

Who cares? Perspectives on Public Awareness, Participation and Protection in Archaeological Heritage Management



Edited by Agneta Lagerlöf

EAC Occasional Paper No. 8

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Detail from Ales stenar, the famous stone ship at Kåseberga, Skåne, Sweden

Photo © Leif Gren.

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Foreword

*Katalin Wollák, President of Europae
Archaeologiae Consilium*

One of the major tasks of the Europae Archaeologiae Consilium is to provide archaeological heritage management agencies with a forum for discussion and a platform to exchange information. We organize our annual heritage management symposiums and special seminars in order to provide an opportunity for our member organizations and other experts to learn about each other's well-established practice. We also consider that it is essential to monitor developments in heritage management, and to react to the changing role of archaeology in society, and the roles and functions of heritage managers, archaeologists and other professionals.

In the last twenty years, in the so-called "Malta era", investment-led archaeology became determinative; although we strongly endeavoured to preserve the research element of our discipline, it became part of the market world. In this context it was unavoidable that new service functions had to be evolved; the development of commercial/contract archaeology indicated these changes. In this new era new expectations arose and professional archaeologists need to pay more attention not only to demands of the investor as a customer, but also to the customer's and other stakeholders' perception, and to the understanding of the results.

Another type of professional challenge concerned how archaeology can remain a sensitive tool in preserving national identity in a globalizing world. Besides the positive effects of the lack of a common EU "cultural policy", however, labelling cultural goods (including finds), for example, as (commercial) goods is deemed to be ambivalent. This issue was addressed positively by the formulation of special requirements in the case of archaeological finds, but the application of sometimes more restrictive national provisions was left within the competence of the member states. The same EU approach to the free movement of goods and services led to a delicate situation resulting from the Commission intervening in a member country by requesting it to take action which would adversely effect the regulation of metal detectors on and near the sites of ancient monuments.

Radical changes are resulting from recent developments such as the economic crises or the "digital shift" arising from the expansion of the Internet. In several countries cultural heritage institutions are merging and integrating, the legal environment is changing rapidly, and resources are decreasing. Not only has the influence of economic policy become stronger, but there is also significant public demand to control archaeological activity. In certain countries treasure hunting has become a legitimate livelihood, and alongside all this, the younger generations are not so interested in historical facts and contexts.

Three years after the 2009 EAC symposium, which focused on the looting of archaeological sites with the title "Europe's Archaeological Heritage under Threat", we felt it could be beneficial to return to the issue of plundering and jeopardizing the archaeological heritage. We planned to examine not only the causes, but also the responsibility of our profession and to seek possible measures which could be applied. The 13th EAC Symposium, organized in March 2012 by the Swedish colleagues with the title "Who Cares? Perspectives on Public Awareness, Participation and Protection in Europe's Archaeology" tried to reconsider the question: do archaeologists, heritage managers, civil servants, university-museum-research experts perform properly, and do we answer all the questions posed by society?

Our profession faces several new challenges and has to adapt to major ongoing developments; we have to find new ways to communicate our achievements better. We need to demonstrate the cultural benefit from the results of our work, and more importantly we need to transform our accumulated knowledge to reach different target groups and stakeholders with the collaboration of all interested parties. The EAC symposium was an important stage in this spiritual process. The keynote speakers analysed the position of archaeology in the new historical narrative and in the context of the growing influence of economic interests. Both the papers represented different aspects, and the open discussion supported the above-mentioned objectives, introducing good examples of how to achieve a better understanding of heritage values, and how to raise greater public awareness.

I'd like to express our special thanks to Agneta Lagerlöf, the scientific coordinator of the conference and the editor of this volume, as well as to the colleagues from the Swedish National Heritage Board, who helped both in the preparation of the conference and in compiling the publication. The small questionnaire prepared by them offered an opportunity for each country to compare their practice with other models and helped to collect the legal framework of different European countries. I'd like to stress the effective role of the moderator, Björn Magnusson Staaf, in generating thought-provoking discussions. The venue of the conference, the Cité des Sciences in Paris, France, ensured an excellent environment for a high-quality conference, and for this the EAC is extremely grateful to the French Ministry of Culture and especially to host of the meeting, Bernard Randoin. We offer our congratulations to the contributors of the papers and we are very proud that the EAC was able to publish the proceedings of the symposium in time for the 2013 EAC Heritage Management Symposium. We believe this volume will enrich the series of the EAC Occasional Papers, arousing an interest in further volumes in the series among the professionals and other concerned parties.

Budapest, 20th November 2012

Who cares? Perspectives on Public Awareness, Participation and Protection in Archaeological Heritage Management

Agneta Lagerlöf
National Heritage Board, Stockholm

Introduction to the EAC symposium in 2012 at the Cité des Sciences, 30 Avenue Corentin Cariou, Paris, France

In recent years several meetings have been organized on the topic of illicit traffic in cultural and archaeological objects, vandalism and theft at archaeological remains. The EAC symposium in 2012 should be seen as a continuation of the discussion that started at the EAC symposium in Strasbourg in 2009.

To provide further background to the problem of damage and looting we want to present a part of the discussions that took place both at the EAC symposium 2009, and at the EAA meeting 2010 and in connection with the separate seminar on a related topic in Stockholm 2011. The 2009 symposium is summarized below by Adrian Oliver, adviser, former president EAC. Other discussions are also published in shorter or longer contributions after the introduction.

EAC symposium 2009: Who Steals Our Past?

Stimulated by the increasing frequency of spectacular discoveries reported in the news, some fought over in criminal courts, the ever-growing awareness of the frequency and scale of the looting of archaeological sites and the resulting increase in the volume of illicit trade in archaeological materials led the EAC to devote its Heritage Management Symposium to this important topic in 2009.

The 10th EAC Heritage Management Symposium entitled “Who Steals Our Past?” was organized by Jürgen Kunow and Friedrich Lüth (Germany), and took place on 11–12 March 2009 at the Palais de l’Europe, Place Lenôtre, Strasbourg, France.

Among the many examples of this problem current at that time is the famous sky disc from Nebra which was discovered in central Germany, looted by amateurs and bartered through Europe, crossing several Schengen and non-Schengen borders, before finally ending up in the Archaeological State Museum in Halle/Saale. Other finds were regularly and increasingly being reported from the seas and oceans of the world, being looted by specialized companies that are funded by shareholders expecting gigantic financial profits from the sale of such archaeological “treasures” – in direct contravention of the provisions of the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001).

Apart from these outstanding examples it was clear that looting was widespread throughout Europe, sometimes both large-scale and systematic. Although every European State has heritage legislation to protect its cultural and archaeological heritage from looting, the implementation and, moreover, the enforcement of such legal provisions seemed to be problematic in some states and jurisdictions.

Without any doubt at all, the looting of archaeological sites effectively represents the outright theft for profit of our common European past. However, any examination of the nature of this serious problem reveals a number of significant questions that it has proven difficult to answer:

- Who are the looters?
- What can we do to raise public awareness?
- Are there legal gaps in the existing measures to prevent looting?
- How is the subject dealt with in the different European countries?
- Can we improve our procedures and can we obtain better results through cooperation?

To examine this situation in detail, the EAC invited keynote speakers from different international organizations, together with stakeholders from different administrative and executive bodies, to discuss this topic in Strasbourg, under the aegis of the Council of Europe. The Council of Europe European Convention on the Protection of the Archaeological Heritage (revised) 1992 – The Valletta Convention – was drafted in Strasbourg, and makes specific reference to the need to prevent any illicit excavation or removal of elements of the archaeological heritage (Article 3ia) as well as preventing the illicit circulation of elements of the archaeological heritage (Article 10).

At the symposium, speakers from different European countries shared their experiences, both good and bad, and provided a good overview of the situation prevailing across Europe at that time. It is still the intention of the EAC to publish the results of the 2009 symposium together with a number of related papers on associated topics.

EAA meeting 2010

At the EAA meeting in The Hague in 2010 the problem of illicit trade in cultural material was also discussed. This discussion is presented in the first article in this volume by one of the organizers of the round table about this theme, Amanda Chadburn EAA Committee on the Illicit Trade of Archaeological and Cultural Material English Heritage. In the same discussion information was provided about the Portable Antiquities Scheme (PAS), which is a project to encourage the voluntary recording of archaeological objects found by members of the public in England and Wales, here presented by Michael Lewis, Department of Portable Antiquities and Curator, Medieval Collections, British Museum.

Seminar in Stockholm 2011

One of the most common reasons for damage and looting is the illegal use of metal detectors. For many countries in Europe, this is a big problem as evidenced by several of the speeches at the 2012 symposium. In Sweden all users of metal detectors have to request permission from the regional authorities. In 2011 the Swedish National Heritage Board (SNHB), at request of the European Commission, was instructed by the Swedish Government to investigate the possibility of suggesting a modified law on metal detectors and of adapting the Swedish law to EU law on free trade. As part of the investigation a seminar at SNHB in Stockholm was arranged in 2011. Several European countries took part in the seminar, discussing European Heritage legislation in the use of metal detectors. Michael Lehorst also presents in this volume SNHB's view of the problem and its report to the Government.

Because of the importance of this topic in a legal context, the legal adviser at the SNHB, Maria Barkin, has summarized the current heritage law regarding the use of metal detectors in some European countries.

Theme 2012

At the 2009 symposium there were extensive discussions on national legislation and international agreements and treatments. As a reaction to this, but also as a continuation of the theme, the EAC emphasized the need for increased efforts in raising awareness and contacts with non-profit/voluntary organizations. The 2012 Symposium therefore had the somewhat provocative title: *Who Cares? Perspectives on Public Awareness, Participation and Protection in Europe's Archaeology*.

