art security. While this is the primary goal of specialised security companies, entities such as museum, auction houses, storage firms, and galleries also have to safely store, exhibit, and/or transport art works. Improved site security can also be the result of insurance companies asking for higher premiums if they assess site security to be low.<sup>547</sup> In this way, insurance drives security measures and promotes preventative practices. But insurance companies also play a role in recovery.<sup>548</sup> Insurance companies have offered rewards and hired individuals such as private detectives in their attempts at recovery.<sup>549</sup> Other players also help in recovery. Heritage organisations, museums, and security can be crucial in establishing a crime has taken place and notify the relevant authorities; quick alerts of crime are crucial in successfully redressing the crime.<sup>550</sup> Unfortunately, art crime is not always reported due to reputational fears and bad record-keeping meaning the crime itself is not or only much later detected.<sup>551</sup>

As such, many private entities can in various way contribute to target hardening and capable guardianship of art works. While they need the police for the prosecution of criminals, they themselves have an abundance of knowhow and expertise which in its own right is crucial for effective art crime policing, and which can be a crucial resource for the police in its activities.<sup>552</sup> As such, these private entities can help towards more effective policing, by dint of their capacities, which are complementary to the police's.<sup>553</sup> They can fill the policing gap.<sup>554</sup> The co-production of art crime policing is thus a way to ensure the most capable guardian is put in the right place to assure optimum policing.<sup>555</sup> To recall, art crime policing co-production occurs when private actors provide an active

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<sup>547</sup> Straus (n 253) 137-141, 147; Kerr (n 8) 336-337.

<sup>548</sup> Kerr (n 8) 337.

<sup>549</sup> Kerr (n 1) 94-97; Dorit Straus, 'Insurance Challenges and Art Crime' in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Springer 2019) 258-261.

<sup>550</sup> Kenneth Polk and Duncan Chappell, 'Art Theft and Time Limits for Recovery: Do the Facts of the Crime Fit the Limits in Law?' in Joris D Kila and Marc Balcells (eds), *Cultural Property Crime: An Overview and Analysis of Contemporary Perspectives and Trends* (BRILL 2014) 3-9.

<sup>551</sup> Mazurek (n 357) 419-421; Hufnagel (n 9) 42-44.

<sup>552</sup> Hollis, Felson, and Welsh (n 264) 73-74, Polk and Chappell (n 12) 74-75; Rapley (n 12) 36-37.

<sup>553</sup> Loeffler and Bovaird (n 6) 206; Brandsen and Honingh (n 238) 427.

<sup>554</sup> Polk and Chappell (n 12) 74-75; Rapley (n 12) 36-37; Oosterman, Mackenzie, and Yates (n 438) 9.

<sup>555</sup> Loeffler and Bovaird (n 6) 209-210, 212-213, 214, 217; Brandsen and Honingh (n 238) 427.

and direct contribution to the police's efforts in combatting art crime, as part of an ongoing relationship between the two that is aimed at leveraging each other's abilities in the pursuit of delivering more effective policing together. Effective art crime policing would serve three purposes: the recovery of art, the successful prosecution of criminals, and the prevention of art crime.

### 3.5 Conclusion

This chapter focused on art crime. It presented an overview of art crime research from its beginning to now, attempted to identify more deeply what makes art crime distinct, and finally discussed why art crime policing is a specialised form of policing which involves the police and private actors. Because of the specific attributes of art works and the specific ways in which it occurs, which are strongly associated with the way in which the art world operates, art crime is a specific form of crime and art crime policing a specialised form of policing. It is apparent that art crime policing requires specific subject expertise. With this and the discussion on plural policing and policing co-production in the previous chapter in mind, the research now moves on to three particular case studies and their analysis.

In the next three chapters, the legislative and policy environment for art crime policing in Belgium, the UK, and France are discussed, as well as the state of their respective specialised arts and antiques units and the potential network of private art crime policing actors. Then, in the penultimate chapter of this thesis, the thematic analysis is deepened with interviewee responses. As part of this research, interviews with members of the specialised art crime police units in Belgium, the UK, and France, as well as with private actors were conducted. The focus on the private side is on entities which consider, or are considered to have, these activities and processes as part of their purpose in alignment with the discussion above. Interviewees thus included private security agents, private art detectives, as well as insurance company employees, stolen arts database representatives, and heritage-focused NGO's. Through these interviews it can be established whether the theory matches realities on the ground.



## Chapter IV: Art Crime Policing in Belgium

***“At present, one has the impression that Belgium is the weak link in the policy against illicit trafficking in cultural goods”<sup>556</sup>***

### 4.1 Introduction

So said Edouard Planche, UNESCO programme specialist for the legal protection of cultural heritage and the fight against illicit traffic of cultural heritage, in 2017. His comment came in the wake of the closure of the Belgian police’s dedicated Art and Antiques unit in 2015.<sup>557</sup> The charge towards the Belgian government was that its decision to close the unit had weakened art crime policing capacity in the country, thus creating an attractive environment for would-be art criminals. It remains difficult to assess whether this is true; concrete data to support the assertion of Belgium being a hotbed for art crime are hard to find.<sup>558</sup> Nonetheless, at the very least a clear signal was sent that the Belgian authorities did not consider art crime to be a significant priority.<sup>559</sup> Mr. Planche was not the only one to ring the alarm bell, as others familiar with art crime and its policing in Belgium such as the Blue Shield organisation also expressed concern, both at the time of the unit’s closure and since.<sup>560</sup>

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<sup>556</sup> ‘Trafic d’œuvres d’art: la Belgique est trop laxiste’ (‘Art trafficking: Belgium is too lax’) *Le Soir* (13 July 2017) <<https://www.lesoir.be/104396/article/2017-07-13/trafic-doeuvres-dart-la-belgique-est-trop-laxiste>> accessed 22 March 2023.

<sup>557</sup> Belgian Senate (n 137) 7.

<sup>558</sup> Belgian Senate (n 137) 18-21, 43-44, 55-56.

<sup>559</sup> Belgian Senate (n 118) 25-26.

<sup>560</sup> Katelin Lee, ‘Belgian Committee of the Blue Shield Seeks Support to Fight Art Trafficking’ (*Culturalheritage.com*, 6 February 2017) <<http://resources.culturalheritage.org/conservators-converse/2017/02/06/belgian-committee-of-the-blue-shield-seeks-support-to-fight-art-trafficking/>> accessed 22 March 2023; Blue Shield Belgium, ‘Open brief aan de Minister van Binnenlandse Zaken Annelies Verlinden’ (‘Open letter to Home Affairs Minister Annelies Verlinden’) (31 January 2022) <<https://blueshieldbelgium.be/nl/open-brief-aan-de-minister-van-binnenlandse-zaken-annelies-verlinden/>> accessed 22 March 2023; Stephanie D’Hose, ‘“Ons land is het eldorado van de roofkunst, de valse kunst en de gestolen antiek” (‘Our Country is the El Dorado for Looted Art, Fake Art, and Stolen Antiquities’) [2022] *Knack* <<https://www.knack.be/nieuws/belgie/ons-land-is-het-eldorado-van-de-roofkunst-de-valse-kunst-en-de-gestolen-antiek/>> accessed 22 March 2023.

Belgium houses an ecosystem of private security providers, insurance companies, private detectives, law firms, art market professionals, and other entities that engage in aspects of art crime policing. During the Senate hearing on art theft that took place in 2017, police representatives explicitly opened the door for private involvement, stating that a public-private partnership could be a worthwhile endeavour.<sup>561</sup> These statements are remarkable given the Belgian police forces' traditional reservations towards plural policing. Due in part to the influence of the heavily centralised and hierarchical French policing system, the Belgian police has only tentatively sought out cooperation with non-police entities, and even in those situations it has held close to a fundamentally state- and police-led approach.<sup>562</sup> In this chapter, the structural dynamics surrounding Belgian art crime policing are described.

## 4.2 Legislation

### 4.2.1 Art crime law

There is no Belgian criminal law that targets art crime specifically, and so it is general Belgian criminal law which provides a basis for its prosecution. Theft is outlined in article 461 of the Belgian Criminal Code, which states a person is guilty of theft if they dishonestly take away property that does not belong to them. Fraud is primarily covered by article 498 which penalises individuals who intentionally deceive a buyer regarding the identity or nature of the sold object by dishonestly delivering an object other or only similar to the object agreed upon are guilty of fraud. Vandalism is covered by articles 530 (for moveable objects) and 534ter of the Criminal Code, which require intentional damaging of another's property. Money laundering is covered by the *Wet tot voorkoming van het witwassen van geld en de financiering van terrorisme en tot beperking van het gebruik van contanten* of 18 September

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<sup>561</sup> Belgian Senate (n 137) 12.

<sup>562</sup> Devroe (n 294) 6/9.



2017<sup>563</sup> and article 505 of the Criminal Code.<sup>564</sup> The stipulations of the 5<sup>th</sup> Money Laundering Directive have been implemented.<sup>565</sup>

International and European law contains the primary provisions regarding the trafficking of cultural goods, though not all international legal instruments stipulate criminal consequences. Belgium has a monist approach to international law, meaning that international law, once adopted, is considered to be fully part of the internal order of the state. As such, principally, no transposing legislation has to be adopted and national judges can upon ratification start applying international law.<sup>566</sup> The 1970 UNESCO convention however left it to ratifying states to choose whether they implement criminal sanctions.<sup>567</sup> Belgium ratified the Convention on March 31<sup>st</sup> 2009.<sup>568</sup> At the time, a council was set up involving the different relevant actors across the layers of Belgian government, which proposed an implementation draft in 2013. However, while in 2017 it was announced a law was to be introduced imminently, as of yet no final instrument has been enacted.<sup>569</sup> As such, the penalisation of trafficking of art in Belgium, at least on the basis of the 1970 UNESCO Convention, remains a grey area.<sup>570</sup> On May 3<sup>rd</sup> 2017, the Council of Europe adopted the Council of Europe Convention on Offences relating to Cultural Property, also known as the Nicosia Convention.<sup>571</sup> This Convention introduces common criminal law standards to combat illicit activities relating to cultural property such as illegal excavation, illegal acquisition, illegal 'placing on the market', falsification, and destruction.<sup>572</sup> The Belgian Senate recommended the support of this Convention in its 2017 report, albeit subject to a prior legal

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<sup>563</sup> 'Law on the Prevention of Money Laundering and Terrorist Financing and Restricting the Use of Cash'.

<sup>564</sup> Articles 2 and 136-138 Law of 18 September 2017.

<sup>565</sup> Lucie Lambrecht and Lucy Ryan, 'The Art Law Review: Belgium' in Howard N Spiegler and Lawrence M Kaye (eds), *The Art Law Review* (2023) 1/16-2/16.

<sup>566</sup> Patricia Popelier and Catherine Van de Heyning, 'The Belgian Constitution: The Efficacy Approach to European and Global Governance' in Anneli Albi and Samo Bardutzky (eds), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law: National Reports* (TMC Asser Press 2019).

<sup>567</sup> Manacorda (n 508) 32-33.

<sup>568</sup> Belgian Senate (n 137) 29, 39-40, 70, 72, 87; Belgian Senate (n 118) 18.

<sup>569</sup> Belgian Senate (n 118) 18; Lucie Lambrecht and Charlotte Sartori, 'The Art Law Review: Belgium' in Howard N Spiegler and Lawrence M Kaye (eds), *The Art Law Review* (2021) 7/15; Lambrecht and Ryan (n 565) 6/18.

<sup>570</sup> Belgian Senate (n 137) 70.

<sup>571</sup> Council of Europe Convention on Offences relating to Cultural Property 2019.

<sup>572</sup> Mateusz Maria Bieczyński, 'The Nicosia Convention 2017: A New International Instrument Regarding Criminal Offences against Cultural Property' (2017) 3 *Santander Art and Culture Law Review* 255; Blake (n 508) 175-180.

examination to examine its interaction with other existing legal instruments.<sup>573</sup> Belgium has not yet become a signatory of the Convention.

#### 4.2.2 Plural policing law

Public-private partnerships in art crime policing, or plural policing more broadly, are governed by the laws regarding private policing and the police.<sup>574</sup> The Law regulating private and particular security of 10 April 1990 was the first to regulate private security in Belgium.<sup>575</sup> This law was designed to “*strictly control the private security companies and limit their growth*”, reflecting the historically dominant idea of state supremacy in policing.<sup>576</sup> Even if the Belgian police did not enjoy “*the same degree of legitimacy as their UK cousins at the time*”, the police still enjoyed significant popular support, stretching back to the period immediately following the second world war.<sup>577</sup> At the same time, the private industry’s cause was undermined by scandals involving private security in the 1980’s.<sup>578</sup> The result of these undercurrents was a law that put the private security sector under police oversight, curtailed its area of action, introduced a licensing system, and put in place extensive quality control criteria for private security companies.<sup>579</sup> As such, the 1990 law is reflective of an approach that favoured public policing, wary of private efforts. Even so, the fact the Belgian government saw it fit to develop targeted regulation for the private security industry indicates that the sector was getting noticed.<sup>580</sup>

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<sup>573</sup> Belgian Senate (n 118) 39.

<sup>574</sup> Devroe (n 294) 5/9-6/9; Marleen Easton, ‘Reflecties over nodaal en netwerkend politiewerk: de aanpak van cocaïnestromen in de haven van Antwerpen’ (‘Reflections on Nodal and Networked Policing: Tackling Cocaine Flows in the Port of Antwerp’) (2018) 2 Cahiers Politiestudies 96.

<sup>575</sup> Leloup and White (n 205) 12.

<sup>576</sup> Leloup and White (n 205) 14.

<sup>577</sup> Marc Cools and Eddy De Raedt, ‘Het Outsourcen van Politietaken Naar de Private Veiligheid in Een Stroomversnelling? (‘Outsourcing of Police Tasks to Private Security Gaining Momentum?’)’ in Paul Ponsaers and others (eds), *Outsourcing Policing*, vol 36 (Maklu 2015) 34-35; Leloup and White (n 205) 12-14.

<sup>578</sup> Marc Cools, ‘De Onderstromen in de Private Veiligheidszorg (‘The Undercurrents in Private Security’)’ (2002) 23 *Panopticon* 136; Leloup and White (n 205) 13.

<sup>579</sup> Leloup and White (n 205) 12.

<sup>580</sup> Leloup and White (n 205) 12-13.

The *Wet Private Veiligheid*<sup>581</sup> of October 2<sup>nd</sup> 2017 replaced the Law of 10 April 1990. It remains the cornerstone of private policing legislation in Belgium. The newer law streamlines the requirements of its predecessor and was drafted in a more market-friendly political environment.<sup>582</sup> Nonetheless, private security remained junior to the police, and the law overall was designed to strictly delineate police and private security competences and areas of action.<sup>583</sup> Per articles 46 and 47, private security companies, defined as entities deploying activities related to security including installing camera systems and providing security-related trainings<sup>584</sup>, are principally barred from sharing any information regarding the company that employs them, the personnel of that company, and any visitors of that company with any party other than the employing entity. Article 48 places private security companies under the obligation to provide any information requested by police forces, and article 49 requires them to notify the authorities when they become aware of facts that may lead to criminal liability during or because of their activities. However, article 88 stipulates a general duty of discretion, meaning that private security providers cannot disclose information that is not necessary for their activities which may put at risk the safety of their personnel and the personnel of their employers, or which may impact the efficiency of the methods or means used in the context of the performance of their security provision.

At the time the law was introduced, the sense was that the better regulation of private security and the resulting empowerment of the industry could *“encourage the establishment of partnerships between the police and the private sector”* and facilitate the outsourcing of police functions to the market.<sup>585</sup> The sector received the message: *“this is what the legislator wanted to achieve with the new private security regulation. They don’t want to make everything compulsory, but they want to provide a legal framework which the private sector can fill to a certain degree”*.<sup>586</sup> Notwithstanding

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<sup>581</sup> ‘Law Regarding Private Security’.

<sup>582</sup> Leloup and White (n 205) 14.

<sup>583</sup> Cools and De Raedt, (n 577) 34-35.

<sup>584</sup> Articles 2-8 Law 2 October 2017.

<sup>585</sup> Leloup and White (n 205) 15.

<sup>586</sup> Leloup and White (n 205) 15.

these ambitions, private security remains subordinate to the police in the law's framework.<sup>587</sup> The Belgian private security sector is markedly smaller, also in relative numbers, than counterparts in surrounding countries, or the US.<sup>588</sup> Even so, the law significantly expanded the private sector's policing competences, while maintaining entry requirements and quality control.<sup>589</sup> The 2017 law can thus be considered a tentative shift in approach: while still relatively strict compared to laws in neighbouring countries it does open up more opportunities for private policing.<sup>590</sup>

The *Wet Private Veiligheid* is mirrored by the *Wet Politieambt*<sup>591</sup> of August 5<sup>th</sup> 1992. This latter law forms the primary legislative basis for the tools and latitudes afforded to the Belgian Police.<sup>592</sup> The Belgian Police are able to wield the typical arsenal of a police force per articles 26 to 36: conduct searches of premises, vehicles, and individuals, perform confiscations, arrest individuals, and ask for identity documents. The centrepiece of the law is article 37, which allows the Belgian Police to use force. Key from a plural policing perspective is the way the law deals with information sharing. The management of information by the police is subject to a set of limitations regarding which information the police can "process" in what way, and with whom that information can be shared. The crux is that the police are not at liberty to share much information, especially regarding investigations, with any private entity.<sup>593</sup>

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<sup>587</sup> Van Steden (n 331) 11.

<sup>588</sup> Leloup and White (n 205) 11-12.

<sup>589</sup> 'De Wet Private Veiligheid (The Private Security Law)' [2017] BeSafe Magazine <[https://www.besafe.be/sites/default/files/2018-03/magazine\\_44\\_nl.pdf](https://www.besafe.be/sites/default/files/2018-03/magazine_44_nl.pdf)> 1-3, 8.

<sup>590</sup> Cools and De Raedt, (n 577) 43; Leloup and White (n 205) 15.

<sup>591</sup> 'Law on the Office of the Police'.

<sup>592</sup> Franky Goossens and Frank Hutsebaut, 'De Wet op het politieambt: een overzicht in vogelvlucht van haar doelstellingen en van de evolutie van haar inhoud' ('The Police Service Act: a bird's eye view of its objectives and the evolution of its content') [2014] *Vigiles: Tijdschrift voor Politierecht* 15; Cools and De Raedt, (n 577) 34.

<sup>593</sup> Stijn Van Daele and Eddy De Raedt, 'Het Cruciaal Belang van de Signaalfunctie van Politiediensten in de Strijd Tegen Criminaliteit' ('The Crucial Importance of the Signal Function of Police Services in the Fight Against Crime') (2013) 34 *Panopticon: Tijdschrift voor Strafrecht, Criminologie en Forensisch Welzijnswerk* 316; Tiffany Putzeys, 'Publiek-Private Samenwerking in de Strijd Tegen Georganiseerde Winkelcriminaliteit: Het Commerce Information Network' (Public-Private Partnerships in the Fight Against Organised Shop Crimes: The Commerce Information Network') (2019) 40 *Panopticon: Tijdschrift voor Strafrecht, Criminologie en Forensisch Welzijnswerk* 5-6/28, 13-14/28.

This means the exchange of information from police to private entities is generally limited to contextual information: general info on trends within crime can be communicated, but more specific information, regarding for example recent thefts, cannot.<sup>594</sup> This is also due to privacy laws, especially with the advent of the EU Regulation of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (known as the GDPR).<sup>595</sup> When the roles are reversed, however, article 44/1 of the *Wet Politieambt* grants police forces the right to obtain information from citizens and private actors if there is a concrete interest for the fulfilment of police duties. Articles 48 and 49 of the *Wet Private Veiligheid* obligate private security to provide any information requested by police forces and to notify the authorities when they become aware of facts that may lead to criminal liability during or because of their activities. As such, legislatively, the structure is set up to facilitate information flowing to the police much more than it facilitates information flowing from the police.

In summary, the absence of dedicated criminal stipulations within Belgian law as well as its failure so far to complete the full implementation of the UNESCO convention indicate the Belgian legislator does not prioritise art crime. This could open up opportunities for private policing and policing co-production if it correlates to a limited investment into art crime on the ground. However, the legislative approach to plural policing is restrictive: the Belgian legal framework for private policing as described above has been designated as one of the most comprehensive in Europe.<sup>596</sup> Such an approach tends to limit the opportunities for private and thus plural policing at large, even if the legitimisation that legislation may bring through implementing entry barriers and quality control can

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<sup>594</sup> Gert Vermeulen, 'Explorierend Onderzoek Naar de Aard van de Bestuurlijke Informatiestromen van de Lokale Politie: Een Verkenning van Enkele Cruciale Spanningsvelden' ('Exploratory Research into the Nature of the Administrative Information Flows of the Local Police: An Exploration of Some Crucial Fields of Tension') <<https://core.ac.uk/reader/55811494>> 6-7.

<sup>595</sup> Van Daele and De Raedt (n 593) 316; 'Een Visie Voor de Politie in 2025' ('A Vision for the 2025 Police') (2014) Policy Report 25; EU Regulation of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); Putzeys (n 593) 5-6/28, 13-14/28.

<sup>596</sup> Button (n 337) 117; Mark Button and Peter Stiernstedt, 'Comparing Private Security Regulation in the European Union' (2016) 28 *Policing and Society* 269, 274.

help foster trust in limited policing areas. However, there are signs of a nascent course direction towards plural policing. The question is whether these trends are also reflected in policy.

### 4.3 Policy

The Belgian police has its origin in the statist French policing model, as it traces back to the French occupation of the region between 1794 and 1815.<sup>597</sup> Belgian politicians have historically been wary of private policing involvement.<sup>598</sup> During the 1960's and 70's, when private policing started its rise, a significant portion of civil servants and magistrates supported the state's primacy over the market. This meant policymakers sought to control and limit plural policing.<sup>599</sup> A set of scandals involving private security in the 1980's further enforced this view and provided momentum for a strict approach to sector regulation. Even after the adoption of the restrictive law of 1990, political opposition to private policing remained.<sup>600</sup> Around the turn of the century, however, change was imminent. Police legitimacy was seriously damaged during this time.<sup>601</sup> Previously, Belgium, like France, had a dual system, with a military police force called the *Gendarmerie* or *Rijkswacht* on the one hand, and a civil police force consisting of a municipal and judicial branch on the other. From 1985 onwards this system came under increasing pressure after a series of high-profile scandals affecting the police's credibility.<sup>602</sup>

Between 1982 and 1985 Belgium not only fell victim to bomb attacks by communist terrorist group *Cellules Communistes Combattantes* (CCC<sup>603</sup>), but also to a series of highly aggressive and deadly raids

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<sup>597</sup> Devroe and Ponsaers (n 320) 1-2/15.

<sup>598</sup> Elke Devroe, 'Bringing Politics Back into the Study of Policing? A Case Study on the Policing of Social Disorder in Belgium' (2017) 27 *Policing and Society* 93; Leloup and White (n 205) 12-13.

<sup>599</sup> Button and Stierstedt (n 596) 275; Leloup and White (n 205) 12-13.

<sup>600</sup> Devroe (n 598) 94; Leloup and White (n 205) 14.

<sup>601</sup> Devroe and Ponsaers (n 320) 7/15; Leloup and White (n 205) 14-15.

<sup>602</sup> Jeroen Maesschalck, 'Van de Bende Van Nijvel tot Dutroux: een beleidswetenschappelijke analyse van de politiehervorming in de jaren '80 en '90' ('From the gang of Nivelles to Dutroux: a policy analysis of police reform in the 1980s and 1990s') (2002) 44 *Res Publica* 28; Devroe and Ponsaers (n 320) 2/15.

<sup>603</sup> 'Communist Combatant Units'.

on department stores and supermarkets attributed to the so-called *Bende van Nijvel*.<sup>604</sup> The latter were never caught and were moreover rumoured to be linked to the *Gendarmerie*. These rumours deeply damaged trust in the police. Also in 1985, 39 people were killed in a stampede ahead of the European cup final at Brussels' Heysel Stadium; the police were accused of implementing inadequate safety measures.<sup>605</sup> The Belgian police faced a legitimacy crisis which festered until the "*dykes burst*" in 1996, when previously convicted paedophile Marc Dutroux kidnapped and abused six girls, five of which underage, leading to the death of four of them, all while on parole.<sup>606</sup> This event and the ensuing public outcry proved the catalyst for fundamental reforms finalised in 1998. The so-called *Octopus Akkoord*<sup>607</sup>, dated 23 May 1998, led to the *Wet tot Organisatie van een Geïntegreerde Politiedienst, Gestructureerd op Twee Niveaus*<sup>608</sup> of 7 December 1998, a law which reorganised the Belgian police into a Local and a Federal police force, together forming the *Geïntegreerde Politie* ('Integrated Police').<sup>609</sup> The *Gendarmerie* was abolished. The decrease in police legitimacy due to the scandals simultaneously blew wind in the sails of those advocating for a more pluralised approach to policing. The federal government started exploring ways of outsourcing policing.<sup>610</sup> Other avenues, such as establishing consultation bodies to facilitate police and private sector developing arrangements for concurrent policing and targeted information sharing were also starting to be explored. Further tailwind was forthcoming.

After the 2008 financial crisis Belgium went through a period of austerity, which put pressure on public and police funds<sup>611</sup> This led to the so-called "*Kerntakendebat*"<sup>612</sup> in which police and government considered what tasks were to be done by the police and which others might be shed. This further

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<sup>604</sup> Known as the 'Brabant Killers'. For a discussion of the Brabant Killers and the CCC, see Philip Jenkins, 'Strategy of Tension: The Belgian Terrorist Crisis 1982–1986' (1990) 13 *Terrorism* 299.

<sup>605</sup> Devroe and Ponsaers (n 320) 1/14.

<sup>606</sup> Devroe and Ponsaers (n 320) 1/14, 6/14; Elke Devroe, 'Purple Vests. The Origins of Plural Policing in Belgium' (2015) 2 *European Journal of Policing Studies* 308-309.

<sup>607</sup> 'Octopus Agreement', named after the eight political parties involved.

<sup>608</sup> 'Integrated Police Force on Two Levels Act'.

<sup>609</sup> Devroe and Ponsaers (n 320) 7/15; Devroe (n 294) 4/9.

<sup>610</sup> Cools and De Raedt, (n 577) 35-36.

<sup>611</sup> Cools and De Raedt, (n 577) 35; Leloup and White (n 205) 14.

<sup>612</sup> 'Core tasks debate'.

increased interest in public–private partnerships.<sup>613</sup> In 2014, then, the optimisation of the Federal police forces created a final push towards more plural policing and policing co-production. The process and idea of optimisation is the corollary of the *Kerntakendebat*: the goal was to improve the effectiveness of the Belgian police while simultaneously cutting overhead costs. After discussion within a governmental working group started in 2011, a new ‘vision for the police 2025’ was presented in 2014.<sup>614</sup> This policy document, titled ‘A Connected Police’, was developed to serve as the blueprint for the Belgian police going forward.

The working group, after consideration of 4 different “scenarios” for the future of the police, opted to endorse the development of a ‘networked’ police.<sup>615</sup> The police force of the future would work on the basis of public consent and involve the public in policing, by for example making use of technologies developed by commercial partners or by making use of the “free exchange of information between police and society”.<sup>616</sup> The text explicitly mentions the “pluralisation of security” as an opportunity, though in the same breath it notes the danger of “others taking up essential polic(e)(ing) functions”.<sup>617</sup> It was envisaged that the Integrated Police would be an organisation that “naturally participates in the security market”, entering into “cooperative partnerships and alliances”, with “respect for the individuality of all actors involved” by 2025.<sup>618</sup> This document is the strongest endorsement of private policing to date in Belgium and clearly echoes the ideas and arguments surrounding policing co-production.

This more networked approach is however not without its challenges. The flow of information to and especially from the police remains heavily regulated in Belgium. This is not without reason, since it is paramount to guard against information leaks to protect ongoing investigations.<sup>619</sup> There also remain

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<sup>613</sup> Cools and De Raedt, (n 577) 36- 37; Leloup and White (n 205) 15.

<sup>614</sup> Visie (n 595); Devroe (n 294) 6/9.

<sup>615</sup> Visie (n 595) 12-13.

<sup>616</sup> Visie (n 595) 73-75.

<sup>617</sup> Visie (n 595) 79.

<sup>618</sup> Visie (n 595) 40.

<sup>619</sup> Visie (n 595) 25.



crucial questions of democratic governance of these networks as well as the balancing of private and public interests.<sup>620</sup> Such issues were highlighted in the vision text without providing a concrete roadmap as to how they would be addressed; while it for example suggests involving civil society to ensure accountability, it does not specify how and in what way civil society would participate, nor in what way precisely this would promote democratic accountability.<sup>621</sup>

The Belgian police on its part has remained reticent to allow private elements to be incorporated into the overall policing matrix. Ahead of the law of 2017 the Belgian Police Union questioned whether *“the objective of the government is to hand over the Federal Police’s tasks to private security companies or to deliberately destroy this federal institution”*.<sup>622</sup> There has been an *“immense”* ideological resistance to privatising policing.<sup>623</sup> In 2015, Elke Devroe, a prominent academic with regards to Belgian policing, described the police’s behaviour towards private policing as *“cannibalistic”*.<sup>624</sup> This strong statement was due to the police’s practice of *“insourcing”* outside agencies in order to maintain the quasi-exclusive provider of security.<sup>625</sup> Under the cloak of *“partnerships”* with private entities, the latter were instrumentalised to serve the police’s goals rather than approached as collaborators in a reciprocal relationship. For example, academic *“networking”* has led to the police attempting to incorporate scientific knowledge and skills into the force.<sup>626</sup> This is not, however, to say the Belgian police wants to keep in full control of (all) policing. The Belgian police has sought to limit itself to what it considers to be its core tasks, meaning it increasingly moved to

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<sup>620</sup> Ian Loader and Neil Walker, ‘Policing as a Public Good: Reconstituting the Connections between Policing and the State’ (2001) 5 *Theoretical Criminology* 25-29; Ian Loader and Adam White, ‘How Can We Better Align Private Security with the Public Interest? Towards a Civilizing Model of Regulation’ (2017) 11 *Regulation & Governance* 167; James W Williams, ‘Governability Matters: The Private Policing of Economic Crime and the Challenge of Democratic Governance’ (2005) 15 *Policing and Society* 187-188.

<sup>621</sup> Visie (n 595) 25-26, 28-29, 47-49, 52-53.

<sup>622</sup> Devroe (n 294) 5/9; Devroe (n 598) 95; Leloup and White (n 205) 15.

<sup>623</sup> Devroe (n 294) 5/9.

<sup>624</sup> Devroe (n 294) 6/9.

<sup>625</sup> Devroe (n 294) 6/9.

<sup>626</sup> Devroe (n 294) 6/9-7/9.

withdraw from administrative and community-related tasks, in a clear example of load-shedding.<sup>627</sup> It is this idea that also emerged in the *Kerntakendebat*. Thus, the police seek to retreat from some responsibilities while simultaneously wanting to keep the reins of policing in its hands.

Around roughly the same time as plural policing generally became a bigger topic it also appears in the thinking around art crime policing. In 2010, a senate proposal by Bart Tommelein and Martine Taelman suggested creating a national and publicly accessible stolen arts database, so that private actors were enabled in their due diligence processes, making *“stolen art less easy to sell”*.<sup>628</sup> Accompanying this effort a campaign was proposed to encourage Belgian citizens to *“store information about the art and antiques they have in their possession in accordance with the agreed standards, so that if an object is stolen it can be described as accurately as possible on the central database”*.<sup>629</sup> The idea of using the private sector as an ally in (preventative) policing is clear.<sup>630</sup> The 2017 Senate report also contains several recommendations for public-private policing. Firstly, it suggests a public-private partnership be set up to make the object data in the ARTIST database publicly available, though stripped of privacy-sensitive elements.<sup>631</sup> This measure was to facilitate the performance of due diligence within the art market. Secondly, the report recommended the setup of public-private partnerships with online sales platforms and/or the *“Google Cultural Institute, which provides online archives, information and photographs of works of art”*, in order to curb the illegal art trade on the Internet.<sup>632</sup> Finally, recommendation 96 suggests *“exploring the possibility of working with private companies to create a standardised inventory that insurance companies can use for prevention and reimbursement”*. The information in this inventory was to be *“structured for easy*

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<sup>627</sup> Devroe (n 294) 7/9; Leloup and White (n 205) 14; Elke Devroe and Paul Ponsaers, ‘The Power Context of Police Reform in Belgium—The Brussels Case: A Shift in the Style of Policing after the Terrorist Attacks’ (2021) 15 *Policing: A Journal of Policy and Practice* 299.

<sup>628</sup> Belgian Senate, Buitengewone Zitting 2010-2011 (2010), “Voorstel van resolutie ter oprichting van een nationale publiek toegankelijke databank voor gestolen kunst en antiek” (‘Proposal for resolution establishing a national publicly accessible database for stolen art and Antiques’) (No. 5-29/1) 6.

<sup>629</sup> Belgian Senate (n 628) 8.

<sup>630</sup> Belgian Senate (n 628) 6, 7.

<sup>631</sup> Belgian Senate (n 118) 43.

<sup>632</sup> Belgian Senate (n 118) 48.

exchange”.<sup>633</sup> As such, in policy terms, we see a pivot towards plural policing, both in art crime policing and policing generally. The most important policy advice in the Senate report however remains the re-establishment of the unit itself.

## 4.4 The ‘Cel Kunst & Antiek’

Art crime’s importance in the eyes of Belgian policymakers has varied throughout the existence of the Belgian police’s specialist art crime unit. There have been inconsistencies in the prioritisation of art crime and, consequently, the means made available to combat the phenomenon. The Belgian Federal Police’s Arts and Antiques Squad is the traditional focal point for art crime policing in Belgium. Within the country this unit was known as the *Section ART* or as the *Cel Kunst & Antiek*.<sup>634</sup> The unit was founded in 1991, employing four individuals at the time.<sup>635</sup> These officers were primarily tasked with the documentation, analysis, coordination, and dissemination of information related to stolen art.<sup>636</sup> To that end a database registering thefts in Belgium was managed from 1993 onwards, initially using paper files.<sup>637</sup> This database was meant to provide any police investigator with all the information necessary to conduct investigations into the theft of a piece of art, including information of an art-historical nature.<sup>638</sup> The paper database was digitised and renamed ARTIST (“ART Information SysTem”) in 1998.<sup>639</sup> In that same year, the number of full-time employees of the unit was increased to seven, while an additional Customs officer was attached as a liaison.<sup>640</sup> Apart from its information collection and management activities, the unit also investigated the theft, forgery and trafficking of

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<sup>633</sup> Belgian Senate (n 118) 51.

<sup>634</sup> Belgian Senate (n 118) 27.

<sup>635</sup> Belgian Senate (n 137) 7; Belgian Senate (n 118) 25.

<sup>636</sup> Belgian Senate (n 118) 25.

<sup>637</sup> Block (n 7) 189; Belgian Senate (n 137) 7.

<sup>638</sup> Belgian Senate (n 137) 9.

<sup>639</sup> Block (n 7) 189; Belgian Senate (n 137) 7; Belgian Senate (n 118) 25; Oosterman (n 7) 217.

<sup>640</sup> Belgian Senate (n 137) 7; Belgian Senate (n 118) 25.

art, albeit typically through cooperation with other police forces, both locally and abroad.<sup>641</sup> But it was not the only police entity engaged with art crime.

