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THE GLOBAL CULTURE OF COUNTERFEIT COMMERCE: RELATIONS OF PRODUCTION, DISTRIBUTION AND CONSUMPTION

Abstract

Study of the consumption of counterfeit products casts consumers as reflexive agents who knowingly break the law (through the consumption of illegal commodities). Because this analysis is pitched at the level of meaning rather than structural constraints, it produces a misleading view of reflexive counterfeit consumption as being motivated by resistance or the wish to escape from normative coercion.
This paper contrasts with approaches that prefigure meaning in explaining counterfeit commerce by treating the trade as an unavoidable structural feature of capitalism. That is, the structural logic of capital accumulation inevitably creates a black market of counterfeit commerce. It is a parasitic form of illegal consumerism which mirrors conventional capitalist organization reproducing familiar dynamics of valued status differentiation.

Key Words

Counterfeit commerce, reflexivity, status differentiation

Counterfeit commodities refer to products that violate registered copyright and patent provisions by illegally duplicating a brand. Counterfeit production entails the unauthorized use of a logo or trademark. The commercial relations organized around it typically involve the

exchange of illegal replicas at a lower price point than that of authentic branded products. Counterfeit goods are divided into two categories: (1) *deceptive counterfeits* i.e. fake products of knock-off's that consumers believe to be authentic brands; and (2) *non-deceptive* counterfeits i.e. commodities that are recognized as inauthentic by specific information points such as quality, purchase location, price or materials used to make the product (Juggessur and Cohen 2009). The formal definition, set down in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), is as follows:

> "Counterfeit trademark goods" shall mean any goods, including packaging, bearing, without authorization, a trademark that is identical to that trademark validly registered in respect of such goods that cannot be distinguished in its essential aspects from such a trademark, which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation (World Trade Organization 1994)

Estimates of the extent of the global trade vary. Since disguise and dissimulation are the essence of exchange relations involving counterfeits the task of calculating the real size of the transactions involved is complex. Further, the entire enterprise of calculating volume accurately is open to challenge on methodological grounds (1). Notwithstanding this, a range of estimates has emerged which is broadly accepted in the field. At the lower end, the International Chamber of Commerce Intelligence Bureau (1997) puts counterfeit commerce at

5% of world trade. However, most critical commentators submit that this is a conservative estimate. They hold that the trade accounts for between 5-7% of global trade (Kim and Karpia 2009: 79; Staake 2009; Lee and Workman 2011: 289). At the upper level, Wiedmann *et al* (2012) contend that the portion of global trade given over to the exchange of counterfeits is in the order of 10% of global consumer transactions. The OECD (2008) estimates that the value of counterfeit products seized worldwide is $500 billion per year and maintains that this is only a fraction of what is in circulation (Kim and Karpova 2010: 79).Whatever the true figure, there is little doubt that the trade constitutes a significant portion of the global economy and further, that its scale is rapidly expanding. Norum and Cuno (2011: 27) calculate that over the last twenty years counterfeit commerce has multiplied 10,000 times. When estimates of the undetected trade are added to recorded seizures of counterfeits by the authorities the trade is predicted to grow to $1.7 trillion by 2015 (Guim. DiMase, Tehranipoor 2014). This is the result of a combination of factors, namely more efficient supply chains, better design values, deregulation of border controls, the spread of access to copyright design data through hacking, direct/low-risk internet sales provision, various forms of intellectual property theft, insufficient policing and escalating consumer demand. The most commonly counterfeited goods are luxury items: branded apparel, watches, jewelry, perfume, purses, sunglasses. However, no product or brand is immune (Lee and Workman 2011). The trade extends to pharmaceuticals, automative and airline parts, electronics, sporting equipment, batteries, toys, hygiene products, alcohol, cigarettes and various forms of

intellectual property (Heinonen, Holt and Wilson 2012: 354) (2).

By definition, counterfeit commerce is unauthorized. It is therefore not subject to regulatory codes of practice. For this reason examples are seldom found in High Street or Shopping Mall settings. The main urban retail suppliers are street vendors, flea markets, car boot sales, liquidation sales and illicit shopfronts. However, in order to appreciate the increasing audacity and sophistication of the trade it is worth noting Yang's (2014) report, that in 2011 an entire 'fake' Apple store with Apple merchandise was discovered in the southern Chinese city of Kunming. The store feature the trademark Apple spiral staircase with an inventory of knock-off Apple products and employees dressed in blue T-shirts with Apple nametags.