Who cares? is a legitimate question. A simple answer is: of course most people care and are doing their best! A more complex answer in the form of a reflective question from the profession is: do we really care in the right way? The criminals that systematically steal the heritage on behalf of unscrupulous customers represent a problem that we cannot do so much about. But damage caused by ignorance and lack of understanding is something we can not accept. This will be one of our future challenges.

In the programme the symposium theme was introduced as follows:

"We increasingly hear reports of acts of plunder and vandalism affecting Europe's archaeological heritage resulting in the loss of irreplaceable cultural artefacts and the destruction of archaeological sites and monuments. This raises many questions. Do the increasing numbers of reports on tampering with ancient monuments and archaeological materials reflect more acts of plunder? Or does it reflect a higher incidence of reporting of such acts to competent authorities? Of course it might be that acts of plunder are currently deemed newsworthy in our part of the world. And if this is the case, we must ask why has this become important now, and also, how does this influence our understanding of what is happening?"

"The issue of damage to archaeological remains is a complex one and the reasons for its occurrence may vary. The problems and the solutions will differ in the different countries of Europe. We may assume that there is no one best practice, but instead there are likely to be different approaches with varying levels of success throughout Europe. Legislation is often a first step, but is far from the only way to solve this. Conventions are a way to create a common platform. But do they work? In this context it may be of interest to look on the role of the Valetta Convention. In reality, laws and conventions in themselves do not solve any problems. However, they function as a societal statement which, at best, may contribute to better protection by inspiring restraint. A better way, perhaps, may be the dissemination of information and knowledge about our heritage and its importance. However, this gives rise to the concern that while this approach may help prevent damage to archaeological material by those who are unaware of its significance it could also mean that information about the location and potential 'plunder value' of sites would be more easily available to looters."

"How can we meet this challenge, a challenge that is not only one for those engaged in cultural heritage management but for society as a whole? The complexity of this problem and the ethical issues it raises require us to examine our view of the archaeological source material and archaeology as a profession in relation to society at large. We must take into account the opinions, wishes and needs of the members of society. How we do that poses its own problems."

"The phenomenon of plunder was the theme of the EAC Symposium in the year 2009 in Strasbourg, with the provocative title: *Who Steals Our Past? Europe's Archaeological Heritage Under Threat*. In that symposium, 'our past' was 'under attack'. In 2012, this problem will be approached from another perspective: the purpose of our symposium is to discuss the kind of measures that need to be taken and what the societal consequences of

these may be. The symposium in 2012 was intended to include contributions that enrich our understanding of the situation and describe different ways of meeting the various challenges we face. Ample time was given for discussion and comments. In short: the way we understand a question is the foundation for how we choose to answer it.”

Contents and structure

The symposium consisted of contributions with the objective of enriching our understanding of the situation (see Symposium Theme above) and exemplifying different ways of meeting the various challenges we face.

The afternoon of the first day, two keynote speakers gave their view on the issue from two very different perspectives:

1. *Plunder, destruction and mentalities in current society*

The purpose of the lecture was to enrich our understanding of the role archaeology plays in society and how we act as archaeologists and culture heritage managers. The protection of the archaeological record is often seen as the archaeologist’s primary responsibility and duty. But to safeguard remains from the past mainly for future generations often narrows our understanding to a purely scientific perspective. We therefore ought to focus more on how archaeology can become a vital force in today’s society. Are we to some extent therefore to blame for the current situation?

In archaeological literature there has been intense discussion about ethical principles. Questions have been raised about archaeologists managing the archaeological source material and the results for purely scientific reasons and not for the benefit of the society as a whole. Has heritage management/stewardship gone astray – how ought we think and act?

2. *Protection by legislation, conventions or preventive measures*

The protection of archaeological remains is often based on laws, which in turn rely on conventions and international agreements. But legislation is only one of many ways to enhance preservation. The purpose of this keynote lecture was to discuss different instruments for achieving relevant protection in relation to the overall objectives. What is protection about? Why and for whom? The role of laws and conventions in today’s society – do they have the intended effect? What kind of preventive measures ought we to take?

After the keynote speakers there was a general discussion led by a moderator. Using an informed and articulate moderator added value to the structure and quality of the discussion

The second day was divided into two blocks, each with a theme:

1. *Perspectives on damage, destruction and looting*

The purpose of these presentations was to look at the situation in terms of different types of damage and looting. What are the underlying motives? What is the reaction in the community and the media? Does the protection used today work? What kind of measures are needed? What should the role of archaeologists and culture heritage managers be in relation to the society as a whole? How to handle the changes of mentality in society?

2. *Perspectives on Public Awareness, Participation and Protection*

The purpose of these presentations was to focus on different agendas for preserving and protecting the archaeological remains. Is the engagement of the community, national and local interest groups and amateurs properly taken care of? Do people understand the vital force of the past? Are they invited to take part in the protection and to make use of the archaeological material and knowledge? What is the role of the culture heritage manager in relation to the society as a whole? How is it possible to handle the changes of mentality in society?

Twelve presentations highlighted the conditions in eleven different countries (two from France). In between the presentations were short group discussions. The discussions were held in the form of a “beehive”, that is, the persons sitting next to one another form a small discussion group of 2–3 persons. It worked fairly well and it saved time. Thanks to the “beehive” discussions and the efforts of the skilled moderator, we managed to fit lively and informative discussions alongside the twelve speakers in one day.

Many people were involved in the success of the symposium and this volume. In the preface the EAC president mentioned our French host Dr. Bernard Randoin and the excellent organization of the practical arrangements in Paris and the excursion on the last day of the conference. It is my belief that all the participants enjoyed the warm and generous hosting. Thanks also to the individual authors for their time and patience with the editor’s persistent reminders. The papers are marginally edited so that the text of the authors is fully respected. Thanks also to Emon Cody who revised the text in the English programme. My colleagues Carolina Andersson and Åsa Wall deserve special thanks for support in organizing the conference. Finally, I want to express my great respect for the work of the EAC Assistant Réka Viragós, for her support to me as the organizer of the conference.

1 | The work of the European Association of Archaeologists on the illicit trade of archaeological and cultural material

Amanda Chadburn

Abstract: The European Association of Archaeologists (EAA) is a membership-based association open to all archaeologists and other related or interested individuals or bodies. In 2010 at its annual meeting, a round table was held on the Illicit Trade in Cultural Material, organized by its Committee on the same subject. The outcomes of this round table have not been presented fully (but see Anon, 2011, 32–40), and it was felt that it would be helpful – given the obvious cross-over with the subject matter of the Heritage Management Symposium of 2012 in Paris – to present them in this volume. At the same time, it was felt helpful to set out the overall work and policies of the EAA Committee on the Illicit Trade of Archaeological and Cultural Material in one place, since this has not been previously undertaken.

Introduction

The European Association of Archaeologists (EAA) currently has over 1,100 members from 41 countries worldwide working in various fields. They include academics, aerial archaeologists, environmental archaeologists, field archaeologists, heritage managers, historians, museum curators, researchers, scientists, teachers, conservators, underwater archaeologists and students of archaeology. In 1994, at its Inaugural Meeting held in Ljubljana, Slovenia, the EAA Statutes were formally approved. Importantly for this subject, they include the following:

- to promote the management and interpretation of the European archaeological heritage
- to promote proper ethical and scientific standards for archaeological work

The EAA therefore has a clear mandate to assist in and ensure the proper conservation and preservation of the archaeology of Europe, and to ensure that archaeological work is undertaken to the correct ethical and scientific standards. Both these statutes are important, as we shall discuss later. Moreover, the EAA has been recognized by the Council of Europe; in 1999, the EAA was granted consultative status with the Council of Europe, which was upgraded to participatory status in 2003.

The work of the EAA on illicit trade

The EAA first considered that it should have a Working Party on the Illicit Trade in Archaeological and Cultural Material at its annual meeting in 1998 in Göteborg, Sweden. Neil Brodie became its first Chair. The Working Party met the following year, this time in Bournemouth, UK, and at its Annual Business Meeting, following the advice of the Working Party, the EAA agreed a resolution calling on all governments to ratify the Conventions on the subject, especially the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. It also wrote to all European Governments on this matter.

In 2000, at the annual meeting in Lisbon, the first Round Table was held by the Working Party. It led to a Statement at the EAA Annual Business Meeting, which was put forward and accepted:

The EAA, as a professional body of archaeologists, is opposed to the illicit trade in archaeological and cultural material, and urges governments to become parties to all relevant international conventions, including the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects, the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its 1999 Second Protocol, and to adopt effective implementing legislation.

Some progress was made: in 2002 the UK Government signed the 1970 UNESCO Convention and the Netherlands signed the Valletta Convention. Hopefully, the pressure brought by many organizations, including the EAA, may have helped both governments in coming to their decisions. Also in 2002, at the EAA's meeting in Thessaloniki, there was another lively Round Table, organized by Neil Brodie and Paula Kay Lazrus of the EAA's Working Party. The Round Table heard three presentations; the first was by Neil Brodie reviewing the situation around the world, including the rise of investor collectors in antiquities – for example the British Rail Pension Fund – and also documenting the rise of Internet auctions, particularly eBay, where lower-value items which might not have found a market in previous years are now finding buyers. We also heard from Katerina Romiopolou who discussed the situation in relation to Greece and who confirmed the rise of investor collectors over the last twenty years. The final presentation was by me on a new metal detecting policy for the Avebury World Heritage Site (Chadburn 2001, 89–91). In the discussion, the Working Party agreed that we must continue to press for improvements on



Figure 1.1: Evidence of looting in the medieval preceptory of the Knights Hospitallers, Low Chibburn, Northumberland, England, a scheduled monument.

the illicit trade issue both at local level in improving relations with the police, landowners and museums, and also at the national and international level, with better legislation and codes of practice – although it was noted that the effective enforcement of such codes and laws may be difficult.