Until 1998, the *Algemene Politieonderdienst* (APSD)<sup>642</sup>, the police department created to liaise between the three components of the Belgian Police<sup>643</sup>, coordinated the Belgian police's art crime policing efforts, and also functioned as a contact point for Interpol for art crime.<sup>644</sup> Moreover, most of the Belgian Judicial Police precincts, located in cities such as Antwerp, Namur, and Arlon, had at least one officer with a modicum of art crime expertise within their investigative unit. These were typically the units dedicated to financial crime.<sup>645</sup> In the Brussels precinct, up to five of such officers were operational. These officers were not occupied with art crime cases fulltime, but rather took the lead for art crime related investigations within their districts when necessary. Through the years these individuals built up art crime expertise. As such, art crime policing expertise was dispersed over several departments within the Belgian police structure, though the unit was a focal point. But the Belgian police structure was soon to be drastically reshuffled.

The Belgian police reform of 2001 would also prove to fundamentally reshape the police's art crime efforts.<sup>646</sup> Apart from integrating the police forces, the reform also redrew the policing map by transforming the existing precincts into larger districts which were granted a degree of autonomy.<sup>647</sup> This second aspect of the reform meant the aforementioned art crime expert officers embedded at the precinct level were now redeployed across the redesigned and larger districts of the new Federal Police. Within those districts these officers were assigned to financial crime departments in some districts and theft departments in others. This meant some of them no longer dealt with art crime cases, and those that did in time retired. These developments eventually led to the district level

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<sup>641</sup> Ludo Block, 'European Police Cooperation on Art Crime: A Comparative Overview' (2011) 4 *Journal of Art Crime* 16; Belgian Senate (n 118) 25.

<sup>642</sup> Belgian National Police Support Service'.

<sup>643</sup> Namely the *Gendarmerie* or *Rijkswacht*, the Judicial Police, and the Municipal Police.

<sup>644</sup> Belgian Senate (n 118) 23.

<sup>645</sup> Van Herzeele (n 143) 103-104.

<sup>646</sup> Devroe and Ponsaers (n 320) 7/15.

<sup>647</sup> Devroe and Ponsaers (n 320) 7/14.

deciding to no longer investigate art crime cases.<sup>648</sup> The human resources of the APSD, which had lost its original *raison d'être* as the bridge between the three former branches of the police, were progressively scaled back.<sup>649</sup> This meant it no longer dealt with the coordination of art crime. Thus, while it has overall been considered a success, the reform indirectly led to a loss of art crime expertise within Belgian police forces.<sup>650</sup>

The *Cel Kunst & Antiek* was left as the sole lead for art crime policing in Belgium, as part of the Belgian Federal Police.<sup>651</sup> At the time of the reform, the unit employed seven officers, alongside the liaison colleague with the Belgian customs authorities.<sup>652</sup> In the following years, however, its number of officers dwindled. By 2004, the customs attaché had withdrawn, and the unit itself was downsized to five members.<sup>653</sup> In 2006, art crime was removed from the 'National Security Plan'<sup>654</sup>.<sup>655</sup> This policy document determines which criminal phenomena are a priority for the Belgian police, and thus has a profound impact on resource allocation. The unit was consequently downsized to two active members, one of whom exclusively dedicated to the upkeep of the ARTIST stolen art database.<sup>656</sup> Plans were made to update the database.<sup>657</sup> But the overall dynamics were clear, and in 2009 a member of the unit was quoted stating that “[*illegal antiquities are*] not on the top of anyone’s list”, while a customs official stated screening for illegal antiquities was “*basically an impossible task*”.<sup>658</sup>

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<sup>648</sup> Van Herzeele (n 143) 104, 117; Belgian Senate (n 137) 6, 110; Belgian Senate (n 118) 23.

<sup>649</sup> Belgian Senate (n 118) 23.

<sup>650</sup> Devroe and Ponsaers (n 320) 8-12/14.

<sup>651</sup> Oosterman (n 7) 217.

<sup>652</sup> Belgian Senate (n 137) 7; Belgian Senate (n 118) 25.

<sup>653</sup> Belgian Senate (n 137) 7; Belgian Senate (n 118) 25.

<sup>654</sup> *Nationaal Veiligheidsplan*.

<sup>655</sup> Belgian Senate (n 137) 22; Belgian Senate (n 118) 7.

<sup>656</sup> Block (n 7) 189; Lynda Albertson, 'Belgian Federal Police Eliminating its Art Crime Police Squad Due to Reported Budgetary Constraints' (*ARCABlog*, 15 April 2016) <<http://art-crime.blogspot.com/2016/04/belgian-federal-police-eliminating-its.html>> accessed 22 March 2023; Belgian Senate (n 118) 25.

<sup>657</sup> 'Stolen Works of Art Databases for Law Enforcement Agencies at European Level' (*NETCHER – Social Platform for Cultural Heritage*, 17 November 2020) <<https://netcher.eu/project-news/stolen-works-of-art-databases-for-law-enforcement-agencies-at-european-level/>> accessed 22 March 2023.

<sup>658</sup> Peter Brems & Wim Van den Eynde, *Blood Antiques* (LinkTV broadcast Oct. 8, 2009) <<http://www.journeyman.tv/?lid=59906&tmpl=transcript>> accessed 22 March 2023; Alderman (n 446) 619.

This increasingly difficult art crime policing situation did not go unnoticed. In their 2010 Senate politicians Bart Tommelein and Martine Taelman argued for the establishment of a publicly accessible database for stolen art lamented the “*unfortunate*” reality that police forces did not register all art and antiques thefts while noting police services conducted “*no active policy in matching the database with the supply of dealers and auction houses*”.<sup>659</sup> The following year senators Ludo Sannen and Bert Anciaux tabled a bill to incorporate specific art crime offences into the Belgian Criminal Code.<sup>660</sup> The two senators disapproved of how “*the Belgian police services have systematically disinvested from tackling art crime*” and claimed that the job security of the two remaining officers at the art crime unit was under threat.<sup>661</sup>

In 2014 the decision was made to discontinue the *Cel Kunst & Antiek*. This decision was formalised on 27 October 2015.<sup>662</sup> It was taken in the context of an “*optimisation*” of resources within in the Belgian police, which is to say a police-wide budget efficiency exercise. An audit of the unit had taken place from 2012 to 2013.<sup>663</sup> Due to the otherwise expanded priorities of the *Centrale Directie van de Bestrijding van de Zware en Georganiseerde Criminaliteit*<sup>664</sup> (‘Central Directorate for Serious and Organised Crimes’, abbreviated DJSOC), of which the Arts and Antiques squad was now part, and the removal of art crime from the National Security Plan, it was decided that resources were better

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<sup>659</sup> Belgian Senate (n 628) 2.

<sup>660</sup> Belgian Senate, Buitengewone Zitting 2010-2011 (2011), “Wetsvoorstel tot aanvulling van het Strafwetboek wat de diefstal van kunst- en cultuuroederen betreft” (“Bill to supplement the Criminal Code concerning the theft of art and cultural goods”) (No. 5-1040/1) <<https://www.senate.be/www/webdriver?MltabObj=pdf&MlcolObj=pdf&MlnamObj=pdfid&MltypeObj=application/pdf&MlvalObj=83887360>> accessed 22 March 2023.

<sup>661</sup> Belgian Senate (n 660) 1-2.

<sup>662</sup> Albertson (n 656); Lars Bové, ‘Politie maakt geautomatiseerde databank over kunstdiefstallen’ (‘Police Create Computerised Database on Art Thefts’) *De Tijd* (26 February 2020) <<https://www.tijd.be/politiek-economie/belgie/algemeen/politie-maakt-geautomatiseerde-databank-over-kunstdiefstallen/10210708.html>> accessed 22 March 2023; Belgian Senate (n 137) 6.

<sup>663</sup> Lucie Dendooven, ‘La cellule Art de la police fédérale supprimée, une aubaine pour les terroristes?’ (‘Federal Police Art Unit abolished, a boon for terrorists?’) (*RTBF Info*, 12 April 2016) <<https://www.rtbef.be/info/belgique/detail-la-cellule-art-de-la-police-ferale-supprimee-une-aubaine-pour-les-terroristes?id=9266654>> accessed 22 March 2023; Belgian Senate (n 137) 6; Belgian Senate (n 118) 25.

<sup>664</sup> ‘Central Directorate for Serious and organised Crime’.

deployed elsewhere.<sup>665</sup> The idea was that the tasks formerly performed by the federal unit would be taken up by the local judicial police forces: where the federal unit was formerly the lead and focal point of art crime policing, with the judicial police the support, now the judicial police themselves were asked to take up the art crime policing mantle.<sup>666</sup> However, none of these forces were willing to do so.<sup>667</sup> Nonetheless, policymakers pressed on with the decision and the unit dissolved. Art crime was absent from the new National Security Plan 2016-2019.<sup>668</sup>

These decisions meant the police were left almost completely without specialised personnel.<sup>669</sup> This quickly caused problems.<sup>670</sup> In 2016 police officers testified how the percentage of successful investigations had decreased from between 6 and 7 percent in 2014 to zero in 2016.<sup>671</sup> Some sources dispute this claim, but none dispute that the loss of art crime police capacity was significant and that it negatively affected the police's performance on art crime.<sup>672</sup> The aforementioned 2010 Senate proposal already noted how faulty registration practices damaged art crime policing efforts by creating opportunities for crimes to fly under the radar.<sup>673</sup> Moreover, there was no attention paid to art crime in police training, and developing expertise takes years.<sup>674</sup> The situation proved untenable

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<sup>665</sup> Dendooven (n 663); Victoria Stapley-Brown, 'Belgium Eliminates Federal Taskforce to Fight Trafficking in Cultural Property' *The Art Newspaper* (15 April 2016) <<https://www.theartnewspaper.com/2016/04/15/belgium-eliminates-federal-taskforce-to-fight-trafficking-in-cultural-property>> accessed 22 March 2023; Bové (n 662); (n 118) 25.

<sup>666</sup> Dendooven (n 663); Stapley-Brown (n 665); Van Herzeele (n 143) 104, 117; Belgian Senate, 'Schriftelijke Vraag Nr. 6-888' ('Written Question no. 6-888') (17 March 2016) <<https://www.senate.be/www/?MIval=/Vragen/SchriftelijkeVraag&LEG=6&NR=888&LANG=nl>> accessed 22 March 2023.

<sup>667</sup> Dendooven (n 663); Van Herzeele (n 143) 104, 117; Belgian Senate (n 137) 6.

<sup>668</sup> Belgian Senate (n 137) 111; Belgian Senate (n 118) 28.

<sup>669</sup> Belgian Senate (n 137) 11, 22.

<sup>670</sup> Belgian Senate (n 137) 6, 22, 42.

<sup>671</sup> Wim Van De Velden, 'Ophelderingsgraad Kunstdiefstallen Tot 0 Procent Gedaald' ('Clearing-up rate of Art thefts Decreased to 0') *De Tijd* (6 November 2017) <<https://www.tijd.be/politiek-economie/belgie/algemeen/ophelderingsgraad-kunstdiefstallen-tot-0-procent-gedaald/9950372.html>> accessed 22 March 2023.

<sup>672</sup> Belgian Senate (n 137) 100.

<sup>673</sup> Belgian Senate (n 118) 1-2.

<sup>674</sup> Belgian Senate (n 137) 8, 110.

as Belgium came under increasing international pressure since it risked defaulting on its international obligations.<sup>675</sup>

In the same year Mr. Planche made his comments, 2017, the decision was made to reinstate a point of contact for art-related crime. This was an unilateral initiative on the part of Claude Fontaine, then Director-General of the Belgian Federal Police, together with then-Director of DJSOC Patrick Ludinant.<sup>676</sup> One so-called 'reference officer' was assigned to be the contact point for art crime.<sup>677</sup> This individual was embedded within the *Operationeel Invalsput*<sup>678</sup> (abbreviated OCP), a service of the *Directie Operaties*<sup>679</sup> (abbreviated DIROPS) which itself is part of the DJSOC.<sup>680</sup> As such this service formally belongs to the department concerned with operations (being DIROPS) of the DJSOC. The OCP itself is tasked with the global management of all information pertaining to criminal activity that falls under the jurisdiction of the DJSOC. As this officer was employed as a reference officer assigned to a department of DJSOC, the unit itself was not fully or formally operational again.

The decision to reinstate a reference officer did however mean that art thefts that took place in Belgium would again be registered on the ARTIST database, and alerts would be sent to the European IMI database and Interpol's PSYCHE database. The reference officer for art crime also again identified stolen goods at the request of Belgian and foreign police services, the judiciary, or Interpol.<sup>681</sup> In 2016, an IT specialist was hired at the request of Director-General Fontaine to restore and update the ARTIST database, which was again fully operational since 2017.<sup>682</sup> The database is estimated to contain over

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<sup>675</sup> Articles 5, 13, 14 of the 1970 UNESCO Convention; Ellen Maerevoet, "'Wegvallen van Kunstcel catastrofe voor ons land'" ('Closure of Arts and Antiques unit catastrophe for our country') (*vrtnws.be*, 2 May 2016) <[https://www.vrt.be/vrtnws/nl/2016/05/02/wegvallen\\_van\\_kunstcelcatastrofevooronsland-1-2645331/](https://www.vrt.be/vrtnws/nl/2016/05/02/wegvallen_van_kunstcelcatastrofevooronsland-1-2645331/)> accessed 22 March 2023; 'België Is "Zwakke Schakel" in Strijd Tegen Illegale Kunsthandel' ('Belgium Is a "Weak Link" In the Fight Against Illegal Art Trade') [2017] *Knack* <<https://www.knack.be/nieuws/belgie/belgie-is-zwakke-schakel-in-strijd-tegen-illegale-kunsthandel/article-normal-877509.html>> accessed 22 March 2023; Belgian Senate (n 137) 72, 179; Belgian Senate (n 118) 45.

<sup>676</sup> Belgian Senate (n 137) 8.

<sup>677</sup> Belgian Senate (n 137) 7; Belgian Senate (n 118) 26.

<sup>678</sup> 'Operational Contact Point'.

<sup>679</sup> 'Directorate of Operations'.

<sup>680</sup> Belgian Senate (n 137) 5.

<sup>681</sup> Belgian Senate (n 137) 8.

<sup>682</sup> Belgian Senate (n 137) 9.



20000 entries.<sup>683</sup> Its contents can however not be shared with units in the field, while the backlog amassed since 2015 is significant.<sup>684</sup> The reference officer's workload and the size of the backlog meant documentation is not up to date. In 2020, it was announced the database was to be modernised and outfitted with image recognition technology.<sup>685</sup>

Information management is not the only task the officer had. The reference officer was expected to lead, coordinate, and follow up on the bulk of art crime related investigations within the Belgian territory. This entails:

- cooperating with international police forces in transnational art crime cases,
- supporting art crime related investigations by the federal and local police levels,
- handling investigations that cannot be assigned to a particular police district<sup>686</sup>,
- developing best practices as well as trainings for police officers and relevant professionals,
- participating in cross border art crime policing operations in cooperation with foreign police forces,
- and functioning as point of contact for foreign police forces and organisations such as Interpol for matters concerning art crime.<sup>687</sup>

This is a significant workload. To manage this workload the (fully operational) unit had relied on cooperation with local police forces throughout its existence. On the one hand, because it was dependent on them to pass the information on the art thefts they encountered. On the other, because they needed them to perform actual investigations and provide support for international requests. While the central unit did technically have coercive and investigative powers at the time, in practice it

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<sup>683</sup> Block (n 7) 189.

<sup>684</sup> Belgian Senate (n 137) 9.

<sup>685</sup> Bové (n 662).

<sup>686</sup> *Politie-arrondissement*.

<sup>687</sup> Belgian Senate (n 118) 25-26; Bové (n 662).

was impossible to wield them due to the unit's other responsibilities.<sup>688</sup> Thus, the *Cel Kunst & Antiek* mainly provided support and coordination in those instances when district level police forces were willing to look into the matter.<sup>689</sup> Nonetheless, at least initially, the view was still maintained that “*a relatively small phenomenon like art theft could be handled by one person, certainly if they had extensive experience and expertise in the matter*”.<sup>690</sup> This assessment proved faulty, and, even with the reference officer receiving some IT support, art crime trends could not be properly analysed, information flows could not be coordinated as efficiently as they should be, and no statistics were published.<sup>691</sup> It remained difficult to engage in preventative policing, provide operational support to other forces, or attend many of the international gatherings unit members would previously have attended.<sup>692</sup>

The Belgian Senate held hearings on the matter in 2017. Following these hearings, a report was published containing 97 recommendations, among which the full reinstatement of the *Cel Kunst & Antiek*.<sup>693</sup> The report was approved by almost all political parties but initially its recommendation remained dead letter.<sup>694</sup> The reference officer continued his work alone.<sup>695</sup> A few years later, in 2020, then-Minister for the Interior Pieter De Crem announced that the arts and antiques unit was again operational with two members of staff. At the same time, he voiced the intention to hire additional personnel.<sup>696</sup> However, Mr. De Crem would leave office as the new Belgian government was sworn in. In March 2021, senator Stephanie D’Hose asked a parliamentary question about the current status of

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<sup>688</sup> Van Herzeele (n 143) 105, 118; Jef Huybrechts, ‘Merendeel van de kunstdiefstallen blijft onopgelost’ (‘Majority of Art Thefts Remain Unsolved’) (*vrtnws.be*, 26 April 2018) <<https://www.vrt.be/vrtnws/nl/2018/04/26/merendeel-kunstdiefstallen-blijft-onopgelost/>> accessed 22 March 2023; Oosterman (n 651) 216.

<sup>689</sup> Block (n 7) 189.

<sup>690</sup> Bové (n 662).

<sup>691</sup> Belgian Senate (n 118) 23.

<sup>692</sup> Belgian Senate (n 118) 25-26

<sup>693</sup> Belgian Senate (n 118) 39-51.

<sup>694</sup> ‘Le trafic d’œuvres d’art sème le trouble au Sénat’ (‘Art Trafficking Brews Trouble in the Senate’) (*7sur7.be*, 15 June 2018) <<https://www.7sur7.be/belgique/le-traffic-d-oeuvres-d-art-seme-le-trouble-au-senat~a9c0b39f/>> accessed 22 March 2023.

<sup>695</sup> *Le Soir* (n 556); Belgian Senate (n 137) 9; Belgian Senate (n 118) 25.

<sup>696</sup> Bové (n 662).

the unit. Annelies Verlinden, the new Minister for the Interior, replied that in February 2021 the unit had been strengthened further with one additional full-time employee, bringing its total personnel to three individuals.<sup>697</sup>

However, in e-mail correspondence the reference officer contested this version of events, stating that although two individuals were assigned to support him, this was not the type of robust strengthening the Minister's reply implied.<sup>698</sup> Of these two one was indeed the non-police officer assigned to work exclusively on the ARTIST database. COVID-19 scuppered initial plans to train this individual to be able to also carry out operational duties. The other addition was, according to the reference officer, a police officer with no art crime expertise who no longer had an immediate function within the police force, and who was thus free to be detached to services in need. However, this individual was imminently retiring, and moreover, so was the reference officer himself, on December 31<sup>st</sup>, 2021. On 20 January 2022 this retirement of the officer became public knowledge.<sup>699</sup> When asked about the matter, Minister Verlinden now stated that the directorates of the Federal Judicial Police would carry out highly specialised tasks such as art crime policing, though adding that the updating work on the ARTIST database was progressing.<sup>700</sup> This position was taken despite the Senate report indicating that *“three or four”* unit members would be enough, and that it would *“cost less to employ four art specialists than to manage that knowledge in the fourteen districts”*.<sup>701</sup> This decision is reminiscent of the situation in 2015.

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<sup>697</sup> Belgian Senate, 'Schriftelijke Vraag Nr. 7-1033' ('Written Question no. 7-1033') (April 2021) <<https://www.senate.be/www/?MIval=/Vragen/SchriftelijkeVraag&LEG=7&NR=1033&LANG=nl>> accessed 22 March 2023.

<sup>698</sup> E-mail correspondence reference officer, 27 October 2021.

<sup>699</sup> Frédéric Loire, 'Trafic d'art et d'antiquités : la police judiciaire fédérale dépose les armes' ('Arts trafficking : federal police lays down its arms') [2022] *Paris Match* <<https://parismatch.be/actualites/politique/535075/trafic-dart-et-dantiquites-la-police-judiciaire-federale-depose-les-armes>> accessed 22 March 2023.

<sup>700</sup> Loire (n 699).

<sup>701</sup> Belgian Senate (n 137) 10.

An internal memo produced by the Belgian Directorate General of the Judicial Police<sup>702</sup> accessed by Belgian journalists indicated that in the absence of new budgetary resources art crime would no longer be monitored centrally, the ARTIST database would no longer be fed, and that the relay of information from and to foreign police forces, Europol, and Interpol would no longer be guaranteed.<sup>703</sup> This was thereafter corroborated by the now-retired reference officer, who said that foreign services and Interpol still contacted him for information instead.<sup>704</sup> Public outcry followed once more.<sup>705</sup> And much like in the aftermath of the unit's closure in 2016, the outcry provoked a U-turn. Early February, Minister Verlinden stated she had requested the Commissioner General of the Belgian Federal Police to "evaluate" the decision to discontinue art crime support, while Belgian Finance Minister Vincent Van Peteghem stated: "We will make sure that this decision is reversed".<sup>706</sup> One year later, this reversal was confirmed, as a renewed Bureau of Art and Antiques was operational as part of the Belgian Federal Police.<sup>707</sup>

Renamed the 'Art Research Team', abbreviated as 'ART', the unit now does indeed employ three individuals. Following some of the recommendations outlined in the Senate report, one of these individuals has a university background in the art crime subject matter, thus providing specialist

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<sup>702</sup> *Algemene directie van de gerechtelijke politie.*

<sup>703</sup> Loore (n 699).

<sup>704</sup> Jorn Lelong, 'Roofkunst verkopen kun je voortaan best in België: centrale dienst kunstcriminaliteit wordt opgedoekt' ('From now on Sell Looted Art in Belgium: Central Art Crime Department to be Disbanded') <<https://www.demorgen.be/gs-b340d34a>> accessed 22 March 2023.

<sup>705</sup> Céline Biourge and Isabelle Huysen, 'Faute de moyens, la lutte contre le trafic d'œuvres d'art au sein de la police fédérale est en suspens, "un open bar pour les trafiquants"' ('Due to lack of resources, the fight against art trafficking within the federal police is on hold: "an open bar for traffickers') (*RTBF.be*, 2022) <<https://www.rtbef.be/article/faute-de-moyens-la-lutte-contre-le-traffic-doeuvres-dart-au-sein-de-la-police-federale-est-en-suspens-un-open-bar-pour-les-trafiquants-10925235>> accessed 22 March 2023; Blue Shield Belgium (n 560).

<sup>706</sup> 'Le gouvernement veut faire annuler le démantèlement de la cellule trafic art et antiquités' ('The government wants to cancel the dismantling of the art and antiquities trafficking cell') *La Libre* (3 February 2022) <<https://www.lalibre.be/belgique/judiciaire/2022/02/03/le-gouvernement-veut-faire-annuler-le-demantelement-de-la-cellule-traffic-art-et-antiquites-XOWIPSMOVZBHJNMAJCNOWALGVU/>> accessed 22 March 2023; Lelong (n 704).

<sup>707</sup> Geert Houck, 'Universiteit Gent werkt samen met Gentse politie om kunstcriminaliteit beter te bestrijden' ('Ghent University collaborates with Ghent police to better combat art crime') (*vrtnws.be*, 15:48+01:00) <<https://www.vrt.be/vrtnws/nl/2023/01/13/universiteit-gent-werkt-samen-met-gentse-politie-stad-om-kunstcr/>> accessed 22 March 2023; 'GRACE: Ghent Research institute for Art & cultural heritage Crime and law Enforcement' (*Universiteit Gent*) <<https://www.ugent.be/re/cssr/nl/onderzoeksgroepen/grace>> accessed 22 March 2023.

knowledge, while an administrative unit member focuses on the ARTIST database. To manage the international aspects of the art crime phenomenon, an advisor with experience in international police cooperation was added to finish the unit's roster. The ART is currently part of the Centre of Excellence (CENTREX) for theft department in the DJSOC. Despite this, its remit covers all forms of art-related crime, including theft, looting and trafficking, art (money) laundering, and fraud. The unit will work with local police forces, be the point of contact for Interpol and Europol, and *"play a key role in safeguarding Belgium's cultural heritage"*.<sup>708</sup> The ART will also examine developing modus operandi in the art crime context, with specific attention paid to potential links with organised crime and terrorism.

This relaunch of a fully operational unit happened on the explicit request of the Ministry of Internal Affairs. Nonetheless, the way in which policymakers have treated art crime policing in general and the nations specialised arts and antiques unit in particular has not been edifying. The reference officer repeatedly warned about the implications of his retirement in the years running up to it, but little was done to prepare.<sup>709</sup> This means that the reopened unit starts at a disadvantage, and that operational experience may have been lost. Given the retirement of the reference officer, the current plan for the ART unit is to rebuild *"a new perspective"* and to develop a renewed strategy for the unit going forward. This renewal could also have positive effects. The unit now is now the largest since 2006, and art crime is continually evolving. New perspectives can bring new dynamism, and the unit appears to have been thoughtfully organised. Nonetheless, it is a rebuilding job, and the police's art crime policing efforts remain significantly constrained.

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<sup>708</sup> Email correspondence ART unit advisor d.d. 13/03/2023.

<sup>709</sup> 'Kunstdiefstallen in België Blijven Onopgelost' ('Art Thefts in Belgium Remain Unsolved') *De Standaard* (7 November 2017) [https://www.standaard.be/cnt/dmf20171106\\_03173380](https://www.standaard.be/cnt/dmf20171106_03173380)[https://web.archive.org/web/20180917163325/http://www.standaard.be/cnt/dmf20171106\\_03173380](https://web.archive.org/web/20180917163325/http://www.standaard.be/cnt/dmf20171106_03173380)> accessed 22 March 2023; Huybrechts (n 688); Biourge and Huysen (n 705).

## 4.5 The Belgian art crime policing network

There exists a relatively robust network of art expertise in Belgium. The nation's importance in international art trade reaches beyond what could be expected for what is a relatively small country.<sup>710</sup> In 2015, Belgium held sixth place in the market for contemporary art in Europe, after the UK, France, Germany, Italy and Austria, with a sales value totalling US\$4.1 million; equivalent to one percent of the world art auction market.<sup>711</sup> Leading international auction houses such as Sotheby's and Christie's have representative offices in Brussels, while German auction house Lempertz runs a full sales and auction location. Local auction houses are spread all over the country but are mainly concentrated in Antwerp and Brussels, the most high-profile of which include Bernaerts Auction House and Carlo Bonte Auctions. Art gallery clusters are situated in the major cities and at the Belgian coast. Major galleries include Sofie Van de Velde Gallery and Tim Van Laere Gallery. Brussels is a centre for African art as well as for the antiquities trade.<sup>712</sup> Several major art trade fairs are organised each year: BRAFA (Brussels' Antiques and Fine Art Fair), BRUNEAF (focused on African and non-European art) and Art Brussels (contemporary art). The Belgian contemporary art market is gaining importance.<sup>713</sup> In art market terms, the country is primarily a destination country, rather than a country of origin.

Several specialised art insurance companies are also active in Belgium, such as Eeckman Art and Insurance, while other companies such as AXA insurance run departments dedicated to art and collection insurance. There are also several companies developing conservation, restoration, logistics, and storage services, such as the International Platform for Art Research and Conservation (IPARC), Art Salvage, ARTPORT, and Mobull. Notwithstanding the relatively small size of the private security sector in Belgium, several private security firms have developed specialised art security expertise,

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<sup>710</sup> Simon Leenknecht, 'The Flemish Contemporary Art Market: A Survey of Flemish Private Galleries and Flemish Artists with Galleries in Belgium and Abroad (2005-2015)' (*Flanders Arts Institute*) 18-21; Lambrecht and Sartori (n 569) 1/15.

<sup>711</sup> Lambrecht and Sartori (n 569) 1/15; Lambrecht and Ryan (n 565) 1/15.

<sup>712</sup> Alderman (n 446) 619.

<sup>713</sup> Lambrecht and Ryan (n 565) 1/15.

including ALLSECCON and SERIS. The latter installed the security systems for the renewed Royal Museum of Fine Arts in Antwerp.<sup>714</sup> Belgium is dotted with museums managing considerable collections such as the Royal Museums for Fine Arts in Brussels and Ghent. The latter has recently, in collaboration with elements of the Ghent police as well as academics from the Ghent University, set up a dedicated information exchange and dissemination hub for art crime expertise.<sup>715</sup> Finally, Artsafe, run by a former member of the *Cel Kunst & Antiek*, offers a number of services, including the tracking and return of stolen pieces.<sup>716</sup>

The Bureau of Art and Antiques built a network of contacts outside the police or government. Internationally, lines of communication with organisations such as the Committee of the Blue Shield, ICOM and UNESCO were kept open. Within Belgium, the unit could call upon the advice of local museums and academics, and it cooperated with related organisations.<sup>717</sup> The unit also kept up lines of communication with commercial actors, such as loss adjusters, private security firms, and art law professionals. In a comment on behalf of the Belgian Royal Chamber of Antique and Art Dealers, Yves-Bernard Debie, a lawyer specialised in art commerce, stated that the members of the Chamber had been content with their cooperative relationship with the unit.<sup>718</sup> A key example of the unit cooperating with entities outside the force is the collaboration it had with the *Centrum voor Religieuze Kunst en Cultuur*.<sup>719</sup> The centre was a hybrid organisation, of private origin but with extensive public legitimisation and support, created to safeguard and document religious heritage in Flanders and Brussels.<sup>720</sup> Today, it has been subsumed within religious heritage expertise centre PARCUM, which also runs a museum housing a collection of religious heritage at the Abdij Van 't Park site in Leuven,

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<sup>714</sup> 'Beveiliging van het Koninklijk Museum voor Schone Kunsten Antwerpen' ('Security at the Royal Museum of Fine Arts Antwerp') (1 March 2021) <<https://seris.be/nl/beveiliging-van-het-koninklijk-museum-voor-schone-kunsten-antwerpen>> accessed 22 March 2023.

<sup>715</sup> 'GRACE strijdt tegen kunstcriminaliteit ('GRACE Fights Art Crime')' (*Klara*) <<https://klara.be/luister/select/espresso/grace-strijdt-tegen-kunstcriminaliteit>> accessed 22 March 2023.

<sup>716</sup> 'About Us' (*artsafe.be*) <<https://www.artsafe.be/en/artsafe-4/>> accessed 22 March 2023.

<sup>717</sup> Belgian Senate (n 118) 26.

<sup>718</sup> Belgian Senate (n 137) 42.

<sup>719</sup> 'Centre for Religious Art and Culture'.

<sup>720</sup> CRKC - The Centre for Religious Art and Culture, 'Missie En Opdracht' ('Mission and Task') <<https://web.archive.org/web/20180917174734/http://crkc.be/missie-en-opdracht>> accessed 22 March 2023.

Belgium.<sup>721</sup> Both PARCUM and the CRKC before it are independent organisations recognised and partly subsidised by the Flemish Government. They are thus best described as a hybrid organisation, having both public and private elements. However, because of their importance to religious heritage policing, they are included in this research. The CRKC website had a separate heading to report church theft. When a theft was reported via that website, the information was sent straight to the unit.<sup>722</sup> This measure led to a large increase of registered cases: in 2009 nine thefts of thirty-six pieces were registered, whereas previously the registration year-record had been three.<sup>723</sup>

The incentive to keep this network alive arguably increased as police resources for art crime declined. Less resources meant less expertise and manpower within the unit; issues a performant network with outside experts could help address. Already before it the dissolution of the unit, the 2010 Tommelein-Taelman proposal mentioned earlier envisaged the active involvement of private parties such as art dealers, auction houses, and buyers as a way to more effectively prevent art crime without having to invest a large amount of public funds.<sup>724</sup> Axel Poels, former unit member, had previously come to a similar proposal in a 2006 thesis he produced while training as an antiquarian.<sup>725</sup> After the unit's dissolution, the 2017 Senate report recommended public-private partnerships for the purposes of information sharing on stolen art, also online, be set up, and to work with insurance companies specifically to improve prevention and facilitate restitution.<sup>726</sup> A network of contacts with private entities still existed, and, according to the reference officer, was running "*very smoothly*" in 2017 as part of testimony for the Senate.<sup>727</sup> However, it is apparent from other testimonies as part of the

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<sup>721</sup> Parcum (n 69).

<sup>722</sup> Van Herzele (n 143) 110, 123.

<sup>723</sup> Belgian Senate (n 137) 17; Belgian Senate (n 118) 117.

<sup>724</sup> Belgian Senate (n 628) 8.

<sup>725</sup> Axel Poels, 'De Antiekhandelaar En Het Niet-Authentieke Kunstwerk (the Art Dealer and the Inauthentic Artwork).' (Syntra 2006) 71-72.

<sup>726</sup> Belgian Senate (n 118) 43, 48, 51.

<sup>727</sup> Belgian Senate (n 137) 21.



Senate's consultations for its report that the size of that network had shrunk due to the downsizing of the unit.<sup>728</sup>

## 4.6 Conclusion

The Belgian situation concerning the policing of art crime is nuanced. At the macro level, Belgium's policing culture is partial to centralised police forces and less well-disposed towards plural policing and policing co-production. This can be seen in the comparatively strict regulation of private security, the police's traditional wariness of private usurpation, and the lack of a detailed, structured approach to public-private cooperation. In the wake of the 2008 financial crisis the police have experienced significant fiscal constraint, leading to a lively debate on the police's core tasks and an interest in load-shedding. Contemporary legislative and policy initiatives now evidence an increasing openness towards plural policing and policing co-production. As such, there are signs of a cultural shift taking place tracking fiscal constraints pressures associated with international developments. But while policymakers recently seem to be moving towards a more private-friendly police force and have argued for public-private partnerships in the context of art crime policing, there are also indicators of reticence within the police, evidencing the stickiness of policing culture and historical traditions.

Art crime policing itself uncontestedly faces significant fiscal constraint in Belgium. The lack of priority afforded to art crime and its policing by policymakers is reflected in their treatment of the unit and its resources as well as in the Belgian legislator's approach to art crime. After a period of expansion starting with the unit's establishment and lasting until the time of the 2001 reform of the Belgian police, the dynamic within the Integrated Police and with policymakers has been to progressively deprioritise art crime policing. This culminated in the destabilising period between 2015 and 2022, where the unit was first shut down, then revived in the form of a reference officer, then shut down again after that officer's retirement at the start of 2022, to then be fully and officially reinstated as a

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<sup>728</sup> Belgian Senate (n 137) 38, 189.

unit by 2023. The unit and reference officer do appear to have maintained a network of private contacts in order to effectively combat art crime, as a result of capacity limits. This, at least, is the picture emerging from official documents and literature.

## Chapter V: Art Crime Policing in the United Kingdom

*“It is easier to train a curator as a police officer than it is to turn a policeman into an art market specialist”<sup>729</sup>*

### 5.1 Introduction

This was the opinion of Vernon Rapley, at the time a Detective Sergeant of London Metropolitan Police’s Art and Antiques Unit, in 2006, at a time the UK’s specialist art crime police unit’s resources were squeezed due to budget cuts. Indeed, the UK’s Arts and Antiques squad has repeatedly had to go “*cap in hand*” to secure its resources.<sup>730</sup> This despite its many notable successes, one of the most high-profile of which was the unit’s successful recovery of Edvard Munch’s *The Scream* three months after it was stolen from Oslo’s National Museum of Art in 1994.<sup>731</sup> Rapley’s opinion reflects the expertise necessary for art crime policing, but also points towards the choices a police force faces when selecting its approach to art crime. The Arts and Antiques unit, in its search for ways to deal with shortfalls, has looked towards less conventional solutions, one of which was the training and incorporation into the force of civilian experts on cultural heritage protection. That such a scheme was eventually, and successfully, adopted, speaks to the flexibility with which the unit approaches (plural) policing. The UK police is indeed arguably more open to private policing than continental counterparts, while the UK’s status as a major art world hub ensures the presence of art expertise within the country. As such, the ground seems fertile for a police unit seeking to source expertise and intelligence from the private sector.