Needless to say, the internet is a crucial, massively expanding point of sale. This reflects the switch in retailing from high street/shopping mall to online purchasing. Industry analysts submit that general internet usage multiplies globally at a rate of 20% per year (Wilson and Fenoff 2014:40). Some 60% of US consumers buy products online at least once per fiscal quarter (Anderson 2010). Online retail exchange provides a favourable climate for the growth of the commercial exchange of counterfeit products. In addition to the exchange of counterfeits, it is compatible with identity theft, credit card fraud, hacking and non-delivery of goods and services (Newman and Clarke 2003). E-commerce sites, like eBay, Craiglist and half.com, do not possess effective regulatory mechanisms to guarantee fidelity in product specification or advertising. In addition, products advertised online are not available for physical inspection. So customers fall back upon the reputation

of the seller and/or customer reviews (Gregg and Scott 2006; Chua, Wareham and Robey 2007). Because of this, trade conditions are highly propitious to the conduct of fraud. The US Federal Trade Commission (2011) reported over 56,000 consumer complaints on internet auction fraud in 2010 alone. Since it is probable that most customers do not make official complaints, or may not even be aware that a fraud has been perpetrated, this figure is very likely to be a serious under-estimate of the real magnitude of the problem.

The increasing importance of the virtual environment in the exchange of illegal products means that the notion of counterfeit commerce needs to be extended to point of sale. With the rise of the digital economy, the internet is becoming fundamental to the global expansion of the trade. It is estimated that 'cybersquatting' (using a domain name that capitalizes on an established brand) accounts for 1.7 million web sites (Wotherspoon and Cheng 2009: 32). The spread of the digital economy encourages the growth of counterfeiting. It is a direct form of sale as retailers drive the business straight to consumer digital devices. For the most part, auction websites, such as *e-Bay*, are self-policed and hence attractive to counterfeit commerce. To be sure, e-Bay has been fined for omitting to efficiently counteract counterfeit trading (Treadwell 2012: 188). Additionally, servers can change identities rapidly and frequently. This makes it challenging for the authorities to pinpoint digital supply chains and finance flows. Digital Piracy (DP) refers to the illegal reproduction of intellectual property and exchange by non-authorized vendors. It is calculated that 35% of the packaged software installed on personal computers worldwide in 2005 was obtained by these means (Taylor, Ishida and Wallace 2009: 246).

Global movie piracy is estimated to result in a $6 billion loss to the industry (Klein 2007). Similarly, the International Federation of the Phonographic Industry reports that 37% of all music CDs exchanged in 2005 was pirated and 20 billion songs were illegally downloaded (IFPI 2006).

The articulation of the counterfeit trade in local settings disguises the organized, international dimensions of production and distribution. While some portions of the trade are confined to local relations of production, distribution and exchange, Dick Hobbs (1998: 419) insists that the concept of 'global network' is the right perspective to apply. Organized crime works through local underworld points of exchange but interconnects with global supply chains. The thrust for illegal profiteering that produces counterfeiters in the first place, reproduces itself in the next place and is supplied by global sourcing and constitutes a global industry.

The articulation of the network is influenced by multiple factors. Among the most commonly cited are, demographic distribution, familial structures, ethnic distribution and cohesion, commercial practice, trading patterns and policing. Sourcing is concentrated among manufacturers in Far East Asia, principally China, South Korea, Taiwan and West Africa (Riston 2007). The post-Soviet bloc economies also contribute significantly to the trade. For example, industry reports on one of the most common types of counterfeiting, namely the production of cigarettes, indicate that 65% of volume is produced in China, and 20% in Russia (Nurton 2005). Chow's (2003) research into the counterfeit trade in China unearthed deep links with organized crime and the collusion of local populations through protectionism. Following an escalation in

enforcement effects against illicit recreational drugs such as cocaine and heroin, there is evidence that organized crime syndicates such as the Russian mafia, Mexican drug gangs, Chinese Triads and Colombian drug cartels have switched resources to counterfeit pharmaceuticals (Mackey and Liang 2011). The involvement of organized gangs and international cartels supports cross subsidization of criminal activities. Revenues generated from counterfeit commerce are channelled into prostitution, human trafficking and terrorism (Vagg and Harris 1998).

Factories are run on a 'just in time' principle so that counterfeiters can adapt rapidly to changes in markings, packaging and concomitant design features (McEwen and Strauss 2009: 253). Counterfeit goods are transported to affluent metropolitan centres in the West through clandestine trade routes or online auction sites.

At every level, the production, carriage and sale of goods is illegal. Producer's copy luxury designs illegally, employ workers to produce facsimiles illegally and shield their activities from the eyes of the authorities, again illegally. Local distributors stock the products in camouflaged warehouses and supply consumers via underground pathways and bulk cargo trade routes that carry legitimate container material.