Following the recommendations of the Working Party of 2002, at its business meeting the EAA agreed to:

- Reconvene the Working Party in St Petersburg in 2003
- Continue email discussion within the Working Group
- Strengthen links with other organizations, e.g. Society for American Archaeologists
- Consider setting up a website/using existing websites and linking
- Consider making a presentation to the Committee on Culture, Youth, Education, Media and Sport of the EU Parliament over 2002–3
- Take forward these proposals with the EAA Board
- Put material on the EAA website as required/use the EAA mailing list
- Monitor the difference that signing the 1970 Convention makes in dealing with illicit trade in the UK

The next EAA Round Table took place in Lyon, France, in 2004, chaired by Neil Brodie. That year, the Illicit Antiquities Research Centre at the McDonald Institute at the University of Cambridge was awarded the EAA

Figure 1.2: A stolen shall be fourteenth century alabaster frieze from a listed church, Oxfordshire, England.

European Archaeological Heritage Prize, accepted on their behalf by Neil. The EAA, at its business meeting, agreed that Members of the Working Party could say they were acting on behalf of the EAA (as well as their own organizations) if they were attending any international meetings on the subject of illicit trade (keeping EAA Board members informed). Additionally, a Yahoo Email Group was formed for the Working Party.

In early 2005, recognizing the importance of the subject, the EAA Board established a new, formal EAA Non-Statutory Committee, the Committee on the Illicit Trade of Archaeological and Cultural Material. Committee membership continued through from the Working Party, with myself being appointed Chair. The Terms of Reference for the Committee include the following statements:

Preamble

It is now well established that most archaeological or ethnographic objects appearing for sale on the market are without provenance (either findspot or ownership history), and that a large proportion of these unprovenanced objects have been removed destructively and illegally from their contexts, which include archaeological sites and monuments, museums and other cultural institutions. The trade in this illicit cultural material has two European aspects:

1. Archaeological sites and cultural institutions within Europe are plundered to provide material for the trade;
2. Archaeological and other cultural material obtained illegally from countries outside Europe is marketed within Europe.

It is now proposed to establish the Working Party as a Non-Statutory Committee.

Mission statement

The Committee on the Illicit Trade of Archaeological and Cultural Material represents the European Association of Archaeologists in matters regarding the illicit trade. It will:

- Endeavour to raise awareness in the European archaeological community of the problems caused by the illicit trade;
- Explore ways in which national and pan-European executive bodies may be encouraged to adopt appropriate legislative counter-measures;



- Lobby national and pan-European executive bodies accordingly;
- Act on behalf of the EAA when asked to do so by the Executive Board.

There were informal meetings of the Committee at the annual meetings of the EAA in Krakow, Poland, 2006; Zadar, Croatia, 2007 and Valletta, Malta, 2008, when it was agreed to convene another Round Table as soon as possible.

The Round Table on Illicit Trade, The Hague, 2010

This was organized by Committee members, Leena Söyrinki-Harmo of the National Board of Antiquities, Finland, and myself, with the following aims:

- To raise awareness of the Committee and its work, and to encourage others to join
- To discuss good practice across Europe (and beyond) in the prevention of illicit trade
- To discuss good practice across Europe (and beyond) in the response to illicit trade (remembering that Europe is a trading centre for cultural material from across the world)
- To make suggestions and recommendations as to how the EAA can raise awareness of this problem; how the EAA can encourage European bodies to adopt appropriate legislative counter-measures; how the EAA can lobby effectively for change

There were four formal presentations to stimulate discussion; I discussed the work of the Committee to date (set out above) and some thoughts on what work the Committee should do in future; Leena Söyrinki-Harmo set out the work in Scandinavia and the Nordic countries, including discussing the Nordic study of cultural heritage crime initiative and cultural heritage cooperation in the Baltic Sea states; Adrian Olivier of English Heritage delivered a joint paper by his colleagues Pete Wilson on night hawking and Mark Harrison (see elsewhere this volume) on responding to illicit metal detecting in England and improvements in crime prevention; and finally Michael Lewis of the British Museum discussed the Portable Antiquities Scheme of England and Wales (see elsewhere this volume). Additionally, the keynote speaker at the EAA Opening Ceremony in 2010 was Prof. Colin Renfrew, who delivered a paper on "The Museum as an Agent in the Conservation or Destruction of the Archaeological Heritage?", a subject of direct relevance to the Round Table.

Following discussion, the Round Table made a number of recommendations which were put to the EAA at its Annual Business Meeting and subsequently agreed, including a revised policy for the EAA:

The EAA is opposed to the illicit trade in archaeological and cultural material and urges governments to become parties to all relevant international conventions, including the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the

1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects, the 1954 Hague Convention on the Protection of Cultural Property in the event of Armed Conflict and its 1999 second protocol, and to adopt effective implementing legislation. Furthermore, the EAA calls upon all national museums and local museums in Europe to formulate acquisition policies in relation to antiquities which are in conformity with the 1970 Rule and to publish these policies.

This last sentence was the subject of much debate at the Round Table, and constituted a change in policy for the EAA.

Next steps

At the 2010 Round Table, a number of possible ways forward were discussed for the EAA's Committee. These included a number of small and practical measures, e.g.

- adopting a formal list of new Committee Members
- ensuring a new email group forms
- updating the EAA website and/or newsletter
- posting the EAA policy on this issue in a more prominent place on the website
- getting more links with the EAA Board
- producing a list of European countries who are signatories to various conventions
- making links with other relevant EAA working parties, particularly the Committee on Archaeological Legislation and Organization
- get the EAA to write to those governments who have still not signed various conventions – a similar letter to the 1999 letter (review outcomes of the EAA letter to governments in 1999)
- Understand best practice in European countries
- Link with others who are already doing this sort of work (e.g. National Agencies; National Museums; UNESCO bodies e.g. UK National Commission for UNESCO who helped set up a travelling exhibition called "*Catastrophe! The Looting and Destruction of Iraq's Past*")
- Discussing raising this issue with the Council of Europe with the EAA Board

Conclusions

One of the main difficulties for the EAA has been the amount of resources which members have been able to give to the Committee, and the relatively poor level of interest from EAA members, with not very many archaeologists engaging in the issue. Perhaps part of the reason for this is that there are relatively few museum archaeologists who are members of EAA, and therefore many EAA members may not face these issues on a regular basis, and choose not to engage with the Committee. It appears that sometimes the national heritage agencies are also struggling to resource this area effectively, and it would be helpful to discuss ways of improving this, whilst recognizing that this is a difficult time economically to find additional resources.

Under these circumstances, it is necessary to work "smarter" and to think of ways of tapping into the work which others are already doing in this area. For

example, it would be helpful to strengthen the links between the EAA and others such as the Society for American Archaeologists who are making significant efforts to tackle illicit trade. It may well help the situation if there can be improved cooperation between the USA where there are large markets, and Europe, which is both a market and an exporter of archaeological material. In this regard, it is heartening to see that the Archaeological Institute of America (AIA) has entered into a formal partnership with the EAA in November 2011 with the aim of greater cooperation and joint programming between the two organizations that will allow for a greater and more efficient exchange of ideas and scholarship between the two groups. Another new initiative is "Trafficking Culture" (<http://traffickingculture.org/>), which aims to produce an evidence-based picture of the contemporary global trade in looted cultural objects. This research programme is based at the University of Glasgow and is funded by the European Research Council, and it would be helpful for the EAA to make formal links with this programme. It may also be possible to influence the Council of Europe via the EAA Board, to ensure that improvements can be made in this area.

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2 | The PAS - a rather British solution. The mandatory reporting and voluntary recording of archaeological objects in England and Wales

Michael Lewis

Abstract: In most European countries metal detecting is prohibited or restricted by law, portable antiquities (archaeological small finds) must be reported, and the state claims ownership of all finds discovered. In contrast, metal detecting in England and Wales is largely unregulated, finders have few obligations to report finds, and the categories of finds that can be claimed by the state are limited (The countries most similar to England and Wales regarding metal detecting are Scotland and Denmark, where metal detecting is legal, though finders are obliged to report a wider range of archaeological material). This might be considered a “treasure hunter’s” utopia and an archaeologist’s nightmare!

However, this seemingly strange state of affairs has actually led to more than 820,000 archaeological objects being reported by the public (most discovered by metal detectorists) and recorded by archaeologists since 1997, when the Treasure Act 1996 became law and the Portable Antiquities Scheme (a project to record archaeological objects found by the public) was established. Fifteen years on, this short paper seeks to look at the success and limitations of both the Act and the Scheme.

Treasure

The Treasure Act 1996 has its origins in the reform of the medieval “common” law of Treasure Trove, by which English monarchs claimed legal rights to all ownerless gold and silver items (Wales is technically a principality, a dominion of England.) This legislation had been reformed in modern times, principally in the nineteenth century, to reflect current practices (such as to ensure that ancient objects ended up in public collections, rather than melted down as bullion!), but was essentially unchanged.