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<sup>729</sup> Antiques Trade Gazette (n 121).

<sup>730</sup> Laville (n 212).

<sup>731</sup> Block (n 7) 196.

## 5.2 Legislation

### 5.2.1 Art crime law

Given the Arts and Antiques unit operates under English law, English law is the primary focus here. Like in most other countries, the primary basis for art crime prosecution can be found in 'general' criminal law. The big difference between English law and the law of Belgium or France is that it employs a common law system while the latter two have a civil law system. Broadly speaking the law is written down in comprehensive codes in civil systems, and these structured codes are assumed to govern all cases.<sup>732</sup> The courts are asked to apply and interpret these codices, and should the law not be conclusive, apply the general principles contained in the codes. Common law leans more towards case law: courts' rulings are an important engine for law making as the codes tend to be less comprehensive than in the civil approach.<sup>733</sup> The division between the two systems is however less stark in practice.<sup>734</sup>

Theft is defined by Section 1 of the Theft Act 1968: "*A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it*". Any proprietary interest suffices to make the object belong to another, while appropriation is interpreted widely as per *Gomez* any act in relation to property that can be said to assume a right of the owner of the property constitutes appropriation.<sup>735</sup> Dishonesty is assessed per the lay objective standards of ordinary reasonable and honest people.<sup>736</sup> Fraud is covered by the Fraud Act 2006, section 2(1) of which states that individuals are guilty of fraud when they make a false representation with the goal to make a gain for themselves or cause a loss to another (or expose another to the risk

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<sup>732</sup> Caslav Pejovic, 'Civil Law and Common Law: Two Different Paths Leading to the Same Goal Original Scientific Paper' (2001) 155 *Poredbeno Pomorsko Pravo* 8-9.

<sup>733</sup> Pejovic (n 732) 9-10.

<sup>734</sup> Pejovic (n 732) 10.

<sup>735</sup> [1993] AC 442 (HL).

<sup>736</sup> *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67.

of a loss). This section thus covers the most prevalent forms of fraud in the art world.<sup>737</sup> Forgery is nonetheless separately defined in Section 1 of the Forgery and Counterfeiting Act 1981. A person is guilty of forgery if they “*make a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person’s prejudice*”. The handling of stolen goods and money laundering, finally, are covered by section 22 Theft Act and sections 327, 328 and 329 of the Proceeds of Crime Act 2003 respectively.<sup>738</sup>

The UK has a dualist approach to international legislation. This means that in the UK the international and legal orders are principally separate, and that as a consequence international law needs to be translated into national law for it to have full effect. As such, when the UK signs a treaty, it is “*effectively a promise by the UK Government to adhere to the treaty’s principles, doing so, if necessary, by making laws or policies that bring the principles to bear on life in the UK*”.<sup>739</sup> The UK signed the 1970 UNESCO Convention in 2002. The country domesticated the Convention a year later by adopting the Dealing in Cultural Objects (Offences) Act, implementing criminal sanctions.<sup>740</sup> It was made an offence to “*dishonestly deal in a cultural object that is tainted*” while “*knowing or believing that the object is tainted*”.<sup>741</sup> Offenders face up to seven-year imprisonment and/or a fine. However, the Act does not apply retroactively, meaning cases before 2003 fall outside its scope. This limits its efficacy, given the number of looted items already in circulation before that date, and the difficulty of establishing dates

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<sup>737</sup> R v Gomez [1993] AC 442 (HL); Charney (n 59) 108; Rapley (n 12) 33-34.

<sup>738</sup> Gertrude M Prescott, ‘A Different Kind of Special. The Metropolitan Police’s Art and Antiques Unit Initiative ArtBeat’ (2006) 11 Art Antiquity and Law 203.

<sup>739</sup> Historic England, ‘International Heritage Conventions, Treaties and Charters’ (2021) <<https://historicengland.org.uk/advice/hpg/coventionstreatiesandcharters/>> accessed 22 March 2023.

<sup>740</sup> Article 8 1970 UNESCO Convention; Manacorda (n 508) 32-33.

<sup>741</sup> Section 1 Dealing in Cultural Objects (Offences) Act 2003.

of looting to begin with.<sup>742</sup> Moreover, it is difficult to prove, as the Act requires, that a defendant knew or believed an object they were dealing in was tainted.<sup>743</sup> Enforcement of the law is patchy.<sup>744</sup>

On the supranational stage, the UK was formerly bound by EU legislation. However, the United Kingdom organised a non-binding referendum on the European Union on June third, 2016, in which a majority of 51.9 percent of respondents chose to leave the EU.<sup>745</sup> This decision has come to be known as 'Brexit'. The Brexit transition period, a period agreed in the Withdrawal Agreement between UK and EU in which the UK remained a member of the EU single market, customs union, and subject to EU law, expired at 11pm on the 31<sup>st</sup> of December 2020. This created a difficulty for the UK government with regard to cultural property law legislation. On the 28<sup>th</sup> of December 2020, three days before the expiration of the transition period, EU Regulation 2019/880 on the Introduction and the Import of Cultural Goods entered into force. Its article 3(1) prohibited the import of cultural goods unlawfully removed from their country of origin. The Regulation left it to the member states to stipulate penalties for non-compliance, but indicated these penalties were to be effective, proportionate, and dissuasive, and that all measures necessary for the proper implementation of Regulation were to be implemented.<sup>746</sup> What effective, proportionate, and dissuasive means is not defined in the regulation, though generally this phrasing is taken to mean that *“remedies and sanctions must achieve the desired outcome; to be proportionate, they must adequately reflect the gravity, nature and extent of the loss and/or harm; and to be dissuasive, sanctions must deter future acts [that are against the purposes of*

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<sup>742</sup> Simon Mackenzie, 'Dealing in Cultural Objects: A New Criminal Law for the UK' (2007) 2007 Amicus Curiae 11.

<sup>743</sup> Mackenzie (n 742) 11.

<sup>744</sup> Mackenzie (n 742) 11-12; Roger Bland, 'The United Kingdom as a Source Country: Some Problems in Regulating the Market in UK Antiquities and the Challenge of the Internet' in Simon Mackenzie and Penny Green (eds), *Criminology and Archaeology: Studies in Looted Antiquities* (Bloomsbury Publishing 2009) 99-100.

<sup>745</sup> Tony Baumgartner, 'Tackling Art Crime and Obtaining Restitution of Cultural Property Post-Brexit' (2017) 22 *Art Antiquity and Law* 125.

<sup>746</sup> Article 11 EU Regulation 2019/880 on the Introduction and the Import of Cultural Goods.

the legislation]”.<sup>747</sup> Initially, the UK government indicated the Regulation would be enforced.<sup>748</sup> However, the UK government started the procedure to repeal the Regulation in May 2021.<sup>749</sup> Its reasoning relied on the argument there was already sufficient domestic law to tackle the problem.<sup>750</sup> The Regulation has since been repealed, save for Northern Ireland, where it remains applicable.<sup>751</sup> The principles of the 5<sup>th</sup> money laundering also apply to the British art trade, as the UK government has implemented it, providing additional guidelines for the art trade.<sup>752</sup>

## 5.2.2 Plural policing law

The country’s regulation for private policing has been described as “*lax*”.<sup>753</sup> Like in most other countries, regulatory efforts have focused primarily on the regulation of conventional private security arrangements, and less on broader private policing regulation and governance.<sup>754</sup> The UK was relatively late in introducing private security legislation. It took until 2001 to introduce the Private Security Industry Act, which provides the basic framework for the sector.<sup>755</sup> Its objectives were to “*drive out criminals and drive up standards*”, and to “*assist the building of important crime reduction*

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<sup>747</sup> Barbara Cohen, ‘Remedies and Sanctions for Discrimination in Working Life under the EC Anti-Discrimination Directives’ in Janet Cormack (ed), *Discrimination in Working Life: Remedies and Enforcement* (2004) 19; Effectiveness, Proportionality and Dissuasiveness’ (2011) 15 *Eastern and Central European Journal on Environmental Law* 11.

<sup>748</sup> Alexander Herman, ‘Brexit and Importing Cultural Goods’ (*Institute of Art and Law*, 9 December 2020) <<https://ial.uk.com/brexit-culturalgoods/>> accessed 22 March 2023.

<sup>749</sup> Alexander Herman, ‘UK to Repeal Import Prohibition Derived from EU Law’ (*Institute of Art and Law*, 25 May 2021) <<https://ial.uk.com/ukrepeal-eulaw/>> accessed 22 March 2023.

<sup>750</sup> Fionulla Rogers, ‘Policy Brief: Following the UK’s Repeal of the EU Import Regulation in Great Britain, Will Northern Ireland Become a Gateway to Europe for Illicit Cultural Property?’ (Antiquities Coalition, October 2021) <<https://thinktank.theantiquitiescoalition.org/following-the-uks-repeal-of-the-eu-import-regulation-in-great-britain-will-northern-ireland-become-a-gateway-to-europe-for-illicit-cultural-property-recommendations-for-the-uk-to-mitigate/>> accessed 22 March 2023.

<sup>751</sup> Emily Gould, ‘What’s New for the Export of Works of Art? IAL Seminar with Maurice Turnor Gardner LLP Shines a Light on Recent Developments’ (*Institute of Art and Law*, 23 February 2022) <<https://ial.uk.com/whats-new-for-the-export-of-works-of-art-ial-seminar-with-maurice-turnor-gardner-llp-shines-a-light-on-recent-developments/>> accessed 22 March 2023.

<sup>752</sup> Emily Gould and Alyssa Weitkamp, ‘New Guidance from UK Government on Money Laundering Risks for the Art Trade’ (20 July 2021) <<https://ial.uk.com/new-guidance-from-uk-government-on-money-laundering-risks-for-the-art-trade/>> accessed 22 March 2023.

<sup>753</sup> Singh and Light (n 196) 307.

<sup>754</sup> Button (n 217) 47.

<sup>755</sup> Ronald van Steden and Rick Sarre, ‘The Growth of Private Security: Trends in the European Union’ (2007) 20 *Security Journal* 222; Singh and Light (n 196) 307.

*partnerships between police, the private security industry and others*".<sup>756</sup> Before 2001, self-regulation was the norm in the private security industry.<sup>757</sup> Private regulatory bodies and trade organisations developed codes of conduct and other forms of self-regulation; membership of these organisations was high.<sup>758</sup> These efforts were ultimately deemed insufficient, and the Act brought key aspects of the sector's regulation under state auspices in its quest to improve industry standards. Sections 1 and 2 introduce a new governmental institution, the Security Industry Authority, to carry out licensing, standard-setting, and monitoring duties. The requirements for licensing and the procedure to apply are set out in Sections 3 to 12. Not all private security providers are subject to licensing, however. The Act primarily focuses on "*manned guarding*", security operatives, and wheel-clampers.<sup>759</sup> Moreover, the Authority licenses individual security officers rather than security companies as a whole.<sup>760</sup>

Thus, while the Act has been successful in reducing criminality and raising standards in the sector, its relatively narrow approach left out important sectors within private security.<sup>761</sup> It was in any case not an attempt to fully address private policing at large.<sup>762</sup> The second goal of the Act was to facilitate public-private partnerships.<sup>763</sup> By raising standards, the Act was designed to increase the trustworthiness of the private security industry, making it a more plausible partner, both in the eyes of the police and from the perspective of the general public. Thus, the private security market has not been left to its own devices, but regulation has kept a relatively light touch. Broadly speaking, the UK's regulatory approach to private policing has been market friendly, even though the dynamics of the genesis of the regulation also include state-oriented elements.<sup>764</sup>

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<sup>756</sup> Mark Button, 'The Private Security Industry Act 2001 and the Security Management Gap in the United Kingdom' (2011) 24 *Security Journal* 119.

<sup>757</sup> Van Steden and Sarre (n 755) 226; Crawford (n 68) 164.

<sup>758</sup> Rick Sarre and Tim Prenzler, 'The Regulation of Private Policing: Reviewing Mechanisms of Accountability' (1999) 1 *Crime Prevention and Community Safety* 20.

<sup>759</sup> Sections 5, 6 and Schedule 2 of the Act; Van Steden and Sarre (n 755) 226.

<sup>760</sup> Leloup and White (n 205) 8.

<sup>761</sup> Adam White, 'The Impact of the Private Security Industry Act 2001' (2015) 28 *Security Journal* 425.

<sup>762</sup> Jones, van Steden and Boutellier (n 205) 289; Button (n 756) 127-128.

<sup>763</sup> Crawford (n 68) 165.

<sup>764</sup> Leloup and White (n 205) 9-11, 16.



Much like in Belgium, legislation is a barrier to knowledge exchange between the police and private actors in the UK. Laws including the 2000 of the Regulation of Investigative Powers Act (RIPA), the Police and Criminal Evidence Act, and the Data Protection Act 2018 have put an emphasis on authorisation of information flows.<sup>765</sup> Even though officials have stated that “*data protection law should not unduly prevent the police from detecting, investigating and deterring crime*”, such laws have contributed to a perception on the police’s part that these protocols involve a time-intensive identification of what could and could not be shared.<sup>766</sup> The GDPR also still applies in the UK through the Data Protection Act 2018. In summary, the UK has an uneven approach to art crime legislation, but it keeps to a relatively light touch regarding plural policing.

## 5.3 Policy

The British police has traditionally conceived of itself as “*citizens in uniform*” working on the basis of consent.<sup>767</sup> This is an important basis for its legitimacy and opens the door for a more horizontal relationship between the police and the private sector. Such has not always been the case: up until the 1980’s policymakers in practice still held a strong belief in police supremacy.<sup>768</sup> However, the market-oriented UK governments of the 1980’s were much more sympathetic to plural policing, and as a result tentative attempts to regulate the private policing sector were abandoned or shelved.<sup>769</sup> Despite a set of scandals involving private security, it took until the New Labour government of 1997 to revive sector regulation, culminating in the 2001 Private Security Act.<sup>770</sup> That act, as described above, is still relatively lenient, and rather than wishing to revive police supremacy the Labour government sought to strike a balance between state-centric and plural policing forward

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<sup>765</sup> Anne Adams, Gill Clough and Elizabeth FitzGerald, ‘Police Knowledge Exchange: Full Report 2018’ (The Open University 2018) 15-16.

<sup>766</sup> Adams, Clough and Fitzgerald (n 765) 24- 26.

<sup>767</sup> Reiner (n 317) 318-319; Home Office, ‘Criminal Justice: The Way Ahead’ (2001) 83; Jennifer M Brown, ‘A Blended Model for the Public-Private Provision of Policing for England and Wales’, *The Future of Policing* (Routledge 2013) 195; Rogers (n 38) 59.

<sup>768</sup> Leloup and White (n 205) 8.

<sup>769</sup> Leloup and White (n 205) 9

<sup>770</sup> Leloup and White (n 205) 9-10

approaches.<sup>771</sup> It invested heavily into police resources.<sup>772</sup> But the investing capacity of the British government was diminished significantly in the wake of the 2008 financial crisis. The new government of 2010 chose to solve the problem by pursuing an austerity policy. This meant significant police budget cuts and the pursuit of “*freeing up market capacity*”.<sup>773</sup> Policymaking viewed intervention in the private sector useful in so far it helped build confidence and trust in it, so that it could perform its role in meeting policing demand. Load-shedding, partnerships, and systematic police performance measurement were all explored and, in many cases, applied as strategies in the UK.<sup>774</sup>

Budget constraints also affected art crime policing and the Arts and Antiques Squad, even before the 2008 financial crisis. On the 21<sup>st</sup> of March 2006 the Metropolitan police announced a new scheme to bring experts in from the private sector, to work with detectives from the Specialist, Organised & Economic Crime command, of which the Arts and Antiques unit was a part.<sup>775</sup> Recruits would receive an initial four-week training and were thereafter to patrol art crime hotspots one day per fortnight.<sup>776</sup> The initiative was christened ‘ArtBeat’, and built on the tradition of the Special Constabulary which had existed within the police for 175 years.<sup>777</sup> The Special Constabulary consists of volunteer police officers, called Special Constables, who are invested with all the legal powers of their regular counterparts, but who are generally only work part time without pay.<sup>778</sup> In 2005 the Constabulary had already extended its remit by linking with the retail, higher education, and hospital sectors bring their employees in as Special Constables, working a day a fortnight alongside experienced officers.<sup>779</sup> The same template was to be used for ArtBeat.

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<sup>771</sup> Leloup and White (n 205) 10

<sup>772</sup> Jones, van Steden and Boutellier (n 205) 286-287.

<sup>773</sup> Leloup and White (n 205) 10-11; Rogers (n 38) 54.

<sup>774</sup> Button (n 21) 45-66; Rogers (n 38) 57-128.

<sup>775</sup> Kerr (n 1) 71.

<sup>776</sup> Prescott (n 738) 201.

<sup>777</sup> Antiques Trade Gazette (n 121).

<sup>778</sup> London Metropolitan Police, ‘Special Constable (Volunteer Police Officer)’ ([<https://www.met.police.uk/2021>](https://www.met.police.uk/2021) [<https://www.met.police.uk/car/careers/met/police-volunteer-roles/special-constable/special-constable-overview/>](https://www.met.police.uk/car/careers/met/police-volunteer-roles/special-constable/special-constable-overview/) accessed 22 March 2023.

<sup>779</sup> Prescott (n 738) 201-202.

The initiative's initial 'soft launch' was followed by a robust outreach effort later in the year. In June 2006, Detective Sergeant Vernon Rapley of the Art and Antiques Unit let it be known that the Metropolitan police was interested in recruiting part-time volunteer police officers from the art trade, to help tackle art and antiques crime in London.<sup>780</sup> The hope was to have 24 interested parties by the end of June 2006, so that the first ArtBeat officers would be on active duty by late 2006.<sup>781</sup> The project was to empower the police's art crime policing efforts, but was also seen as a platform on which foster dialogue with the sector. The prospect of better intelligence gathering was central to the police's thinking.<sup>782</sup> The plan was greeted with considerable scepticism.<sup>783</sup> Nonetheless, the effort is considered a success, with thirteen Special Constables operating by 2013.<sup>784</sup> It can be considered an example of community policing, where members of the community work in tandem with the police forces.<sup>785</sup> Nonetheless, it is the police who are in charge, and the Special Constables are in a supporting role.<sup>786</sup> Plural art crime policing was also endorsed by other involved parties.

In 2013 English Heritage, after starting its work with the Crown Prosecution Service and the Association of Chief Police Officers (now National Police Chiefs' Council), published its own ambitions to support cultural heritage protection in its 'National Cultural Heritage Protection Plan Framework'. In this plan it argued for a community-oriented approach to heritage protection.<sup>787</sup> The endorsement by the Association of Chief Police Officers and the Crown Prosecution Service of "*collective efficacy*" in combatting art crime gave further momentum to plural art crime policing.<sup>788</sup> The National Police

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<sup>780</sup> Antiques Trade Gazette (n 121).

<sup>781</sup> Prescott (n 738) 201; Antiques Trade Gazette (n 121).

<sup>782</sup> Prescott (n 738) 202-203

<sup>783</sup> Kerr (n 1) 74-76.

<sup>784</sup> Kerr (n 1) 71.

<sup>785</sup> Mike Brogden and Preeti Nijhar, *Community Policing* (Willan 2005).

<sup>786</sup> John Kerr, 'The Role of the Police in the Co-Production of Art Security in London' in Noah Charney (ed), *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves* (Palgrave Macmillan 2016) 111.

<sup>787</sup> English Heritage, 'National Heritage Protection Plan Framework' (English Heritage, 2013) <<https://historicengland.org.uk/images-books/publications/nhpp-plan-framework/nhpp-plan-framework/>> 5-7.

<sup>788</sup> National Police Chiefs Council, Heritage Watch and Alliance to Reduce Crime Against Heritage, 'Heritage and Cultural Property Crime: National Strategic Assessment 2013' (2013) 5-6, 17, 21, 30; National Police Chiefs Council, Heritage Watch and Alliance to Reduce Crime Against Heritage, 'Heritage and Cultural Property Crime: National Strategic Assessment 2017' (2017)

Chiefs' Council's former lead for Heritage and Cultural Property Crime and Historic England's Policing Advisor have moreover pushed for network-building with public and private sector stakeholders.<sup>789</sup> In summary, both in policing policy at large and art crime policing policy in particular there has been a significant openness to pluralising policing in England and the UK.

## 5.4 The London Metropolitan Police's Art and Antiques Unit

The structure of the police's approach to art crime policing in the United Kingdom differs from other countries across Europe. In most European countries with a specialised art crime unit that unit is situated at the national police level.<sup>790</sup> Instead, the UK's specialist art crime unit is the London Metropolitan Police's Art and Antiques unit.<sup>791</sup> Thus, as part of the London Metropolitan Police rather than a national police force, the unit is primarily set up to deal with art crime in London, and it is not formally able to operate outside of the city limits.<sup>792</sup> This setup is not necessarily a handicap, however, since London is not only the UK's major art centre, but also one of the major hubs of the art market worldwide. While the early signs are that some of the UK's art trade is shifting towards other art centres in Europe and abroad in the wake of both the Brexit vote and the COVID pandemic, it is *"likely that London will retain its attractiveness as a global hub and location for top-tier sales, with the expertise, infrastructure, and relatively trade-friendly regulatory stance required"*.<sup>793</sup> This ensures a unit based in London remains well-positioned to identify art crime trends and combat the phenomenon.<sup>794</sup> Moreover, the Arts and Antiques unit works with local departments in art crime cases and remain available for guidance.<sup>795</sup>

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<<https://www.nationalruralcrimenetwork.net/content/uploads/2017/11/Heritage-and-Cultural-Property-Crime-National-Strategic-Assessment-2017-FINAL.pdf>> 3.

<sup>789</sup> Kerr (n 531) 448.

<sup>790</sup> Oosterman (n 7) 216-227.

<sup>791</sup> Block (n 7) 195; Block (n 641) 16; Oosterman (n 7) 226.

<sup>792</sup> Kerr (n 786) 107.

<sup>793</sup> Clare McAndrew, 'The Art Market 2021: An Art Basel & UBS Report' (Art Basel & UBS 2021) 42; McAndrew (n 126) 31.

<sup>794</sup> Bichler, Bush and Malm (n 356) 372-376; Mackenzie and Yates (n 444) 71-77; Kerr (n 531) 448.

<sup>795</sup> Block (n 7) 195; Kerr (n 531) 448; Oosterman (n 7) 226.

The Arts and Antiques squad was one of the first of its kind worldwide.<sup>796</sup> It was originally established in 1969 following a series of stamp dealer robberies, and was for a time known as the 'Fine Art, Antique and Philatelic Squad'.<sup>797</sup> The impetus for establishing a squad also came from the discussions preceding the 1970 UNESCO Convention, as well as the recognition of London as a major art market centre.<sup>798</sup> This momentum however only carried for a little over a decade, as in 1984 the unit's 14 members were redeployed to fight street crime, thus effectively disbanding the Arts and Antiques Squad.<sup>799</sup> Five years later, in 1989, the unit was re-established in its current form, under the leadership of Richard ("Dick") Ellis.<sup>800</sup> But, again, a little over a decade later, in 2002, former unit member Charley Hill lamented specialisation had fallen out of favour in police circles, and was quoted as saying the police had all but given up on seriously tackling art theft.<sup>801</sup> Hill considered cost a key issue for the unit's survival. Despite the successful conclusion of the Myatt-Drewe forgery case<sup>802</sup> during the second half of the 90's, and the resultant good publicity for the unit and the police force as a whole, the investigation had *"cost the taxpayer millions"*, a fact which Hill thought to *"have been resented by the senior Scotland Yard officers, who questioned the significance of the case to the general public"*.<sup>803</sup> At the time of Charley Hill's comments, the squad was reported to employ but a single detective.

A few years later, in 2007, the announcement was made that funding towards the unit's 300-to-350-thousand-pound budget was to be cut by half.<sup>804</sup> The reasons cited were art crime's low priority, and

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<sup>796</sup> Rapley (n 12) 36.

<sup>797</sup> Gupte (n 136); Block (n 7) 195.

<sup>798</sup> Rapley (n 12) 36; Oosterman (n 7) 226.

<sup>799</sup> Block (n 7) 195; Anna Brady, 'Closure of London's Art and Antiques Crime Squad Would Be Madness Says Former Chief' *The Art Newspaper* (7 September 2017) <<http://theartnewspaper.com/news/closure-of-londons-art-and-antiques-squad-would-be-madness-says-former-chief>> accessed 22 March 2023.

<sup>800</sup> Noah Charney, Paul Denton and John Kleberg, 'Protecting Cultural Heritage from Art Theft: International Challenge, Local Opportunity' (2012) 81 *FBI Law Enforcement Bulletin* 4; Block (n 7) 195; James Pickford, 'Warning over Break-up of Scotland Yard Specialist Art Unit' *Financial Times* (16 August 2017) <<https://www.ft.com/content/53a4d768-82a2-11e7-94e2-c5b903247afd>> accessed 22 March 2023; James Ratcliffe, 'Bring Back the Met's Art and Antiquities Squad' [2017] *Apollo Magazine* <<https://www.apollo-magazine.com/bring-back-the-mets-art-and-antiquities-squad/>> accessed 22 March 2023.

<sup>801</sup> Gleadell, 'The Art Detective' *The Telegraph* (8 July 2002) <<https://www.telegraph.co.uk/culture/art/3579807/The-art-detective.html>> accessed 22 March 2023.

<sup>802</sup> For an extensive discussion of the case, see e.g. Laney Salisbury and Aly Sujo, *Provenance: How a Con Man and a Forger Rewrote the History of Modern Art* (Penguin 2009).

<sup>803</sup> Gleadell (n 801).

<sup>804</sup> Charney, Denton and Kleberg (n 800) 5; Laville (n 212); Block (n 7) 196.

the necessity of internal resource prioritisation as budget cuts affected the whole Specialist Directorate. These budget cuts were “needed so the police could focus resources on frontline operational activities”, per a Scotland Yard spokesman.<sup>805</sup> In the same breath the potential for private funding to fill the budget hole was suggested. The unit was encouraged to source private capital. This search would prove difficult, with Mark Dodgson, of the British Antique Dealers Association, commenting: “The idea of people in the art world funding the squad seems wrong. My members pay taxes already, and surely paying for the police is what their taxes are for”.<sup>806</sup> Annabel Fell-Clark, chief executive of Axa Art UK stated that although Axa “want and need to work with the police”, it was not prepared to help fund the unit, and considered the attempts by the Metropolitan Police to find private art world sponsors short-sighted.<sup>807</sup> Ultimately, Scotland Yard confirmed that no private funding sources had been secured.<sup>808</sup> However, the budget cuts were never carried out.<sup>809</sup>

By 2017, the unit employed three full-time police officers.<sup>810</sup> But during the summer of that year, a communication circulated stating the unit had been operationally suspended starting June 19, 2017, because its three officers had been redeployed to the Grenfell Tower fire investigation.<sup>811</sup> On June 14<sup>th</sup> the Grenfell Tower, a residential appartement block in west London, caught fire. The blaze cost the lives of more than 80 people. The severity of the disaster and the revelation of deficient safety measures made it dominate the British news cycle, making its resolution a high priority.<sup>812</sup> The

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<sup>805</sup> ‘Scotland Yard Want Sponsors to Fund Art and Antiques Unit’ *Antiques Trade Gazette* (22 January 2007) <<https://www.antiquetrade gazette.com/news/2007/scotland-yard-want-sponsors-to-fund-art-and-antiques-unit/>> accessed 22 March 2023.

<sup>806</sup> Laville (n 212).

<sup>807</sup> Laville (n 212).

<sup>808</sup> Laville (n 212); Oosterman (n 7) 226.

<sup>809</sup> Block (n 7) 196.

<sup>810</sup> Laura Chesters, ‘Metropolitan Police’s Art Crime Unit Closed Due to Grenfell Pressures’ *Antiques Trade Gazette* (25 July 2017) <<https://www.antiquetrade gazette.com/print-edition/2017/july/2300/news/metropolitan-police-s-art-crime-unit-closed-due-to-grenfell-pressures/>> accessed 22 March 2023; Martin Bailey, ‘Scotland Yard’s Art and Antiques Unit Heading for Closure’ *The Art Newspaper* (16 August 2017) <<http://theartnewspaper.com/news/scotland-yards-art-and-antiques-unit-heading-for-closure>> accessed 22 March 2023.

<sup>811</sup> Bailey (n 810); Reyburn, ‘A Green Light for Art Criminals?’ *The New York Times* (1 September 2017) <<https://www.nytimes.com/2017/09/01/arts/london-police-art-antiques-unit.html>> accessed 22 March 2023.

<sup>812</sup> Bailey (n 810); Gordon MacLeod, ‘The Grenfell Tower Atrocity’ (2018) 22 *City* 460.

redeployment of the unit caused significant unease in the wider art world. Both former unit heads Richard Ellis and Vernon Rapley expressed concern that the unit was headed for closure.<sup>813</sup> Speaking at the Art Business conference, Ellis warned the threat of permanent closure was real, indicating he'd "been here before" in 1984. Most within art security agreed that the police should not leave the field altogether.<sup>814</sup>

The matter made it to London city hall, where during Mayor Question Time UKIP's Peter Whittle asked the Mayor Sadiq Khan for assurances the unit would survive.<sup>815</sup> The mayor replied the Metropolitan Police remained "wholly committed to the work of the Art and Antiques Unit", stating that one officer within the Unit still maintained liaison with the industry during the redeployment, with the support of a Detective Sergeant. Moreover, he stated that a newly appointed permanent unit head would be in post from October onwards. His words proved true, as the unit was again operational with three officers working under its new chief by December 2017.<sup>816</sup> This is the current status quo. Taken together, the facts thus show that the Specialist Crime Directorate was often the first to be considered for budget cuts, and that the Art and Antiques unit within it was vulnerable.<sup>817</sup>

There is specialist art crime policing knowledge in the UK police outside the Arts and Antiques unit, however. Today, each county police has assigned an officer as a point of contact for art crime-related affairs.<sup>818</sup> In contrast to Belgium, where historically district level officers with art crime expertise were typically found within the investigative teams for theft or financial crime, these 'Heritage Liaison

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<sup>813</sup> Bailey (n 810); Brady (n 799).

<sup>814</sup> Reyburn (n 811); Kerr (n 786) 113-114; Kerr (n 531) 449.

<sup>815</sup> Peter Whittle, 'Art and Antiques Unit' (*Mayor's Question Time*, 4 September 2017) <<https://www.london.gov.uk/questions/2017/3572>> accessed 22 March 2023.

<sup>816</sup> Lynda Albertson, 'Good News: Scotland Yard Art and Antiques Unit Will Continue, with new Permanent Unit Head.' (*ARCABlog*, 5 October 2017) <<http://art-crime.blogspot.com/2017/10/good-news-scotland-yard-art-and.html>> accessed 22 March 2023; Laura Chesters, 'Scotland Yard Art and Antiques Unit Re-Formed' *Evening Standard* (14 December 2017) <<https://www.standard.co.uk/news/london/scotland-yard-art-and-antiques-unit-reformed-a3719641.html>> accessed 22 March 2023.

<sup>817</sup> Block (n 7) 195-196; Kerr (n 786) 110; Kerr (n 531) 453-454.

<sup>818</sup> Bethan Poyser and Sam Poyser, 'Police Practitioners and Place Managers' Understandings and Perceptions of Heritage Crime in Nottinghamshire' (2017) 19 *International Journal of Police Science & Management* 253; Mark Harrison, Mark Dunkley and Alison James, 'The Development of the Heritage Crime Programme in England' in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Springer 2019) 733; Kerr (n 531) 448.

Officers' are usually associated with the investigation of offences against the rural and natural environment.<sup>819</sup> Historic England, the British Government body assigned with protecting England's historic environment, has been a key driver for the identification and appointment of art crime reference officers within the police force.<sup>820</sup> The organisation supported these officers by publishing 'Heritage Crime: A Guide for Law Enforcement Officers', a booklet intended to *"assist front line officers with information on the most common heritage offences and to signpost additional support and contacts"*.<sup>821</sup> In addition, Historic England's Policing Advisor has conducted heritage crime outreach programmes for as many as 10,000 practitioners, including many police officers. According to this Advisor these practitioners are equipped with *"a basic level awareness and understanding"* of art crime.<sup>822</sup> These efforts are important for improving the quality of the police's response to art crime. Yet equally, an initial awareness of art crime or the knowledge of who to refer cases to are but the basics of art crime policing, and more focused training programs have been suggested to further improve police efforts.<sup>823</sup>

The unit itself is a member of the National Heritage and Cultural Property Crime Working Group (NHPCPWG).<sup>824</sup> This group is a result of English Heritage (now Historic England), the Association of Chief Police Officers (now the National Police Chiefs' Council), and the Crown Prosecution Service together *"recognis[ing] the need for a more structured and sustainable approach to the prevention and investigation of crime and anti-social behaviour within the historic environment of England"* in 2010-2011.<sup>825</sup> The resultant NHPCPWG helps coordinate art crime policing efforts and has supported an extensive range of public institutions and private organisations, commercial and non-commercial, in their efforts countering art crime.<sup>826</sup> The Art and Antiques unit itself also directly aids other elements

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<sup>819</sup> Poyser and Poyser (n 818) 249; Harrison et al. (n 818) 733.

<sup>820</sup> Kerr (n 531) 448.

<sup>821</sup> Mark Harrison and Stuart Orton, 'Heritage Crime: A Guide for Law Enforcement Officers' (Historic England 2016) 3; Harrison et al. (n 818) 733; Kerr (n 531) 454.

<sup>822</sup> Kerr (n 531) 448.

<sup>823</sup> Assessment (n 788 (2017)) 16, 13-14, 17.

<sup>824</sup> Kerr (n 531) 448.

<sup>825</sup> Harrison et al. (n 818) 733.

<sup>826</sup> National Police Chiefs Council (n 823) 5, 9, 38-49.



of the police.<sup>827</sup> Police forces faced with art-related cases can contact the unit for support.<sup>828</sup> In this way, the unit still plays a vital role for cases outside of London: the unit can provide expertise in support of investigations outside London, or assume a coordinating role for large-scale operations.

The unit was previously part of the Economic and Specialist Crime command within the Specialist Crime Directorate of the Metropolitan Police.<sup>829</sup> Over 2018 and 2019 the Metropolitan Police however was restructured into four business groups, one of which, Met Ops, incorporated many of the functions of the Specialist Crime & Operations Directorate. The unit's primary focus is to deal with art criminals, inside or outside of the market. It investigates not only the thieves and the forgers, but also those commissioning or supporting the commission of art crime offenses, as well as those who benefit, directly or indirectly, from the crimes.<sup>830</sup> The unit, like foreign counterparts, also gathers evidence and intelligence for overseas public police and judicial authorities on matters relating to London art crime.<sup>831</sup> Apart from pursuing criminals and gathering intelligence, it may also aid in recovery, though the priority afforded to the latter has varied during the unit's existence.

The Arts and Antiques unit also, like many other units of its kind, maintains a stolen arts database. The 'London Stolen Arts Database', which like the unit has a London imprint, is reported to store details of more than 57,000 items.<sup>832</sup> This is less than the London-based private Art Loss Register database.<sup>833</sup> The latter is the more important for UK art crime, and is even used by the unit itself.<sup>834</sup> Items are included in the 'London Stolen Arts Database' if they have good descriptions, qualify as pieces of art, antiques or as cultural property, and are unique and identifiable.<sup>835</sup> The proper function and upkeep of the database has however not been without issue. A 2003 proposal for a national stolen art

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<sup>827</sup> Kerr (n 531) 447.