The size and vigour of counterfeit commerce raises several interpretive questions concerning authenticity, trust and meaning. Walter Benjamin's (2002) famous contribution to the sociology of culture on the consequences of mechanical reproduction, points to issues of originality, politics and status differentiation in the consumption of duplicates. When the volume and scale of the global counterfeit trade nowadays is factored in, together with the subject of

consumer motivation, especially in the matter of consuming non-deceptive counterfeits, the issues multiply in range and complexity (3). Structurally speaking, the world of commodities exchanged under copyright and patent is mirrored by a counter-world consisting of illegal relations of production, distribution and exchange that are resistant to detection, policing and control. Counterfeit commerce certainly breaks the law. However, when viewed from the logic of the general consumption process under capitalism it is also the rational extension of consumer activity into 'hyper consumerism' (Hayward 2004: 86) i.e. a form of subjective desire to accumulate goods and services that privileges the drive to consume above respect for contract in order to acquire price advantage or distinction (Hayward 2004: 86; Moxon 2011).

What does it mean to propose that counterfeit commerce is the extension of general consumerism into 'hyper consumerism'? The capitalist mode of production assigns great weight to the consumption of goods and services as a mark of distinction (Bourdieu 1984). Counter cultures of consumption and anti-consumerist movements, in general, merely confirm this predominance since what they are reacting to, and ultimately reinforcing, is the normative assumption that equates status with sought after consumption. Hyper-consumption assigns status to unauthorized consumption and applies a variety of pretexts to support this interpretation. Thus, save in one respect, hyper-consumerism is faithful to the general status accumulation process of the authorized price mechanism. The proviso in question refers to the illegal basis of the relationships of production, distribution and exchange in counterfeit commerce. By flagrantly flouting legal regulations it might be inferred that

counterfeit commerce renders morality forfeit. In reality, producers and consumers regard counterfeit status as providing no moral impediment to exchange. A different kind of consumer judgement about morality and authenticity appears to be operational here. Counter hierarchies of status, flexible moral judgements about production and consumption and global shadow networks of distinction, identity and difference built around the production, distribution and exchange of counterfeits have become normalized. Rutter and Bryce (2008:1158) submit that the purchase and consumption of counterfeit goods is a *routine* component of everyday life. It extends over all ages, ethnicities and is gender neutral. In emphasizing the ordinary quality of exchange, Rutter and Bryce (2008) problematize the commonsense twinning of counterfeit consumption with crime. Indeed, it has been suggested that non-deceptive counterfeits fulfil two sorts of consumer demand that are not satisfied by authorized production. In the first place they supply the demand to acquire positive status differentiation through the accumulation of luxury goods and affordable prices. Consecutively, they fulfil the need of some consumers to comment upon the vanity and waste of the luxury goods industry (Arellano 1994; Hilton, Choi and Chen 2004). Normalization suggests that the trade correlates with moral elasticity. That is, consumers refuse to designate trademark violation as regular crime. The elasticity in question relates to a variety of concrete issues of consumer motivation bearing upon, *inter alia,* issues of price advantage, value for money, one upmanship and the economic and cultural pretensions of the authorized trade particularly, in luxury goods. Before taking up these issues in greater detail, it is

necessary to remark briefly upon the main social interests adversely affected by the trade in fake goods.

Who is Most Affected by Counterfeit Commerce?

Wall and Large (2010: 1095) differentiate three sets of agents who are directly and indirectly affected by counterfeit commerce Copyright Holders, Consumers and the General Public.

1) Copyright Holders

> The financial loss to copyright owners is impossible to calculate accurately. However, if the counterfeit trade really does account for 10% of global commerce, revenue loss to aggregated businesses is at least one tenth of potential turnover. Given that counterfeit goods are priced significantly below the market rate, this figure is almost certainly a massive under-estimate. The counterfeit trade then, directly affects the profitability and economic growth prospects of legitimate business.
> Some sectors of the economy report a calamitous effect on authorized sales. Research into counterfeit electronic integrated circuits in 2005-7 put the size of the counterfeit market in the region of 50% of total transactions; reports of counterfeits in the electronics business have quadrupled since 2009 (Guin, DiMase and Tehranipoor 2014: 10). The US Customs and Border Control reported in midyear 2006 that 45% of seized counterfeit goods were fashion accessories; (Kim and Karpova 2010).

among the Top 5 brands counterfeited, 4 were fashion brands (*Louis Vitton, Nike, Gucci* and *Prada*), the fifth was *Microsoft* (Kim and Karpova 2010).

The trade loss to European companies in the clothing and footwear sector is put at E1,266 million; E555 million in the perfumes and cosmetics sector; E627 million in the toys and sports articles sector; and E292 million in the pharmaceuticals sector (Blakeney 2009: 7).