Under the old law of Treasure Trove, only gold and silver objects whose owners were unknown, and which had been deliberately buried with the intention of recovery, could be declared Treasure Trove, and thus become Crown property: it was under this legislation that the famous Sutton Hoo Anglo-Saxon “treasure” was found *not* to be Treasure, as the Coroner’s Inquest found that the objects had not been buried with the intention of recovery, ignoring (it would seem) the widely held belief that those who buried the items would have hoped to have use for them in the afterlife!

The payment of a reward to those who find Treasure has been established for some time. Since 1886 the Government has paid *ex gratia* rewards to finders for declaring finds.

Deficiencies in the pre-existing Treasure legislation came to light following the “looting” of the Romano-British temple site at Wanborough, Surrey in the early 1990s. The collapse of the prosecution against those failing to report finds under Treasure Trove led to attempts (initiated by Surrey Archaeological

Society) to reform the law. Subsequently a Treasure Bill, championed by the Earl of Perth, passed through Parliament in 1996 and became law the following year.

The Treasure Act

The Treasure Act 1996 only applies to objects found in England, Wales and Northern Ireland since 24 September 1997; items declared to have been found before that date, but not previously reported, are considered under the pre-existing Treasure Trove legislation. The following finds are Treasure if found after 24 September 1997 or, in the case of category 2, if found after 1 January 2003:

- Any metallic object, other than a coin, provided that at least 10% by weight of metal is precious metal (gold or silver) and that it is at least 300 years old when found. If the object is of prehistoric date it will be Treasure provided any part of it is precious metal.
- Any group of two or more metallic objects of any composition of prehistoric date that come from the same find (an example would be a Bronze Age weapon hoard).
- All coins from the same find provided they are at least 300 years old when found. If the coins contain less than 10% of gold or silver there must be at least ten of them.
- Any object, whatever it is made of, that is found in the same place as, or had previously been together with, another object that is Treasure.
- Any object that would previously have been Treasure Trove, but does not fall within the specific categories given above.

Objects belonging to their original owner or his heirs are excluded, as are unworked natural objects (such as fossils) and wreck (which is covered by the Merchant Shipping Act 1995).

Under the Act any person who finds an object which he/she believes, or has reasonable grounds for believing, is Treasure has a legal obligation to report it to the local coroner in the district in which it was found within 14 days after the find was made, or upon realizing the object might be Treasure. *The Treasure Act 1996 Code of Practice* offers further guidance for finders on the reporting of Treasure and the workings of the Act in general.

Rewards and valuations

The Act allows a national or local museum to acquire Treasure finds for public benefit (it is normally the case that first-refusal is given to the local museum, with the national museum (i.e. the British Museum or the National Museum of Wales) stepping in if the local museum does not wish (or is unable) to acquire the find, or there is a consensus of view that it is best displayed in the national museum). If this happens a reward is paid, which is (normally) shared equally between the finder and the landowner. Interested parties eligible for a reward (i.e. the landowner or finder/s) may wish to waive their right, enabling museums to acquire Treasure at reduced or no cost; this is happening in a growing number of cases, though these finds are normally of relatively low financial value.

Rewards are fixed at the full market value of the find, determined by the Secretary of State upon the advice of an independent panel of experts (from museums, the antiquities trade and metal detecting organizations) known as the Treasure Valuation Committee (currently this committee is chaired by Professor Lord (Colin) Renfrew of Kaimsthorn). This committee is advised by a panel of valuers drawn from the trade, who submit valuations on the finds considered for acquisition. Interested parties (including museums) can also commission their own valuations (though it is normally only the finders who do this), which the committee will consider. The reward can be reduced or not paid at all if there is evidence of wrongdoing. Once a valuation has been agreed, museums have up to four months to raise the funds to acquire the find. Importantly, archaeologists who find Treasure are not eligible for rewards.

If a find is not acquired by a museum it is returned to the landowner/finder to do with what they will; some will keep the find, but others sell it on the open market. Needless to say, since museums have to pay for finds (though there are sources of funding which they can turn to that support the acquisition of Treasure) they are selective in what they acquire. On average about one third of Treasure finds are acquired, with medieval and post-medieval material accounting for most of the disclaimed items.

The administration of the Treasure process is undertaken by the Department of Portable Antiquities and Treasure, British Museum. This work involves the preparation of Treasure cases for coroners' inquests,

providing the secretariat for the Treasure Valuation Committee, handling disclaimed cases and the payment of rewards.

Numbers of Treasure cases

In 1994 it was predicted that the number of cases would be between 100 and 200 a year, but in fact the increase has been much greater than that. Before the Act came into force about 25 finds were declared Treasure Trove each year, though of course the criteria were significantly different. In the first full year of the new Act (1998) this number increased to 201. Over the next four years the number of cases steadily increased, until 2003 when reported cases almost doubled (427), and thereafter have risen by about a hundred cases a year. The 2011 total was 970, and so far this year (14 November 2012) there have been 790 cases of potential Treasure reported, an increase on this point last year. The upturn in Treasure reporting in 2003 was undoubtedly a result of the expansion of the Portable Antiquities Scheme across the whole of England and Wales (see below), highlighting the way in which liaison with metal detectorists also encourages reporting under mandatory legislation.

Problems

The system of administration of Treasure is necessarily complex and consequently the period between the discovery of a find and the payment of a reward can take longer than the one year target time set out in the *Treasure Act 1996 Code of Practice*. Since March 2007, when the British Museum took on responsibility for the whole of the administration of the Treasure process (previously divided between the Museum and the DCMS), the process has become more efficient, providing a better service to finders, landowners and museums. However, the fact that Coroners have a major role in procedures can cause delays, especially in areas where Coroners are stretched dealing with death inquests or less familiar with Treasure. That said, Coroners are extremely useful in adjudicating on difficult cases, where the circumstances of discovery are unclear or there is a reason to believe criminality. It was thought a way forward to address these delays had been agreed when the Coroners and Justice Act 2009 became law under the last (Labour) Government. A small part of this Act was to make provision for a Coroner for Treasure (to replace the duties of local coroners regarding treasure) which would ensure a single point for dealing with Treasure inquests. This Act would have also brought in other much needed changes to the Treasure Act, designed to clarify reporting procedures and also help tackle the illicit trade in Treasure finds (see below). However, as part of the Coalition Government's plans to reduce the fiscal deficit this legislation has been "parked", so whilst enacted (by Royal Assent) it has not yet been implemented.

Another problem associated with metal detecting, though not particular to Treasure finds nor indeed unique to England and Wales, is the looting of archaeological sites for antiquities. In 1995 the Council of British Archaeology's survey on metal detecting found that over a five-year period 188 Scheduled Monuments had been looted and 37 out of 50 professional archaeological units reported "raids" on

their excavation sites (Dobinson and Denison 1995). In 2009, Oxford Archaeology, on behalf of English Heritage, produced a follow-up report on the extent of illicit metal detecting in the United Kingdom and Crown dependencies (Oxford Archaeology 2009a), also produced as a summary report (Oxford Archaeology 2009b). This found that while illegal metal detecting was still a problem, certainly in the eastern parts of England, the number of scheduled sites being targeted seemed to be decreasing (ibid: 3): importantly it was recognized that, due to the work of the Portable Antiquities Scheme, relations between archaeologists and metal detectorists had improved significantly, and it stated that such partnerships provided the best opportunity for tackling heritage crime (ibid: 13-4).

As recommended by this study, English Heritage formed a relationship with the Association of Chief Police Officers (here it is important to note that the United Kingdom does not have a national police force, but rather local police forces. Led by their Chief Constables, they enforce law based on local priorities, but are guided nationally by government policy and the Association of Chief Police Officers (i.e. those that lead the local forces). A police officer (at chief-inspector grade) was seconded to help inform their policy regarding heritage crime. This resulted in the formation of the Alliance to Reduce Heritage Crime (ARCH), a national network established to take forward initiatives to tackle heritage crime and galvanize local action as part of English Heritage's Heritage Crime Programme. Drawing upon experience in Kent (from where the police officer seconded to English Heritage was previously employed), it was felt that the best way to tackle heritage crime, such as illegal metal detecting, was to engage with the local community, including metal detectorists, as it was they who could provide useful intelligence for the police, and also were the "eyes and ears on the ground" to report on other forms of illegal and unsocial behaviour. The project was deemed to be a success, and consequently heritage crime has now become part of English Heritage's Heritage Protection Plan. The recent (though controversial) establishment of Police Commissioners for each police force (except in Greater London, where the Mayor of London takes on this role) perhaps provides further opportunities to tackle heritage crime, as these individuals will set priorities for local police forces.

Related to illegal metal detecting is the illegal trade in antiquities, including Treasure finds. Treasure finds can only be legally sold on the open market with documentation to prove that they have been disclaimed by the Crown. Following the passing of the Dealing in Cultural Objects (Offences) Act 2003, the British Museum (supported by the All Party Parliamentary Archaeology Group) sought discussions with eBay, since its site was deemed to be a place where unscrupulous individuals were off-loading non-reported items of Treasure. Although it was recognized eBay was not directly involved in such transactions (but rather provided a marketplace where this could happen), it was a trade eBay itself was also concerned about, but had no expertise to deal with. Therefore in October 2006 the British Museum (along with the now defunct Museums, Libraries and Archives Council,

which then managed the Portable Antiquities Scheme) agreed a Memorandum of Understanding with eBay whereby the British Museum, with the support of the Metropolitan Police Service, would monitor the site for unreported items of potential Treasure. The agreement allows the British Museum to use an eBay account to question vendors of potential Treasure finds and offer advice if finds need reporting. If a vendor refuses to cooperate, the museum has the option of referring the case to the Metropolitan Police's Art and Antiques Unit, who will ask eBay to end the listing and may investigate further.