<sup>828</sup> Kerr (n 786) 107.

<sup>829</sup> Kerr (n 1) 71; Block (n 7) 195.

<sup>830</sup> Rapley (n 12) 36.

<sup>831</sup> Kerr (n 531) 447.

<sup>832</sup> Block (n 7) 196; Kerr (n 786) 100.

<sup>833</sup> Kerr (n 531) 448.

<sup>834</sup> Kerr (n 531) 449.

<sup>835</sup> Irini A Stamatoudi, *Cultural Property Law and Restitution: A Commentary to International Conventions and European Union Law* (Edward Elgar Publishing 2011) 186.

database did not come to fruition, due to a lack of interest shown by local police forces.<sup>836</sup> This request was renewed ten years later by the Association of Chief Police Officers (ACPO). At the time the database was no less than five years out of date, with its website's latest entries concerning objects stolen in February 2008.<sup>837</sup> This call for action was preceded by the 'Heritage and Cultural Property Crime (HCPC) strategic assessment 2013', which also suggested the establishment of a national database.<sup>838</sup> A series of break-ins at auction houses, violent robberies of dealers, and church, museum and art gallery thefts gave further momentum to the initiative.<sup>839</sup> Nonetheless, at the time of writing, the status quo remains the same, and no national police stolen arts database is operational in the UK.

## 5.5 The British art crime policing network

The UK and London in particular, as one of the world's major art world centres, house a plethora of institutions with expertise relevant to art crime policing. The country houses several of the world's premier museums, including the National Gallery, Tate Britain and Modern, the Victoria & Albert (V&A) and the British Museum. In 2019, before COVID's profound effect on museum visitor numbers, the British Museum, Tate Modern, and the National Gallery were the fifth, sixth, and seventh most visited museums in the world respectively, each drawing around 6 million visitors.<sup>840</sup> London was the only city represented more than once in the top 10 of most visited museums, while only the United States had more than one representative in the list, with two. Several of these museums have developed significant programs to combat art crime.

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<sup>836</sup> Kerr (n 786) 112.

<sup>837</sup> 'Police Chiefs Call for New Theft Database' *Antiques Trade Gazette* (27 November 2013) <<https://www.antiquetrade gazette.com/news/2013/police-chiefs-call-for-new-theft-database/>> accessed 22 March 2023.

<sup>838</sup> Assessment (n 788 (2013)) 31.

<sup>839</sup> 'Criminal Gangs Targeting High-Value Works of Art in UK' *BBC News* (17 November 2013) <<https://www.bbc.com/news/uk-24956337>> accessed 22 March 2023; *Antiques Trade Gazette* (n 837).

<sup>840</sup> Emily Sharpe and José da Silva, 'Art's Most Popular: Here Are 2019's Most Visited Shows and Museums' *The Art Newspaper* (31 March 2020) <<https://www.theartnewspaper.com/2020/03/31/arts-most-popular-here-are-2019s-most-visited-shows-and-museums>> accessed 22 March 2023.

One example is the British Museum's 'Circulating Artefacts' (CircArt) project, which ran from April 2018 to February 2021.<sup>841</sup> CircArt was primarily an online platform for flagging potentially looted objects, mainly from Egypt and Sudan, that were offered for sale on the art market or social media.<sup>842</sup> By the time of the project's completion, more than 50000 objects had been researched and more than 1200 images and videos of potentially trafficked objects were identified.<sup>843</sup> The British Museum employed a dedicated team of experts to search for suspicious antiquities, and lead project partners' efforts. These project partners included cultural organisations and universities in Egypt and Sudan, auction houses and dealers, and law enforcement agencies; funding was secured from the British Council's Cultural Protection Fund in partnership with the UK Department for Digital, Culture, Media and Sport.<sup>844</sup> The project also had an educational component, as it ran training sessions and workshops for heritage professionals, students, teachers and relevant authorities, in an effort to spread awareness and build expertise.<sup>845</sup>

In a similar vein, the V&A runs the 'Culture in Crisis' programme since 2014.<sup>846</sup> The programme focuses on "providing a forum for sharing information, inspiring and supporting action and raising public awareness".<sup>847</sup> The most important components include the Culture in Crisis Portal, which is a database cataloguing cultural heritage preservation projects worldwide, the Culture in Crisis Podcast, a podcast covering heritage protection topics, and a series of events and conferences organised under

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<sup>841</sup> The British Museum, 'Circulating Artefacts' (*The British Museum*, 2021) <<https://www.britishmuseum.org/our-work/departments/egypt-and-sudan/circulating-artefacts>> accessed 22 March 2023.

<sup>842</sup> 'Circulating Artefacts: A Cross-Platform Alliance Against the Looting of Pharaonic Antiquities' (*Culture in Crisis*) <<https://cultureincrisis.org/projects/circulating-artefacts-a-cross-platform-alliance-against-the-looting-of-pharaonic-antiquities>> accessed 22 March 2023; The British Museum (n 841).

<sup>843</sup> The British Museum (n 841).

<sup>844</sup> Javier Pes, 'Looters Beware: The British Museum Is Leading an International Task Force Fighting the Illicit Trade in Egyptian Antiquities' (*artnet News*, 21 January 2019) <<https://news.artnet.com/art-world/british-museum-will-become-global-watchdog-fight-trade-stolen-egyptian-antiquities-1441918>> accessed 22 March 2023; The British Museum (n 841).

<sup>845</sup> Culture in Crisis (n 842); The British Museum (n 841).

<sup>846</sup> 'V&A · Culture in Crisis' (*Victoria and Albert Museum*) <<https://www.vam.ac.uk/info/culture-in-crisis/>> accessed 15 November 2021.

<sup>847</sup> Victoria and Albert Museum (n 846).

the Culture in Crisis Banner.<sup>848</sup> The museum has also organised a course on art crime in 2020, and, like the British Museum, professes to support law enforcement in combatting the illicit trade in art, by providing expert advice.<sup>849</sup> Given these initiatives and given the profile of London's museums, there is a rich repository of knowledge and, seemingly, willingness to support art crime policing efforts within the UK's museums. Expertise stretches beyond the museum sector, however.

In 2021 the UK had the third largest share of the global art market in terms of value.<sup>850</sup> The world's major auctions houses, such as Sotheby's, Christie's, Philip's, and Bonham's, have their origins in the UK, and more specifically, London.<sup>851</sup> To say London is the centre of the UK's art market is somewhat of an understatement. For example, sales at the aforementioned four London auction houses account for up to 75 percent of the UK's total auction sales.<sup>852</sup> London gathers not only the major auction houses, but also the who's who of the international art gallery world.<sup>853</sup> Major international galleries, such as Pace Gallery, Gagosian and David Zwirner Gallery operate a flagship store in London, while others, such as White Cube, originated in the UK's capital. London also houses several large art trade associations, including The Association of Art and Antique Dealers (LAPADA) and the British Antique Dealers' Association (BADA).<sup>854</sup> Extensive expertise also exists within the insurance and legal sectors.<sup>855</sup> Moreover, London is home to developed specialised art security sector, with a security

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<sup>848</sup> Yosola Olorunshola, 'V&A Launches Culture in Crisis Database' (*Museums Association*, 5 December 2019) <<https://www.museumsassociation.org/museums-journal/news/2019/12/05122019-vanda-launches-culture-in-crisis-database/>> accessed 22 March 2023; Victoria and Albert Museum (n 846).

<sup>849</sup> 'V&A · Art and Heritage Crime' (*Victoria and Albert Museum*, 2019) <<https://www.vam.ac.uk/event/RyY3PxX6/art-and-heritage-crime-spring-2020>> accessed 22 March 2023; St John Simpson, 'Caught, Identified, Studied, Returned! The Role of the British Museum as a Source of Expert Witness for UK Law Enforcement' (*WCO News*, February 2020) <<https://mag.wcoomd.org/magazine/wco-news-91-february-2020/british-museum-expert-witness/>> accessed 22 March 2023; Alex Diggins, 'Meet the British Museum's Monument Men: The Team Tracking down Looted Artefacts' *The Telegraph* (5 July 2021) <<https://www.telegraph.co.uk/art/architecture/meet-british-museums-monument-men-team-tracking-looted-artefacts/>> accessed 22 March 2023; Victoria and Albert Museum (n 846).

<sup>850</sup> Mcandrew (n 126) 28.

<sup>851</sup> David Bellingham, 'The Auction Process' in Jos Hackforth-Jones and Iain Robertson (eds), *Art Business Today: 20 Key Topics* (Lund Humphries 2016) 148.

<sup>852</sup> Gregor Kleinknecht and Petra Warrington, 'The Art Law Review: United Kingdom' in Howard N Spiegler and Lawrence M Kaye (eds), *The Art Law Review* (2021) 1/14.

<sup>853</sup> Robertson and Chong (n 408) 1.

<sup>854</sup> Robertson and Chong (n 408) 2.

<sup>855</sup> Kerr (n 8) 331-333.

network incorporating several specialised private detectives, art security consultants, and art security companies.<sup>856</sup> Companies such as ArtDiscovery offers authentication services.<sup>857</sup> Several public and private academic institutions, finally, offer specialised courses on art law, the art business, including Queen Mary University's Centre for Commercial Law Studies' Art Business and Law LLM course developed in partnership with the Institute of Art and Law. The breadth and depth of art expertise in London make it potentially fertile ground for public-private policing interaction. The Arts and Antiques unit has indeed worked with art experts, private loss registers, insurance companies, and the trade.<sup>858</sup>

## 5.6 Conclusion

Overall, the UK's approach, while not universally eager, trends towards openness towards private policing. Its relationships with private actors are not in the top-down mould of those in more centralised police forces, but neither are private entities full-fledged partners to the Art and Antiques Squad. The UK's legislation on private policing is relatively lenient, and policymakers have shown eagerness to plural policing-based approaches to meeting policing demand. This tracks with the nation's deeper historical traditions and its policing culture which has been described as being temperamentally more open to private policing.<sup>859</sup> Fiscal constraint has played a major part in decision-making, both at the level of the police and with regards to art crime policing in particular. The London Metropolitan Police's Arts and Antiques unit remains an important entity within the UK's art crime policing configuration. And as London remains a crucial node in the international art world, the unit will more than likely remain an important factor in art crime policing in the UK going forward. But the police have taken a more decentralised approach, with a specialised unit supporting, and being supported by, both other police departments, with the country police's Heritage Liaison Officers in particular noteworthy, as well as private policing. Both unit and government have approached private

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<sup>856</sup> Kerr (n 122) 153-156.

<sup>857</sup> 'ArtDiscovery – Increase Value and Decrease Risk in Today's Art Market' (*ArtDiscovery*) <<https://artdiscovery.com/>> accessed 22 March 2023.

<sup>858</sup> Kerr (n 531) 447-448.

<sup>859</sup> Loader (n 329) 429.

policing in fundamentally instrumental way, considering it as a useful resource, especially in the context of budget challenges. The ArtBeat scheme is perhaps the most notable measure, directly integrating private experts into the force, but more broadly the Arts and Antiques Squad has developed a relatively robust private outreach network.

## Chapter VI: Art Crime Policing in France

*“Art crime in France is not a high priority”<sup>860</sup>*

### 6.1 Introduction

This was the opinion of at least one *Office Central de Lutte Contre le Trafic des Biens Culturels*<sup>861</sup> (OCBC) officer in 2016. Despite this opinion the OCBC is one of the largest specialist art crime police units in the world. There has been a tradition of investing in art crime policing in the country, and France has been at the forefront of attracting international attention to art crime during the last decade.<sup>862</sup> Five days after terrorist attacks perpetrated by members of the Daesh terrorist group cost the lives of 130 victims in Paris on Friday November 13<sup>th</sup> 2015, then-president François Hollande announced, in front of an UNESCO conference in the same city, plans to grant “*asylum*” to art and archaeological treasures at risk of being destroyed by Daesh.<sup>863</sup> In the same speech he indicated France’s priority was to curtail the illicit trafficking of cultural property, thus evidencing the link made in policy circles between antiquities trafficking and terrorist financing. Hollande committed France to “*preserve the world’s common heritage*”.<sup>864</sup> Two years later, President Emmanuel Macron’s speech on the restitution of looted heritage to African nations and his commissioning of a report on the matter were bellwethers

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<sup>860</sup> Kerr (n 531) 454.

<sup>861</sup> ‘Central Office for the Fight against Trafficking in Cultural Goods’.

<sup>862</sup> ‘Trade of Egyptian Antiquities Fund Terrorist Groups: Parliamentarian’ (*EgyptToday*, 7 June 2018) <<https://www.egypttoday.com/Article/1/51720/Trade-of-Egyptian-antiquities-fund-terrorist-groups-Parliamentarian>> accessed 22 March 2023; Vincent Michel, ‘Le Trafic Illicite Des Biens Culturels Dans Les Pays En Conflit. De l’identification Des Objets à La Judicialisation Des Affaires’ (‘Illicit Trafficking in Cultural Property in Conflict Countries. From the Identification of Objects to the Judicialisation of Cases’) [2020] *Patrimoines* 58-60; Costanza Musu, ‘Cultural Heritage Protection, Illicit Antiquities, and the International Fight Against Terrorism Financing’ [2021] *The Safety and Security of Cultural Heritage in Zones of War or Instability* 15.

<sup>863</sup> Henri Neuendorf, ‘France Offers Asylum for Threatened Antiquities’ (*Artnet News*, 18 November 2015) <<https://news.artnet.com/art-world/france-asylum-isis-antiquities-366293>> accessed 22 March 2023.

<sup>864</sup> Paolo Foradori, Serena Giusti and Alessandro Giovanni Lamonica, ‘Reshaping Cultural Heritage Protection Policies at a Time of Securitisation: France, Italy, and the United Kingdom’ (2018) 53 *The International Spectator* 89.

for the increasing attention paid to the restitution of looted cultural property.<sup>865</sup> In January 2022, finally, soon after taking up its six month presidency of the EU council, France circulated an EU Council Presidency memo that again put “*crime targeting cultural property*” at the top of the agenda.<sup>866</sup>

France has thus mobilised itself in the fight against art crime.<sup>867</sup> It is from that perspective unsurprising the OCBC unit finds itself better equipped than most.<sup>868</sup> Nonetheless, members of the unit are on record stating they feel they have to work to justify the resources afforded to the unit and have argued for more institutional backing.<sup>869</sup> Equally, the OCBC appears to run into the same structural limitations as other units do regarding the need for specialist expertise. At the same time, French policing is traditionally considered to be highly centralised compared to other models around the world, favouring a top-down, public approach to policing.<sup>870</sup> This chapter, like the previous chapters, zooms in deeper on the specifics of art crime policing, discussing French legislation, French policy, the OCBC itself, and the potential plural network of actors with art crime policing skills.

## 6.2 Legislation

### 6.2.1 Art crime law

While general criminal law forms the primary basis for art crime related investigations and prosecutions in France, French law does carry more specific stipulations regarding crime involving

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<sup>865</sup> Bénédicte Savoy and Felwine Sarr, ‘The Restitution of African Cultural Heritage. Toward a New Relational Ethics’ (Ministère de la Culture 2018); Jonathan Paquette, ‘France and the Restitution of Cultural Goods: The Sarr-Savoy Report and Its Reception’ (2020) 29 *Cultural Trends* 302-303, 313; Jean-François Canat and others, ‘The Art Law Review: France’ in Howard N Spiegler and Lawrence M Kaye (eds), *The Art Law Review* (2021) 1/14.

<sup>866</sup> French Presidency of the Council of the European Union and French Presidency of the EU Council, ‘Trafficking of Cultural Goods’ (The Council of the European Union, 20 January 2022) <<https://media.euobserver.com/44de758b238106775a19fe064f3eab83.pdf>> accessed 22 March 2023.

<sup>867</sup> Ministère de la Culture, ‘Mobilization of France’ <<https://www.culture.gouv.fr/Thematiques/Circulation-des-biens-culturels/Patrimoines-en-danger/Mobilisation-de-la-France>> accessed 22 March 2023; French Presidency of the Council of the European Union 2022, ‘Conference to Strengthen European Cooperation against the Trafficking of Cultural Property’ (*French Presidency of the Council of the European Union*, 31 January 2022) <<http://presidence-francaise.consilium.europa.eu/en/news/conference-to-strengthen-european-cooperation-against-the-trafficking-of-cultural-property/>> accessed 22 March 2023.

<sup>868</sup> Block (n 7) 190; Oosterman (n 7) 219-220; Kerr (n 531) 454.

<sup>869</sup> Kerr (n 531) 454.

<sup>870</sup> Kerr (n 531) 455.



cultural property. French law defines theft as the dishonest taking of another person's property.<sup>871</sup> This offence is ordinarily punished with up to three years' imprisonment and a fine of up to 45000 Euros.<sup>872</sup> However, the French Criminal Code contains a provision making the theft of cultural goods, such as goods classified as historical monuments, goods in collections, and classified archives, an aggravating circumstance.<sup>873</sup> Theft of such goods is instead punished with up to seven years of imprisonment and 100000 Euros, and the punishments may rise to 10 years in prison or up to 150000 Euros in fines if other conditions outlined article 311-4 of the French Criminal are met.<sup>874</sup> As such, art theft is treated more severely than ordinary theft. The same template applies to vandalism. The destruction or damaging of another's property can, per Article 322-1 of the French Criminal Code, be punished with up to 2 years of imprisonment and a fine of up to 30000 Euros. However, when cultural property is affected, sentences rise to 7 years in prison and up to 100000 Euros in fines.<sup>875</sup>

Regarding the trafficking of cultural goods, article 322-3-2 goes a step further, creating an independent offence. Per this article, the import, export, transport, possession, acquisition, or exchange of cultural property of archaeological, artistic, historical, or scientific interest is punishable with up to seven years' imprisonment and a fine up to 100000 euros if this is done with the knowledge that the property had been removed from a territory that was, at the time of that removal, an area of operations for (a) terrorist group(s), and if the lawfulness of the origin of the cultural property in question cannot be proven. The article was introduced as part of the Law of 3 June 2016 which amended various articles in both the Criminal Code and the Code of Criminal Procedure which aimed to facilitate the prosecution of terrorism and organised crime, and which was adopted following the 2015 Paris terrorist attacks.<sup>876</sup> It is thus an example of a result of the impetus generated by these terrorist attacks,

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<sup>871</sup> Article 311-1 Code Pénal ('Criminal Code').

<sup>872</sup> Article 311-3 Code Pénal.

<sup>873</sup> Article 311-4-2 Code Pénal; Christian Armbruester and others, 'Study on preventing and fighting illicit trafficking in cultural goods in the European Union' 72.

<sup>874</sup> Article 311-4-2 Code Pénal.

<sup>875</sup> Article 322-3-1 Code Pénal.

<sup>876</sup> Loi n° 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale 2016 (2016-731) ('Law Strengthening the Fight

ISIS activity in the Levant, and the suspected link between antiquities trafficking and terrorist funding.<sup>877</sup>

In other areas French law does not specifically consider art crime. Money laundering, in article 324-1, is defined as the facilitation, by any means, of the false justification of the origin of the property or income of the perpetrator of a crime or offence, which has provided the perpetrator with a direct or indirect profit. With regards to fraud and forgery involving cultural property, there are also no specific article to be found in the law. As such, '*Escroquerie*', which is "*the act of deceiving a natural or legal person, by using a false name or quality, or abusing a quality, or using fraudulent means, in order to incite them to give funds, securities or property, or to provide a service, or to consent to an obligation or disclaimer*"<sup>878</sup>, and forgery<sup>879</sup> are the main offences applicable to deception crime involving cultural property.

On the international front, France ratified the 1970 UNESCO Convention, which was signed in Paris on the 7<sup>th</sup> of January 1997. On July 7<sup>th</sup> 2016, France introduced the Law on Freedom of Creation, Architecture and Heritage, which allowed for the smoother application of the 1970 UNESCO Convention.<sup>880</sup> It did so by altering several articles in the French Heritage Code, including article L111-8, which prohibits the import of cultural goods of non-EU Member State states which are party to the 1970 Convention in the absence of a corresponding export license drawn up by the state of export, as well as article L124-1, which can invalidate the entry into public collections of goods acquired after the ratification in 1997 of the UNESCO Convention of 1970, even if done so in good faith, when it is proven the goods were stolen or illicitly exported. France is, however, not a party to the UNIDROIT

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Against Organised Crime, Terrorism and their Financing, and Improving the Efficiency and Guarantees of Criminal Procedure').

<sup>877</sup> Mark V Vlasic and Helga Turku, "'Blood Antiquities': Protecting Cultural Heritage beyond Criminalization' (2016) 14 Journal of International Criminal Justice 1177-1179; Paul R Williams and Christin Coster, 'Blood Antiquities: Addressing a Culture of Impunity in the Antiquities Market' (2017) 49 Case Western Reserve Journal of International Law 103.

<sup>878</sup> Article 313-1 Code Pénal.

<sup>879</sup> Article 441-1 Code Pénal.

<sup>880</sup> Loi n° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine 2016 (2016-925) ('Law of 7 July 2016 on the Freedom of Creation, Architecture and Heritage').

Convention on stolen or illegally exported cultural objects of 24 June 1995. As a member of the European Union, France must also abide by European law, thus including Council Regulation (EC) No 116/2009, Council Directive 2014/60/EU of 15 May 2014, and the 5<sup>th</sup> Money Laundering Directive.<sup>881</sup> Overall, it is apparent that the French legislator has paid specific attention to the issue of art crime, and has more so than its counterparts in Belgium and the UK seen fit to incorporate specific stipulations to combat the problem.

## 6.2.2 Plural policing law

France's first law on private security was adopted on the 12<sup>th</sup> of July of 1983.<sup>882</sup> The steady growth of private policing, primarily in the form of private security, had put the topic on the political agenda of the socialist government under President François Mitterand.<sup>883</sup> The Bonnemaïson report of December 1982<sup>884</sup>, which confirmed the private security in France had grown significantly but also the abuses within it, recommended the development of a regulatory framework of the hitherto "unregulated" private security sector.<sup>885</sup> The resultant law subjected private security companies to administrative control, whereby such companies, their managers, and their guards, had to successfully undergo a background check before being granted authorisation to operate.<sup>886</sup> Security companies were also obliged to refrain from developing other activities, to wear a uniform easily distinguishable from that of public forces, and to refrain from intervening in social conflicts.<sup>887</sup> They were, finally, barred from using coercion, the key instrument of the police. The law thus sought to clearly delineate

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<sup>881</sup> Sophie Vigneron, 'The Return of Illicitly Exported Cultural Objects: The Implementation of the 2014/60/EU Directive in France' (2017) 3 Santander Art and Culture Law Review 35-56.

<sup>882</sup> Loi n° 83-629 du 12 juillet 1983 réglementant les activités privées de sécurité ('Law regulating private security activities').

<sup>883</sup> Cedric Paulin, 'Vers Une Politique Publique de La Sécurité Privée? Réguler La Sécurité Privée (1983- 2014)' ('Towards a Public Policy on Private Security?Regulating Private Security') (PhD, Université Paris Saclay 2017) 69.

<sup>884</sup> Named after Gilbert Bonnemaïson, who chaired the Commission that produced the report.

<sup>885</sup> 'Face à la délinquance : prévention, répression, solidarité : rapport au Premier ministre' ('Facing delinquency: prevention, repression, solidarity: report to the Prime Minister') (1982) 86.

<sup>886</sup> Articles 5-8 Loi n° 83-629 du 12 juillet 1983.

<sup>887</sup> Articles 2-4, 10 Loi n° 83-629 du 12 juillet 1983.

the line between private security and public police and put the security sector under government control. It took until 1986 for the necessary implementing measures to be adopted.<sup>888</sup>

A little under ten years later, the ‘Law on the orientation and programming of security’ was adopted on January 21<sup>st</sup>, 1995.<sup>889</sup> The law set out the French state’s basic duty to ensure security, parts of which are the maintenance of public peace, respect for the law, and the protection of persons and property. Crucially in the context of public-private policing, the first article of the law explicitly states that the state in the fulfilment of this duty “*associates itself with [...] representatives of professions, services and associations confronted with manifestations of delinquency*”.<sup>890</sup> This opened the door to private entities other than private security companies becoming associates of the state. Because of its explicit reference to non-governmental actors in the context of security provision the law has been considered one that “*calls for the coproduction of security*”.<sup>891</sup> But, as then-Prime Minister Lionel Jospin indicated: “[*it is necessary to*] *regulate with precision the conditions of recruitment, training, and supervision of [private] agents*”.<sup>892</sup> The approach remained, in other words, careful with private policing. The main effect of the 1995 law would be the introduction of the idea of co-production of policing in France’s legal system. Its underlying assumptions of the receding role of the state in certain areas and the

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<sup>888</sup> Décret n° 86-1058 du 26 septembre 1986 relatif à l'autorisation administrative et au recrutement des personnels des entreprises de surveillance et de gardiennage, de transport de fonds et de protection de personnes (‘Decree of 26 September 1986 on the administrative authorisation and recruitment of personnel for surveillance and guarding, cash-in-transit and personal protection companies’); Décret n° 86-1099 du 10 octobre 1986 relatif à l'utilisation des matériels, documents, uniformes et insignes des entreprises de surveillance et de gardiennage, transport de fonds et protection de personnes (‘Decree of 10 October 1986 on the use of equipment, documents, uniforms and badges of surveillance and guard companies, cash in transit and personal protection’).

<sup>889</sup> Loi n° 95-73 du 21 janvier 1995 d'orientation et de programmation relative à la sécurité (Law on Security Policy and Programming’).

<sup>890</sup> Article 1 Loi n° 95-73 du 21 janvier 1995.

<sup>891</sup> Valentin Boex, ‘La sureté aéro portuaire face à la diversité des menaces. Analyse systémique et typologique’ (‘Airport security in the face of the diversity of threats. Systemic and typological analysis’) (PhD, Université Jean Moulin, Lyon 3 2011); Paulin (n 883) 76.

<sup>892</sup> Ministère de l’Intérieur, ‘Des villes sûres pour des citoyens libres : actes du colloque de Villepinte, 24-25 octobre 1997’ (‘Safe cities for free citizens: proceedings of the Villepinte symposium’) <<https://www.vie-publique.fr/rapport/25592-des-villes-sures-pour-des-citoyens-libres-actes-du-colloque-de-villepinte>> accessed 22 March 2023.

potential for private policing to (help) shore up lacunae became an influence in French policing policy, and the private sector was enabled to take an important role in airport and train security.<sup>893</sup>

From 1995 to 2012 the private security sector in France continued to grow.<sup>894</sup> But this also led to inconsistencies in the quality of services, poor profitability, unclear management structures, and the existence of unauthorised and thus illegal service providers on the market.<sup>895</sup> The promotion and growth of private policing brought about by the 1995 law laid bare the inadequacies of the 1983 legal framework, and thus momentum was again created for legal reform to address industry failures. This culminated in the Law of 14 March 2011 and the Decree of December 21<sup>st</sup> 2011.<sup>896</sup> These laws created the *Conseil National des Activités Privées de Prévention et de Sécurité*<sup>897</sup> (CNAPS), an administrative public body created to manage the authorisation of security companies and employees, to institute disciplinary action if necessary, and to monitor and assist the sector.<sup>898</sup> Through the intermediary of the CNAPS, although it is semi-autonomous, the state keeps public control over the private security sector.<sup>899</sup>

As such a dynamic of “*agentification*” exists in France, where new administrative bodies are created to manage certain tasks, in a kind of internal load-shedding policy.<sup>900</sup> It was apparent the French state does not want to relinquish its hold on policing; in France’s approach to legislating private security and its relationship with the police there is a pronounced police and state oriented undercurrent.<sup>901</sup>

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<sup>893</sup> Virginie Gautron, ‘Les politiques publiques de lutte contre la délinquance’ (‘Public policies to combat delinquency’) (PhD, Université de Nantes 2006) 126; Boex (n 891) 259; Paulin (n 883) 77-78; Loi n° 2021-646 du 25 mai 2021 pour une sécurité globale préservant les libertés (Law for for a global security that preserves freedoms) (2021-646).

<sup>894</sup> Paulin (n 883) 87-88.

<sup>895</sup> Paulin (n 883) 137.

<sup>896</sup> Loi n° 2011-267 du 14 mars 2011 d’orientation et de programmation pour la performance de la sécurité intérieure (‘Law on the Orientation and Programming for the Performance of Internal Security’) (2011-267); Décret n° 2011-1918 du 21 décembre 2011 relatif à l’armement des personnes chargées du gardiennage et de la surveillance de certains immeubles collectifs d’habitation (‘Decree on the arming of persons responsible for the guarding and surveillance of certain apartment buildings’).

<sup>897</sup> ‘Council for Private Prevention and Security Activities’.

<sup>898</sup> Frédéric Ocqueteau, ‘The Expansion of Private Policing in France’ in Jacques de Maillard and Wesley G Skogan (eds), *Policing in France* (Routledge 2020) 128-129.

<sup>899</sup> Paulin (n 883) 283-284, 329-330.

<sup>900</sup> Paulin (n 883) 286; Button (n 21) 48-51; Ocqueteau (n 898) 127-128.

<sup>901</sup> Malochet (n 38) 2/15.

This approach still holds today. Even though the authors of the new 2021 law for a global security preserving liberties considered private security firms an “*essential link in the security continuum*”, the law still reinforced the CNAPS’ authority and implemented stricter licensing requirements for private agents as well as a ban on chain subcontracting.<sup>902</sup>

## 6.3 Policy

The French police system has been described as being at “*the most extreme pole of intense administrative centralisation*”.<sup>903</sup> With regards to the police structure itself, the system has been described as “*a dual system with two dominant institutions plus a constellation of related organisations with limited competence but with authority to police important social and economic activities*”.<sup>904</sup> The Gendarmerie and the National Police lead policing in France, and other public forces such as the municipal police typically have more limited competences than the aforementioned two, and depend on them for, for example, seizure and arrest.<sup>905</sup> Both have a hierarchical structure with the top having formal control over the mid-level and base of the organisation.<sup>906</sup> These centralised ideals are so entrenched in the French police as to make them an “*irreversible paradigm*”, which has contributed to a traditional wariness of plural policing as it is perceived as a potential challenge to this hierarchical and centralised police force.<sup>907</sup> The state limits the freedom of movement of private policing, both in terms of the tools private entities can utilise and the areas in which they can be active.<sup>908</sup>

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<sup>902</sup> Loi n° 2021-646 du 25 mai 2021 pour une sécurité globale préservant les libertés (‘Law for a global security preserving liberties’).

<sup>903</sup> Zagrodzki (n 330) 46; Jacques de Maillard and Wesley G Skogan, ‘Policing in France’ in Jacques de Maillard and Wesley G Skogan (eds), *Policing in France* (Routledge 2020) 17-18; Malcolm Anderson, ‘The Dual French Police System: Centralization, Specialization, Competition’ in Jacques de Maillard and Wesley G Skogan (eds), *Policing in France* (Routledge 2020) 63; Mouhanna (n 43) 82.

<sup>904</sup> Anderson (n 903) 68-69.

<sup>905</sup> François Bonnet, Jacques De Maillard and Sebastian Roché, ‘Plural Policing of Public Places in France: Between Private and Local Policing’ (2015) 2 *European Journal on Policing Studies* 286-287; De Maillard and Roché (n 198) 390; Anderson (n 903) 68.

<sup>906</sup> De Maillard and Skogan (n 903) 17; Mouhanna (n 43) 77-80.

<sup>907</sup> Mouhanna (n 43) 81-82; Malochet and Ocqueteau (n 331) 17; Malochet (n 38) 2/15.

<sup>908</sup> Malochet (n 38) 5/15.

Nonetheless, private policing continues to grow in France.<sup>909</sup> The main academic explanation offered for this expansion is familiar: research points to the skills deficit and fiscal constraint the police faces driving the expansion of private policing.<sup>910</sup> While French policy has predominantly maintained a philosophy of police primacy, police budgets, both for the *Gendarmerie* and the *Police Nationale*, have been under pressure from 2008 onwards. The *Révision générale des politiques publiques*<sup>911</sup>, which is far-stretching evaluation and reform of public institutions, led to funding and resource cuts for both forces.<sup>912</sup> At the same time, the French police's legitimacy and performance was further questioned. President Macron renewed the effort to guide the police towards a more conciliatory and "service-oriented" relationship with a public suspicious of it due to the police's extensive use of identity checks inviting racial profiling accusations and the police's adversarial approach.<sup>913</sup> The goal was to balance a continued "tough on crime" policy with increased cooperation with the public in targeted areas, while defusing mounting tensions in French society.<sup>914</sup> At the same time, the government moved to invest into the police, with money budgeted for recruitment drives and new police vehicles, thus trying to strike a balance between the momentum for plural policing and the traditional steadfast belief in police primacy.<sup>915</sup>

A 2018 government report suggested to rethink the public-private division as more of a continuum.<sup>916</sup> At the time the report was made public, the French Minister of Interior remarked that private security's development into essential nation-wide actors necessitated their full integration into the

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<sup>909</sup> Van Steden and Sarre (n 755) 222.

<sup>910</sup> Bonnet et al. (n 905) 300; Zagrodzki (n 330) 50; Ocqueteau (n 898) 125; Malochet and Ocqueteau (n 331) 10-11.

<sup>911</sup> General Review of Public Policies.

<sup>912</sup> Clément de Maillard, 'Intelligence-Led Policing in Criminal Investigations' in Jacques de Maillard and Wesley G Skogan (eds), *Policing in France* (Routledge 2020) 87.

<sup>913</sup> Zagrodzki (n 330) 50.

<sup>914</sup> De Maillard and Skogan (n 903) 17.

<sup>915</sup> Zagrodzki (n 330) 50.

<sup>916</sup> Malochet and Ocqueteau (n 331) 9; Thierry Delpeuch and Jacqueline E Ross, 'Security Partnerships in France' in Jacques de Maillard and Wesley G Skogan (eds), *Policing in France* (Routledge 2020) 149-150; Alice Thourot and Jean-Michel Fauvergue, 'D'un Continuum de Sécurité vers une Sécurité Globale' ('From a Security Continuum towards Comprehensive Security') (Parliamentary Commission 2018) 5.

global policing strategy, thus continuing and deepening the policy instated by the law of 1995.<sup>917</sup> However, this report did not fully consider the preconditions under which trust between the police and private actors can develop, and kept the language of involving non-police partners in “*certain*” areas only.<sup>918</sup> Without a clear vision on how to create conditions more amenable to private engagement, the 2018 report is “*likely to end up in a filing cabinet*”.<sup>919</sup> As such, although the report is emblematic of a change in approach, this change towards more plural policing appears to be, at this time, tentative still.

## 6.4 The Office Central de lutte Contre le trafic des Biens Culturels

The OCBC was founded in 1975 as the *Office Central pour le Repression des Vols d’Oeuvres et d’Objets d’Art*, which translates to ‘Central Office for the Repression of the Theft of Works of Art and Artistic Objects’.<sup>920</sup> It was established in the wake of a series of thefts of cultural property from churches, castles, and private homes, and, as its original name implies, it focused on the theft of art.<sup>921</sup> In 1997, the unit was rechristened with its current name: *Office Central de Lutte Contre le Trafic des Biens Culturels* (‘Central Office for the Fight against Trafficking in Cultural Goods’), signalling a broader focus.<sup>922</sup> The unit now “*deals with complex investigations of theft and receiving stolen property as well as forgery cases, fraud committed by organised groups, and money laundering at both national and international levels*” as well as trafficking. The repression of artistic counterfeits was added to its remit

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<sup>917</sup> Ocqueteau (n 898) 132.

<sup>918</sup> Thourot and Fauverge (n 916) 7, 105-111; Ocqueteau (n 898) 132.

<sup>919</sup> Ocqueteau (n 898) 132; Malochet and Ocqueteau (n 331) 28.