Above and beyond the question of revenue loss, legitimate business faces a variety of other challenges with counterfeit trade.

Counterfeits may damage the authorized brand and thus, diminish goodwill. The trade can increase the risk of being exposed to liability claims that arise from a flood of substandard products on the market carrying the brand name (Wilke, R. and Zaichkowsky, J. 1999; Staake, T., Thiesse, F.,and Fleisch, E. 2012).

Moreover, in the long run, counterfeiting may act as a deterrent on the research and development dynamism of legitimate business. For what is the point of investing in R&D if the fruits of design are hijacked and duplicated by criminal interests?

2) Consumers

Consumers may be divided into two groups: Vulnerable and Hoodwinked. Vulnerable consumers have a propensity to consume knock-off's despite being cognizant that they are non-deceptive counterfeits.

They are described as vulnerable for, despite being aware of the non-deceptive character of the counterfeit, they are at risk from purchasing goods that are not subject to independent regulatory standards. Generally, this motivation derives from pecuniary disadvantage in the marketplace. For example, the purchase of counterfeit pharmaceuticals may be motivated by the desire to acquire some medical relief, however uncertain, in a market where the authorized product is beyond the financial means of the consumer. In addition, it may merely reflect the desire to acquire positive status differentiation. There is evidence that some consumers with high disposable income will opt to purchase non-deceptive counterfeits on value for money grounds (Pendergast, Cheun and Phau 2002; Gentry, Putrevu and Schulz 2006). In contrast, hoodwinked consumers are pure victims of fraud. That is, they are not cognizant that the commodities they purchased in good faith are illegally reproduced duplicates. They are also subject to the risk of purchasing goods that are not subject to independent regulatory standards.

The World Health Organization reports that 10% of global medication is counterfeit with an increase of 80% between 2000 and 2006. In 2001, Chinese authorities investigated 480,000 incidents involving counterfeit drugs and attributed 192,000 deaths to counterfeit drug use (Chang 2009: 1516).The absence of independent regulation means that the

counterfeit pharmaceutical trade carries significant risks of morbidity and mortality. It is associated with spurious standards of resistance and toxicity. While all consumers are at risk equally, the hazard is concentrated in the lowest income quartile of Western society and in the developing world (Newton et al 2006: 602; Healy 2012) (4).

Aldhous (2005) reports that research by the Cambodian Ministry of Health examined 230 samples of 24 pharmaceuticals bought on the Cambodian market in 2000, including antibiotics and painkillers. They discovered that 3.5% of them consisted of less than 60% of the labelled quantity of active ingredient. When the survey was repeated in 2003, 11% of samples fell into this category. In Haiti in 1990, 89 children died after taking fake cough medicine containing anti-freeze; in 1996, more than 2,500 Nigerians reportedly died after receiving a fake meningitis vaccine (Kontink 2003: 46). Counterfeiting is especially prevalent in the spare parts sector of the transport industry, with obvious implications for public wellbeing. In the USA the Federal Trade Commission (FTC) estimates that counterfeiting deprives the auto parts industry of $3 billion and $12 billion globally (Mele 2004:16). The US Federal Aviation Administration (FAA) submit that 2%, or 520,000 of the 26 million airline parts installed each year are fakes (Wotherspoon and Cheng 2009: 32). The risks of illness and morbidity to consumers arising from unregulated, counterfeit trade need hardly be

laboured. However, quantification of the true extent of damage done to vulnerable and hoodwinked consumers is problematized by the clandestine, global nature of the trade. Despite this, it is reasonable to assume that counterfeit commerce is a significant influence to global illness and morbidity rates.

3) General Public

The distribution of counterfeit commerce in flea markets, uauthorized kiosk and liquidation sales, is often associated with festivity and the carnivalesque. It is as if the consumer is getting one over on the over-priced catalogue and inventory of the luxury goods industry. However, responses of this type are myopic. Counterfeit commerce has major negative consequences for public finance. Since counterfeit commodities are exempt from fiscal discipline, significant production and sales tax revenue is lost to the Treasury. This carries over into threats to the authorized labour market. In the USA the counterfeit trade is held to be responsible for the loss of 750,000 jobs per year; in New York alone, counterfeit sales are estimated to constitute £23 billion and involve a loss of $1 billion in tax revenue annually (Kim and Karpova 2010: 79). In the sourcing countries undeclared production, false reporting compounds public revenue loss. Hence, funds that could be used for various types of social investment for the benefit for the public are never generated. In

> addition, as we have already noted, defective copies in the transport and pharmaceuticals trade may increase ill health and morbidity among consumers and so add to public health care costs. In so far as defective counterfeits are associated with risk, especially in the areas of transport components and pharmaceuticals, the trade in illegal commodities is a significant factor in the production and reproduction of risk society.

