



Infcous

THE ART OF CRIME

New models of governance, compliance and accountability for the art world

by Marcílio Franca



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Issue 29/2005 of German magazine *Der Spiegel* announced that, according to German Police findings, terrorist Mohammed Atta possibly tried to finance the attacks of 11 September 2001 through illegal art trade. According to the publication, Atta had offered antiques to a Professor of the University of Göttingen, who suspected the origin of the artwork and declined. Despite the world's astonishment at such revelation, Al Qaeda was not the first terrorist organization to use the art and antiques market to finance their criminal operations, a market that only in 2016, handled an officially reported amount of 45 billion dollars, according to the TEFAF Report 2017 on the global art market.

Criminal organizations have known for over 50 years that it is relative-

ly easy to steal and sell art to raise funds. As an example, still in the 1960s, the *Unione Corse* - a mafia organization that operated in Corsica and Marseille - stole works by Picasso, Cézanne, Van Gogh and many other authors in the French Riviera. The *Camorra* and the *'Ndràngheta* have all used similar procedures. In the 1980s, Pablo Escobar, the Colombian king of cocaine, was known to have used priceless works by Dalí, Rodin, Botero and Picasso to launder money.

Criminal groups soon realized how easy it is to cross borders with a rolled-up canvas; prices can be raised or lowered by millions in few months in the art market; the tangle of conflicts of interest can contaminate the result of expert reports and technical opinions, and the names

of buyers and sellers tend to be kept anonymous, leaving law enforcement authorities with the hard work of guessing who was involved, where the money came from and whether or not the price was suspicious. The "prestige" or "elegance" of the person who steals art (so different from shoplifters, for example); the development of online sales; and the lack of regulation in the sector, are conditions that can all be conducive to a number of crimes involving works of art, especially money laundering.

Like terrorism and the mafia, corruption also is closely linked with the art market. Take Brazil's current scenario: in the middle of a political crisis, highlighted by the corruption scandal involving the giant contractor Odebrecht, many works of art used to ei-

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ther corrupt public authorities or hide or launder money that originated in corruption acts, have been apprehended. A single Brazilian museum, the Oscar Niemeyer Museum, in Curitiba, has already received nearly 150 works of art, including paintings by Miró and Dalí, confiscated from individuals involved in the corruption scandal. Power, secrecy and mobility are together in this market. The Panama Papers and Paradise Papers provide an unprecedented look at the connection between international art trade, money laundering, corruption and offshore secrecy.

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Although there have long been many good instruments of hard law against money laundering in the field of criminal law, administrative law, economic law and international law, the State/domestic law has not been enough to regulate the ever bigger and more opaque art market.

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In 1984, Italo Calvino – one of the most important Italian writers of the 20th century – was invited by Harvard University to deliver the Charles Eliot Norton Poetry Lectures for the 1985/1986 academic year. Calvino decided that the theme of

his lectures would be the literary values that deserved to be preserved in the course of the new millennium which was to start some years later. However, Calvino passed away in September 1985, shortly before setting off to the United States. Posthumously, the five conferences written so far were collected in one volume whose English version is entitled *Six Memos for the Next Millennium*. The first conference he wrote was about lightness. Italo Calvino starts his lesson on lightness by remembering that “to cut off Medusa’s head without being turned to stone, Perseus supports himself on the very lightest of things, the winds and the clouds [...]”

With that in mind and since money laundering in the art market is a complex, widespread and multi-faceted activity, it must be tackled nowadays from several different angles, far from domestic criminal law alone. One of the new angles to face this issue may be precisely corporate self-regulation and



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soft law, like codes of conduct, compliance tools, governance methods, accountability mechanisms and legal principles.

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While different anti-money laundering regimes have been adopted around the globe, a single, har-

monised, efficient, global legal regime for the art market is still far from existing. However, it is worth mentioning that enterprises and legal entities of the art sector like Sotheby's, Christie's, Allianz Versicherung, SGS Logistics, ARIS Insurance, ING Bank, the Conseil des Ventes Volontaires, the International Council of Museums (ICOM), Art Basel, for example, already do have corporate codes. An International code of ethics for dealers in cultural property has been adopted by the UNESCO in 1999. In January 2017, a group of Geneva-based art institutions known as the Responsible Art Market Initiative (RAM) published their first set of directives on anti-money laundering best practices. This means that methods of self-regulation are already in sight for the art mar-

ket players as tools to prevent raising risks and confidence loss.

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It is obvious that one does not buy art merely to hide or to launder money of illicit origin. It would be tremendously prejudiced or naive to think so. In an increasingly aesthetic and visual world, in addition to individual collectors whose access to works and auctions has been democratized with the Internet, private museums, non-profit institutions and

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companies have been achieving an increasingly important role in art and culture through their corporate collections, their patronage policies (acquisitions, sponsorships, prizes, grants and artistic residencies) and even their art investment funds. In view of this strengthened importance, whether for cultural, political, imaginary, social, mar-

ket, strategic, philosophical or even status-based reasons, it is fundamental that the art market be protected more and better against its use for unlawful purposes, preserving its image and solidity as well as guaranteeing security, certainty, confidence and predictability to its many operators. Against this backdrop, here is what is left to find out: if

art is so creative, why can't such creativity contaminate the world of art law to cause the discussion of new models of regulation and cooperation of the sector? I am sure that UNICRI, its researchers and its long and deep expertise have a fundamental role in this debate!

The author

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