<sup>920</sup> Block (n 7) 190.

<sup>921</sup> Flynn (n 367) 109; Napoleon.org (n 121); Agnan (n 452).

<sup>922</sup> Kerr (n 531) 446.



in 2009.<sup>923</sup> More recently, vandalism of cultural heritage has also become a prominent focus.<sup>924</sup> Today, the OCBC is a central office of the French *Direction Centrale de la Police Judiciaire*<sup>925</sup> (DCPJ), which is the Directorate of the French *Police Nationale*<sup>926</sup> tasked with investigative policing.<sup>927</sup> The unit is part of the DCPJ's *Sous-Direction de la Lutte contre la Criminalité Organisée et la Délinquance Financière* (SDLCODF)<sup>928, 929</sup>.

The OCBC conducts its own investigations while also coordinating art crime investigations done by regional police departments.<sup>930</sup> Beyond its activities in concert with other elements of the French police forces, it also liaises with non-police public institutions including the Ministry of Culture and Communication, the Ministry of Justice, and the Ministry of Foreign Affairs and International Development.<sup>931</sup> As such, the unit generally leads the French police's response to the various forms of art crime.<sup>932</sup> On the international front, the OCBC is the main point of contact for INTERPOL, EUROPOL, and foreign police services regarding art crime in France.<sup>933</sup> It is also the designated central authority per Council Directive 93/7/EEC of 15 March 1993. Article 3 of this Directive requires EU Member States to appoint such an authority to carry out the tasks provided for in the Directive, which primarily entail

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<sup>923</sup> Dominique Perrin, 'La Police de l'Art sur les Traces du Butin de Daech Daech ('How French Art Police Are Hunting Daesh Antiquities') *Le Monde* (19 February 2016) <[https://www.lemonde.fr/m-actu/article/2016/02/19/la-police-de-l-art-sur-les-traces-du-butin-de-daech\\_4868651\\_4497186.html](https://www.lemonde.fr/m-actu/article/2016/02/19/la-police-de-l-art-sur-les-traces-du-butin-de-daech_4868651_4497186.html)> accessed 22 March 2023; Oosterman (n 7) 219; Interview with OCBC officer d.d. 01/12/2020; Ministère de l'Intérieur, 'Office central de lutte contre le trafic de biens culturels' <<http://www.police-nationale.interieur.gouv.fr/Organisation/Direction-Centrale-de-la-Police-Judiciaire/Lutte-contre-la-criminalite-organisee/Office-central-de-lutte-contre-le-traffic-de-biens-culturels>> accessed 22 March 2023.

<sup>924</sup> Ministère de l'Intérieur (n 923).

<sup>925</sup> 'Central Directorate of the Judicial Police'.

<sup>926</sup> 'National Police'.

<sup>927</sup> Décret n°75-432 du 2 juin 1975 instituant au ministère de l'intérieur un Office central de lutte contre le trafic des biens culturels. ('Decree of 2 June 1975 instituting at the Ministry of the Interior a Central Office for the fight against the traffic of cultural goods') (75-432); Ministère de l'Intérieur (n 923).

<sup>928</sup> 'Subdepartment for Organised and Financial crime'.

<sup>929</sup> Ministère de l'Intérieur (n 923).

<sup>930</sup> Block (n 7) 191; Kerr (n 531) 447.

<sup>931</sup> Balcells (n 358) 106; Kerr (n 531) 447.

<sup>932</sup> Kerr (n 531) 446; Ministère de l'Intérieur (n 923).

<sup>933</sup> Kerr (n 531) 447; Ministère de l'Intérieur (n 923).

the management of claims and restitution procedures for national treasures that have unlawfully left the territory of one Member State for the territory of another.<sup>934</sup>

The unit also works on prevention of art crime and awareness-building. It contributed to the 2010 “*Sécurité des Biens Culturels: de la Prévention du Vol à la Restitution de l’Objet Volé*” booklet, containing guidelines for securing cultural property provided to public and private owners of art, procedures to follow in case of theft, and approaches to adopt when a piece is recovered.<sup>935</sup> The unit also produced a separate booklet aimed at archaeologists with guidelines for what to do when encountering a looting site. According to an OCBC officer interviewed in 2016, the latter booklet had significantly increased the number of reports made to the police and Gendarmerie.<sup>936</sup> These booklets are part of a broader policy which sees the OCBC engage with institutional and art market interlocutors, such as dealer organisations, in the interest of preventing art crime.<sup>937</sup> Nonetheless, the OCBC does not consider prevention one of its core tasks; audits of security measures in for example churches and museums are done by officers with the qualification of *référént sûreté*<sup>938</sup> seconded to the French Ministry of Culture.<sup>939</sup> The unit, finally, also provides training in art crime policing to French or foreign investigators and judges, while also giving presentations at conferences.<sup>940</sup>

To fulfil this sizeable mandate, the OCBC can currently call upon around 25 members of personnel, making it one of the largest art crime units of its kind.<sup>941</sup> This number has remained stable over the last decade.<sup>942</sup> The OCBC employs both Police Nationale and Gendarmerie officers, as well as

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<sup>934</sup> Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State articles 3, 4, 6; Armbruester et al. (n 873) 127.

<sup>935</sup> Ministère de la Culture et de la Communication, ‘Sécurité Des Biens Culturels. De La Prévention Du Vol à La Restitution de l’objet Volé (Security of Cultural Goods. From Prevention of Theft to Restitution of the Stolen Object)’ (Ministère de la Culture et de la Communication, October 2010) 5.

<sup>936</sup> Kerr (n 531) 454.

<sup>937</sup> Kerr (n 531) 454.

<sup>938</sup> ‘Security Advisor’.

<sup>939</sup> Napoleon.org (n 121).

<sup>940</sup> Ministère de l’Intérieur (n 923).

<sup>941</sup> Block (n 7) 190; Belgian Senate (n 137) 11; Kerr (n 531) 446, 454; Agnan (n 452).

<sup>942</sup> Block (n 7) 190; ‘40 ans de lutte contre le trafic de biens culturels’ (‘40 years fighting against cultural property trafficking’) (*Ouest-France.fr*, 19 September 2015) <<https://www.ouest-france.fr/societe/justice/justice-40-ans-de-lutte-contre-le-traffic-de-biens-culturels-3702461>> accessed 22 March 2023; Kerr (n 531) 454.

administrative support agents.<sup>943</sup> The Police Nationale is the nation's civilian police, reporting to the Ministry of the Interior. It is primarily associated with the policing of urban areas.<sup>944</sup> The Gendarmerie, heir to the *Maréchaussée*<sup>945</sup>, is a military police, traditionally associated with policing the countryside.<sup>946</sup> Employing both kinds of police officers together in the art crime police unit has logic to it, as art crime policing is strongly associated with both big art trade centres often located in global capitals such as Paris, where stolen or forged cultural property may be monetised, and with rural areas, which are often more vulnerable to various types of art crime as security measures tend to be less stringent.<sup>947</sup> There is a balance of Police Nationale and Gendarmerie officers in the OCBC, with around 10 of each employed, supported by the contingent of administrative agents.<sup>948</sup>

The OCBC's officers work across its various departments. The first and perhaps most important of these is the Operational Section, which in turn consists of three components: the Police investigative group, the Gendarmerie investigative group, and a Customs division.<sup>949</sup> The Operational Section is at the core of the OCBC's activities, as its three investigative groups form the main hub for the investigation and prosecution of art crime. The Database unit is also crucial for the OCBC's efforts. This unit gathers intelligence and manages the unit's stolen art database. The third and final component of the Operational Section is the Secretariat, which functions as the administrative centre of the entire OCBC.<sup>950</sup> There are then two further sections in the unit, which are dedicated to outreach and prevention rather than investigation and support. The first of these outreach-oriented sections is dedicated to liaising with the Ministry of Culture and the "*Conseil des Ventes*"<sup>951</sup>. The *Conseil* is the

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<sup>943</sup> Kerr (n 531) 446.

<sup>944</sup> De Maillard and Skogan (n 903) 17; Anderson (n 903) 62.

<sup>945</sup> 'Marshalcy'.

<sup>946</sup> Anderson (n 903) 58-59, 62.

<sup>947</sup> AJG Tjihuis, 'The Trafficking Problem: A Criminological Perspective' in Stefano Manacorda and Duncan Chappell (eds), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property* (Springer 2011) 92-93; Bichler, Bush and Malm (n 356) 372-376; Balcells (n 358); Kerr (n 531) 447, 454.

<sup>948</sup> Kerr (n 531) 446; Agnan (n 452).

<sup>949</sup> Oosterman (n 7497) 219-220; Kerr (n 531) 446-447.

<sup>950</sup> Kerr (n 531) 446-447.

<sup>951</sup> 'High Council of Voluntary Sales'.

independent regulatory body for the auction sector in France, established by the law of July 10<sup>th</sup>, 2000.<sup>952</sup>

The second, and more important from a plural policing perspective, is the External Relations and Training Group, which employs two officers. These officers publicise the OCBC's activities and mission. For example, these officers give presentations nationally and internationally to educate the public about the importance of protecting heritage and cultural property and explain to them the legal context.<sup>953</sup> These activities also serve a promotional purpose: OCBC officers have commented that they consider outreach essential to legitimise the OCBC's continued existence.<sup>954</sup> An OCBC employee interviewed by criminologist John Kerr in 2016 remarked that there seemed to be an increasing recognition by government and the public of the OCBC's work and importance.<sup>955</sup> At the time, the interviewee estimated that as many as 20000 people visited an 2015 exhibition about the OCBC's work organised in the context of the unit's 40<sup>th</sup> anniversary. The members of the External Relations and Training Group are also the ones providing training through seminars and yearly specialised courses for both French investigators, particularly at the French School of Magistrates, and foreign police officers.<sup>956</sup> Beyond its own personnel, the unit can also call on a network of around 35 so-called "*Correspondants*" throughout France.<sup>957</sup> These are liaison officers with which the unit can work in co-referral in investigations.<sup>958</sup> These correspondents thus function as a bridge between the national OCBC and more local police forces for art crime related matters. Nonetheless, Didier Berger, head of the OCBC in 2020, stated in 2020 that he thought the correspondent system was not enough, and that in his opinion the unit had to (re)develop deeper ties with France's police forces.<sup>959</sup>

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<sup>952</sup> Loi n° 2000-642 du 10 juillet 2000 portant Réglementation des Ventes Volontaires de Meubles aux Enchères Publiques ('Law for the Regulation of Voluntary Sales of Mobile Goods at Public Auctions').

<sup>953</sup> Kerr (n 531) 454.

<sup>954</sup> De Maillard and Roché (n 198) 386; Kerr (n 531) 454-455.

<sup>955</sup> Kerr (n 531) 454-455.

<sup>956</sup> Ministère de l'Intérieur (n 923); Kerr (n 531) 454.

<sup>957</sup> Armbruester et al. (n 873) 127; Kerr (n 531) 447.

<sup>958</sup> Ministère de l'Intérieur (n 923); Kerr (n 531) 447.

<sup>959</sup> Agnan (n 452).

In 1995, the unit started using its own stolen arts database called TREIMA, which stands for *Thesaurus de Recherche Electronique et d'Imagerie en Matibre Artistique*<sup>960,961</sup> TREIMA is an electronic search and fine-art images thesaurus for cultural property.<sup>962</sup> It contains images of cultural property stolen in France, as well as images of objects stolen abroad and reported to INTERPOL.<sup>963</sup> The database is fed by members of the OCBC, as well as by officers of the Police Nationale, the Gendarmerie, and the organized crime squad of the Paris Prefecture of Police.<sup>964</sup> In 2005 the database was updated, equipping it with image recognition searching and a web interface, and the database can be downloaded, enabling use outside the office.<sup>965</sup> This updated version, still used today, was given the name 'TREIMA II'.<sup>966</sup> TREIMA II is a police database and thus not open to the general public.<sup>967</sup> However, its information is added to INTERPOL's PSYCHE's stolen art database, access to which is open to all who have successfully applied to become an authorised user.<sup>968</sup> Moreover, art market professionals may request permission from the OCBC to conduct searches on TREIMA II.<sup>969</sup> In 2008, the database was reported to contain references to approximately 72000 stolen objects, and in 2010 around 86000 entries were said to have been logged, but by September 1<sup>st</sup> 2016, this number appears to have dropped, as TREIMA II was said to contain photos and specifications of only roughly 49000 objects.<sup>970</sup> Nonetheless, TREIMA II is a sizeable database compared to equivalents in the UK and Belgium.

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<sup>960</sup> 'Electronic Research and Image Thesaurus for Artistic Material'.

<sup>961</sup> Bojan Dobovšek, Saša Kuhar and Noah Charney, 'Art Crime Archives' (2009) 2 *Journal of Art Crime* 27; Oosterman (n 497) 219.

<sup>962</sup> Armbruester et al. (n 873) 90-93; Ministère de l'Intérieur (n 923).

<sup>963</sup> Armbruester et al. (n 873) 90; Ministère de la Culture, 'Rechercher Un Bien Volé Ou Disparu' (2021) <<https://www.culture.gouv.fr/Thematiques/Circulation-des-biens-culturels/Informations-pratiques/Rechercher-un-bien-vole-ou-disparu>> accessed 22 March 2023.

<sup>964</sup> Armbruester et al. (n 873) 90.

<sup>965</sup> Dobovšek, Kuhar and Charney (n 961) 27; Armbruester et al. (n 873) 90; Block (n 7) 191; Oosterman (n 7) 219.

<sup>966</sup> Block (n 7) 191; Ministère de la Culture (n 963).

<sup>967</sup> Armbruester et al. (n 873) 90; Ministère de la Culture (n 963); Napoleon.org (n 121).

<sup>968</sup> Interpol, 'Stolen Works of Art Database' (2021) <<https://www.interpol.int/en/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database>> accessed 22 March 2023.

<sup>969</sup> Armbruester et al. (n 873) 90.

<sup>970</sup> Dobovšek, Kuhar and Charney (n 961) 27; Armbruester et al. (n 873) 90; Block (n 7) 191; Oosterman (n 7) 220.

## 6.5 The French art crime policing network

France, being a major art centre in terms of its art market, its institutions, and its heritage, is home to a deep reservoir of expertise relevant to art crime policing. In 2019, the year before the start of the COVID pandemic, the French art market had a particularly strong year, when it was one of the best performing art markets.<sup>971</sup> The market also recovered from the COVID dip more strongly than most in 2021, achieving the highest level of sales in term of value in ten years, placing it as the fourth biggest market worldwide.<sup>972</sup> The major players in the French auction market include the local chapters of Sotheby's and Christie's, but also indigenous auction houses such as Artcurial, Tajan, Aguttes and Millon. On the gallery front, Paris also houses one of the most diverse art dealership ecosystems in the world.<sup>973</sup> It thus has been, and remains, a major art market centre, though lagging significantly behind New York and London. Whether Paris will benefit greatly from the repercussions of the Brexit vote on the London art market is as of yet unclear. Since the Brexit vote, several prestigious international galleries have opened new premises in the French capital, but whether this is indicative of a larger shift towards Paris, or rather just galleries hedging their bets, remains an open question.<sup>974</sup> France's strong rebound after COVID might indicate it is having somewhat of a Brexit boost.

Beyond the art market, Paris is one of the museum capitals of the world, its crown jewel arguably being the world-renowned Louvre.<sup>975</sup> Other major museums in Paris include the Musée National d'Art Moderne<sup>976</sup> located at the Centre Pompidou famed for its unusual architecture, the Musée d'Orsay, and the Musée des Beaux-Arts de la Ville de Paris<sup>977</sup>. France's major museums remain concentrated in Paris, although there has been an intermittent state effort to create tourism and culture hubs

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<sup>971</sup> Mcandrew (n 411) 45-46.

<sup>972</sup> Mcandrew (n 126) 28, 31.

<sup>973</sup> Iain Robertson, 'Art Fairs' in Iain Robertson and Derrick Chong (eds), *The Art Business* (Routledge 2008) 161.

<sup>974</sup> Canat et al. (n 865) 1/14; Mcandrew (n 411) 45-46; Mcandrew (n 126) 31.

<sup>975</sup> Derrick Chong, 'Public Funding and the Art Market' in Iain Robertson and Derrick Chong (eds), *The Art Business* (Routledge 2008) 55-56.

<sup>976</sup> 'National Museum for Modern Art'.

<sup>977</sup> 'City of Paris' Museum of Fine Arts'.

throughout the country away from Paris, leading to projects such as the Centre Pompidou in Metz.<sup>978</sup> France is home to a large number of heritage sites throughout the country.<sup>979</sup> The country additionally houses many significant academic institutions with important expertise on all matters related to art. For example, Vincent Michel, Professor of Art History and Archaeology of Classical Antiquity in the East at Poitiers University, has for several years organised symposia on illicit cultural goods trafficking, bringing together academics and practitioners in an attempt to promote knowledge sharing and to develop better strategies to curtail the phenomenon.<sup>980</sup> Companies such as LP ART, finally, provide tailored art transport and storage services throughout the country.<sup>981</sup> As such, there exists a significant opportunity for the development of a knowledge exchange network for policing art crime.

The OCBC has in recent years signalled it is willing to work with private partners. In 2015, then-unit head Ludovic Ehrhart openly stated that, as the members of the OCBC were first and foremost investigators, the unit relied on *“experts, the Ministry of Culture and the major museums”*.<sup>982</sup> An officer of the OCBC interviewed by John Kerr in 2016 confirmed the unit regularly worked with other police and public institutions, and also with the art market, insurance companies, and art owners.<sup>983</sup> In a more recent interview for the *Fondation Napoleon* conducted in February 2020, unit member Jean-Luc Boyer went even further, indicating a *“need”* to work with experts outside the police in academic institutions. This outreach is motivated by the lack of such specialist expertise within the unit, even if the members of the OCBC receive a modicum of art-related training: *“when you're a police officer, you can't be an expert [...] So we call people from the outside, we call our colleagues, to see if by chance they know anything about a person. To see whether the painting is a real painting, if the statue is a*

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<sup>978</sup> Chong (n 975) 55.

<sup>979</sup> Magdalena Pasikowska-Schnass, 'Cultural Heritage in EU Policies' (2018) 2 available at : [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621876/EPRS\\_BRI\(2018\)621876\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621876/EPRS_BRI(2018)621876_EN.pdf).

<sup>980</sup> 'À Poitiers, un archéologue lutte contre le trafic illicite des biens culturels' (In Poitiers, an archaeologist fights against illicit cultural property trafficking') (*lanouvellerepublique.fr*, 5 March 2020) <<https://www.lanouvellerepublique.fr/poitiers/a-poitiers-un-archeologue-lutte-contre-le-traffic-illicite-des-biens-culturels>> accessed 22 March 2023.

<sup>981</sup> 'LP ART' <<https://www.lpart.com>> accessed 19 August 2022

<sup>982</sup> Ouest-France (n 942).

<sup>983</sup> Kerr (n 531) 447.

*real statue or if the cuneiform tablet is real, we call the expert who says yes or no. It's not us who can do it, have this knowledge: the archaeologists have done ten years of study*".<sup>984</sup> Such outside expertise the officer deemed "*absolutely necessary*" for the good functioning of the unit.<sup>985</sup> Didier Berger, colonel at the OCBC, confirmed in November 2021 that the unit "*looks for the relevant expertise, whether it's in paintings or on archaeology... wherever it can be found*".<sup>986</sup> Equally, though, this does not mean the OCBC has anything like an open-door policy to private policing. While the OCBC is happy to engage with outside entities, it does so in an instrumental way, as indicated by the persistent messaging out of the unit that is particularly interested in outside expertise to shore up its own deficiencies. Such entities are approached as sources of necessary knowledge, but the OCBC sees itself as the locus of policing work.

## 6.6 Conclusion

France's policing system is characterised by its centralism and state orientation. Policy initiatives towards private policing have largely kept private policing within a decidedly public overall framework and have tended to limit private policing to certain defined areas, not including art crime. The OCBC reflects these features.<sup>987</sup> The fight against art crime demonstrably enjoys a relatively high priority in France. France's specialist police unit for art crime one of the largest of its kind in the world. While given a broad remit, the unit is equipped with an advanced stolen arts database and a sizeable staff. Notwithstanding the perception within the unit that it has had to legitimise its existence and that it needs more support, its number of personnel has remained relatively stable throughout its existence. As such, while the unit and its officers would always welcome more resources, the unit remains able to lead art crime policing in France, and, by all accounts, lead it well, even if the OCBC, like other units

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<sup>984</sup> Agnan (n 452); Napoleon.org (n 121); Interview OCBC officer (n 923).

<sup>985</sup> Interview OCBC officer (n 923).

<sup>986</sup> 'Is the Art of Crime Credible? The Real OCBC Cops Judge the France 2 Series' (*news.in*, 22 November 2021) <<https://www.programme-tv.net/news/series-tv/287837-lart-du-crime-est-elle-credible-les-vrais-flics-de-locbc-jugent-la-serie-de-france-2/>> accessed 23 March 2023.

<sup>987</sup> De Maillard and Roché (n 198) 390; Kerr (n 531) 447.



of its kind, is a police unit employing investigators, who are not (necessarily) art experts.<sup>988</sup> To that extent, fiscal constraint is much less of an issue for the OCBC than it is for its counterparts in Brussels and London. Nonetheless, the unit also does maintain lines of communication with private entities, such as art galleries, owner associations, experts, and insurance companies.<sup>989</sup> Various units heads and officers of the unit have publicly advertised these relationships. It appears the unit has consciously embarked on a campaign of public outreach, and from that angle the unit breaks with the dominant approach in France.

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<sup>988</sup> Kerr (n 531) 445, 447; Agnan (n 452).

<sup>989</sup> Yann Brun and Bertrand Triboulot, 'La lutte contre les atteintes au patrimoine archéologique et le trafic illicite des biens culturels' ('The fight against damage to the archaeological heritage and illicit trafficking in cultural property') [2017] *Les nouvelles de l'archéologie* 44; Kerr (n 531) 447.

## Chapter VII: Art Crime Policing in Practice

*“What happens will in part be a consequence of emerging material, structural conditions, but it will also be a product of the agency of people responding to, and acting within, these structures and the “tiny theatres” of power they make possible”<sup>990</sup>*

### 7.1 Introduction

This research has so far identified potential factors influencing policing co-production, as well as the demands of art crime policing. The three case study chapters preceding this chapter charted these elements as they related to art crime policing in Belgium, the UK, and France. It is clear that there are differences in fiscal constraint and policing culture across these three countries, and that their legislative approach and public policy approaches to both plural policing in general and art crime policing in particular differ.<sup>991</sup> These commonalities and differences are discussed in juxtaposition and in further depth in this chapter, which examines how the themes identified in chapter two and three apply on the ground. A challenge for topic summaries as developed in Chapter II and III is that they are theoretical conceptualisations whose applicability to practice can be unclear.<sup>992</sup> In this chapter, it is examined to what extent the themes of fiscal constraint, policing culture, legislation, and policy influence art crime policing co-production in practice. In this process it centres the agency of the actors involved. This chapter focuses on the interviewees’ views on art crime policing co-production. As such, in this chapter the voices of those involved with the fight against art crime come to the fore. That said,

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<sup>990</sup> Shearing (n 23) 427.

<sup>991</sup> Devroe (n 294) 3/9.

<sup>992</sup> Braun and Clarke (n 180 (2023)) 2.

the theoretical framework and the case studies so far enable a critical appraisal of interviewee responses and attitudes.

## 7.2 Fiscal constraint and art crime policing

### 7.2.1 Degrees of fiscal constraint

In the interviews fiscal constraint was revealed to be a major influencer of art crime policing and the relationship between the units and private actors. The case studies show that fiscal constraint is present in art crime policing, and that there are differences in the degree of constraint the three case study countries face. Some of these differences correlate to the differences between the countries themselves. Belgium is a country with a population of around twelve million with an active but relatively small art market. It is nonetheless an important transit country for both the licit and illicit trade. The UK 's population counts around sixty-seven million inhabitants, and in London it houses one of the art market's undisputable global centres, while also being rich in heritage. France, finally, is a country with a slightly higher population of sixty-seven and a half million inhabitants with the largest art market centre on mainland Europe, centered around Paris, and houses many significant heritage sites. Given the difference in population, art market profile, and heritage present in these countries, it is logical their respective art crime police forces differ in size and budget. However, the differences are stark, and go beyond a correlation with country size and circumstances.

Belgium's Bureau of Art and Antiques' funding steadily dwindled in the decades preceding the unit's closure in 2015, which was decided explicitly on the argument its funds were better used elsewhere.<sup>993</sup> Thereafter the police's art crime resources "*approached zero*".<sup>994</sup> After public outcry and given international obligations, one officer was assigned to work as a 'reference officer' for art crime in Belgium in 2017, but upon his retirement early 2022 he was not immediately replaced. One year later,

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<sup>993</sup> Albertson (n 656); Belgian Senate (n 137) 7, 23; Belgian Senate (n 118) 25; Bové (n 662).

<sup>994</sup> Belgian Senate (n 137) 42; Belgian Senate (n 118) 26; Loore (n 699); Biourge and Huysen (n 705).

a renewed, renamed, arts and antiques unit commenced activities. Nonetheless, the overall lack of funding has demonstrably had negative consequences for art crime policing in Belgium.<sup>995</sup> This was corroborated in interviews conducted with the reference officer<sup>996</sup>, two private art insurers<sup>997</sup>, one of which based in Brussels<sup>998</sup>, a private security consultant,<sup>999</sup> a private consultant<sup>1000</sup>, and a PARCUM outreach officer.<sup>1001</sup>

The police have acknowledged that there is *“no training of police personnel in relation to art crime. Either an employee with a university degree in archaeology or art history has to be hired, or the staff have to train themselves”*.<sup>1002</sup> Two officers of the former unit did pursue antiquarian courses during the time they worked at the unit, on their own initiative and outside of working hours.<sup>1003</sup> When the reference officer was active, they offered expertise and support to police in Belgium, where there was *“no expertise on the ground”*, and to foreign investigators.<sup>1004</sup> The reference officer considered their own expertise to have been built up over the years and consisting of on the one hand operational knowledge, such as how foreign police agencies work and legislation pertaining to art crime policing, and on the other hand what they called *“background information”*, such as knowledge of criminal art crime networks and which areas were sensitive to looting.<sup>1005</sup> However, the Senate report stated that since the dissolution of the unit *“built-up expertise was lost”*.<sup>1006</sup> In a situation report obtained from the current ART it is stated that *“since the last expert retired, a new perspective will be rebuilt from*

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<sup>995</sup> Le Soir (n 556); Belgian Senate (n 137) 100; Lelong (n 704); Dominique Soenens, ‘De laatste kunstdetective van België: “In ons land maakt het geen verschil of je een zakje chips of een Rubens steelt: voor de wet is dat hetzelfde”’ (‘Belgium’s last art detective: “In our country, it makes no difference whether you steal a bag of crisps or a Rubens: it’s the same thing for the law”’) [2022] *Humo* <<https://www.humo.be/gs-b660bce6> accessed 22 March 2023.

<sup>996</sup> Interview reference officer d.d. 6/11/2020.

<sup>997</sup> Interview Officer (n 1016)..

<sup>998</sup> Interview Brussels-based art insurer d.d. 22/09/2020

<sup>999</sup> Interview private security consultant d.d. 20/10/2020.

<sup>1000</sup> Interview private consultant d.d. 30/11/2020.

<sup>1001</sup> Interview PARCUM 28/09/2021.

<sup>1002</sup> Belgian Senate (n 137) 8.

<sup>1003</sup> Poels (n 725) 71-72; Belgian Senate (n 137) 8.

<sup>1004</sup> Interview reference officer (n 996).

<sup>1005</sup> Interview reference officer (n 996).

<sup>1006</sup> Belgian Senate (n 137) 6, 10, 11, 14.

2023 onwards”, further indicating that the transfer of expertise from to reference officer to the new ART has not been completely smooth.<sup>1007</sup>

According to a former officer of the unit who now offers consultancy services for art crime prevention and the retrieval of stolen art, *“the police neglect the subject [of art crime [...]] they leave a gap, and when they do so without opening the door to private efforts, there is a vacuum”*.<sup>1008</sup> A PARCUM representative also indicated they regretted the constraints the police had regarding heritage protection and art crime policing.<sup>1009</sup> A private security consultant, who specialises in museum security, noted that *“more could be done [...] if the police was supported better”*.<sup>1010</sup> A Brussels-based art insurer noted that their previously good relationship with the unit had broken down, and that they were no longer in regular contact with the reference officer, who was still working at the time of the interview.<sup>1011</sup> A private security consultant stated that *“In the private sector, we [...] make risk analyses, but we can only do limited police work, such as identifying trends in terrorism and how art crime is organising itself”*. They added that *“we have certain insights the police do not [...] because of the way they are trained”*.<sup>1012</sup> As such, also on the private side, at least the perception existed, but in several cases also the experience, that the Belgian police’s art crime efforts were constrained, but that this constraint did not necessarily lead to the reference officer getting in touch more.

The London Metropolitan Police’s Art and Antiques squad has also faced significant budgetary instability.<sup>1013</sup> Founded in 1969, it was closed between 1984 and 1989, and put on hold for a few months in 2017 when its officers were reassigned to the Grenfell Tower Fire investigation.<sup>1014</sup> In the intermittent decades its budget was to be cut by half, and its number of personnel declined as well.<sup>1015</sup>

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<sup>1007</sup> Email correspondence ART unit advisor (n 708).

<sup>1008</sup> Interview private consultant (n 1000).

<sup>1009</sup> Interview PARCUM (n 1001).

<sup>1010</sup> Interview private security consultant (n 999).

<sup>1011</sup> Interview Brussels-based art insurer (n 998).

<sup>1012</sup> Interview private security consultant (n 999).

<sup>1013</sup> Block (n 7) 195-196; Kerr (n 214) 71; Interview Vernon Rapley d.d. 18/10/2021.

<sup>1014</sup> Block (n 7) 195; Bailey (n 810); Brady (n 799); Chesters (n 816).

<sup>1015</sup> Gleadell (n 801); Charney, Denton and Kleberg (n 800) 5; Block (n 7) 196; Laville (n 212).

Much like in Belgium, this has hindered effective art crime policing, though the unit seems to have found more stable footing since 2017.<sup>1016</sup> Nonetheless, a current unit officer indicated that *“If I could increase the capacity of the unit, I would open more criminal investigations, which are hugely onerous”*.<sup>1017</sup> The ‘London Stolen Arts Database’, meanwhile, is relatively sizeable, but not a national stolen arts database, and it has not been updated and modernised in the past decade.<sup>1018</sup> This has led the Arts and Antiques unit to utilise the private Art Loss Register database.<sup>1019</sup>

Vernon Rapley, who previously headed the Arts and Antiques unit, confirmed that the unit had seen budget and personnel cuts both during his time and after. Rapley said that he was *“probably involved in saving the unit 10 times while I was in it, arguing right up to the House of Commons and the Lords on a number of occasions [...] By the time I took it over, it was three officers, and I built it up to six. And then I called special constables on to get up to about 24-25 again, and now it's back to about five or six with a couple of special constables”*.<sup>1020</sup> However, in his opinion, the unit was still able to function well. The first reason for this was that institutional knowledge had been passed on: because the unit hadn't been discontinued since 1989 the institutional *“skills, the confidence, [and] data”* had not been lost, which would've been the case if the unit had been closed.<sup>1021</sup> To Rapley, institutional memory was more important than the number of officers in the unit. To him, the unit had moved to a *“focused team”* model, meaning that the unit focuses on being a nexus for art crime policing without necessarily needing or wanting to have all the expertise and lead all the investigations itself.<sup>1022</sup> Even so, while still arguing the unit as a whole functioned well, the unit officer concluded the interview by saying *“You have to function in the reality, and our team is too small for the London art market”*.<sup>1023</sup>

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<sup>1016</sup> Kerr (n 531) 452-453; Interview Charley Hill (n 539); Interview Vernon Rapley (n 1013); Interview Arts and Antiques Squad officer d.d. 27/11/2020.

<sup>1017</sup> Interview Officer (n 1016).

<sup>1018</sup> Dobovšek, Kuhar and Charney (n 961) 27; Armbruster et al. (n 873) 90; National Police Chiefs Council (n 838) 31; *Antiques Trade Gazette* (n 837); Block (n 7) 191, 196; Kerr (n 786) 100; Oosterman (n 7) 220.

<sup>1019</sup> Kerr (n 531) 448-449; Interview Officer (n 1016).

<sup>1020</sup> Interview Vernon Rapley (n 1013).

<sup>1021</sup> Interview Vernon Rapley (n 1013).

<sup>1022</sup> Interview Vernon Rapley (n 1013).

<sup>1023</sup> Interview Officer (n 1016).

Contrast this to France, where the OCBC has been able to call upon around 25 officers throughout its existence.<sup>1024</sup> It is difficult to argue that there is a lack of police funding for art crime policing in France, especially when compared to its counterparts in Belgium, the UK, and across most of the rest of Europe.<sup>1025</sup> Nonetheless, OCBC officers have still aired grievances about their level of equipment.<sup>1026</sup> The officer sighed that *“it would be nice if we were really given the real means [to police art crime]”*.<sup>1027</sup> Nonetheless, the unit has access to its own stolen art database, one of the biggest and most modern of its kind worldwide.<sup>1028</sup> The officer’s complaints focused on *“structural support”* and concerns regarding a need for new(er) computers, new(er) cell phones, police cars, renovated buildings, and so forth.<sup>1029</sup> These comments can be contextualised as an expression of intra-police force resource competition, with the OCBC officer stating *“I simply notice that the municipal police are in general in a better car and with better salaries than the national police”*.<sup>1030</sup> And one would be hard pressed to find *“find a police department or unit that felt that it had more officers or resources than necessary”*.<sup>1031</sup>

As such, while the UK’s market, and the London market in particular, is far larger than its counterparts in Belgium and France, the OCBC employs up to six times as many policemen as the Arts and Antiques Squad. If anything, given London’s position with the market in particular, the Arts and Antiques unit should be the biggest of the set.<sup>1032</sup> In Belgium, meanwhile, the unit’s capacities significantly declined in the previous two decades. By comparison, the Dutch unit, operating a neighbouring country with a very similar profile, employs *“four experts led by one dedicated art crime detective”* as part of the Analysis and Research department of the Dutch police.<sup>1033</sup> As such, it is clear that these respective

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<sup>1024</sup> Block (n 7) 190; Belgian Senate (n 137) 11; Kerr (n 531) 446, 454; Agnan (n 452).

<sup>1025</sup> Block (n 7) 189-196; Oosterman (n 7) 216-226; Kerr (n 531) 454-455.

<sup>1026</sup> Kerr (n 531) 454; Interview OCBC officer (n 923).

<sup>1027</sup> Interview OCBC officer (n 923).

<sup>1028</sup> Dobovšek, Kuhar and Charney (n 961) 27; Armbruster et al. (n 873) 90-93; Block (n 7) 191; Oosterman (n 7) 219-220; Runhovde (n 235) 1740; Ministère de l’Intérieur (n 923).

<sup>1029</sup> Interview OCBC officer (n 923).

<sup>1030</sup> Interview OCBC officer (n 923).

<sup>1031</sup> Kerr (n 531) 454; Interview OCBC officer (n 923).

<sup>1032</sup> Poyser and Poyser (n 818) 249; Harrison, Dunkley and James (n 818) 733; Kerr (n 531) 448.

<sup>1033</sup> Oosterman (n 7) 224; Kerr (n 531) 449-456.

units' personnel numbers and budget vary significantly to an extent beyond a correlation with their respective contexts.