The Endeavour of Policing and Consumer Motivations

The coherence of organized global counterfeit commerce depends upon perpetual fluidity between the local and the global. Hence, tackling counterfeit commerce requires multi-level, international co-ordination between police, customs and national regulators of commerce. The growth of so-called 'Trojan drugs' has led to the pharmaceutical industry lobbying for radio frequency identification (RFID) tags and 2-dimensional bar codes on pharmaceutical products to facilitate tracking (deKeiffer 2006: 325-7). However, the absence of fail safe tracking technologies and the lack of industry wide standards bedevil and frustrate the imposition of regulatory requirements (Kontink 2006: 142). Periodically, high profile policing interventions are implemented. For example, in 2010 the internet-based operation *Pangea III*, involving 45 countries, cracked down on the counterfeit drug trade. An illicit drug cache valued at US$2.6 billion was recovered, 290 illegal websites were closed down and 76 people were arrested (Siva 2010: 1725). However, there are budgetary cost barriers in applying adequate policing. Similarly, enforcement measures fall foul of

global supply chains that are governed by disjointed jurisdiction. The USA has started talks with key trading partners to regularize international responses via the Anti-Counterfeiting Trade Agreement (ACTA). This seeks to strengthen information sharing between law enforcement agencies; increase criminal and civil enforcement of intellectual property rights violation; upgrade border controls; and reform the international law regarding the enforcement of intellectual property rights (Sommers and Kilaru 2008). At the state level, authorities in host countries where supply is concentrated have taken measures to counteract the trade in a bid to enhance international standing. Russia and East Africa have also intensified enforcement against copyright violation (Von Braun and Munyi 2010; Charlton 2012). However, at the level of the state, the opposition to counterfeiting has not all been plain sailing. The European Parliament refused to ratify ACTA in 2012 on the grounds that the proposed legislation threatens individual liberties by infringing personal privacy. The difficulties illustrate the problems confronting anti-counterfeiting law enforcers who struggle to combat crime, but face resistance from civil liberties groups who maintain that blanket legislation impedes individual rights to duplicate and exchange for private use.

In recent years, anti-counterfeiting legislation has intensified. In the USA, the Counterfeit Drug Prevention Act (CDPA, 2007) and the Intellectual Property Enhanced Criminal Enforcement Act (IPECEA, 2007) provide for harsher sentencing for trafficking in counterfeit goods and knowingly supplying counterfeit goods to 'at-risk' groups. In addition, the IPECEA criminalizes the intent to commit copyright infringement and assigns $12 million to create a special operations

unit, within the Federal Bureau of Investigation (FBI) to coordinate the investigation of intellectual property crime. However, given estimates of the scale of the trade which refer to 'trillions' of dollars of value in counterfeit circulation, these measures are a drop in the ocean. International statecraft has also stepped up anti-counterfeiting provisions. However, it is widely agreed that obstacles to policing are formidable. Not the least challenge facing policing is that counterfeit commerce is normalized. That is, the pattern of reactions to counterfeit products may rail against the trade in spare parts for aeroplanes and automobiles or pharmaceuticals, while encompass, as a standard operative in everyday life the consumption of counterfeit apparel, perfumes, software, leather goods and so on.

Conventionally, exchange relations in democratic consumer culture are believed to be founded upon good faith and trust (Jacoby and Chestnut 1978; Rust and Oliver 1994; Alhabeeb 2007). Trust resides in the copyright or patent of the product and the legality of the exchange relationship. Important residual factors in building trust are packaging and the retail setting of exchange. Even internet purchases must be made through 'recognized' servers if they are to be valued as 'legitimate'. The absence of trust is generally understood to render exchange relations forfeit.

Counterfeit commerce overturns orthodoxy. In the case of non-deceptive counterfeits the transactions are *automatically* appreciated by consumers to be a trade in fakes. The culture of *detected* counterfeit commerce raises issues about the nature of the exchange relationship. *What* exactly, is being exchanged here? To answer this question a distinction can be introduced with respect to the question of consumer reflexivity.