As a result of this monitoring work to date (as of 12 April 2012) 933 cases have been logged, of which 481 were questioned: to put this in context, 5,053 cases of Treasure have been reported in the same period, hence the under-reporting of such items is significant. Through this work it is notable that many people trying to selling items of non-reported potential Treasure are not the finders themselves (though they of course must have relieved themselves of the items in question in the first place, and therefore failed in their obligations under the Treasure Act), but third-party individuals, some who "buy on trust" without making proper due diligence checks: indeed some of the responses given by these individuals outlining why they (in their view) need not report these items make interesting reading! It had been hoped that changes to the Treasure Act, through the aforementioned Coroners & Justice Act 2010 – particularly the clauses that require anyone coming into possession of potential Treasure to report it (not only finders of Treasure, as currently required by the Act) – would hinder the illicit trade, but (as stated above) this legislation has not yet been implemented. Here it is important to note that Treasure finds are only a small proportion of the number of antiquities offered for sale on eBay and elsewhere each day, though understanding the legal status of the remainder is much more complex.

The Portable Antiquities Scheme

Although the Treasure Act removed the major anomalies of the common law of Treasure Trove, the Government recognized that most archaeological finds remained outside of its scope. Following consultation with interested parties it was agreed to establish pilot projects for the voluntary reporting of all archaeological finds outside the scope of the Act: this project was to become known as the Portable Antiquities Scheme.

Six pilot schemes were established in 1997, with a further six in 1999. Then in 2003 the Portable Antiquities Scheme was extended to the whole of England and Wales, and since April 2006 has been funded by Central Government (DCMS). Currently there is a network of 39 Finds Liaison Officers, and 11 other posts, which includes a team dealing with the administration of Treasure cases.

Aims of the Portable Antiquities Scheme

Before the Portable Antiquities Scheme was established, some metal detectorists would take their finds to museums, primarily for identification, rather

than recording. Likewise, museums did not necessarily consider it was within their remit to do little more than provide the finder with information about what the object was. In some cases details of the finds were recorded (perhaps for the curator's personal interest), passed on to the local Sites and Monuments Record (generally known as Historic Environment Records), or even published (in local journals and such like). In some areas, such as Norfolk, there was a greater concerted effort to record metal detector finds. However, there was no national mechanism to systematically record archaeological objects found by members of the public until the establishment of the Portable Antiquities Scheme.

Nowadays any member of the public who finds an archaeological object can record it. In fact there is little excuse to do otherwise! Most recorded finds (92% in 2011) are found by metal detectorists, as it is they who proactively search for archaeological material. It is the experience of the Portable Antiquities Scheme that it is better to engage with metal detector users to educate them about best practice, such as the importance of recording their finds, rather than ignore them, as was often the attitude in the past. Needless to say, not all archaeologists, or even metal detectorists, agree with this view. However, if done responsibly, metal detecting can make a valuable contribution to archaeological knowledge.

Code of Practice

What is meant by being responsible? Until relatively recently there was no clear definition of what being a responsible metal detectorist meant. Although the two national metal detecting organizations – the National Council for Metal Detecting and the Federation of Independent Detectorists – have Codes of Conduct, these have no real archaeological focus. In May 2006 a *Code of Practice on Responsible Metal Detecting* was agreed and endorsed by the main archaeological bodies and landowner and metal detecting organizations. This outlines what a responsible metal detectorist should do before going metal detecting, while metal detecting and after metal detecting. The emphasis is on avoiding damage to archaeology, recording findspots while in the field and reporting and recording all archaeological finds. The Code also stands as a statement of good practice that can be used by archaeological and government bodies in developing policies relating to metal detecting.

Some problems

Although relations between archaeologists and metal detectorists have improved significantly over the last 15 years, some problems remain.

Most notable is the fact that the Portable Antiquities Scheme is a victim of its own success. The *Code of Practice on Responsible Metal Detecting* says that finders should offer all their finds for recording. However, the Scheme does not have the resources to record everything that is found, and therefore the Finds Liaison Officers find themselves being selective in what they record. Ideally the Scheme would like more funds

to employ more Finds Liaison Officers, especially in the most archaeologically productive areas. In the current financial environment this is unlikely to be possible; indeed most heritage organizations are making the case to protect them selves from further funding cuts, rather than why they need more money. Attempts to address this problem have been made by making more use of volunteers and training the most able finders to take on some of the recording work themselves. Later this year the Scheme is to submit to the Heritage Lottery Fund a bid to make better use of volunteers and engage with the wider community.

Another major problem for the Portable Antiquities Scheme (and archaeologists more generally) are metal detecting rallies; essentially large gatherings of metal detectorists on one area of land. Landowners are paid money by those organizing such events, and they are a tempting solution for finders who have trouble gaining access to new land. The problem for the Scheme's Finds Liaison Officers is these events do not provide the ideal circumstances for recording finds (in a rush, with limited equipment to hand and poor conditions for photography and such like). Furthermore, the resources needed to record finds in such circumstances and in such numbers is beyond that of a single Finds Liaison Officer, and so (with the bigger rallies) a recording team needs to be assembled to tackle (even on a basic level) the recording of these finds. Such gatherings are not illegal, so the main focus of the Portable Antiquities Scheme's efforts in this area is to encourage the organizers of such events to ensure they provide adequate facilities to enable recording and providing finders with maps of the areas which they search.

Achievements

In 2008 it was estimated that 6,464 finders offered finds for recording with the Portable Antiquities Scheme, of which 4,232 were metal detectorists. The last time this data was gathered was in the Portable Antiquities and Treasure annual report 2008 (Lewis & Richardson 2010, 14). Given that it is estimated that there are some 8,000 metal detector users in England and Wales and a significant proportion of them do not regularly find archaeological objects (for example they search beaches etc.) the Scheme is probably being shown finds by as many as two-thirds of all active metal detectorists.

Finds are normally handed over to the Finds Liaison Officer for a month or so, so they can be properly recorded and photographed, before being returned to the finder/landowner. It is important to note that (in contrast to the Treasure Act) the aim of the Portable Antiquities Scheme is to record finds, rather than acquire them for museums, though of course if a Finds Liaison Officer records an item of particular note he/she will suggest to a finder that he/she might consider allowing a museum to acquire. All information about the finds reported to the Portable Antiquities Scheme is recorded on its database (www.finds.org.uk/database), which (as of 15 November 2012) contained the data for 822,270 objects (within 527,420 records) and 335,794 images. This database is proving to be

an extremely powerful research tool, which is being exploited by academics as well as those with a more general interest in finds and their local area. To date 343 research projects, including large research projects and PhD students, are making use of the data.

If the finds data is to be a useful archaeological resource then it is crucial that precise findspot information is recorded. When the Portable Antiquities Scheme was first established (1996–67) 56% of findspots were recorded at least a one-hundred-metre square (a six-figure National Grid Reference). Last year the figure was 91%. Increasingly finders are being encouraged to use hand-held Global Positioning Systems (GPS) devices, to enable more precise findspot recorded, with limited success.

Last year (2011) 97,509 archaeological objects were recorded by the Portable Antiquities Scheme (Lewis & Richardson 2012). Most objects recorded are coins (47.16%) or metal artefacts (32.20%); this is to be expected given most finds are made by metal detector users. This is followed by worked stone (8.67%), then pottery (6.47%), both which are normally field-walked finds, though metal detectorists are also recovering such items. In some parts of the country, notably the south-west and Wales, field-walked finds account for a large number of those discovered.

Roman finds account for the largest proportion of those recorded (51.73%). This is followed by post-medieval (17.63%), medieval (16.13%), Stone Age (8.09%), early medieval (2.94%), Bronze Age (1.85%) and then Iron Age (1.63%) finds. Although the Finds Liaison Officers are selective in recording finds less than 300 years old, it is apparent that significant quantities of post-medieval material are being recorded, and it is also welcome that research in this area is also growing. There are regional differences in the quantities of objects recovered by period (not discussed here) which mostly reflect the diverse archaeology of England and Wales.

The main strength of the Portable Antiquities Scheme database lies in the fact that it is providing a national picture, allowing archaeologists to understand the regional distribution of artefact types in a way not previously possible. Also, the data is being used to identify new archaeological sites, and help pave the way for new archaeological intervention and exploration, as well as understanding and protecting the historic environment vulnerable from agricultural damage. Indeed, one of the greatest concerns archaeologists have about metal detecting is the potential damage caused to archaeology by removing objects from undisturbed contexts. However, 82.51% of reported finds were recovered from cultivated land, where they are susceptible to plough damage and artificial and natural corrosion processes. It is an important factor to consider, since if recorded these objects help identify new sites that are at risk, and metal detecting (if undertaken responsibly) might be seen as rescue archaeology.

Conclusions

Generally, archaeologists in England and Wales perceive the Portable Antiquities Scheme as a success, if not a necessity. That is not to say that archaeologists are enthusiastic about “hobby” metal detecting (i.e. those people working outside an archaeological remit), but rather it is accepted that the *status quo* is here to stay. There is no Government appetite for banning metal detecting or regulation. Furthermore, commonly proposed solutions, such as licensing, would invariably be bureaucratic and have a cost implication. The Scheme is therefore a rather British solution to what was once (and maybe still is) perceived as a problem.