The degree to which art crime is prioritised is a crucial in this. Fiscal constraint is the result of changing economic environments, but equally governing “takes place through particular problematizations”, meaning that the allocation of resources to a specific issue is dependent on awareness raising.<sup>1034</sup> This is especially important in centralised systems where state actors have greater power in establishing policy.<sup>1035</sup> For the OCBC this means the challenge is to establish heritage and cultural property crime as a problem, and to maintain that awareness. OCBC officers have indicated a persistent need to “legitimize [the unit’s] existence” and argue for continued support.<sup>1036</sup> The unit, and the External Relations and Training Group in particular, appear to have met this challenge. The OCBC enjoys a relatively major public profile. It has had its fair share of successes, burnishing its reputation both nationally and internationally.<sup>1037</sup> The Police Nationale has used the OCBC in recruitment videos and the unit’s work has been promoted through UNESCO.<sup>1038</sup> Indeed, public broadcaster France 2 has broadcasted a tv-show focusing on the OCBC called “l’Art du Crime” since 2017 which is a, admittedly highly fictionalised, account of the OCBC’s operations.<sup>1039</sup> More recently, the OCBC is involved in a major investigation into antiquities looted in conflict areas the Near and Middle East, then laundered, and ultimately sold on the French art market.<sup>1040</sup> The individuals involved included former Louvre director Jean-Luc Martinez, who was charged with complicity in gang fraud and laundering of illicit antiquities, dealer Roben Dib, detained for gang fraud and money laundering, as well as expert and

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<sup>1034</sup> De Maillard and Roché (n 198) 393; Kerr (n 531) 449-450.

<sup>1035</sup> De Maillard and Roché (n 198) 393-394.

<sup>1036</sup> Kerr (n 531) 454; Interview OCBC officer (n 923).

<sup>1037</sup> Bazley (n 11) 168.

<sup>1038</sup> Kerr (n 531) 454.

<sup>1039</sup> Pierre Sérísier, ‘L’Art Du Crime – Petits Meurtres En Peinture’ (‘The Art Of Crime - Small Murders In Painting’) (*Le Monde*, 15 November 2017) <<https://www.lemonde.fr/blog/seriestv/2017/11/15/lart-du-crime-petits-meurtres-en-peinture/>>.

<sup>1040</sup> Lynda Albertson, ‘The Cost of Trinkets: France detains five art market actors in relation to a network believed to be trafficking in conflict antiquities’ (23 June 2020) <<https://art-crime.blogspot.com/2020/06/the-cost-of-trinkets-france-detains.html>> accessed 22 March 2023.



dealer Christophe Kunicki, charged with criminal conspiracy, gang fraud and laundering.<sup>1041</sup> The case caused a stir given the high profile of the individuals involved, further putting the OCBC's work into the spotlight. Ultimately, through this process of legitimisation, the OCBC has achieved "*symbolic power in its role*", meaning the unit has through its activities acquired authority which helps ascertain its continued funding.<sup>1042</sup>

This hasn't been as much the case in the UK. Vernon Rapley contended that "*I was probably involved in saving the unit 10 times while I was in it, arguing right up to the House of Commons and the Lords on a number of occasions. On the last two occasions they've been trying to close, even after I've left, I've managed to bring a crew together that have convinced the police to keep it*".<sup>1043</sup> Indeed, as explained above, on several occasions in the past two decades broader civil society has stepped in and advocated for the unit to survive at times when it was under threat. This evidences that the unit has not as of yet acquired symbolic power in its role, and it is notable that is those outside the unit itself that are its strongest advocates.<sup>1044</sup> There isn't anything like the OCBC External Relations and Training Group to advocate for police investment towards art crime policing. The same is true for Belgium. The reference officer did attempt to bring attention to the subject of art crime. Not without success: "*Look, within our management, our director agrees. He is in favour of setting up an art and antiques cell again [...] it is quite possible that at some point several people will again be present to set up a cell*".<sup>1045</sup> This ultimately came to pass, but it took almost ten years and sustained outside advocacy to reopen the unit fully. As the reference officer said: "*until [the director] gets permission, and staff and budget, from higher up or from our Minister of Home Affairs, it is very difficult [...] But he does work, and has been*

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<sup>1041</sup> 'Trafic d'antiquités du Moyen-Orient en France : un expert en archéologie et son mari inculpés' *Le Journal Des Arts* (29 June 2020) <<https://www.lejournaldesarts.fr/actualites/trafic-dantiquites-du-moyen-orient-en-france-un-expert-en-archeologie-et-son-mari>> accessed 22 March 2023; Canat et al. (n 865) 2/14; Vincent Noce, 'Former Louvre Director Jean-Luc Martinez Charged in Connection with Antiquities Trafficking Investigation' *The Art Newspaper - International art news and events* (26 May 2022) <<https://www.theartnewspaper.com/2022/05/26/former-louvre-director-jean-luc-martinez-charged-in-connection-with-antiquities-trafficking-investigation>> accessed 22 March 2023.

<sup>1042</sup> Kerr (n 531) 456.

<sup>1043</sup> Interview Vernon Rapley (n 1013).

<sup>1044</sup> Kerr (n 531) 452-453.

<sup>1045</sup> Interview reference officer (n 996).

*for a few years, to get art crime back on the agenda of the higher-ups. We're dealing with a federal institution so that takes its time...".*<sup>1046</sup>

Beyond the *Cel Kunst & Antiek*, or now the ART, there is very little art crime expertise among the Belgian police. The reference officer stated that during their time operating as a reference officer they still remained in touch with a few "old hands" in other departments of the police who still had experience with art crime, and with whom the reference officer had a "very good contact".<sup>1047</sup> These old hands were most likely holdouts from the era before 2001 when there were officers with some art crime specialism in each of the Belgian police districts. The Belgian police have since acknowledged that there is "no training of police personnel in relation to art crime. Either an employee with a university degree in archaeology or art history has to be hired, or the staff have to train themselves".<sup>1048</sup> Two officers of the unit did indeed pursue antiquarian courses during the time they worked at the unit, on their own accord and outside of working hours.<sup>1049</sup> In the UK and in France, the police reported to have received better training and to have a modicum of in-house expertise.<sup>1050</sup> In the UK, Historic England has worked with the police force to ensure designated police officers throughout the force have "a basic level awareness and understanding" of art crime.<sup>1051</sup> Beyond instilling that basic awareness there is little indication the police have substantial subject expertise, but the unit does have an operational information network, and the unit's officers appear well-accustomed to the particularities of the art market.<sup>1052</sup> The OCBC has also built a performant information sharing network, which it appears to want to expand.<sup>1053</sup> Out of all three units, the OCBC's officers receive the most specialist art training.<sup>1054</sup> The interviewees thus broadly confirmed the findings in the case

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<sup>1046</sup> Interview reference officer (n 996).

<sup>1047</sup> Interview reference officer (n 996).

<sup>1048</sup> Belgian Senate (n 137) 8.

<sup>1049</sup> Poels (n 725) 71-72; Belgian Senate (n 137) 8.

<sup>1050</sup> Agnan (n 452); News.in (n 986); Napoleon.org (n 121).

<sup>1051</sup> Kerr (n 531) 448.

<sup>1052</sup> Kerr (n 531) 446; Interview Officer (n 1016); Interview Art Loss Register police liaison Officer d.d. 2/11/2021.

<sup>1053</sup> Ouest-France (n 942); Agnan (n 452); Napoleon.org (n 121); Interview OCBC officer (n 923).

<sup>1054</sup> Agnan (n 452); Napoleon.org (n 121).

studies based on what has been written on these units in official publications, news articles, and art crime literature so far.

Two substantive inferences can be made at this point. The first centres on Vernon Rapley's argument that a small arts and antiques unit is not necessarily an issue, if a focused team approach is adopted. In such an approach, a small arts and antiques unit, even one officer, can serve as an information and intelligence hub which can then mobilise resources in other parts of the police force as deemed necessary.<sup>1055</sup> This is fundamentally the approach adopted in Belgium and the UK. In France, a different model was adopted, where the unit itself is expected to fully cover art crime investigations nationwide, and as such the OCBC needs a more significant amount of personnel and resources. This choice of model can explain the divergences in these three unit's sizes. The choice is itself influenced by the size of the country, the broader economic environment of its police forces, and, crucially, the degree of prioritisation art crime policing is given. But it also means that while previously it has been acknowledged art crime policing needs *"some form of centralised expertise"*, the way in which this is organised within the police force can vary while still remaining effective.<sup>1056</sup> A minimum threshold of funds and personnel needs to be met, but it is not the case that all arts and antiques unit need be of a size approach to France's OCBC. A focused, well-structured team employing four or five individuals can meet needs in many cases. As the Belgian reference officer put it: *"But as long as the work is done, in an efficient manner, and within the legal framework, it does not matter whether we adopt the model of the Netherlands or France. Each country has its specific elements to consider"*.<sup>1057</sup>

The second point is the idea of institutional knowledge. Effective art crime policing is confirmed to require expertise. According to unit members, their specialist expertise is primarily built up over time through experience.<sup>1058</sup> This *"institutional memory"* consists of *"the skills, the confidence, the*

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<sup>1055</sup> Interview Vernon Rapley (n 1013).

<sup>1056</sup> Block (n 7) 196; Oosterman (n 7) 227.

<sup>1057</sup> Interview reference officer (n 996).

<sup>1058</sup> Interview reference officer (n 996); Interview Officer (n 1016); Interview OCBC officer (n 923); Interview Vernon Rapley (n 1013).

*data*".<sup>1059</sup> This knowledge, built over time, can then be transferred to new members of the arts and antiques unit by experienced officers. Thus, institutional knowledge becomes institutional memory that can be preserved and grow further within police forces. As such, more than resources per se, it is arguably stability of resources that is most important, to that this police experience can be built up and transferred over time. In Belgium, for example, *"the built-up expertise was lost"* since the dissolution of the unit.<sup>1060</sup> This knowhow is an important component of the unit's effectiveness in dealing with art crime. It is also important because a specialised unit, given the need for centralised expertise, is the only place where such an institutional memory can be fully built and transferred. Officers outside of specialist units can build up art crime expertise. But since they are typically also working on other types of crime, it is difficult for them to acquire the depth of knowledge unit officers have. Transfer of knowledge is also more difficult in these situations, since there is less time to dedicate to transferral of knowledge to more junior officers if officers' efforts are already spread across domains.

## 7.2.2 Dimensions of fiscal constraint

The interviews reflected that art crime is a specialised form of policing, needing specific investigatory, object-based, and network-related expertise. Among police interviewees, the first element was emphasised. The Belgian reference officer stated that had *"very good contacts abroad. I know the procedures in a foreign investigation [...]. I also know a bit about the legislation [...] That background information is very important, also for magistrates, for example to indicate that the person has already been convicted or is already involved in a judicial investigation, or has contacts with certain other persons"*.<sup>1061</sup> The Senate report confirmed the idea that *"It is important for the reference officer for art and cultural goods to be operationally very knowledgeable, not to be an art expert"*.<sup>1062</sup> In the UK,

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<sup>1059</sup> Interview Vernon Rapley (n 1013).

<sup>1060</sup> Belgian Senate (n 137) 6, 10, 11, 14.

<sup>1061</sup> Interview reference officer (n 996).

<sup>1062</sup> Belgian Senate (n 137) 21.

the current unit officer stated *“probably the most important thing is a really acute awareness how civil litigation and criminal legislation can run in parallel when investigating art crime [...] What the police provide to art investigations is policing skills”*.<sup>1063</sup> The OCBC officer interviewed for this research confirmed that they were aware of foreign legislation and had built up his knowledge over the years: *“when you're a police officer, you can't be an [art] expert”*.<sup>1064</sup> In a similar vein, a previous head of the UK's Arts and Antiquities stated that *“It is easier to train a curator as a police officer than it is to turn a policeman into an art market specialist”*.<sup>1065</sup>

This leads to the second and third aspects of art crime policing: the need for subject expertise. This consists of one the one hand knowing the objects involved in art crime (object expertise) and on the other knowing the environment(s) in which they circulate (network expertise) The Arts and Antiques unit officer stated that despite the fact they themselves were *“doing an MA in cultural heritage”*, and some of their colleagues had degrees in history and ancient history, the unit *“definitely [didn't] have the complete level of expertise that other experts do [...] expertise and also time. I do not have the time to trawl auction catalogues [...]”*.<sup>1066</sup> Such expertise was nonetheless important: *“You obviously need awareness of the arts; you need a good eye to be able to recognise stolen property types”*. In France, the officer was formal in stating: *“You cannot be an investigator and an archaeologist, or an investigator and a restorer”*.<sup>1067</sup> Instead, the unit reached out: *“To see whether the painting is a real painting, if the statue is a real statue or if the cuneiform tablet is real, we call the expert who says yes or no. It's not us who can do it, have this knowledge: the archaeologists have done ten years of study”*.<sup>1068</sup> The Belgian officer indicated they had built up some subject expertise: *“So if, for example, we arrest a person here and he comes from Romania, I know that is a region where there is a lot of looting [...] It is important that you have a picture of the criminal world in the domain of art and*

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<sup>1063</sup> Interview Vernon Rapley (n 1013).

<sup>1064</sup> Agnan (n 452); Napoleon.org (n 121); Interview Officer (n 1016); Interview OCBC officer (n 923).

<sup>1065</sup> Antiques Trade Gazette (n 729).

<sup>1066</sup> Interview Officer (n 1016).

<sup>1067</sup> News.in (n 986).

<sup>1068</sup> Agnan (n 452); Napoleon.org (n 121); Interview OCBC officer (n 923).

*antiques*".<sup>1069</sup> Nonetheless, the reference officer acknowledged they were not an art expert and that for such knowledge they had contacts outside of the police.

'Fiscal constraint' thus reveals itself as an umbrella term for a layered reality when it comes to art crime policing. Art crime police units are affected by various kinds of constraint, and this is an important nuance. It would be wrong to solely think of constraints on police units in budget and personnel terms, especially for specialised areas such as art crime policing.<sup>1070</sup> Investigatory expertise proved to not be considered an issue in any of the three case studies: police officers were confident in their skills and training. While the arts and antiquities unit officer did indicate they would like to do more investigations, the unit's fundamental capacity to run investigations as such was not under threat. In Belgium, the reference officer alone could not run investigations, but working as a point of reference he could advise and guide operations by other elements of the police. It is important that there are officers who have the time to develop more specialised investigatory skills for art crime, and that they are enabled to transfer their built-up knowhow both to officers in other departments in the form of support and to their successors in the form of institutional memory. The situation is different for subject expertise. Although some of the unit interviewees indicated some level of expertise was present, the common refrain was nonetheless that the police did not have all necessary object-based expertise in-house. It is this, at this time, a quasi-inherent limit to the units' art crime policing, which cannot be easily remedied through increased funding. In terms of network expertise, it appears the units do build networks. But much like specialist investigatory expertise, building art-historical knowledge and a deep understanding of the art market takes time and effort. This is time the unit officers do not have, focused as they are on investigations. Subject expertise thus needs to come from elsewhere; from individuals whose expertise is focused on these topics.

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<sup>1069</sup> Interview reference officer (n 996).

<sup>1070</sup> Brenner (n 278) 58; Rosemont (n 278) 13; Button (n 21) 41-47.

### 7.2.3 Fiscal constraint and art crime policing

Two basic responses to fiscal constraint were formulated in chapter two: the state reaching out to private actors, or alternatively private actors taking it upon themselves to “fill the policing gap”.<sup>1071</sup> When the Belgian Bureau of Art and Antiques was still operational, it did maintain a network with private entities.<sup>1072</sup> This network included institutional entities such as museums as well as commercial actors. Relationships with the network were described as positive.<sup>1073</sup> This outreach was driven by these actors possessing crucial skills and expertise the police did not have in-house.<sup>1074</sup> These entities also formed a preventative line of defence, by reporting suspicious activity or by creating more codes of conduct and other policies to fight art crime.<sup>1075</sup> As such, there is an identifiable “transfer of responsibility for service provision from the police to the private sector”, as the Belgian unit instrumentalised private policing by using private entities as a knowledge repository and as a “filter” for art crime.<sup>1076</sup> In practice and in policy, private entities were explicitly regarded and utilised as a primary line of defence by the Arts and Antiques unit.<sup>1077</sup> This can be considered an example of load-shedding which connects to the broader *Kerntakendebat* in Belgian policing.

With the unit discontinued, fiscal constraint increased. It is then surprising that the reference officer was subdued in their private outreach in the context of art crime: “I am careful”.<sup>1078</sup> The decrease in personnel, resources, and expertise following the closure of the unit does not appear to have increased outreach to private partners. The reference officer did continue attending regular meetings at the Abdij Van’t Park in Leuven, where they sat with religious heritage experts, fire department representatives, and church board members and discussed the security of religious heritage against

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<sup>1071</sup> Garland (n 275) 452-456; Jones and Newburn (n 279) 98-99; Button (n 21) 34-35,40-41.

<sup>1072</sup> Belgian Senate (n 137) 42; Belgian Senate (n 118) 26; Interview private consultant (n 1000).

<sup>1073</sup> Belgian Senate (n 137) 21, 42.

<sup>1074</sup> Belgian Senate (n 137) 18, 21, 38; Interview private consultant (n 1000).

<sup>1075</sup> Belgian Senate (n 137) 18; Interview Brussels-based art insurer (n 998).

<sup>1076</sup> Johnston (n 35) 60; Ramachandran (n 290) 44-45; Button (n 21) 48; Interview Brussels-based art insurer (n 998).

<sup>1077</sup> Belgian Senate (n 659) 2; Belgian Senate (n 137) 12, 18, 50, 54, 58, 129; Belgian Senate (n 118) 42, 43, 49-51; Interview private security consultant (n 999); Interview Brussels-based art insurer (n 998).

<sup>1078</sup> Interview reference officer (n 996).

calamities and crime.<sup>1079</sup> But more broadly, private outreach slowed down and even decreased. An art insurer interviewed in September 2021 stated that their previously good relationship with the unit had broken down in recent years.<sup>1080</sup> A private security consultant specialised in museum security reported a similar experience: *“we have very good contacts with the unit, albeit a little less now than in the past because there are simply far fewer people working there [...] we have closer contacts with museums and other organisations [than with the police]”*.<sup>1081</sup> This confirms the Senate report in indicating that one reference officer could not manage the significant art crime policing workload, but it also indicates that fiscal constraint, in and of itself, did not result in more private outreach let alone policing co-production.

A significant increase in private entities endeavouring to fill the gap also did not occur. Instead, there was a private consensus that the private sector felt itself unable to fill the widening policing gap: respondents voiced their hope the unit would be reinstated.<sup>1082</sup> This is because private actors felt the police have skills they lack. Most private interviewees saw the police’s investigatory capacities as a crucial link in the policing chain: *“Everything that I can find open source we can use as a private company, but there are also a lot of things we don't know because that falls under public sector or police control. And that's when the agent comes in [...] what limits us is the fact that we do not have police power. We are not allowed to do a number of things. So we also cannot go and investigate everything in detail”*.<sup>1083</sup> There are but tentative moves towards providing policing services, most notably at IPARC, who have expressed interest in forgery detection specifically, but on the whole the

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<sup>1079</sup> Interview reference officer (n 996); Interview PARCUM (n 1001).

<sup>1080</sup> Interview Brussels-based art insurer (n 998).

<sup>1081</sup> Interview private security consultant (n 999).

<sup>1082</sup> Belgian Senate (n 137) 28-29, 42; Interview Brussels-based art insurer (n 998); Interview private security consultant (n 999); Interview private consultant (n 1000).

<sup>1083</sup> Interview private security consultant (n 999); Interview private consultant (n 1000).



strong message is that the police should reinstate a specialist art crime unit.<sup>1084</sup> Still, some entities indicated they would be happy to do more.<sup>1085</sup>

Both budget cuts and a lack of subject experience did drive the London Metropolitan Police's Arts and Antiques unit towards private engagement. Per Vernon Rapley the decision to initiate the Artbeat programme which brought in private experts as Special Constables *"came down to how much is this unit costing [...] the only way I could see to improve it was to bring in [Artbeat] to support us that could both increase the results but also [keep costs low] [...]"* *"What it did, though, is give us probably £2 million of unit for £600,000 and that value for money"*.<sup>1086</sup> The Artbeat project was also designed to be a platform for dialogue with the art sector: *"there was a desire there to get more awareness"*.<sup>1087</sup> As such, Artbeat can be seen as a project that directly addressed expertise and resource deficits, while also providing a basis for future cooperation. It is the only example of a unit in-housing private expertise essential for effective art crime policing found in this research. The police's focus on successful prosecutions as a quantifiable metric to assess budget allocation and unit performance had made art crime, where successful prosecutions are often time-consuming and rare, less attractive. This data-driven culture was adopted by the unit itself, opening up the opportunity for others to step in and deliver aspects of art crime policing that were less attractive to the police.<sup>1088</sup>

The need for expertise continues to motivate the Arts and Antiquities unit to reach out to private actors, though so do personnel constraints: *"we definitely [don't] have the complete level of expertise that other experts do [...] expertise and also time"*.<sup>1089</sup> The unit today is clear in what it does and doesn't

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<sup>1084</sup> Belgian Senate (n 137) 28-29, 42; Interview Brussels-based art insurer (n 998); Interview private security consultant (n 999); Interview private consultant (n 1000); Artsafe (n 716); 'IPARC: Conservatie & Restauratie Voor Musea, Verzamelaars, Kerkfabrieken En Kunstliefhebbers' ('IPARC: Conservation & Restoration For Museums, Collectors, Churchwardens And Art Lovers') (IPARC) <<https://www.iparc.eu/en/home/>> accessed 22 March 2023.

<sup>1085</sup> Interview private security consultant (n 999); Interview private consultant (n 1000); Interview Brussels-based art insurer (n 998).

<sup>1086</sup> Interview Vernon Rapley (n 1013).

<sup>1087</sup> Prescott (n 738) 202-203; Interview Vernon Rapley (n 1013).

<sup>1088</sup> Interview Vernon Rapley (n 1013).

<sup>1089</sup> Interview Officer (n 1016).

consider its remit: *“fundamentally, your job as a police officer is to deal with criminals, and it’s to find evidence of criminality and living offenders”*.<sup>1090</sup> These comments, as well as a current officer’s remark that *“I don’t think you’d really expect the police to be doing anything other than focusing on criminality”*, again link to the idea of load-shedding, where a police force faced with fiscal constraint seeks to delineate what is its responsibility, and transfer tasks which it considers not to be.<sup>1091</sup> Today there is *“very regular”* contact between the Arts and Antiques Squad and private actors, and it is *“happy to speak to people directly”* and is *“cautiously open”* to such interactions.<sup>1092</sup> The Arts and Antiques officer confirmed that on occasion information provided by private entities had led to successful investigations: *“so if they have something that is submitted to them that is a document that they’re very confident is false, that would be grounds to open a police investigation. So that works both ways”*.<sup>1093</sup> Private actors’ tips have led to successful investigations and the unit has benefitted from outside expertise.<sup>1094</sup> The unit considered its interactions with private actors *“a very respectable and correct relationship... where we recover property and they’re helping us with our investigations”*, although it is never *“going to work in partnership with a private actor or with an insurance company”*.<sup>1095</sup>

As in Belgium, the unit has also engaged with private entities from a preventative standpoint: *“part of the police’s job is crime prevention, awareness raising. You know all people on those courses go on to be cultural heritage specialists and we would like them to know what to look out for”*.<sup>1096</sup> Unlike in Belgium, private entities have taken it upon themselves to fill gaps in art crime policing in the UK. For example, ArtDiscovery provides forgery detection services, while in 2016 Sotheby’s auction house acquired Orion Analytical to serve as its own authentication department, led by forgery expert and

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<sup>1090</sup> Interview Vernon Rapley (n 1013).

<sup>1091</sup> Interview Officer (n 1016).

<sup>1092</sup> Kerr (n 531) 447-448; Interview Officer (n 1016).

<sup>1093</sup> Interview Officer (n 1016).

<sup>1094</sup> Interview Officer (n 1016).

<sup>1095</sup> Interview Officer (n 1016).

<sup>1096</sup> Interview Officer (n 1016).

Orion founder James Martin.<sup>1097</sup> The Art Loss Register and Artive also provide database services.<sup>1098</sup> The Register can be asked to disclose whether someone is using the Register's database for certain objects.<sup>1099</sup> Its police liaison officer for the more well-known Art Loss Register indicated excellent relationships with the unit.<sup>1100</sup> Both Artive and the Art Loss register indicated they wanted to do more cooperation with the police in the future.<sup>1101</sup> As such, there is momentum for private actors independently seeking to fill art crime policing gaps.

Much like its Belgian and British counterparts, the OCBC has reached out to private entities for information and expertise. The unit *"looks for the relevant expertise, whether it's in paintings or on archaeology... wherever it can be found"*.<sup>1102</sup> This expertise is considered *"absolutely necessary"* by the unit, as it needs this outside expertise to for example identify whether a piece is (likely) looted or not.<sup>1103</sup> Again, there are clear links to load-shedding, as the police consider themselves not suited to developing the knowhow to do this type of work themselves *"when you're a police officer, you can't be an expert"*.<sup>1104</sup> Outside experts were contacted for this expertise. The OCBC officer explained: *"I can't say that it's a fake Rembrandt. I'm obliged to bring in someone who has the quality and the knowledge to say that it's a fake Rembrandt"*.<sup>1105</sup> The OCBC has in recent years more strongly signalled its willingness to work with private actors, even including the art market, insurance companies, and art owners.<sup>1106</sup> This in spite of its traditional reticence to work with outside actors.<sup>1107</sup>

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<sup>1097</sup> Bailey (n 810); Brady (n 799); Ermanno Rivetti, 'Sotheby's Buys Orion Analytical Lab in Fight against Art Fraud' *The Art Newspaper* (6 December 2016) <<https://www.theartnewspaper.com/2016/12/06/sothebys-buys-orion-analytical-lab-in-fight-against-art-fraud>> accessed 22 March 2023; Artdiscovery (n 857) .

<sup>1098</sup> Kerr (n 531) 445, 448, 449; Interview Officer (n 1016).

<sup>1099</sup> Interview Officer (n 1016); Interview Art Loss Register (n 1052).

<sup>1100</sup> Interview Art Loss Register (n 1052).

<sup>1101</sup> Interview Artive COO d.d. 22/10/2020; Interview Art Loss Register (n 1052).

<sup>1102</sup> News.in (n 986).

<sup>1103</sup> Interview OCBC officer (n 923).

<sup>1104</sup> Agnan (n 452); Napoleon.org (n 121); Interview OCBC officer (n 923).

<sup>1105</sup> Interview OCBC officer (n 923).

<sup>1106</sup> Kerr (n 531) 447; Napoleon.org (n 121).

<sup>1107</sup> Interview OCBC officer (n 923).

Notwithstanding the OCBC signalling increased willingness to interact with outside entities, the Artive representative still noted they had experienced a pronounced reservedness on the part of the unit during times when they, a not-for-profit organisation, had contact with the unit.<sup>1108</sup> During an interview conducted for this research a unit officer indicated a relatively informal relationship with some private entities, stating they might talk to a gallerist in a coffee house or wine bar.<sup>1109</sup> As such, the OCBC is in communication with private actors, though always taking care not to talk about any specific ongoing investigations and to not divulge any sensitive information.<sup>1110</sup> Ultimately, the unit has generally sought to argue for more resources more forcefully up the police hierarchy.<sup>1111</sup>

It is thus only in the UK that there is clear indication of private entities taking it upon themselves to fill the policing gap.<sup>1112</sup> None of the police forces contracted out art crime policing functions. The unit officers interviewed all indicated, explicitly or implicitly, that they considered art crime policing still, at its core, a police affair, and were uncomfortable with the idea of charging victims.<sup>1113</sup> This did not mean there was no interest in delegating some responsibility for such expertise-heavy policing activities as identifying possible looting or fraud cases to the private sector.<sup>1114</sup> Some private actors kept stolen arts records, in the case of Artive and the Arts Loss register, allowing market participants to check whether pieces offered for sale were possibly stolen. Others were tasked, by law, to perform due diligence on clients in the art market, such as in the case of art insurers.<sup>1115</sup> Others still performed due diligence in the market, securitised art, or educated the participants to the art world.

Information does not only flow from private entities to the police. For example, the Belgian reference officer confirmed that he could share certain information: *“I can warn them to watch out for certain*

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<sup>1108</sup> Interview Artive (n 1101).

<sup>1109</sup> Interview OCBC officer (n 923).

<sup>1110</sup> Interview OCBC officer (n 923).

<sup>1111</sup> Kerr (n 531) 454; Interview Artive (n 1101); Interview OCBC officer (n 923).

<sup>1112</sup> Bailey (n 810); Brady (n 799); Rivetti (n 1097); Artdiscovery (n 857).

<sup>1113</sup> Interview reference officer (n 996); Interview Officer (n 1016); Interview OCBC officer (n 923); Loore (n 699).

<sup>1114</sup> Button (n 21) 50.

<sup>1115</sup> Interview Brussels-based art insurer (n 998).

*things or indicate certain things have occurred abroad*".<sup>1116</sup> All of the unit officers indicated their happiness to provide courses to private entities".<sup>1117</sup> The OCBC on its part has contributed to two booklets aimed at informing art owners, as well as archaeologists, of various aspects of the prevention of art crime and how to respond to art crime when it is encountered.<sup>1118</sup> These are part of a broader OCBC policy to engage with institutional and art market interlocutors, such as dealer organisations, in the interest of preventing art crime, even if the OCBC does not consider prevention a core task.<sup>1119</sup> The preventative aspect of art crime policing appears to be the area in which the art crime units are most comfortable with emancipating private entities. The units also presented an opportunity for private actors. The Arts and Antiques unit stated: *"What they want is to see their object back. We always try and do that if we can, so that that works really well"*. However, the officer was also clear in stating that there were definitive limits to the information they could share with private entities. The OCBC officer operated in a similar way.<sup>1120</sup>

Nonetheless, at this stage there is insufficient evidence for art crime policing co-production. The case studies do show that constraint is an important driver for private outreach. Various forms of constraint have been identified, complicating the police's art crime policing, and a lack of subject expertise was identified as the most important among them. The degree of pluralisation and the intensity of pluralisation in the three countries does not (fully) correspond with what could reasonably be expected on the basis of fiscal constraint theories alone. Based on fiscal constraint theory, the logical hypothesis would be that during those years and certainly after the discontinuing of the unit a policing gap would have emerged, to be filled up by private entities.<sup>1121</sup> But while pluralisation is not absent in Belgium, it is far less developed than would be expected, and less so than in both France and the UK. The set of pluralisation processes present in the UK is the most diverse of the three countries, with

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<sup>1116</sup> Interview reference officer (n 996).

<sup>1117</sup> Interview Officer (n 1016).

<sup>1118</sup> Ministère de la Culture et de la Communication (n 935); Kerr (n 531) 454.

<sup>1119</sup> Kerr (n 531) 454.

<sup>1120</sup> Interview Artive (n 1101); Interview OCBC officer (n 923).

<sup>1121</sup> Van Herzeele (n 143) 109, 122.

the Arts and Antiques unit developing a relatively robust framework for private outreach and in-housing private expertise, while the private sector itself has more emphatically stepped into any policing gaps. Finally, while it is true that in France there is the least fiscal constraint, the OCBC has, like the other units, used private outreach as a way to cover its own expertise gaps, while it also supports preventative policing in the private sector. The OCBC still appears to increasingly be moving *more* towards more private outreach: the unit now *“looks for the relevant expertise, whether it’s in paintings or on archaeology... wherever it can be found”*.<sup>1122</sup> As such, fiscal constraint alone does not explain the degree of public-private interaction in these countries. This was even acknowledged by the Arts and Antiques unit officer: *“We kind of sit in the middle. The OCBC is large. And Belgium is not. You have to function in the reality and our team is too small for the London art market. I think that’s quite a decisive factor but not the only one”*.<sup>1123</sup> This leads to the next part of this chapter, where another factor is discussed: policing culture.

### 7.3 Policing culture

The term ‘policing culture’ refers to the systemic attitudes to policing. These are the product of *“a complex mesh of local, national and international influences, [...] shaped by historical traditions”*.<sup>1124</sup> Different attitudes to plural policing develop in different countries, open and less open to the allocation of policing responsibility to private actors.<sup>1125</sup> Distinct policing cultures approach issues such as institutionalisation and centralisation differently, which leads to more or less openness towards private policing, and thus more or less opportunity for the emergence of policing co-production.<sup>1126</sup> These ingrained, institutional customs establish of default attitudes that exist within a police force,

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<sup>1122</sup> News.in (n 986).

<sup>1123</sup> Interview Officer (n 1016).

<sup>1124</sup> Jones, van Steden and Boutellier (n 205) 283-284, 292-295; Terpstra and van Stokkom (n 42) 327; Singh and Light (n 196) 307-308.

<sup>1125</sup> Manning (n 215) 31-32; Jones, van Steden and Boutellier (n 205) 292-295; Devroe (n 294) 3/9; Singh and Light (n 196) 307-308.

<sup>1126</sup> Mawby (n 305) 37.

including towards private policing.<sup>1127</sup> They are another factor next to fiscal constraint, and might provide answers as to why the level of fiscal constraint does not align perfectly with the degree of private outreach.

France's police have a history of centralised, top-down police forces, owing to their origins under Louis XVI as a tool of state power. As things stand, *"efforts at improving relations with the public or seeking advice from outside the institution tend to induce a degree of defiance, scepticism, or even downright hostility from a corps that perceives itself as unfairly out of favor"*.<sup>1128</sup> The UK's police, on the other hand, was designed to distinguish itself from its continental counterparts through a *"citizen in uniform"* ethos: closer to the public and more open to engaging with it.<sup>1129</sup> Belgium's police has its roots in French policing, but the 2001 police reform sought to create a force for the future that was neither *"a monolithic, unified police force with complete centralisation of authority and responsibilities"* nor an amalgam of *"numerous independent supra-local forces"*.<sup>1130</sup> Soon after, the Ministry for Internal Affairs circulated guidelines which called for increased collaboration with non-police actors. The police needed to be aware that *"they are not, and do not want to be, solely responsible for ensuring security and liveability. Security care is a chain approach in which several partners form the links in a global and integrated approach"*.<sup>1131</sup> As such, overall, France is at one end of the spectrum, the UK on the other, and Belgium somewhere in the middle between them (though traditionally more towards France). However, policing culture is by its nature ephemeral, as it emanates out of customs shaped by daily practices.

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<sup>1127</sup> Manning (n 215) 31-32.

<sup>1128</sup> Jacques de Maillard and Mathieu Zagrodzki, 'Community Policing Initiatives in France' in Jacques de Maillard and Wesley G Skogan (eds), *Policing in France* (Routledge 2020) 272.

<sup>1129</sup> Reiner (n 317) 318-319; Emsley (n 317) 21-27; Emsley (n 314) 73; Fijnaut (n 307) 181.

<sup>1130</sup> Devroe and Ponsaers (n 320) 7/15.

<sup>1131</sup> FOD Binnenlandse Zaken, Omzendbrief CP 1 van 27 mei 2003 betreffende Community Policing: definitie van de belgische interpretatie van toepassing op de geïntegreerde politiedienst, gestructureerd op twee niveaus ('Circular CP 1 of 27 May 2003 on Community Policing, definition of the Belgian interpretation applicable to the integrated police service structured at two levels') (2003).