Counterfeit commodity exchange involves a continuum of consumer reflexivity from the reflexive to the non-reflexive purchaser. Reflexive consumers buy fake goods in the knowledge that they are counterfeit. Non-reflexive consumption (the hoodwinked consumer) take the purchase of counterfeit goods on trust i.e. as *bona fide* items. With respect to both groups, the main motivations behind the purchase of counterfeits is price advantage and perceived quality/value for money (Kim and Karpova 2010: 80; Hendrianna, Mayasari and Gunadi 2103: 63). However, reflexivity is not confined to these economic indicators. Consumption is a *social* process that involves twin collateral considerations: namely, who is attributing authenticity to the good or service, the uses to which attribution will be put (Brunner 1994: 408). These are partly *political* considerations. In his classical contribution, Benjamin (2002) argues that reproduction deprives the work of art of its metaphysical aura (claim to uniqueness) and that production should carry positive political content. Since a large chunk of the counterfeit trade is based in luxury products, the logic of Benjamin's argument can be transferred, without too much trouble, to the culture of counterfeit consumption. To be sure, the essence of the case that counterfeit consumption is merely the politicized extension of regular consumption practice into a state of hyper-consumerism does just that (Hayward 2004: 86). To expand, the economic value of luxury items reflects the metaphysical aura that is culturally attributed to them. On this basis, the exchange of counterfeits operates to expose the 'crass commercialism' of the luxury goods trade (Moxon 2011; Naylor 2011). At the same time, it reveals the rigged nature of the system. On this logic, the consumer of counterfeits is held to seize advantage

of opportunities for consumption that the authorized system of consumption rations or debars. The exchange relationship is explicitly fused with questions of resistance and identity. Thus, it is assumed that consumers of fake goods are mostly concentrated in the ranks of the marginalized and excluded. The consumption of counterfeits is conflated with 'risky' transgressive practice. Through this means, consumers acquire the temporary, positive experience of control and fighting back in the teeth of a system that emiserates them (Winlow 2001; Hall, Winlow and Ancrum 2008; Bloch, Bush and Campbell 1993; Chaudry and Stumpf 2011). By implication, consumers who refrain from engaging in counterfeit consumption are seen as passive. For by confining themselves to the track of conventional consumption they reinforce the unequal property relations upon which the system is founded.

According to this tradition, the consumption of counterfeit goods is a strategic response to the general cultural struggle of acceptance and recognition in the context of societies founded upon class divided property relations (Presdee 2000; Hayward 2004). Pivotal to this line of analysis is the proposition that emotional, expressive qualities of counterfeit consumption are inextricable from questions of surplus and scarcity in political economy. Seizing symbols of luxury, status and power is analyzed as a social reaction to economic inequality and political marginalization. Axiomatic to this is the proposition that the counterfeit trade thrives in the context of organized, historically rooted, structural inequality. At bottom, cultural criminology posits counterfeit consumption to be an illegal practice that arises from the social exclusion of agents from luxury acquisition and associated power hierarchies (by

reason of status and property qualifications). Cultural criminology therefore equates consumer motivation with *both* challenging and reproducing the values of capital by dint of engaging voluntarily and reflexively in illegal activity (Ferrell et al 2004). The consumption of counterfeit commodities is explained either as an act of resistance against capitalist authenticity and power (embodied in copyright and patent law) (Young 1999; Presdee 2000). Or, it is presented as the inevitable mutation of consumer culture into 'hyper consumerism'.

The Politics of Moral Elasticity

The case made by cultural criminologist's rests upon cultural relativism dovetailed with moral elasticity. The location of underprivileged strata in a system of productive and asset accumulation based upon organized inequality is interpreted as the pretext for the reflexive consumption of counterfeits. Therefore, the counterfeit trade is regarded to be the underbelly of the capitalist mode of production. It is not a departure from capitalist logic and ordering, but a continuation of the same by other means. Practically, the comparatively low levels of resources allocated by the authorities to anti-counterfeit policing suggests a considerable measure of acceptance that the trade is an inevitable product of the capitalist mode of production. Providers of authorized brands strive to buy labour and product components in the cheapest market in order to sell in the dearest. Suppliers of counterfeit goods pursue the same logic. In both cases the extraction of surplus value is the name of the game. It is just the legality of the actions, combined with the pricing mechanism in the respective production lines, that is different. In points of both

production and consumption this logic complicates police counter measures. Certainly, commentators identify low risk of detection and inconsistent forms of punishment as magnets for the involvement of suppliers and consumers of counterfeits (Wall and Large 2010: 1097).

Prima facie, this is an odd state of affairs. The counterfeit trade supports a global society of producers, distributors and consumers bound together by nothing less than transparent property theft. While it is universally acknowledged that the trade involves copyright/patent infringement, in general, the police apply a fairly soft policing policy. Doubtless, this reflects the grey status of counterfeit consumption in consumer culture. To some degree, especially in the area of internet supply and retailing, counterfeiters simply realize the latent potential contained in modern technologies of reproduction to increase access to commodities of various sorts.