That is not to say archaeologists do not recognize the benefits of metal detecting, even if they are less keen on the collection method involved. Metal detectorists search in areas not normally frequented by archaeologists and (as mentioned above) they primarily search on land under cultivation. The artefacts recovered therefore provide a unique (perhaps limited) opportunity to learn about sites unlikely to be (otherwise) investigated and also under threat from agriculture. Furthermore, the data itself is widely recognized as an important source for further understanding the past. Not only is it being used to learn about new sites and the spatial distribution of artefact types, but also to answer wider questions about the use, occupation and settlement of the historic landscape. To date the potential of this data is only just being realized, and therefore it is hoped that as the data is used more and more, and as detectorists become better aware of their archaeological responsibilities, then the dividends will be even greater in the future.

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3 | A way to balance societal needs in law

Suggestions for new regulations on the use of metal detectors in the Swedish Heritage Conservation Act

Michael Lehorst

Abstract: The article is basically about finding the balance – by modifying law regulations – mainly between the need for free movement of goods and the need to protect, use and develop heritage, while also incorporating the growing need to prevent and prosecute crime and to consider the private, or amateur, serious use of metal detectors to search for ancient or other metal objects.

First, a short history of the Swedish law on the use and carrying of metal detectors is outlined. The history starts in the 1980s and ends today, as this article is being written, but the history will, as it always does, continue in the near future.

A central feature that is the reason for this history is its acceleration, caused by the EU Commission infringement case in 2008, their letter of formal notice and reasoned opinion to the Swedish Government about Swedish law on the use and carrying of metal detectors as disproportionate in relation to its aims and thus not compatible with articles 34 and 36 of the Treaty on the Functioning of the European Union (TFEU) on the free movement of goods – despite the obvious growing international threats of looting and black market for ancient objects.

The first part shows how the Swedish Government dealt with the case, giving the National Swedish Heritage Board (SNHB) the directive to solve the problem by suggesting a modified law on metal detectors – and how SNHB investigated the problem and suggested and justified modifications to the law. There is a brief account of the aftermath of the SNHB report on how to solve the problem, and later measures taken by the Government.

Secondly, the article presents a summary of the most valuable discussions and actions in the EAC on this issue, with the focus on early 2011, and the help and input that was given to SNHB within the framework of the EAC and from its members. The article by Maria Barkin in this publication shows the more detailed results of the EAC discussions and actions.

The third part is more technical, about the construction of a licensing system for the use of metal detectors, but also showing the intentions, expected effects and consequences of such a system, when it comes to society's needs – that is, to find a good balance between them.

Background

In the Swedish Heritage Conservation Act (HCA 1988:950) there is a general ban on the use of metal detectors (chapter 2, sections 18–20). Metal detectors may not be carried at ancient monuments and remains. Metal detectors may however be used by the Swedish National Heritage Board, and in military activity or the activity of other agencies when the intention is not to search for ancient finds. The County Administration may grant permission for the use of metal detectors for archaeological investigations or in places where ancient finds have been discovered. In other cases the County Administration can also grant permission for the use of metal detectors if there is special reason for it.

It is important to remember that it is not forbidden to sell or own a metal detector, but a permit is needed to use and carry the device. Many stores sell metal

detectors in Sweden, and it is simple to order one on the Internet.

It is also important to remember that it is not forbidden according to the HCA to search for ancient monuments or finds, but one cannot dig in or alter an ancient monument or site without a permit from the County Administration, and one must report ancient finds of gold, silver and copper or copper alloys to the authorities. One can walk very freely in the landscape but one cannot dig in the ground without the landowner's permission (Allemansrätten – the legal right of access to private land (open country)).

The law has not always been like this, and it will change in some way in the near future and most certainly in futures to come. Legislation can be seen as a societal, political and democratic contract that changes through time.



Figure 3.1: Open landscape on the Baltic Islands – prehistoric hoards and graves, under thin soil. Bodudden, Öland.

Photo Jan Norrman © Swedish National Heritage Board

The history and the developments

1985–2008: Restrictions in the Heritage Conservation Act

One major aim of the regulation on the use of metal detectors in the HCA as it is today is that the cultural heritage shall not be looted. The rules about metal detectors were introduced in the Act as it was in 1985, since it had become increasingly common at that time to use metal detectors for treasure hunting even at ancient monuments and find sites. A general ban on the use of metal detectors on the Baltic island of Gotland was imposed. The reason for this was the particular density of finds on Gotland and the acute threat to the sites of archaeological finds that are scattered all over the island. Later a ban was also imposed on the use of metal detectors on the neighbouring island of Öland.

The law was tightened in 1991 as regards the use and carrying of metal detectors. The background was the increasing looting of ancient monuments and remains in other parts of Sweden than the large islands in the Baltic Sea. Metal detector technology had also improved. The ban on the use of metal detectors was extended to apply to the whole of Sweden. The reason for the general ban was the difficulty of demarcating particular areas as especially important to protect with regard to the ancient monuments there, or pointing out any special area that would not be attractive to looters. With regard to the need to protect ancient monuments and finds, the interest in using metal detectors as a hobby had to stand back. The main reason cited for this was that too widespread a use of metal detectors would make it hard for the authorities to intervene against use that threatens the cultural heritage.

2008–2010: Too many restrictions? – Dialogue between the EU Commission and the Swedish Government

In 2008 the EU Commission received a complaint from a Swedish citizen that the Swedish legislation entailed a restriction on the free mobility of goods according to the Treaty on the Functioning of the European Union (TFEU), and the Commission opened a case (infringement case 2008/4191).

The Commission sent a formal notice in February 2009 to inform the Swedish Government that that the Swedish legislation might not be in accordance with articles 34 and 36 of TFEU. The Government, after requesting the opinion of and data from the Swedish National Heritage Board, justified the current law in its reply, pointing out that the situation in Sweden was somewhat unique with a large number of well-preserved and untouched ancient remains and that many ancient monuments in Sweden are visible above ground and therefore vulnerable to looting. The Government also stated that it is not possible to single out and demarcate special areas where a ban on the use of metal detectors could apply, and that the principle of public access to privately owned land meant an added risk of damage to the ancient remains. In short, the Government argued that the ban on metal detectors was a proportionate and necessary means to protect the ancient remains in Sweden. The Government also argued that it was easy to obtain an exemption from the ban by applying to the County Administrative Board.

In a reasoned opinion of October 2010, the EU Commission considered that the Government's arguments were neither convincing nor relevant, since there are no follow-ups or analyses of the results that have been achieved since the regulations were introduced in 1991. The Commission therefore maintained that the ban cannot be considered necessary or in proportion to the desired goal of protecting ancient finds and monuments. The EU Commission considered that the ban according to chapter 2, section 18 of the Heritage Conservation Act (1988:950) is disproportionate in relation to its aims and thus not compatible with articles 34 and 36 of TFEU, and therefore requested Sweden to take action to resolve the problem, that is to amend its legislation on the use of metal detectors so as to ensure its compliance with EU rules on the free movement of goods by removing the unjustified barrier to imports of metal detectors into Sweden.

January 2011: Fewer restrictions! – Government assignment to the Swedish National Heritage Board

In January 2011 the Swedish Government (Ministry of Culture) gave the Swedish National Heritage Board the assignment to review how the Heritage Conservation Act regulates the use and carrying of metal detectors, and to suggest regulations that are compatible with EU law, based on the EU Commission's reasoned opinion. The Government's directive stated that the general ban should be modified but that different solutions may be considered. The intention was nevertheless to be that the use of metal detectors on and near the sites of ancient monuments and in searching for archaeological objects should continue to be prohibited. In addition, the need for a continued general protection should be considered in regions with a particularly large proportion of antiquities. There was no directive that SNHB should argue for maintained legislation.

The suggestions were to be reported to the Ministry of Culture three months later.

SNHB's investigation

The Swedish National Heritage Board noted that no fundamental analysis of key factors such as *the size of the market, the prevention of crime and the preservation, use and development of the cultural heritage* had been carried out. Nor did the short time available to conduct the investigation permit any comprehensive analyses of the current state and expected development of these key factors. This led to difficulties in investigating and assess whether modifications to the regulations could be made compatible with EU law while simultaneously helping to ensure that the goals of cultural policy are achieved, in other words, difficulties in finding the right balance for the proportionality of the protection.

It is important to note that it is almost impossible to survey tens of thousands of ancient monuments that have a potential for being looted and to obtain a figure of the real crime rate or how well the law works, as it is for almost any type of crime: wife-battering, speeding or discrimination, for example.

The agency therefore conducted an investigation into public and individual needs in society concerning the use of metal detectors, also from an international perspective. The aim of the inquiry was to suggest and analyse the consequences of regulations that balance



the need for free mobility of goods within the Union with the need to preserve, use and develop the cultural heritage.

The basis for the investigation of the current situation and expected development was therefore assumptions grounded on principles and different societal needs. The needs identified were: *to preserve, use and develop the cultural heritage; to ensure the free mobility of goods within the EU; to prevent and prosecute crime; the use of metal detectors to search for ancient finds or other objects.* The investigation clarified and analysed these societal needs.

As a basis for the investigation, the Swedish National Heritage Board held a hearing and arranged a meeting with the County Administrations. The hearing focused on the different societal needs, presented by people who are active in the use of metal detectors – both amateur detectorists and professional archaeologists. The meeting with the County Administrations was held in connection with the hearing and focused on the preservation, use and development of the cultural heritage through the application of the rules about metal detectors in the Heritage Conservation Act.

The investigation also considered and analysed the international perspective, both experiences and threats to the cultural heritage and its link to the illegal use of metal detectors, and it was performed with help from colleagues from other countries in the EU within the framework of the EAC (see contributors and summary below). New possibilities and ways to handle the problem were highlighted as well in these meetings.