The Belgian reference officer spoke at length on the subject of policing culture. When asked about their views towards the private sector they stated: *“The Belgian police have a totally different view and culture than, for example, colleagues in Netherlands and England regarding these partnerships with the private sector”*.<sup>1132</sup> The officer explicitly used the word ‘culture’ without prompting. They considered themselves a bit more open than the norm: *“I am perhaps a bit more open, though even then very cautious; but some other colleagues would never do that [...] Only yesterday I had a discussion with a colleague who said: we can never work with the private sector [...] At the end of our discussion, [the colleague] admitted “maybe we should soften our point of view a little bit””*.<sup>1133</sup> While this is an anecdote, it matches broader observations of a Belgian police force partial to *“police centrism”* and wary of *“outsiders”*.<sup>1134</sup> A former unit officer now active as a private consultant opined the relationship between police and private sector was *“very difficult [...] cool and minimal”*. They attributed this to the culture of *“protectionism”* of the Belgian police, which *“is not ready for private policing”*.<sup>1135</sup>

They also claimed that during their time in the unit private outreach was responsible *“for up to 80 percent of successful cases solved”*.<sup>1136</sup> In 2006 a unit member also concluded, in a thesis produced as part of an antiquarian education that, a joint stolen art register accessible by police and art world should be set up.<sup>1137</sup> This went against the general grain of Belgian policing, certainly given the fact both the officers were active at a time when the idea of plural policing was still in its earlier stages in Belgian police discussions. A Brussels-based private art insurer intimated they had previously worked quite closely with the unit, especially in one particular theft case. However, they added that this relationship had broken down, and that they were no longer in regular contact with the reference

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<sup>1132</sup> Interview reference officer (n 996).

<sup>1133</sup> Interview reference officer (n 996).

<sup>1134</sup> Sybille Smeets and Carrol Tange, ‘Le Community Policing En Belgique: Péripéties de La Constitution d’un Modèle de Travail Policier’ (‘Community Policing in Belgium: The Evolution of a Model of Police Work’) (Geneva Center for the Democratic Control of the Armed Forces (DCAF) 2007) 22; Marleen Easton and others, *Multiple community policing: hoezo (‘How So’)?* (Academia Press 2009) 14.

<sup>1135</sup> Interview private consultant (n 1000).

<sup>1136</sup> Interview private consultant (n 1000).

<sup>1137</sup> Poels (n 725) 71-72.



officer, who was still working at the time of the interview.<sup>1138</sup> The Belgian reference officer made the point that “[when colleagues need an expert] I give them several names. Never just one”.<sup>1139</sup> They were wary of advantaging one private actors over another. Nonetheless, they did indicate that they thought more public-private collaboration could have a positive impact on art crime policing. They cited the Netherlands arts and antiques unit’s approach as an example much more open to private involvement and opined that the Belgians would likely move closer towards it in the future. However, at the time of the interview, “these are things that cannot yet be done immediately in Belgium, or at least only after tough discussions”.<sup>1140</sup>

Today, interaction remains at an ad hoc basis, and there is little evidence of a(n appetite for) sustained structured approach to private actors. The officer appears more aligned with the more traditional approach to private policing. They emphasised their carefulness, and while they position themselves as more open than other members of the Belgian police, overall it is difficult to argue they are particularly proactive towards private engagement. This despite the fact that there are indications, both from former unit members and private policing actors, that there had been more interaction in the past. Taken together, these comments indicate that the reference officer remained sceptical of plural policing, even at a time when the broader momentum within Belgium was moving towards more plural policing. The private sector was kept at arm’s length. In summary, the approach to art crime policing by the specialised art crime force in Belgium reflects the broader policing culture of Belgium, caught between police primacy and private outreach.

Out of the three units, the London Metropolitan Police’s Arts and Antiques unit has been by far the most open to plural policing. It has pursued the most diverse set of plural policing strategies and developed the clearest approach to engaging with the private sector. This is never more clearly the case as with the ArtBeat project, which was driven by unit head Vernon Rapley. The depth and breadth

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<sup>1138</sup> Interview Brussels-based art insurer (n 998).

<sup>1139</sup> Interview reference officer (n 996).

<sup>1140</sup> Interview reference officer (n 996).

of this initiative show a unit and a unit leadership willing to set up ambitious plural policing projects, integrating various plural policing strategies, such as outreach, load-shedding, and in-housing private capabilities, while sending out a strong signal to the private sector. Charley Hill, a former unit member turned private investigator indicated the unit previously had significant discretion during his time as a unit officer, working extensively with informants in pursuit of retrieving art and successfully closing cases. However, he found that today's unit was much less open to working with outsiders. In his opinion, the unit *"tends to be very guarded. Protective of themselves in their own world. Arch bureaucrats and proceduralists"*.<sup>1141</sup> Mr. Hill lamented that due to legislative developments the unit was no longer free nor eager to work with private expertise such as his own and was forthright in stating as much: *"I have no dealings with the Metropolitan Police Art Crimes Unit because I believe they are time wasting bureaucrats and grandstanding proceduralists in their dealings with art crime and concomitant problems. They do not know how to handle confidential sources of information, in law they are hindered from doing so, and as a consequence tend to have few or no informants worth listening to and speaking with"*.<sup>1142</sup>

The officer struck a very different note. They considered the unit's interactions with private entities *"very valuable"*. The unit *"work[s] a lot with other companies, some private companies, like the Art Loss Register [...] the information flow in that situation is largely one way. So, if we have concerns about an object, if we want to know if someone has searched or is beginning to conduct due diligence then we submit a data protection form and get information back. They also are useful to tell us about things like... they know more about civil recovery. So [...] they're a good source of advice"*.<sup>1143</sup> The officer moreover expressed a positive attitude towards the market: *"It's interesting, we were at a conference once, and there were police from all over the world and there were very clear differences of opinion on whether the police should have any amicable or kind of antagonistic relationship with*

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<sup>1141</sup> Interview Charley Hill (n 539).

<sup>1142</sup> Interview Charley Hill (n 539).

<sup>1143</sup> Interview Officer (n 1016).

*the trade. I would say that we have an amicable relationship with them because the art market, especially in London, is enormous. Most people are acting lawfully. They will be victims of crime. They're also a massive source of intelligence, they tell us all sorts of interesting things. I think that should be a positive relationship because most criminals, just because there's bad actors in an industry doesn't mean that you should just write off talking to anybody".*<sup>1144</sup> They contended that *"We will be very happy to speak to people directly, we're very forward facing, people know who we are".*<sup>1145</sup>

Both the sentiment expressed and the body language while expressing it were markedly different from the Belgian reference officer's interview. The officer did confirm that legal restrictions played an important role in shaping the police's relationships with private actors, and also indicated there had been frictions with private investigators in particular. Ultimately, the officer regarded the unit's position towards the private sector as balanced: *"I think some [foreign units] are very open to working together with private individuals, some are dead against it. I would put us somewhere in the middle. I suppose cautiously open?"*<sup>1146</sup> They considered themselves to be more careful than their Dutch colleagues, but more open than their Italian or French counterparts. Overall, the UK's traditionally more open policing culture is reflected in the unit's approach. Notwithstanding Charley Hill's comments, the unit is much more proactive than counterparts elsewhere, judging from both its own comments, comments in the UK private sector, and comments from colleagues abroad.<sup>1147</sup> As such, the unit can be said to reflect the traditionally more open institutional attitudes of the UK police.

In France, finally, the police have kept more distance from the private sector. An Artive representative indicated they felt the OCBC less eager to work with the company, which is not for profit, than the Arts and Antiques squad.<sup>1148</sup> This was also the sense of the Arts and Antiques officer.<sup>1149</sup> Nonetheless;

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<sup>1144</sup> Interview Officer (n 1016).

<sup>1145</sup> Interview Officer (n 1016).

<sup>1146</sup> Interview Officer (n 1016).

<sup>1147</sup> Interview Artive (n 1101); Interview reference officer (n 996); Interview Officer (n 1016); Interview Vernon Rapley (n 1013); Interview Art Loss Register (n 1052).

<sup>1148</sup> Interview Artive (n 1101).

<sup>1149</sup> Interview Officer (n 1016).

both in 2015 and in 2016, unit members confirmed they relied on collaborating with private entities in the course of its activities.<sup>1150</sup> In 2020 another unit member indicated a “need” to work with outside experts in a public interview.<sup>1151</sup> The unit, much like its peers, keeps up a network of private expertise to call upon during investigations when necessary. Even so, there remains wariness, especially towards for-profit companies.<sup>1152</sup> There also still exists the reflex to argue for more internal funds rather than engage with private actors.<sup>1153</sup> As such, even though the OCBC has been increasingly proactive in looking for private engagement in more recent years, in art crime policing too public-private cooperation is “much less developed in France than in English-speaking communities”.<sup>1154</sup>

From the private side of things, we also see some actors take action. In the UK, private actors were eager to collaborate with the Arts and Antiques unit where possible. Some made explicit choices with such collaboration in mind, such as in the case of Artive: “When we registered, we decided to register as a non-profit. One of the aspects of that decision was that it will be hoped that having a non-profit status would facilitate a collaboration between entities like law enforcement agencies globally”.<sup>1155</sup> The for-profit Art Loss Register’s representative stated their company had considered going not for profit as well for the same reasons.<sup>1156</sup> In Belgium there was less momentum, but nonetheless several private interviewees expressed the hope that they could “do more” in concert with the police.<sup>1157</sup> IPARC expressed interest in starting up a relationship with the police, while the Brussels-based art insurer and the private security expert wanted to rekindle or reinforce the collaboration they had previously.<sup>1158</sup>

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<sup>1150</sup> Ouest-France (n 942); Kerr (n 531) 447.

<sup>1151</sup> Agnan (n 452); Napoleon.org (n 121); Interview OCBC officer (n 923).

<sup>1152</sup> Armbruester et al. (n 873) 184; Napoleon.org (n 121).

<sup>1153</sup> De Maillard and Zagrodzki (n 1128) 272.

<sup>1154</sup> Delpuch and Ross (n 916) 149-150; Parliamentary Commission (n 916) 7, 105-111; Ocqueteau (n 898) 132.

<sup>1155</sup> Interview Artive (n 1101).

<sup>1156</sup> Interview Art Loss Register (n 1052).

<sup>1157</sup> Interview private security consultant (n 999); Interview Artive (n 1101); Interview private consultant (n 1000); Interview Brussels-based art insurer (n 998); Interview Art Loss Register (n 1052).

<sup>1158</sup> Interview private security consultant (n 999); Interview Brussels-based art insurer (n 998).

In conclusion, there is significant alignment between policing culture and the choices made by the art crime units in each of the countries. In Belgium, the historically state-leaning policing culture is reflected in the actions and behaviour of the reference officer. It can also be seen reflected in the private actors' hope for a reinstatement of the unit, as they continue to look towards the police as a beacon. As such, even though fiscal constraint is a strong driver for plural art crime policing in the country, its impetus is significantly curtailed by a resistant policing culture. In the UK, there is alignment between an open policing culture and an open unit met by a proactive private sector. This openness buoyed public-private leading to a plethora of plural policing tactics pursued. In France, finally, the unit appears to only look towards the private sector for information and expertise. This aligns with a policing culture that is state-oriented, and which has favoured the restriction of private policing to certain ringfenced areas. Policing culture thus has a significant moderating effect on the impetus for plural policing and policing co-production generated by fiscal constraint. A moderating variable influences the trajectory and/or strength of the relationship between an independent and a dependent variable.<sup>1159</sup> The independent variable here is fiscal constraint, which is demonstrably an important driver for public-private art crime policing, the dependent variable. Policing culture thus intervenes in the extent to which fiscal constraint drives police-private interaction. It does not, however, in and of itself provide an incentive for outreach. However, at a level below the broader structural influences of fiscal constraint and policing culture, legislation and policy further influence the emergence of art crime policing co-production.<sup>1160</sup>

## 7.4 Legislation

Much like the policing cultures, the legislative infrastructure for (art crime) policing in Belgium, the UK, and France differs. All countries had criminal law making the various of forms of art crime subject to criminal penalties. However, only in France did criminal law explicitly target art crime by making

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<sup>1159</sup> Bryman (n 125) 346.

<sup>1160</sup> Leloup and White (n 205) 5.

the involvement of art an aggravating circumstance. Otherwise, the countries generally subscribed to the main international instruments of heritage protection, even if there were differences in implementation. Notably, the EU Money Laundering Directive is in force in each country, meaning its stipulations regarding art traders' disclosure and due diligence rules for money laundering apply. This institutes a law-mandated form of preventative policing. Beyond these elements, clearer differences emerge when examining the legislation surrounding plural policing.

In Belgium, legislation embodied a cautious attitude towards plural policing, though one that appears to be opening up, especially since the financial crisis of 2008. The Law regulating private and particular security of 10 April 1990 was the first to regulate private security.<sup>1161</sup> It was designed to “*strictly control the private security companies and limit their growth*” and implemented a state-centric logic restricting private policing.<sup>1162</sup> This status quo remained until the early 2000's. At that time, police legitimacy experienced serious damage while the police's funding was also under pressure.<sup>1163</sup> The 2008 financial crisis further entrenched the latter dynamic.<sup>1164</sup> This led to the *Kerntakendebat* in which police and government considered what tasks were to be done by the police and which others might be shed, and increasing interest in public–private partnerships across the policing spectrum.<sup>1165</sup> These developments resulted in the Law on Private Security of October 2<sup>nd</sup> 2017 which significantly expanded the private sector's policing competences, though still also containing relatively strict entry requirements and upholding administrative controls.<sup>1166</sup> The legislator wanted to design “*a framework which the private sector can fill [policing functions] to a certain degree*”, and the law was meant to “*encourage the establishment of partnerships between the police and the private sector*.”<sup>1167</sup> The 2017

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<sup>1161</sup> Leloup and White (n 205) 12.

<sup>1162</sup> Cools and De Raedt (n 577) 34-35; Leloup and White (n 205) 13-14.

<sup>1163</sup> Leloup and White (n 205) 14-15.

<sup>1164</sup> Cools and De Raedt (n 577) 35 Leloup and White (n 205) 14.

<sup>1165</sup> Cools and De Raedt (n 577) 35, 37; Leloup and White (n 205) 15.

<sup>1166</sup> BeSafe (n 589) 1-3, 8.

<sup>1167</sup> Leloup and White (n 205) 15.

law can thus be considered a turning point. While still relatively strict, the momentum shifted away from centralised state policing to a more pluralised approach.<sup>1168</sup>

This is not to say the legislative infrastructure was completely in place to facilitate public-private partnerships. Information sharing is key for plural policing in general and art crime policing specifically. By law, the Belgian police are restricted in the information they can share with private entities, especially regarding investigations and specific individuals (the latter also due to privacy laws, especially with the advent of the GDPR<sup>1169</sup>).<sup>1170</sup> When the roles are reversed, however, article 44/1 of the August 5<sup>th</sup> 1992 Law on the Office of the Police grants police forces the right to obtain any information if there is a concrete interest for the fulfilment of police duties. Articles 48 and 49 of the Law on Private Security obligates private security to provide any information requested by police forces and article 49 and to notify the authorities when they become aware of facts that may lead to criminal liability during or because of their activities. As such, legislatively, the structure is set up to facilitate information to the police much more than it facilitates information flowing from the police.

The legislative dynamics are different in the UK. The immediate post-war period, much like in Belgium, saw *“the finest hour of the British bobby myth”*, but the undercurrent was more plural policing friendly.<sup>1171</sup> For a relatively long period the private sector was left to self-regulate. The Private Security Industry Act 2001, the first legislation to explicitly target private security sought to subject the industry to government controls in order to address its failings, but simultaneously also sought to facilitate partnerships between police and private sector.<sup>1172</sup> These twin goals of the Act, control but also empowerment, were succinctly put forward by the Minister of State at the Home Office at the time, Charles Clarke MP, as he presented the Bill for first reading: *“This bill forms part of the government’s commitment to reducing crime and disorder. It introduces statutory regulation to the private security*

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<sup>1168</sup> Cools and De Raedt (n 577) 43; Leloup and White (n 205) 15.

<sup>1169</sup> EU Regulation of 27 April 2016 (n 595).

<sup>1170</sup> Van Daele and De Raedt (n 593) 316; Visie (n 595) 25; Putzeys (n 593) 5-6/28, 13-14/28.

<sup>1171</sup> Reiner (n 16) 68.

<sup>1172</sup> Button (n 756) 117-119; Leloup and White (n 205) 9-10.

*industry to drive out criminals and drive up standards. It will assist the building of important crime reduction partnerships between police, the private security industry, and others*".<sup>1173</sup> The spirit of plural policing and policing co-production is evident here in the framing of private sector legislation as part of a broad commitment to crimefighting.

The 2001 Act's area of application is narrower than its 1990 Belgian counterpart. Where the Belgian applies to "*surveillance and protection of movable or immovable property*", section 2 of schedule 2 of the Act is much narrower in its defining of what constitutes "*guarding premises*". The Act focuses on "*manned guarding*", security operatives, and wheel-clampers, while the Belgian law also targets transport security, management of alarm receiving centres, surveillance of persons with a view to ensuring safety in places whether or not open to the public<sup>1174</sup>, and traffic security.<sup>1175</sup> While the Act introduces a new regulatory body to manage licensing requirements, a body in which the sector itself has a stake, the Belgian law puts the private security under direct government control.<sup>1176</sup> All of this confirms the UK's relative openness to plural policing and interest in partnerships.<sup>1177</sup> England's explicit interest in partnerships thus predates Belgium's, even if its first legislative act postdates the Belgian effort in 1991. The Police Reform Act of 2002 went further down the same road, allowing for the contracting out of police functions to the private sector and private security to be given special powers.<sup>1178</sup>

Like in Belgium, limits to police budgets played a role, although concurrently with the Reform Act the government also intended to increase police budgets as well.<sup>1179</sup> However, the 2008 banking crisis did not spare the UK, leading, much like in Belgium, to a debate surrounding police prioritisation.<sup>1180</sup> This debate and associated load-shedding continues even as the police's budget has increased year on year

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<sup>1173</sup> Button (n 756) 119.

<sup>1174</sup> Which section 4 of schedule 2 of the 2001 Act partially puts outside of its application.

<sup>1175</sup> Article 1 paragraph 1 sections 1 to 8 of the Law of 10 April 1990.

<sup>1176</sup> Article 2 paragraph 1 Law of 10 April 1990; Section 1 Private Security Industry Act 2001.

<sup>1177</sup> Jones, van Steden and Boutellier (n 205) 295; Singh and Light (n 196) 307.

<sup>1178</sup> Button (n 755) 119, 130; Button (n 21) 35.

<sup>1179</sup> Home Office (n 767) 17-18.

<sup>1180</sup> Button (n 21) 48-52.



since 2015.<sup>1181</sup> Also like in Belgium, legislation is a barrier to knowledge exchange between the police and private actors. Laws including the RIPA act have put an emphasis on the authorisation of information flows.<sup>1182</sup> Even though officials have stated that *“data protection law should not unduly prevent the police from detecting, investigating and deterring crime”*, such laws have contributed to a perception on the police’s part that protocols involved a time-intensive identification of what could and could not be shared.<sup>1183</sup> This has, according to a 2018 report, resulted in a risk-averse culture within the UK police leading it to be cautious of sharing information in fear of falling foul of legal restrictions: it quotes police staff stating that *“the easy thing to do is just be very cautious and not share”*.<sup>1184</sup>

France adopted its first law on private security in 1983.<sup>1185</sup> Like in the UK, lawmakers sought to address excesses within the growing private security sector. Like its Belgian and UK counterparts, the law of 12 July 1983 subjected private security companies to public control, including mandatory background checks before commencing operation and limits on their competences.<sup>1186</sup> It also incorporated stipulations designed to clearly distinguish private security and the police.<sup>1187</sup> In terms of its area of application, the laws is less detailed in outlining what it does and doesn’t apply to than its Belgian counterpart, but far wider in its scope than the 2001 Act.<sup>1188</sup> The law also devotes a lot of time outlining what private security companies cannot do. The discussions leading up to the law and the law itself do not evidence a significant interest in using it as a platform for policing partnerships. Instead, it appears as a classic example of a state favouring police supremacy clamping down on the private sector.

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<sup>1181</sup> ‘Police Funding for England and Wales 2015 to 2022’ (GOV.UK, 15 July 2021) <<https://www.gov.uk/government/statistics/police-funding-for-england-and-wales-2015-to-2022/police-funding-for-england-and-wales-2015-to-2022>> accessed 22 March 2023.

<sup>1182</sup> Adams, Clough and FitzGerald (n 765) 16.

<sup>1183</sup> Adams, Clough and FitzGerald (n 765) 24- 26.

<sup>1184</sup> Adams, Clough and FitzGerald (n 765) 26.

<sup>1185</sup> Loi n° 83-629 (n 882).

<sup>1186</sup> Articles 5-8 Loi n° 83-629 du 12 juillet 1983.

<sup>1187</sup> Articles 2-4, 10 Loi n° 83-629 du 12 juillet 1983.

<sup>1188</sup> Articles 1-2, 10 Loi n° 83-629 du 12 juillet 1983.

Ten years later the ‘Law on the orientation and programming of security’ was adopted on January 21<sup>st</sup>, 1995. It is a turning point for plural policing in the country, as the first article of the law states that in the fulfilment of this duty the state “*associates itself with [...] representatives of professions, services and associations confronted with manifestations of delinquency*”.<sup>1189</sup> Because of this it has been considered to “*call for the coproduction of security*”.<sup>1190</sup> Nevertheless, legislators emphasised the need for regulation for the private sector, and as such this law and its aims are reminiscent of the dual goals of the 2001 Act.<sup>1191</sup> There are also commonalities with the evolution in Belgium where stricter positions on private policing gradually give way to increasing openness. However, French lawmakers were more circumspect in giving increased leeway to the private sector: the private sector was made relevant primarily in airport and train security.<sup>1192</sup> Even so, the private sector kept growing.<sup>1193</sup> This, again, led to problems in the sector, including illegal (because unauthorised) activity and poor quality.<sup>1194</sup> The 1983 legal framework needed updating, and this came in the form of the Law of 14 March 2011 and the Decree of December 21<sup>st</sup> 2011. The CNAPS, an administrative body, was created to manage authorisation of security companies and employees, to institute disciplinary action if necessary, and to monitor and assist the sector.<sup>1195</sup>

It is here that France’s trajectory diverges: where in Belgium and in the UK the dynamic is one of increasing openness to the private sector, the 2011 legislation in France can be seen as a (re)assertion of public (if not police) control over private policing.<sup>1196</sup> There are not the gestures towards policing partnerships we find in Belgium and the UK, and the state continues to maintain a relatively narrow view of who gets to enter the policing arena.<sup>1197</sup> There is moreover little legal infrastructure for

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<sup>1189</sup> Article 1 Loi n° 95-73 du 21 janvier 1995.

<sup>1190</sup> Boex (n 891) 76.

<sup>1191</sup> Ministère de l’Intérieur (n 892).

<sup>1192</sup> Gautron (n 893) 126; Boex (n 891) 259; Paulin (n 883) 77-78.

<sup>1193</sup> Paulin (n 883) 87-88.

<sup>1194</sup> Paulin (n 883) 137.

<sup>1195</sup> Ocqueteau (n 898) 128-129.

<sup>1196</sup> Paulin (n 883) 283-284, 329-330.

<sup>1197</sup> Malochet (n 38) 2/15.

information-sharing in France.<sup>1198</sup> Cooperation still mainly takes the form of partnerships between public and hybrid agencies, who on the whole see informal information exchange as the best way to share sensitive information between trusted interlocutors.<sup>1199</sup> Efforts to build a more community-facing policing starting during the 1980's and 1990's ultimately stalled during the 2000's.<sup>1200</sup> Today, *“more than thirty-five years after the Bonnemaïson report, which established co-production as a guiding principle of public security policy, it has to be said that information exchange practices do not convince those concerned”*.<sup>1201</sup> As such, comparatively, France's legislation is much more limiting of private endeavour and information sharing than Belgium, which in turn is more limiting than the UK's legislation. These dynamics extend to art crime policing.

The erstwhile reference officer underscored the legal limitations on information-sharing in an interview in 2017, stating that he *“cannot pass on all the information to private organisations. That is absolutely not possible. If they ask a question, I can answer it as long as it is within the legal framework”*.<sup>1202</sup> Three years later, he confirmed that this was still an important factor: *“we have to be very careful that we do not divulge any immediate investigatory or judicial information [...] So sometimes I say, “this is where I stop”. And I will state explicitly: this is possible but that isn't”*.<sup>1203</sup> In general, the police are *“more bound to a certain legal framework which the private sector can move outside of”*.<sup>1204</sup> These statements were corroborated in private sector interviews, where private entities confirmed the Belgian (art crime) police are formal in their communication, strictly avoiding divulging any information deemed potentially sensitive.<sup>1205</sup>

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<sup>1198</sup> Xavier Latour, 'Les communes et l'échange d'informations en matière de sécurité ('Municipalities and the exchange of security information')' (2021) 152 *Sociétés* 23-25.

<sup>1199</sup> Delpeuch and Ross (n 916) 10.

<sup>1200</sup> De Maillard and Zagrodzki (n 1128) 261-262.

<sup>1201</sup> Latour (n 1198) 26.

<sup>1202</sup> Van Herzeele (n 143) 111, 123-124.

<sup>1203</sup> Interview reference officer (n 996).

<sup>1204</sup> Interview reference officer (n 996).

<sup>1205</sup> Interview reference officer (n 996); Email correspondence international art insurer (n 997); Interview Brussels-based art insurer (n 998); Interview private security consultant (n 999); Interview private consultant (n 1000).

In the UK, the Arts and Antiques unit officer was clear in stating: “[...] *Our behaviour is governed by the legislation. And rightly so because some of those powers are incredibly intrusive, and there it is absolutely right that there is accountability and checks and balances on that*”.<sup>1206</sup> In terms of cooperation, “*there has to be a kind of lawful framework for information sharing [...] We speak to [private actors] very regularly, but we have to be careful that we’re not disclosing information that is sensitive, you know, and we have to be conscious of those boundaries*”.<sup>1207</sup> Within that legal framework, there is “*very regular*” contact between the Arts and Antiques Squad and private actors, and the unit is “*happy to speak to people directly*” and “*cautiously open*” to such interactions.<sup>1208</sup> More recently, with the passing of the RIPA act, the Police and Criminal Evidence Act, and to a lesser extent the 2001 Act, the unit’s discretion has been more limited. The officer confirmed that “*There are levels of authority you need to go through*”.<sup>1209</sup> This dovetails with Charley Hill’s comments on how the RIPA act limited the police’s readiness for information sharing with private entities.<sup>1210</sup> Nonetheless, the Arts and Antiques unit officer categorically added that “*the Metropolitan police and the Art and Antiques unit can and do use all police tactics. When there are grounds to do so*”.<sup>1211</sup> In France, the OCBC officer’s comments on his engagement with private entities reflected the informality with which information is gathered from private entities, even if the OCBC also kept strictly to legislative boundaries.<sup>1212</sup>

In summary, legislation has been more open to private policing from the outset in the UK. French legislation throws up the most numerous barriers to private policing, in a framework that is the most state police-centric out of the three contexts discussed here. Belgium once again sits between these two poles. These observations are reflected in art crime policing. In Belgium, the reference officer seemed caught between an instinctive wariness around private engagement and the

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<sup>1206</sup> Interview Officer (n 1016).

<sup>1207</sup> Interview Officer (n 1016).

<sup>1208</sup> Kerr (n 531) 447-448; Interview Officer (n 1016).

<sup>1209</sup> Interview Officer (n 1016).

<sup>1210</sup> Interview Charley Hill (n 539).

<sup>1211</sup> Interview Officer (n 1016).

<sup>1212</sup> Interview OCBC officer (n 923).

acknowledgement that private engagement could be helpful, especially towards the future. In the UK, the unit holds strictly to its legislative boundaries, but is overall more relaxed towards private engagement. In France, the OCBC reflects how legislation has limited private policing, and how this has led to much less public-private policing interaction.

## 7.5 Policy

If legislation encompasses the rules of the game, then policy is the way in which participants set out to play it. Belgian policy has traditionally taken a cautious attitude to plural policing.<sup>1213</sup> This state-oriented trajectory of Belgian policing policy only started bending around the turn of the 21<sup>st</sup> century when police scandals and financial constraints drove policymakers towards the *Kerntakendebat* and plural policing.<sup>1214</sup> Even so, there is also resistance to plural policing. In 2016, when private policing was high on the agenda, the police union questioned whether *“the objective of the government is to hand over the Federal Police’s tasks to private security companies or to deliberately destroy this federal institution”*.<sup>1215</sup> Despite such protestations the ‘vision for the police 2025’ advocated for a *“networked approach”* and the *“free exchange of information between police and society”*.<sup>1216</sup> By 2025, the Integrated Police is to be an organisation that *“naturally participates in the security market”*, entering into *“cooperative partnerships and alliances”*, with *“respect for the individuality of all actors involved”*.<sup>1217</sup> The *“pluralisation of security”* is considered an opportunity here, though one to manage carefully.<sup>1218</sup> This language is thus explicitly in favour of plural policing configurations, and as such the text presents a policy break.

Plural policing also appears in policy proposals for art crime policing. These proposals tend towards a preventative approach.<sup>1219</sup> The Tommelein-Taelman proposal suggested creating a publicly accessible

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<sup>1213</sup> Devroe (n 294) 5/9-6/9; Devroe (n 598) 94; Leloup and White (n 205) 11-14.

<sup>1214</sup> Leloup and White (n 205) 15.

<sup>1215</sup> Devroe (n 294) 5/9; Devroe (n 598) 95; Leloup and White (n 205) 15.

<sup>1216</sup> Visie (n 595) 73-75; Devroe (n 294) 6/9.

<sup>1217</sup> Visie (n 595) 40.

<sup>1218</sup> Visie (n 595) 79.

<sup>1219</sup> Belgian Senate (n 628) 6, 7.

national stolen arts database to help private actors in the performance of due diligence.<sup>1220</sup> Belgian citizens were to be encouraged to properly catalogue and register their art collections to help matters in case of theft.<sup>1221</sup> The 2017 Senate also suggested to make parts of the ARTIST database publicly available.<sup>1222</sup> A public private partnership with online platforms to weed out illegal art trading on the internet was also suggested, as well as the exploration of *“working with private companies to create a standardised inventory that insurance companies can use for prevention and reimbursement”*.<sup>1223</sup> As such, in policy terms, we see increased interest in plural art crime policing, and even the suggestion of setting up outright partnerships to co-produce aspects of art crime policing. On the ground, however, the officer indicated partnerships were still far from a reality in Belgium. They did, however, indicate that their work with private actors was *“mainly prevention oriented”*; when working with magistrates and police, it was judicial.<sup>1224</sup>

In the UK, there is a longer tradition of plural policing than in Belgium or France, with its guiding principle being described as *“the police are the public and the public are the police”*.<sup>1225</sup> This has translated to a wide variety of plural policing strategies being explored in the UK, including community policing, partnerships, contracting out, franchising, and managerialism.<sup>1226</sup> The same dynamism exists for art crime policing. The unit was directly asked to directly source private capital to cover a planned fifty percent budget cut.<sup>1227</sup> While those budget cuts were never carried out, the episode showed just how close the entanglement between the unit and the art sector was allowed to get. The National Heritage and Cultural Property Crime Working Group has supported an extensive range of public institutions and private organisations, commercial and non-commercial, in their efforts countering art crime.<sup>1228</sup> The National Police Chiefs' Council's former lead for Heritage and Cultural Property Crime

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<sup>1220</sup> Belgian Senate (n 628) 6.

<sup>1221</sup> Belgian Senate (n 628) 8.

<sup>1222</sup> Belgian Senate (n 118) 43.

<sup>1223</sup> Belgian Senate (n 118) 48, 51.

<sup>1224</sup> Interview reference officer (n 996).

<sup>1225</sup> Jones, van Steden and Boutellier (n 205) 295; Rogers (n 38) 59.

<sup>1226</sup> Rogers (n 38) 59-80, 117-127; Button (n 21) 45-60.

<sup>1227</sup> Antiques Trade Gazette (n 805).

<sup>1228</sup> National Police Chiefs Council (n 823) 5, 9, 38-49

and Historic England's Policing Advisor have advocated for network-building with private sector stakeholders.<sup>1229</sup>

The situation in France is different. The French policing system is at *"the most extreme pole of intense administrative centralisation"*.<sup>1230</sup> There continues to be a wariness of plural policing, even if there has been an evolution towards the setup of *"forums in which territorial actors have the opportunity to share information and set up joint initiatives"*.<sup>1231</sup> However, a 2018 government report suggested to rethink the public-private division as more of a continuum.<sup>1232</sup> The report encourages further upgrading the quality of the private (security) sector, so that its *"quality and professionalism will no longer be questioned"*, making it *"possible for the state security forces to consider [the sector] as a partner with whom new collaborations are possible"*.<sup>1233</sup> At the time, the French Minister of Interior opined that the growth of the private security sector necessitated its full integration into the global policing strategy.<sup>1234</sup> Moreover, proposal 62 of the report suggest exploring which tasks can be transferred from the public to the private sector; although again the text gestures to specific, limited competences.<sup>1235</sup>

The report reflects a state-oriented approach with its strong emphasis on regulating private policing and ensuring strict quality control. The private sector must first prove itself, as it were, before it is *ready* to be considered as a legitimate part of plural policing configurations.<sup>1236</sup> More broadly, the French government continued to pursue a dual strategy: increased cooperation with the public in targeted areas, but also further investment into the police itself.<sup>1237</sup> The OCBC itself has in recent years

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<sup>1229</sup> Kerr (n 531) 448.

<sup>1230</sup> Zagrodzki (n 330) 46; De Maillard and Skogan (n 903) 17-18 Anderson (n 903) 63; Mouhanna (n 43) 82.

<sup>1231</sup> Mouhanna (n 43) 81-82; Delpeuch and Ross (n 916) 149; Malochet and Ocqueteau (n 331) 17; Malochet (n 38) 2/15.

<sup>1232</sup> Malochet and Ocqueteau (n 331) 9; Delpeuch and Ross (n 916) 149-150; Parliamentary Commission (n 916) 5.

<sup>1233</sup> Parliamentary Commission (n 916) 7-8.

<sup>1234</sup> Ocqueteau (n 898) 132.

<sup>1235</sup> Parliamentary Commission (n 916) 105-111.

<sup>1236</sup> Parliamentary Commission (n 916) 7-8, 103.

<sup>1237</sup> Zagrodzki (n 330) 50; De Maillard and Skogan (n 903) 17.

publicly signalled its increased willingness to collaborate with private partners, even before the changing momentum of the Macron presidency. In an interview for this research, a unit officer indicated the unit has moved to tighten its relationships with university specialists, who *“have a high level of expertise”*.<sup>1238</sup> Didier Berger, colonel at the OCBC, confirmed in November 2021 that the unit *“looks for the relevant expertise, whether it’s in paintings or on archaeology... wherever it can be found”*.<sup>1239</sup> In that sense the OCBC, through public comments made by unit members and by the comments in the interview for this research, has embarked on its own policy of external outreach.

There is significant alignment between broader policy and art crime policing in each of these countries. In Belgium, the mid-2010’s saw a pivot towards plural policing both in art crime policing and policing broadly. In the UK, we see continued openness in both. France’s policy also broadly aligns with its policing traditions, which is relatively strict on private policing. Nonetheless, the 2018 report indicates a potential shift in approach, which would be more open to plural policing, breaking with legislation and tradition so far. Ultimately, the units appear to have significant leeway in addressing private actors as they see fit, as long as they operate within the legal limit. The OCBC, for example, has seen fit itself to increase its private outreach. As such, it does not appear broader plural policing policies have as significant an impact on the tactics of the art and antiques units than the other elements hitherto described.

## 7.6 Conflicting interests

All of the above shows that structural and environmental factors influence how arts and antiques units and the private sector relate to each other. A final element to discuss is the way in which the actors assess each other. In the first place, units and private actors are drawn to each other in pursuit of what they mutually recognise as complementary skills. The police are primarily tasked with investigation, bringing with them all the skills to do so, while the private sector has other imperatives, which bring

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<sup>1238</sup> Napoleon.org (n 121).