Although total hoodwinking of consumers is probably more significant than most people realize, in many cases, there is little doubt that consumers readily distinguish between legitimate brands and counterfeits (Vitell *et al* 2001;King and Dennis 2006). That is, consumers are mostly reflexive and knowingly buy goods that violate copyright and patent. The trade is, in fact, organized around a peculiar double-standard. While those who engage in counterfeit commerce do not generally believe that they are committing a crime, they simultaneously believe that the sellers of these goods should be punished (Norum and Cuno 2011). In short, the counterfeit trade, is permeated with profound moral ambivalence. This is compounded by the nature of the 'victim' in counterfeit exchange. Research consistently finds that consumers are less willing to engage in counterfeit commerce when the victim

is an individual, as opposed to an abstract institution (corporation or state department) or society. The willingness of consumers to 'get one over' on corporations because they are perceived as abstract entities reinforces the argument of cultural criminologist's that there is a political dimension in some forms of counterfeit exchange, especially transactions that bear upon the luxury goods trade.

There are obvious hazards in proposing that counterfeit exchange is pre-eminently a *political* act. Consistently research shows that price advantage and value for money are more imposing considerations in consumer behaviour (Kim and Karpova 2010; Hendrianna, Maysari and Gundai 2013). Nonetheless, the trade continuously raises the political question, posed by Benjamin (2002), of the nature of the social interests that possess the power to authorize the 'metaphysic' of uniqueness in a work of art or delineate the market of luxury commodities. Consumption is not simply a matter of 'having'. It is also a matter of certification through social interpretation (Brunner 1994). This applies not just to the interpretation of the authenticity and value for money of the counterfeit, but, by implication, the pyramid of power that supports and validates authorization. The counterfeit pitches the supplier and consumer against hierarchies of power and chains of consumption from which consumers are excluded. In this sense, it is inextricable from political questions. In its own way, the effort of cultural criminology to break with 'bloodless' criminology is creditable. Yet in the process, the liberties taken cannot be permitted to pass without comment. To be sure, the production, distribution and exchange of counterfeit commodities has political implications for understanding the power hierarchy of

capitalist society. But the case that counterfeit commerce is significantly 'ironic' or 'resistant' should not be pushed too far. While organized networks play a pivotal role in production, exchange and distribution, supply and consumption relations are often opportunistic and self contained. Cumulatively, buying a *Louis Vuitton* knock-off at a Saturday market may damage corporate market share, but it is hardly strong evidence of a meaningful challenge to the authorized price mechanism. As a social institution, counterfeit commerce is wholly parasitic upon the capitalist system of organization. There may be cases where counterfeiting is deliberately applied to erode or obliterate the market position of authorized producers in order to produce justice for consumers. As such, they may be taken as evidence of a threat to the general price mechanism which is founded in the principle of maximizing surplus value. However, such cases are very much in the minority. The bulk of the counterfeit trade is faithfully directed to supplying consumer demands for affordable prices and positive status differentiation. The positional judgements that consumers make in the counterfeit market may come with the frisson of risky business, but their net effect reproduces the price mechanism. Counterfeit commerce does not produce an alternative to the balance of surplus and scarcity in consumer relations. Luxury goods under copyright are still, on financial grounds, out of reach of the majority of consumers. Nor does the trade challenge the stigma of scarcity or the glamour of surplus. Only at the margins is the ironic consumption of counterfeit goods privileged over the certified value of commodities inscribed legally by copyright/patent.

Conclusion: Counterfeiting and Law Enforcement

Currently, the law enforcement lobby is dominant in criminal legislation and police resourcing (Borzel 2006; Worrall 2010; Hobbs 2013). From the standpoint of cultural sociology, in the case of the counterfeit trade, the application of law enforcement policy will only produce pyrrhic victories. Transactions of production, distribution and exchange comfortably out-pace the management capacity of the police. The budgetary, manning and intelligence difficulties that national forces face in effecting co-ordinated international action are not replicated in the operation of the international supply networks that enable the circulation of counterfeits. Ramping-up law enforcement measures carry financial costs that governments and policing authorities are unprepared to pay. Further, as the 'get tough' policies of the Recording Industry Association of America (RIAA) learned in the fight against illegal downloading of intellectual property, intensifying law enforcement provisions runs the danger of creating victims and turning public opinion against legislative and policing authorities (David 2010; Rojek 2011: 137-142). For each successful case that is brought against counterfeiters, score upon score of counterfeit transactions are never acted upon because they are never officially detected. As with illegal downloading, the flexibly, covert nature of the trade militates against effective law enforcement. Therefore, the proposition that policing resources are capable of stamping out counterfeit commerce simply does not carry water.