SNHB's deliberations

The investigation was the basis for the Swedish National Heritage Board's suggested solutions to the problem. The solutions considered were intended to give opportunities for an increase in the appropriate use of metal detectors related to the societal needs stated above. The regulations suggested by SNHB were intended to give as much opportunity for the increased use of metal detectors as is proportionate in relation to their purposes, following the reasoned opinion of the EU Commission, and at the same time the increased use should contribute to achieving the goals of the Heritage Conservation Act and of cultural policy.

A major intention behind the protection according to the present legislation is that there shall be no looting of the cultural heritage. This is a crucial aim of the regulations, and will continue to be so. The need to protect the cultural heritage must be viewed in relation to the threats. Preventing looting also means that the alienation of the finds can be avoided, and the illegal international trade in ancient finds can be reduced.

Figure 3.2: Inlands-mounds, stone settings and cairns along long and narrow lakes. Rud, Värmland. Photo Jan Norrman
© Swedish National Heritage Board

The most appropriate solution was the one that simultaneously satisfies the needs of, or gives the best balance between, the general interests: free mobility of goods and the preservation of the cultural heritage – also in a European perspective. This perspective was, and is, crucial since the threat to the cultural heritage through the illegal use of metal detectors is international.

Preventing and prosecuting crime is a fundamental need in society. The need to prevent, discover and prosecute archaeological heritage crime has this as a general starting point, closely related to the national cultural policy goals. Neither reckless treasure hunting nor deliberate looting of ancient sites through illegal use of metal detectors is compatible with the national cultural policy goals. Increased use of metal detectors aimed at contributing to the national cultural policy goals was therefore desirable.

SNHB's solutions

SNHB considered a solution early on that was close to the current legislation, but with emphasis on a more open application of the law, in that it would be easier for amateurs to obtain a permit to use and carry a metal detector – to search for other objects than ancient objects. This alternative was abandoned when we made the assumption, based on the EU Commission's letter of formal notice and especially in the reasoned opinion, that it would still make the HCA disproportionate in relation to its aims and thus not compatible with articles 34 and 36 of the TFEU.

The Swedish National Heritage Board proposed two solutions, both of which were deemed compatible with EU law:

- Solution 1 entailed opportunities for increased use of metal detectors in order to search for ancient finds and other metal objects through the introduction of a licensing system – a “metal detector license”.
- Solution 2 entailed opportunities for increased use of metal detectors by making it legal to search for other things than ancient finds.

The intention with both solutions was that the use of metal detectors at or near ancient monuments and remains and on the Baltic islands of Gotland and Öland should continue to be prohibited. The modified regulations would entail freer legal use to differing extents, depending on which solution was chosen.

The solutions lead to different consequences or expected effects for the needs of society and for both public and private interests. The Swedish National Heritage Board considered that the suggested solutions will satisfy the need for free mobility of goods, but could not state with any certainty to what extent the suggestions are sufficient to preserve the cultural heritage within the framework of the requirement for free mobility of goods.

The present legislation means that amateur use of metal detectors is a rare occurrence. This use of metal detectors is therefore easily noticed by anyone and can be reported to the authorities. The Swedish National Heritage Board noted that the modification, to differing extents depending on which solution is chosen, will make it more difficult for the authorities to discover and prosecute the illegal use of metal detectors, to prove malicious intent and prosecute offences. There is a risk that the looting of the cultural heritage will increase as a result of the modification of the regulations. The risk is greater with solution 2.

As a consequence, the work of protection against looting and the prosecution of illegal international trade will also need to be developed in cooperation with other countries and actors on the legal market. The increased threat to the cultural heritage in the form of illegal use of metal detectors can be countered on condition that more resources are allocated for the authorities' cooperation, control and supervision.

The freer use should also have the effect of helping to achieve the national cultural policy goals, to preserve, use and develop the cultural heritage. A licensing system will serve this purpose best. A desirable development is increased cooperation between metal detector amateurs and heritage management, corresponding to the development in other parts of Europe. Solution 2 would allow great freedom for the amateur use of metal detectors and would be better for the free mobility of goods, but worse for the preservation of the cultural heritage.

The Swedish National Heritage Board advocated the solution that involves the introduction of a licensing system, that is, solution 1. The licensing system would satisfy the need or interest to use metal detectors as a hobby and to search for ancient finds in order to preserve the cultural heritage. This solution gives the best balance between opportunities for increased use of metal detectors and the need to preserve, use and develop the cultural heritage.

The current rules are considered an obstacle to the use of metal detectors in order to search for ancient finds and other metal objects. The introduction of a licensing system would remove this obstacle and enable the use of metal detectors, following the reasoned opinion of the EU Commission. The licensing system means that those who wish to use metal detectors to search for ancient finds or other metal objects are given the opportunity to do so, within the framework of law.

April 2011: SNHB report to the Government – Aftermath 2012 and future history

SNHB reported to the Ministry of Culture in April 2011, and published another more thorough analysis in the summer (Riksantikvarieämbetet 2011 a and b). Later that year, the Ministry sent the report to a number of public bodies to get their opinion about the solutions. The opinions were mixed. The negative opinions generally stated that the solutions went too far in letting the use of metal detectors be more free than today. By then a

committee appointed by the Government had been given the directive to modify HCA. The committee was also given the directive to modify the regulations on the use and carrying of metal detectors.

The committee suggested a law amendment on the use and carrying of metal detectors that looks pretty much like the regulations of today, but with an emphasis on a more open application of the law, in that it would be easier for amateurs to obtain a permit to use and carry a metal detector – to search for other metal objects than ancient ones, and not at ancient monuments and sites.

In June 2012, the committee reported to the Government and the report was in turn sent to a number of public bodies and NGOs for consideration and comment, including SNHB. This is the state of modification of regulations on the use and carrying of metal detectors in September 2012 as this text is written, and the future history of legislation remains to be seen.

EAC input – trends, threats and possibilities

A huge interest was shown in the issue by the EAC at the meeting of the board held in Stockholm on 27 January 2011. The “case” was presented by SNHB on this occasion, and the need to discuss the matter further within the framework of the EAC was expressed.

As an effect of the board meeting, a special EAC workshop was quickly organized and held in Stockholm on 11 March 2011, with participants from public heritage management in the following countries, with their representatives:

- Germany, *Jonathan Scheschkewitz*, Landesamt für Denkmalpflege im Regierungspräsidium Stuttgart
- Hungary, *Gábor Lassányi*, Budapest History Museum
- France, *Bernard Randoïn*, Ministère de la Culture et de la Communication, Direction générale des patrimoines, Sous-direction de l'archéologie
- Belgium, *Yann Hollevoet*, Department of Town and Country Planning, Section Cultural Housing Policy and Immovable Heritage.
- England, *Pete Wilson*, English Heritage
- Estonia, *Ants Kraut*, Estonian National Heritage Board
- The Czech Republic, *Jan Mařík*, Institute of Archaeology of the Academy of Sciences
- Sweden, *Birgitta Johansen* (host), *Carolina Andersson*, *Maria Barkin*, *Anna-Gretha Eriksson*, *Anna-Lena Olsson* and *Michael Lehorst* (moderator), Swedish National Heritage Board

The focus of the workshop was on how the represented countries' legislation functions and how each country thinks it ought to function, and on the international trends, threats, possibilities and consequences of a change in Swedish legislation. A summary is presented below in this article. How legislation functions and the development of metal detector use related to legislation in European countries is shown and discussed by Maria Barkin in the following article in this publication.

The discussion continued at the annual meeting of the EAC in Belgium on 17 March 2011, and of course at the annual meeting in France on 18 March 2012.

Through the EAC and the international workshop, the Swedish National Heritage Board has gained valuable insight into the way other European countries regulate the protection of the historic environment and the use of metal detectors in relation to this protection.

Negative trends and threats: Summary

In accordance with article 3 of the Valetta Convention, each state has pledged to preserve the archaeological heritage through national legislation, and to ensure that the use of metal detectors is by license or permit only.

The need to protect the cultural heritage must be viewed in relation to the threats. It has been repeatedly noted that the looting that occurs in Sweden is part of both a national and an increasing international problem which requires Sweden to take measures both at home and in cooperation with other countries. The proposed ratification of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is an example of this and a step towards countering the threats.

The Swedish National Heritage Board has learned through international contacts that heritage authorities in Europe view the change in Swedish legislation with alarm. This alarm is based on various experiences of the problem of looting and the fact that some countries have just strengthened, or are in the process of strengthening, their legislation on the use of metal detectors – precisely in order to counter the increasing threats and the increasing looting. In these and other cases, various measures are taken to prevent looting. The French interest organization *Halte au pillage du patrimoine archéologique et historique* (Association HAPPAH) has expressed the sense of concern in a letter to the EU Commission.

The threat reveals a negative development, not least concerning the illegal use of metal detectors in order to loot the cultural heritage and to spread ancient finds on the black market. The development of the threat posed by the illegal use of metal detectors looks as follows:

- international crime has several dimensions, one of which is the trade in ancient finds;
- the international market for trade in ancient finds continues to grow because of the greater range of objects on offer and the increasing interest, with part of the flow of goods coming from illegal activity;
- the channels through which the finds can be sold are expanding, especially via the Internet;
- the risk of discovery and prosecution is very small in the trade in ancient finds;
- the profits are relatively large compared with other illegal trade and with the low risk of being caught;
- it has become increasingly easy and cheap to buy a metal detector, not least through online trade;
- the technology of metal detectors is constantly being developed, making it easier to search for

different kinds of metal and hence different types of antiquities;

- the search for ancient finds is marketed as an exciting and profitable hobby in several countries, even through special magazines, although the use of metal detectors for this purpose is illegal in the country in question
- the general level of knowledge in society is increasing, and there are good possibilities of acquiring special knowledge in history, archaeology and reading landscapes; increased knowledge brings increased skill in locating ancient finds.