<sup>1239</sup> News.in (n 986).



with its other skills, including art historical expertise. This motif came through in all of the interviews with unit officers. The Arts and Antiques unit officer stated: *"[we] definitely don't have the complete level of expertise that other experts do [...] expertise and also time. I do not have the time to trawl auction catalogues [...] They [private entities] do [...] So, they provide something [...] that we don't have otherwise"*.<sup>1240</sup> Similarly, the OCBC officer stated: *"You cannot be an investigator and archaeologist or an investigator and a restorer, it is not possible"*.<sup>1241</sup> And in Belgium the reference officer admitted: *"The technical level, that's for them, I absolutely don't interfere with that"*.<sup>1242</sup> This brings the units to engage with the private sector.

The units also consider the private sector in a strategic way. On occasion, they will share with the private sector intelligence that they want to see spread. This can be to help private actors fight art crime. For example, *"I'd say in the academic world, quite often people would like us to come and give presentations on their courses. We are very happy to do that because part of the police's job is crime prevention, awareness raising. You know all people on those [academic] courses go on to be cultural heritage specialists and we would like them to know what to look out for. Red flags. And that there is a London Arts and Antiques unit. So, we kind of feel that's mutually beneficial for us"*.<sup>1243</sup> Shared information can also serve as a signal to the broader art market and world.<sup>1244</sup> Unit officers have, for example, given public interviews to highlight art crime and their activities to combat it.<sup>1245</sup> By doing so they both advocate for the importance of their work while also sending a deterrent signal to the unscrupulous that the unit is active, and watching.

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<sup>1240</sup> Interview Officer (n 1016).

<sup>1241</sup> Interview OCBC officer (n 923).

<sup>1242</sup> Belgian Senate (n 137) 21; Interview reference officer (n 996).

<sup>1243</sup> Interview Officer (n 1016).

<sup>1244</sup> Kuhar (n 130) 368.

<sup>1245</sup> Koen Voskuil, 'Kunstwendelaar op het spoor via Maastricht: "ze leken zo echt, die valse Picasso's"' ('Tracking an Art swindler via Maastricht: "they seemed so real, those fake Picassos"') *De Limburger* (11 July 2020) <[https://www.limburger.nl/cnt/dmf20200710\\_00167762](https://www.limburger.nl/cnt/dmf20200710_00167762)> accessed 22 March 2023; News.in (n 986); Soenens (n 995).

For private actors, an association with the police can be a form of brand strengthening. An international art insurer stated that they: *“not only contact the police for information, but [...] [we] share [our] information with the police, which assists them on the one hand, but in the long run, assists us because it ensures a good collaboration”*.<sup>1246</sup> For the private security consultant cooperations with the police gave *“more cachet to our business, as people know then that we are serious”*.<sup>1247</sup> They added that when cooperating in the context of museum consultancies the division of labour is typically that the security firm performs a risk-analysis and advises on museum security, while the reference officer can help run background checks on personnel or involve other elements of the police force if appropriate, for example if there is a terrorist threat or to help secure transport of art.<sup>1248</sup> As such, working with the police can also be a source of information. The unit officers confirmed that while they are not able to share investigatory information, they can and do share intelligence on for example trends within art crime. For academics too, the attraction can be access to information: *“I don't like to be frustrating, especially for academics, because they are very keen, and rightly so, to understand the mechanisms of the illicit trade”*.<sup>1249</sup> They may also seek to have unit members speak on academic courses.<sup>1250</sup> The police are also crucial for private actors who become the victim of an art crime, or who work for or with victims, such as in the case of insurance companies.<sup>1251</sup>

As such, the relationship is typically instrumental. Each party sees in the other a potential asset. This is a shaky basis for cooperation. And it is undermined by the underlying interests of both the units and private actors. In the first place, the priorities of the units and private actors do not fully align. The police are primarily focused on prosecutions. In the words of the Arts and Antiques Unit officer: *“I don't think you'd really expect the police to be doing anything other than focusing on criminality”*.<sup>1252</sup>

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<sup>1246</sup> Email correspondence international art insurer (n 997).

<sup>1247</sup> Interview private security consultant (n 999).

<sup>1248</sup> Interview private security consultant (n 999).

<sup>1249</sup> Interview Officer (n 1016).

<sup>1250</sup> Interview Officer (n 1016).

<sup>1251</sup> Interview reference officer (n 996); Interview Officer (n 1016); Brussels Email correspondence international art insurer (n 997); Interview Brussels-based art insurer (n 998).

<sup>1252</sup> Interview Officer (n 1016).

Vernon Rapley, previous unit head, had similar ideas: *“Fundamentally, your job as a police officer is to deal with people. To deal with criminals, and to find evidence of criminality and living offenders”*.<sup>1253</sup>

The Belgian reference officer also agreed, though with reservations: *“the disease within the Belgian police is a bit the numbers and statistics. A case must be closed within two or three weeks. With art crime, you have very long files and offshoots. And most of them, and I find this rather bad in Belgium too, want to catch the perpetrators above all”*.<sup>1254</sup> These comments thus tie in with broader managerialist developments observed throughout western police forces, where numbers-based evaluations push incentive structures.<sup>1255</sup>

This mean that recovery of objects becomes a secondary or tertiary concern: *“[the police] become interested in criminal properties if they can seize it and sell it, confiscated under something like the proceeds of Crime Act. And in fact, that's not something that's very relevant in the art world, because there's always an owner for these things. If you can prove it stolen where you have to prove where it came from, you have to give it back to that person. And so, asset recovery or the removal of proceeds of crime wasn't a big concern”*.<sup>1256</sup> That isn't to say the police are not involved with recovery, and both the reference officer and the OCBC officer were more insistent on recovery being part of their remit, the latter being the strongest in saying that recovery is part of the OCBC's mission.<sup>1257</sup> It is problematic if the police completely discount object retrieval, since victims' expectations that police forces to what they can to redress the effects of crime and bring justice. Part of that justice is that victims get their items back. But ultimately, the primary goal for the police is nonetheless the perpetrator.

Where for police the focus is convicting the perpetrator, for private entities the priority is safeguarding the object. As such, these interests diverge. This can create significant tension. This tension was most evident between the Arts and Antiques unit and private detectives. The unit officer commented: *“We*

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<sup>1253</sup> Interview Vernon Rapley (n 1013).

<sup>1254</sup> Van Herzele (n 143) 115, 127; Interview reference officer (n 996).

<sup>1255</sup> Button (n 21) 55-56.

<sup>1256</sup> Interview Vernon Rapley (n 1013).

<sup>1257</sup> Interview reference officer (n 996); Interview OCBC officer (n 923).

*also work, or we're also contacted by, some art recovery agents. Sometimes that can work well, when there's grounds for police action, sometimes that works less well; when promises are made on the behalf of the Metropolitan Police which we are not able to fulfil, because we haven't been consulted before those promises have been made [...] I think people just want different things [...] sometimes those two things aren't in alignment. I would say an art recovery agent is a private businessperson whose raison d'être is to recover that art either for the loser or for the insurance company".<sup>1258</sup> Ultimately, "art recovery, perhaps the clue is in the title, is often quite object-led, whereas we [the unit] are criminal network-led".<sup>1259</sup> What is top priority for private actors, the object, is not necessarily so for the police. For the police, this leads to frustration because they are put under expectations they cannot, or will not, fulfil. And it creates friction with the private sector because it frustrates them that the police do not, in their view, respect the importance of the objects. This can lead to less information sharing and the sense that the police are not fulfilling what these actors see as the police's duty.<sup>1260</sup>*

A related aspect is that private actors who have given information expect that it is acted upon, but such is not always the case. The Arts and Antiques officer was clear on this front: *"if someone shares information, they really want to know what's happened with it. And actually, it doesn't work that way. [...] we're not going to start sharing information which hasn't reached the evidential threshold. Number one. [...] And second of all we could be subject to legal action if we started very effectively suspicions and rumours about people [...] I think also people will be frustrated when we don't act on information provided. There can be all sorts of reasons for that. But ultimately, I'm not going to go into why I've taken one strategy over another because that's a police operational decision".<sup>1261</sup>* The reference officer echoed this sentiment: *"Because the objectives of a private firm are totally different from those of a*

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<sup>1258</sup> Interview Officer (n 1016).

<sup>1259</sup> Interview Officer (n 1016).

<sup>1260</sup> Interview Charley Hill (n 539); Interview private consultant (n 1000).

<sup>1261</sup> Interview Officer (n 1016).

*police force. And that's going to cause constant friction. You can't share a lot of information with the private sector either [...] And that's where the problem lies".*<sup>1262</sup>

A second fundamental conflict of interest surrounds the profit motive. In all three countries the different principles police forces and private enterprises abide by were considered a point of tension for the public-private relationship. Officers policing art crime in the United Kingdom, Belgium, and France all expressed reservations towards for-profit enterprises on ethical grounds. The police are *"a democratic duty to provide protection and law enforcement universally, or at least on the basis of the greatest need"*, while the private sector supplies *"risk-protection selectively on a user-pays basis"*.<sup>1263</sup>

As a corollary of that, private organisations answer only to their members or their clients, competing in a market, while the police have to answer to the public.<sup>1264</sup> This implies a different deontology. The police aim to serve what they consider the public good and are paid by the public to do so. Private actors, however, and especially private companies, work for their clients, and are motivated by profit.

Again, this was put succinctly by the Arts and Antiques Squad officer: *"People shouldn't get commercial advantages from information they got from the police"*.<sup>1265</sup> The OCBC is more open to working with university specialists with *"have little or no involvement in the market"*.<sup>1266</sup> In Belgium, the reference officer stated *"The private sector is not a philanthropic institution. They have to make a profit. The police ... we just cost money. That also means we can store different info and work in a different way. We are also probably more bound a certain legal character that the private sector can move outside of"*.<sup>1267</sup> The private security consultant admitted: *"You also have to remember that we charge money for that. We are a company that charges money for that, while for the police forces it is their job. That is sometimes where the big difference lies. But we are really not out to make a profit, especially in the*

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<sup>1262</sup> Interview reference officer (n 996).

<sup>1263</sup> Tim Prenzler and others, 'The Policing Complex', *The Cambridge Handbook of Australian Criminology* (Cambridge University Press 2002) 70.

<sup>1264</sup> Joh (n 351) 387-388; Wilbur R Miller, 'What Should Be the Relationship Between Public and Private Policing?' in Wilbur R Miller, *A History of Private Policing in the United States* (Bloomsbury Publishing 2018) 175.

<sup>1265</sup> Interview Officer (n 1016).

<sup>1266</sup> Napoleon.org (n 121).

<sup>1267</sup> Interview reference officer (n 996).

*field of museum security. Okay, we charge money [...] But despite the fact that we have contacts with the police, and also INTERPOL and EUROPOL, there is also a certain line that isn't crossed. And that line is that we charge, and that we do not have police power*".<sup>1268</sup> The mirror image is Artive, who considered its not-for-profit status a potential advantage in this respect: *"When we registered, we decided to register as a non-profit"*, meaning there was not the issue of a *"financial end goal"*.<sup>1269</sup> The latter also addresses an ethical issue on the part of private actors. There are concerns with private actors asking money from victims for their services. A key example of this is stolen arts databases requiring payment from victims to allow them to register their (stolen) art or search their database. The police have complained about the *"aggressive"* tactics some of these databases have used in the past to find information and recruit clients.<sup>1270</sup>

This can lead to wariness of the private sector. In Belgium, the market was looked at with outright suspicion: *"I often have my doubts about how this 'vetting' [at art fairs] is done. [...] Antique dealers have to make a living, but sometimes I think do better research. More thoroughly"*.<sup>1271</sup> This is not surprising. The boundaries between the licit and illicit often blur in the art market. As a result, private actors need to earn the trust of the police. This can take time and effort: *"it all boils down to connections and experience. Building lasting relationships with the police authorities is not something that can be done overnight. Loss adjusters, experts and surveyors tend in general to have a bad relationship with the police authorities, but I can tell you that this is usually due to the fact that their approach is [...] insensitive"*.<sup>1272</sup> Some actors had a bad track record *"not only in Belgium, but in Europe, even in Latin America and in the United States, all police forces have very bad experiences with certain private [stolen art] databases. Very bad experiences"*.<sup>1273</sup> However, this cut both ways. Not only does the private sector need to understand the workings of the police, but the police must also understand

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<sup>1268</sup> Interview private security consultant (n 999).

<sup>1269</sup> Interview Artive (n 1101).

<sup>1270</sup> Interview reference officer (n 996).

<sup>1271</sup> Van Herzeele (n 143) 109, 122.

<sup>1272</sup> Email correspondence international art insurer (n 997).

<sup>1273</sup> Interview reference officer (n 996).

the sensitivities of the private sector. The police are to “*remain in regular contact with the network*” and approach it with “*understanding*”.<sup>1274</sup> If such is not the case, it can lead to “*bad feelings on both sides*”.<sup>1275</sup> For example, police forces’ public raiding of booths at the 2020 BRAFA fair, caused a lot of opprobrium within the market.<sup>1276</sup> The Brussels-based art insurer, who had previously helped the unit, took a dim view of the police’s actions “*Why the hell do that so publicly with a lot of noise? It was ridiculous*”.<sup>1277</sup> Trust is slow to build but easy to destroy. This trust is finally also a personal matter: it is evident the reference officer is less trusting than his colleague in London, and it is clear the private art consultant and Charley Hill took a dimmer view of the unit than other involved parties.

As such, the police and private actors work more or less beside each other. Each primarily tends to their own goals and activities, and while there is some openness to more cooperation, this falls short of actively pursuing partnerships. The relationship between these entities is ultimately best described as a coexistence. In the UK, there is much more cooperation between the Arts and Antiques unit and the private sector. Per both interviewees within the unit and in the private sector there are good relationships between the two. While these relationships stop short of outright partnerships, they can nonetheless stretch over a longer period of time, and all parties involved seem relatively eager to cooperate where such is useful. The existence of a relatively clear framework for interaction further strengthens the case that in the UK there is an overall cooperative relationship between the unit and the private sector. Even then, “*when you build up these relationships with people over a period of time, like the Art Loss Register, you know, they've been around a long time... We speak to them very regularly, but we have to be careful that we're not disclosing information that is sensitive*”.<sup>1278</sup>

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<sup>1274</sup> Interview private consultant (n 1000).

<sup>1275</sup> Interview Brussels-based art insurer (n 998).

<sup>1276</sup> Riah Pryor, ‘Aggressive Seizures by Police at Brafa Leave Dealers Feeling “Assaulted”’ *The Art Newspaper* (2 March 2020) <<http://www.theartnewspaper.com/news/dealers-felt-assaulted-by-seizures-at-brafa>> accessed 23 March 2023.

<sup>1277</sup> Interview Brussels-based art insurer (n 998).

<sup>1278</sup> Interview Officer (n 1016).

In none of the three countries were these relationships formalised. In France, the relationship was markedly informal, with a unit officer going as far as saying they might talk to a gallerist in a coffee house or wine bar, indicating a considerable ease in doing so.<sup>1279</sup> In the UK, as well, interaction stayed largely informal, fluid, and on a case-by-case basis, as police forces proved wary of (being seen to be giving) any actor preferential treatment or being implied in the generation of profit.<sup>1280</sup> The same reservation was expressed by the reference officer in Belgium. While the reference officer did for example attend regular meetings with stakeholders in the protection of religious art, these were in a semi-public setting, and were attended in an advisory capacity. Never did the unit or the reference officer set up formal partnerships. As to why none of the units did so, the Arts and Antiques unit gave the clearest statement: “[...] *the police are never going to work in partnership with a private actor [...] because we don't want the same things*”.<sup>1281</sup>

Ultimately, these elements make for an environment where it is challenging to build the trust necessary for policing co-production. The differing incentives and goals make it complicated for all actors to believe that the other will take their interests properly into account.<sup>1282</sup> Per the private security consultant: *“If the police could trust us a bit more we could do more together, where legally possible [...] I don't have a police background, certain security consultants do. For such people, [...] especially as far as museum security is concerned, it does sometimes go a little easier to get information”*.<sup>1283</sup> Vernon Rapley said similar things: *“Museum security tend to the ex-police officers or ex-military, and therefore there's a little bit more a sense of trust”*.<sup>1284</sup> The crux of it is that the various potential parties to policing co-production at this point have not yet gone fully beyond seeing each other as an asset, and have not yet more deeply engaged with each other's needs and priorities. Until

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<sup>1279</sup> Interview OCBC officer (n 923).

<sup>1280</sup> Interview Officer (n 1016).

<sup>1281</sup> Interview Officer (n 1016).

<sup>1282</sup> Loader (n 329) 435; Van Steden (n 331) 25, 29.

<sup>1283</sup> Interview private security consultant (n 999).

<sup>1284</sup> Interview Vernon Rapley (n 1013).



this is done, and these priorities are navigated, the inherent frictions as described here will continue to impede collaboration.

## 7.7 Conclusion

This chapter focused on the agency and attitudes of the actors involved in putative art crime policing co-production. The interviewees confirmed the themes discussed in chapters II and III as well as the situation assessments presented in chapter IV, V, and VI. Fiscal constraint, policing culture, legislation, and policy were all found to indeed influence art crime policing, and there was divergence in the way these factors influenced art crime policing based on the specific contexts in Belgium, the UK, and France. Clearly, the basic premises of fiscal theory play an important role in shaping the policing arrangements for the fight against art crime. It is indeed gaps in the police's ability to address art crime that have led to public-private interaction. It has also provided the space for private entities to take up policing tasks themselves. That said, the level of constraint differed significantly across Belgium, the UK, and France, and accordingly the strength of its impetus was different in these countries as well. The countries' different policing culture, legislative environments, and polices also shaped the way in which art crime policing was done. Policing culture appeared as a moderator for fiscal constraint's impetus, while legislation was crucial in ringfencing how the units and private actors could work together. The impact of broader policy regarding plural policing was more subdued.

All of this confirms that macro-level plural policing and co-production literature has explanatory power for the micro level of art crime policing. But the specificity of art crime policing also came to the fore. Art crime policing is a specialised area in policing requiring specialist expertise. The opposition between a focus on offenders on the part of the units and a focus on the objects on the part of private actors was also a specificity closely connected to the nature of art and art crime. This latter dynamic was present across the contexts, and so was the element of the profit motive conflicting with the police's public-serving ethos. It is regarding these latter elements that common issues for co-production came to the fore. There are fundamental divergences of interests between specialised art

crime units and private actors, and these divergences were a continuing source of friction, inhibiting art crime policing co-production.

## Chapter VIII: Conclusion

*"What I say to individuals and institutions is that you have a conscience or collective consciences. Use them. Do what's right"<sup>1285</sup>*

### 8.1 Introduction

Those were the words of Charley Hill, former member of the Arts and Antiques unit, imploring all those involved with art to do what is right by art. That meant conducting good due diligence, supporting cultural heritage protection, and prosecuting those guilty of art crime. Art crime is complex and occurs within a complex environment. The art market and broader art world are burdened with structural flaws which were found to facilitate criminal activity. It was found that the way art changes hands incentivises risk-taking and at times criminal behaviour, while mitigating the risk of getting caught. This makes art crime policing difficult, as it means effective policing requires a deep understanding of these structures. Moreover, one also needs to know the art itself. The recognition of forgery, the identification of looting, and the analysis of provenance are but some examples of activities crucial to art crime policing that require significant art-historical knowledge. But art crime is not a priority for many policymakers, and police capacity is consequently limited. Given that additional capacity and knowledge are present in private actors on the art market, art crime policing appears promising for plural policing.

The aim of this study was to analyse whether and why policing co-production is indeed a feature of art crime policing, based on findings in Belgium, France, and the UK. After reviewing the literature, discussing the art crime policing situation in these three countries from a bird's eye perspective, and examining interviewee responses, these questions can be answered. The significance of these answers and this research is threefold. In the first place, this has been an examination of the hitherto little

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<sup>1285</sup> Citron (n 489).

studied and little understood topic of art crime policing.<sup>1286</sup> In chapter III art crime and its policing were discussed from a more theoretical viewpoint. While art crime itself has been the subject of serious academic research for decades at the time of the writing of this study, its policing has received comparatively little attention. The subsequent description of how art crime policing relationships work in practice is an important contribution to the understanding of art crime policing. Secondly, this research also connected theory to empirics: it examined the literature for potential answers to the research dilemma, and then tested whether these literature themes applied in art crime policing practice. In this way, it contributes to plural policing research as well as research on policing co-production. Finally, this process also allows for the formulation of a few suggestions for future research, as well as policing in practice. These are listed near the end of this chapter. But first, the central research questions are addressed.

## **8.2 Art crime policing co-production**

### **8.2.1 The prevalence of policing co-production in art crime policing**

Is policing co-production a feature of art crime policing? The evidence gathered in this research indicates that while art crime co-production does happen, it cannot be stated to be a feature of art crime policing. Policing co-production was defined as private actors providing an active, and direct contribution to public actors' policing activities, as part of a stable relationship between the two aimed at leveraging each other's abilities in the pursuit of delivering more effective policing. The present research shows that private actors do provide important contributions to the units' activities and art crime policing in general. While private actors are kept outside of the police-investigatory aspects of art crime policing, they help successfully prosecute criminals by pursuing preventative activities such as implementing security measures and performing due diligence. They also provide the police with case leads and, perhaps most importantly, their expertise. As such they actively contribute to the

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<sup>1286</sup> Kerr (n 1) 169.

police's efforts in fighting art crime. These are direct contributions to art crime policing. It is to the units' advantage that the private sector develops preventative activities; a testimony to this is that the units encourage such activities and share information to make them more effective. When private actors provide information or expertise to the units it has a direct impact on the units' policing activities. Art crime policing is very much plural policing.

It is also apparent that these parties seek to leverage each other's abilities. It was made abundantly clear in the interviews that the private sector is seen as a crucial repository of expertise by the specialised arts and antiques units. All unit officers contended that they could not develop all the expertise needed to confront art crime in-house. They could not, for example, develop the capabilities to identify all art forgeries or establish the origins of looted objects. Private actors could, as such object-based knowledge is often at the core of what they do. They know how to securitise objects and how to identify them. They also know better than the police how the market operates and what objects are circulating at any given time. On the other side of the aisle, private actors equally saw the police's expertise as indispensable. Without the police's investigatory powers and expertise, the capacity for policing art crime would be severely limited. They also know the police have a broader and more detailed overview of the trends in art crime. As such, both parties saw in each other skills they find complementary to their own. For the police, this is knowhow and potential case leads, for the private sector it is advice on things to be wary of and the potential recovery of cultural objects. It is fair to say this leveraging is done in the pursuit of more effective art crime policing. For the police, it can mean a more cost-effective approach to their core mission. If private actors can provide outside expertise, then police resources can be diverted towards investigations. For private actors, tipping off the police on potential art crimes or providing their expertise is a way to facilitate the police's effectiveness in investigating rogue actors in the art market and crucially to safeguard and retrieve art. While the police may focus more on catching criminals, and the private sector more on recovering objects or weeding out forgeries, both these goals are aspects of successful art crime policing.

But the big barrier to positing that policing co-production is a feature of art crime policing is that the relationships between the police and members of the private sector are rarely stable, and that there is little sense of jointly tackling art crime. Instead, contacts between the two are largely ad hoc. They occur when either party has a direct need for each other, but interactions are rarely embedded in an ongoing relationship. There are various reasons for this. In the first place, instability in the units' operation can mean established networks can collapse as institutional knowledge is lost. This was clearly the case in Belgium. More broadly, the conflicting interests at play mean that the police in all three countries are very wary of favouring, or being seen to favour, some private actors over the other. As a result, the police alternate their collocutors. The relationship remains an instrumental, ad hoc one, and there is little sense of developing partnerships or the sense from either unit officers or private actors that the policing of art crime is a joint endeavour.

There are exceptions to this general rule. Two were identified as part of this research. On the one hand there is the Belgian reference officer's regular attendance to meetings at religious heritage centre PARCUM. There, they discuss topics related to the protection of religious cultural heritage with PARCUM employees, fire brigade representatives, experts, and private security experts. While these meetings are not solely directed towards policing art crime, they are still a stable platform in which the officer can keep abreast of developments regarding religious heritage, and give the other attendees advice. It is important to note that PARCUM is a hybrid organisation geared at bundling expertise on cultural heritage. This facilitates the generation of trust, as the profit motive is less of a factor and PARCUM's interest is more squarely aimed at protecting cultural heritage. The second example is the London Metropolitan Police's Arts and Antiques Squad's enduring relationship with the Art Loss Register. Both parties agreed that this had been a stable relationship built over time that was enduring and mutually beneficent. Contacts were so regular that they had become routine. It appears the unit and the Register have built a common *modus vivendi*, wherein both know what each other's priorities and limits are. Both parties described their interactions as correct and respectful. This was, judging from comments made by the Belgian reference officer, not always the case, but it is the one

example found in this research of a clearly private actor co-producing art crime policing together with a specialised arts and antiques police unit. This also means it is very much the exception rather than the rule.

Kerr argued that co-production exists at the network level in the UK. On the basis of the observation that those making the rules are typically not those who implement them, Kerr opined that art crime policing structurally is a co-production happening within a network consisting of the Arts and Antiques unit and private actors rather than in binary partnerships.<sup>1287</sup> These networks are then constantly evolving, even if relationships between individual actors may be short term. The present research offers two counterpoints. The first is that without enduring relationships and crucially without a sense of a joint endeavour there is no true co-production. The network is too fragile to reliably self-perpetuate. Shocks such as a closure of the unit or collapses in trust between specific partners can threaten the network as a whole. While art crime policing is produced in tandem, it is not jointly produced; the bird's eye view of the network obscures the realities of interactions in practice.

The second counterpoint is that the situations in Belgium and France are quite different from that in the UK. There is for various reasons significantly less interaction between the units and the private sector aimed at art crime policing. Relationships are less stable and more ad hoc, and institutional attitudes remain far more wary. As such, in conclusion, the answer to the question of whether policing co-production can be said to be a feature of art crime policing, or at least art crime policing in Belgium, the UK, and France, is no, because the relationships are stable nor enduring enough to speak of true co-production. The findings finally also argue against the teleological interpretation that co-production is a natural next step for art crime policing. While some actors did consider more collaboration desirable or even likely in the future, there are significant hurdles to art crime policing co-production.

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<sup>1287</sup> Kerr (n 1) 149-153.

## 8.2.2 Explaining art crime policing co-production

The second research question concerned the question of why art crime policing was or was not co-produced. It was found that the art crime units' inability to deliver all aspects of art crime policing was the major driver for engaging with private actors and promoting art crime policing co-production. In all three countries, the specialised units' inability to cover all aspects of art crime policing opened opportunity for policing co-production. Three distinct forms of constraint were identified: constraints in unit personnel numbers, in the tools they are equipped with, and finally in their expertise. The effect of these constraints was not uniform. More than the others, deficits in knowledge and expertise drove units to engage with private actors. On their part, private actors saw the investigatory expertise and cachet of the unit as a potential boon as well. Consequently, in each of these countries, the specialised art crime police units kept up an information network with private actors. While these networks fall short of the establishment of policing co-production, they are an acknowledgement of the fact the police alone cannot cover all aspects of policing, and that private actors were drawn into policing activities, making art crime policing *"embedded in other functions and occupations that do not have policing as their primary focus"*.<sup>1288</sup> These observations are consistent with fiscal constraint theory, which predicts plural policing as a consequence of the police's failure to meet policing demand. Simultaneously, they also meant a reframing of fiscal constraint as a multidimensional concept. It would be wrong to solely think of fiscal constraint in budgetary terms, as a problem of personnel numbers or unit capacities, especially for specialised areas such as art crime policing in line with the arguments developed in chapter III. In that sense, private actors are very much fulfilling a gap in art crime policing. This confirmed many of the key elements of fiscal constraint theory as identified in the plural policing literature. However, this was *"quite a decisive factor but not the only one"*.<sup>1289</sup>

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<sup>1288</sup> Shearing and Stenning, (n 39) 7.

<sup>1289</sup> Interview Officer (n 1016).



While a mutual understanding of each other's skills as being complementary drove the units and private actors to engage with each other, the other factors identified here tended to put a brake on things. In the first place, the driving effect or fiscal constraint effect is moderated by policing culture.<sup>1290</sup> Policing culture has a profound effect on art crime policing actors' biases in favour or against plural arrangements as a solution to policing gaps. Put succinctly, in a country where there has historically been openness to private actors, the police and private actors are more likely to look towards plural policing arrangements than a country where the opposite is the case. Thus, policing culture affects the vigour, intensity, and ways in which policing actors pursue plural arrangements. Policing culture itself did not appear to drive interaction; it affected how quickly actors looked towards each other when they were faced with obstacles in meeting policing demands. It is a facilitator, or barrier to, policing co-production rather than an inherent driver of it.

Legislation and policy had a similar influence, which is unsurprising since policing culture, developed through historical tradition, influences contemporary law- and policymaking. Legislation, and in particular the limits to police information sharing, had a profound effect on co-producing dynamics. The police's limitations in sharing information made it more difficult to build trust relationships and lessened the police's value proposition from the private perspective. Private actors could grow frustrated by the police's legal inability to give them information or engage with them when it came to police-investigatory topics. Legislation also affected the space to grow for private policing in general, meaning more or fewer potential partners for the police to engage with. Policy, meanwhile, could set a trajectory for public-private policing co-production, but appeared to take time to go in effect. Policing culture has a long tail. As a result, there is significant alignment between policing culture, policing policy, and the unit's approaches to art crime policing co-production in each of these countries.

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<sup>1290</sup> Manning (n 215) 31-32; Malochet (n 38) 4/15.

But the major hurdle to art crime policing co-production were structural conflicts of interest that fostered mistrust between all parties. In the first place, the units' focus on prosecution of offenders clashed with private actor's focus on the objects. The police ethos of public service also proved difficult to reconcile with the for-profit motives of many private actors. But even when such a motive was absent, the police still remained careful. There existed a generalised wariness of private actors in an art market characterised by its blurring of the licit and illicit. Not all the units had the same degree of trust in the private sector. Not all private actors had the same trust in the police, either. Both had had bad experiences with each other. Positive interactions fostered trust, while negative one damaged it. As such, trust, or the lack thereof, flowed both ways. Art crime policing co-production is thus primarily driven by complementary skills and primarily dissuaded by the divergence of goals and interests between the unit and private actors. Policing culture moderates this relationship, while legislation limits the co-production field of play. Policy, apart from decisions to invest in specialised units, had a lesser effect. Art crime policing co-production is thus influenced by this complex and interlocking set of factors which explain why it is or is not pursued, and why it does or does have chances of succeeding.

### 8.3. Research implications

Comparing and analysing the differences and commonalities across the case studies "*despecifies national experiences and demystifies others*", allowing for the resting of the "*claims of grand narratives*".<sup>1291</sup> This analysis showed that macro-level policing theories do have explanatory power for a niche area of policing such as the fight against art crime. As such, developments that affect policing as a whole within a given context do appear to trickle down to the level of specialised policing. However, the findings of this study are difficult to generalise. This is because it looked at the hyper-specific area of art crime policing, so other specialised forms of policing may behave differently when it comes to policing co-production. It also focused on a set of three countries in the common context

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<sup>1291</sup> Rogers (n 38) 22-23, 28; Singh and Light (n 196) 296-97; De Maillard and Roché (n 198) 386.

of western Europe, and as such dynamics elsewhere may differ. More and more comparative research is recommended. This study also had a narrow focus on co-production between specialised units and private actors. In many countries there is not, and never has been, such a unit. This can also fundamentally change the dynamics, as police nor private sector have this point of reference for art crime policing. Finally, this study had a narrow focus on specialised police units. This had analytic advantages, but also meant this study did not discuss other public bodies, such as for example ministries of culture, which may also play important roles. Future studies could also focus on the activities of specific actors, for example looking in depth at how art insurance companies in particular play a role in art crime policing.

This research drew concepts and ideas from various literatures developed across various academic traditions. Criminological, legal, art crime studies (which is itself closely tied to art history and archaeology), and economic writing all contributed at various points to this research. Understanding art crime and its policing requires such a multidisciplinary approach, as art crime and its policing touches on many different perspectives. These perspectives all contribute to the understanding of art crime and its policing, and so future research is recommended to continue along this path. That said, this research does show the value of the criminological literature in particular for the understanding of art crime policing. Art crime policing is policing, and as art crime policing research, while multidisciplinary, benefits from giving particular attention to the broader policing research.

Another promising approach to art crime policing would start from the observation that art crime policing is built on information management and information exchange. As such, art crime policing could be considered from the perspective of intelligence-led policing. This is a model of policing which starts from the careful collection and analysis of crime-related information to support decision-making. It is an approach that centres the effective management of information and collaboration in policing practices.<sup>1292</sup> An intelligence-led policing approach to art crime policing would be supported

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<sup>1292</sup> Jerry H Ratcliffe, *Intelligence-Led Policing* (2nd edn, Routledge 2016).

by this study, which showed that the efficient exchange, management, and analysis of information is crucial for effective art crime policing. Future studies could for example focus on how the police units manage their database, how precisely information flows, and how better information practices can lead to more effective art crime policing.

## 8.4 Art crime policing going forward

The findings of this research strongly argue for the establishment of art crime units. They are crucial to effective art crime policing by their ability to wield police power. Without centralised expertise, police forces' ability to tackle art crime is significantly diminished. Moreover, these units also need stability in funding and personnel in order to build the institutional expertise that is their main advantage. Without such a unit, organising effective information networks becomes significantly more difficult, as shown in the case of Belgium. Advocacy for such units would be greatly helped by better statistical evidence of the size of art crime, for example by separate registration of art crime in police records. All parties concerned should also (continue to) advocate for the continued existence and adequate support of art crime units. Such advocacy has a material effect on art crime policing, as seen in Belgium, the UK, and France.

Research can assist the development of best practices, thus supporting practitioners in the field.<sup>1293</sup>

This study was not meant to propagate plural policing as a solution for more effective art crime policing. Nonetheless, plural policing appears to have significant potential in the fight against crime and is already a part of the practices of the units and private actors discussed in this research. But true co-production requires the navigation of differing interests, legislation, policing culture, and policy. In the interest of more effective collaboration between specialised art crime police units and private entities it is recommended that these factors get explicitly addressed. The participants to any co-production must be able to build mutual trust. Having a clear sense of each other's interest, goals,

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<sup>1293</sup> Terpstra and van Stokkom (n 42) 327; De Maillard and Roché (n 198) 386.

and limitations is a prerequisite to this. Consultation platforms such as the Ghent Research institute for Art & cultural heritage Crime and law Enforcement could potentially play a crucial role on this front.

More transparency in the art world at large would also be welcome for trust-building as well as the reduction of art crime. While the art market is getting increasingly regulated, and while art crime itself has moved higher up the international agenda, there still remains a structural lack of transparency within the market which facilitates art crime. Plugging these holes, for example by implementing market-wide, enforceable due diligence standards and educating art collectors on the risks of art looting and fraud is important to avoid art crime policing becoming akin to mopping the floor without also turning off the faucet. It is important to empower those who do aim towards more transparency and better due diligence practices.

This research indicates that there remains significant potential for more effective co-production of art crime policing. Whether that potential will be unlocked remains to be seen. Other models of art crime policing can be suggested. What remains crucial, though, is that the importance of art crime and its policing is realised. It is important that more art crime research develops so that the problem may be better understood and tackled, that more policymakers understand the urgency of the issue so that art crime policing happens on stable footing, that police officers are given the support they need so that they more effectively go after art criminals, that art is better protected so that it does not fall victim to crime in the first place, and that the market realises its role in facilitating art crime so that both the supply and demand for tainted art can be curtailed. Because art crime is not a victimless crime, but one that robs humanity as a whole from a crucial link to the past, a resource for making sense of the present, and an enduring source of beauty and meaning in this world.

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