Concentration of resources in advocacy and education to counter the trade by addressing the cultural aspects of relations of transaction in counterfeits is a more promising strategy. Global criminal supply networks are

bespoke aggregators. That is, they tailor their business operations by cross-subsidization. To put it concretely, the profits made from selling counterfeit handbags or perfumes are applied to underwrite operations in prostitution, human trafficking and terrorism. Moving public awareness from regarding counterfeit commerce as mainly opportunistic, semi-carnivalesque forms of urban and online retailing, to acknowledging the links between organized counterfeit commerce and crimes against humanity may diminish the propensity to consume. Collaterally, raising public consciousness of the risks to health and mortality, especially in the trade around illegal pharmaceuticals and spare parts for airplanes and road vehicles, may have the same effect. A variation here of note, is to focus advocacy and education programmes on comparatively cash-rich consumers of knock-offs and highlight that the main consumer victims of the trade are located in the lower quartile income group of the economically advanced nations and the developing world.

There is also purchase in exploring the development of encryption devices, such as RFID tagging and 2 dimensional bar codes, to authenticate commodities bearing authorized brand names. However, at present these devices are compatible with only some product lines, such as pharmaceuticals (deKeiffer 2006: 325-7). Furthermore, encryption technology is not full-proof. Decoding initiatives are a perpetual and a genuine threat to encryption integrity. The music industry provides an illuminating parallel. In 1998, the 'Secure Digital Music Initiative' (SDMI) was introduced in support of Digital Rights Management (DRM). The aim of SDMI was to produce infallible encryption protection technology to preserve copyright. In 2000 a watermark-based encryption system

was unveiled and hailed as an industry breakthrough. Hackers and cryptologists were invited to test the proposition by trying to break the code. Within three weeks, a team led by Ed Felten, a Professor of Computer Science at Princeton University, accomplished just that. Felten's plan to publicize the neutralization of the watermark at a conference in Pittsburgh in 2001 was frustrated by a legal injunction issued by the RIAA and the Verance Corporation (a sound technology corporation). Since the watermark fiasco, the growth of the internet trade has produced more sophisticated encryption systems, such as Sony's 'Connect' service for ATRAC-encoded digital music files, Microsoft's WMA technology and Apple iTunes AAC-encoded system. However, in view of the fecundity and unpredictable provisions of technological innovation it is futile to believe in a perfect, failsafe watermark system. The same applies to RFID and Bar Code encryption technologies. Despite this, more sophisticated encryption technologies provides another hurdle for counterfeiters and will act, *pro tem*, as an inhibitor of the trade.

The parasitic nature of counterfeit commerce is the chief impediment to mitigating or erasing it. The key to understanding the dynamics of counterfeit commerce correctly lies in this. The imperative of capitalism is to extract surplus value in ever more inventive ways. It aims to accomplish this by dual, interrelated means. Firstly, driving down the costs of production in order to build a margin realized at point of exchange; and secondly, driving up hierarchies of positive status differentiation that make the propensity to consume so intoxicating as to be irresistible. Counterfeit commerce is the parasitic counter culture of this. It deploys illegal means to accomplish precisely the same ends. When

all is said and done their market position derives from offering acceptable duplicates at affordable prices. The moral objections to the trade need to be tempered by a sociological understanding of the immense opportunities for extracting surplus value that are produced by the general pricing mechanism under capitalism. The unavoidable logic of capitalism is to produce opportunities for undercutting the legitimate market and fiddling. A vast, global inverse culture of consumption, that unapologetically robs Peter to pay Paul by audaciously violating fidelity to contract, constitutes the shadow land of the general price mechanism. Despite the admonitions and interventions of the law enforcement lobby, one is struck not by the precariousness of counterfeit commerce, but by its extraordinary tenacity.

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1) The so-called 'dark number' of global transactions in counterfeit commerce can only be a matter of speculation. However, it is perfectly safe to submit that official statistics represent nothing more than the tip of the iceberg.

2) Needless to say, it is no part of my argument that the capitalist procurement of resources and the lowest cost of point of sale is always licit.

3) The consumption on non-deceptive counterfeits is a source of positive status differentiation and identity.

4) One interesting aspect here that deserves much further investigation is the extent of counterfeit

testing and data supply by legitimate brand providers. Healy (2012) argues that major drug companies have a long history of counterfeiting scientific tests in order to expand hugely the market for its products. He (2012) recounts how an anti-depressant drug Paxil claimed 'remarkable efficacy and safety in the treatment of adolescent depression' was in reality known to be associated with a threefold increased risk of suicide compared with those on a comparable antidepressant or on placebo.

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