There is high awareness in European countries of the threats to the cultural heritage through the illegal use of metal detectors. The illegal use of metal detectors and the looting of the cultural heritage is a serious and growing problem in several parts of Europe.

This was, (and still is) the state of world when the EU Commission requested that Sweden should make the HCA compatible with EU law and make it proportional to the desired goal of protecting ancient finds and monuments.

A positive trend in Europe is that amateur detectorists, organized or individually, seek cooperation with heritage authorities, museums and researchers. During the analysis stage, SNHB both heard from and invited representatives from this group, some of them professional archaeologists, using metal detectors outside their jobs. Even the complaint in the European Commission was made by amateurs, and one of them participated in the SNHB hearing on this issue. A licensing system would support such an interest or societal need.

Possibilities through a licensing system – Construction, intentions and expected effects on society

SNHB considered that the previously described, and desired, balance between free mobility of goods and the national cultural policy goals could be best achieved if the current regulations were supplemented with a licensing system and granting of permits that allow for the increased suitable use of metal detectors, following the reasoned opinion of the EU Commission. A licensing system would eliminate obstacles to the use of metal detectors to search for archaeological artefacts or other metal objects. The measure would contribute to the goal of both the Heritage Conservation Act and cultural policy, while simultaneously imposing fewer restrictions on the free mobility of goods.

Construction

According to solution 1 it will remain prohibited to use metal detectors, but an opportunity will be introduced to apply to the County Administration for a metal detector license. This can be achieved by the addition of a section to the Act. The new section would mean that a person with a metal detector license may search for ancient finds within the county, except for Öland and Gotland and at ancient monuments and remains.

If an ancient find is discovered by metal detector, all surveying on the site must cease immediately, the find must be documented and taken into care, and the matter must be reported to the authorities. A person with a license should not have the right to redemption or a reward for finds. The license will be valid for one year, but this can be extended. The license will be valid in all or part of the county. The Government or an authority designated by the Government will issue statements as to the requirements of training and good character that must be fulfilled in order to obtain a metal detector license.

As regards carrying metal detectors, there will still be a general ban at and near ancient monuments and remains, and also on the islands of Öland and Gotland. The license holder can also obtain permission from the County Administration for the use of metal detectors in order to search for ancient finds on or near the site of an ancient monument. The County Administration will then have the possibility to direct the use towards certain sites, for example, those where there is a particular public interest in retrieving finds. In its decision the County Administration can make special demands and conditions, for instance concerning the project plan and the financing of the management and conservation of the finds.

The licensing system gives great opportunities for those who wish to use metal detectors to search for ancient finds and other metal objects, and also means that the authorities can have a good general overview of which users of metal detectors search for ancient finds and other metal objects, but not control of each separate occasion when a metal detector is used.

Intentions

The intention behind licensed metal detector surveying is to preserve, use and develop the cultural heritage. The finds should contribute to knowledge among the general public and in research, and should be managed, conserved and preserved in museums. To be able to obtain a metal detector license, the applicant should have a basic knowledge of archaeology and the regulations that apply to ancient finds. This means that some kind of training or qualification in the use of metal detectors should be required to obtain a license. This training could be given, for example, by county museums, by archaeological research institutes, and by companies that are qualified to undertake contract archaeology. In addition, it should be a requirement that the applicant is a law-abiding and discerning person. A person who has been convicted of a crime should thus be largely disqualified from having a license. The Swedish National Heritage Board should have the opportunity to decide what the training should involve and what other requirements should apply in order to obtain a license.

In order to initiate the licensing system, the Swedish National Heritage Board will draw up, by the time when the modified regulations come into force:

- guidelines for the application of the licensing by the County Administrations;



Figure 3.3: Scandes – hoards with metal objects from the past. Stora Sjöfallet, Lapland. Photo Bengt A. Lundberg © Swedish National Heritage Board

- statements and guidelines clarifying the appropriate level of competence and the focus, that is, what a metal detector qualification should comprise and document;
- statements on the requirements for conducting training and issuing metal detector licenses, that is, for obtaining Swedish National Heritage Board approval as a trainer and examiner;
- a training package and pilot training programmes for examiners.

The licensing system means that those who use metal detectors to search for ancient finds will have a good opportunity to do so when they are licensed. The level of knowledge about the significance of the cultural heritage will be raised among users through the licensing system, via training and direct contact with heritage management or companies responsible for raising competence. The actual intention behind licensed searching for ancient finds will be to preserve, use and develop the cultural heritage. The finds should contribute to knowledge among the general public and researchers, and it should be possible to manage, conserve and make them accessible through display in museums.

Effects and consequences of a licensing system – Assessment

The effects of a licensing system are expected to be positive for the need to preserve, use and develop the cultural heritage, for the free mobility of goods within the Union, for the use of metal detectors to search for ancient finds, and for the development of methods and the growth of knowledge concerning the cultural heritage. Another positive effect of a licensing system is that a market can be created for people who are competent to train metal detector users and issue licenses. There is a risk that the looting of the cultural heritage will increase through the modification of the rules, simply because the more common serious use will make it more difficult for the authorities to pursue supervision and control illegal use.

Looting and crime prevention

One of the main reasons why the regulations have the character they were given in 1991 was that the threats to the cultural heritage had increased, as was also evident from the looting that was noted then in parts of the country. The technology of metal detectors had also been gradually improved during this time and it has developed even more today. The threats are greater now than 20 years ago.

The freer the legal and serious use of metal detectors becomes, the more difficult it will be for the authorities to preserve the cultural heritage by pursuing supervision and control of illegal use. This means a reduced risk that looters will be discovered. It will also be more difficult for the authorities to prove that a person has acted with malicious intent and to prosecute offences. There is a risk that the looting of the cultural heritage will increase through the modification of the rules.

The licensing system will also mean that the authorities can have a good general overview of who uses metal detectors in order to search for ancient finds and other metal objects, although without being able to control each occasion when they are used. The permit procedure will give the authorities a certain degree of control over the use of metal detectors.

The threat to the cultural heritage in the form of the illegal use of metal detectors can be countered on condition that more resources are made available for the authorities' collaboration, control and supervision. Work with protection against looting, and the prosecution of illegal international trade will also need to be developed in cooperation with other countries and actors on the legal market.

Preserving, using and developing heritage

The system will also make it easy for the authorities to clarify the value of preserving the finds and to specify which areas are of such high value that they must be protected. The requirement for a license and a permit to use metal detectors to search for finds at or near ancient monuments and remains will give the

County Administration opportunities to impose special demands and conditions for their use as regards such matters as planning, documentation, management of finds, and financing.

A licensing system gives increased preservation by retrieving, managing and conserving finds, which is positive. This applies especially to finds that are retrieved and preserved from the plough layer of ploughed-out find sites and ancient monuments threatened by acidification and pollution. The licensing system will also give the County Administration a chance to direct the licensed metal detector users towards sites that are particularly affected by chemical substances or agricultural work, in order to rescue and preserve the threatened finds. More find sites and ancient monuments and remains will become known, which will contribute to the build-up of knowledge.

To achieve more positive effects for the preservation, use and development of the cultural heritage there is also a need for contacts, dialogue and cooperation between society's needs and the interest in using metal detectors to search for and retrieve ancient finds. The suggested modification is intended to give scope both for the interest and for closer cooperation. Bringing about contacts, dialogue and cooperation is outside the scope of this assignment, however.

The cultural heritage will also probably be used more, partly because more people will be in the landscape and read its history, there will be a greater interest in ancient finds, and more finds will end up in museums and be made available for research and for the general public. The great effect for the general public will arise when the finds are put to use and tell their story. To achieve that effect requires measures in museums and in research, which is outside what can be demanded in modified legislation.

Free mobility of goods and market growth

Free mobility of goods within the Union is a public interest of the Community. Using metal detectors for hobby purposes is a private interest, but also the main interest that can cause the market to grow. A significant part of this growth consists of those who want to search for ancient finds on an amateur basis. A modification according to solution 2 will have the result that a person who is interested in searching for other metal objects than ancient finds in the landscape will have greater opportunity to do so.

A significant part of the growth in the market through the modification of the regulations, and hence one of the purposes of the free mobility of goods, will probably consist of people who want to search for ancient finds with the help of metal detectors in order to preserve the cultural heritage. For anyone with a license, the modification gives greater opportunity to search for ancient finds in places and areas that are not already protected (but can be when finds are reported). It will also be possible for a person with a license to obtain a permit to use a metal detector in searching for and retrieving ancient finds at ancient monuments and remains. It will also, as today, be possible to

work together with those responsible for heritage management, contract archaeology and research, and within the framework of their permits, to search for finds at known ancient monuments and remains.

Public and private consequences – measures, costs and financing

The consequences of the suggested modification are clearest for the state administration, the management of finds, the control of illegal use of metal detectors, and work on preventing, discovering and prosecuting crime. The changed rules mean that the County Administrations, the Swedish National Heritage Board, and the National Historical Museum/Royal Coin Cabinet will have more cases to handle than today. More ancient finds will come to the regional museums or their equivalents.

Increased legal use of metal detectors also requires increased control and supervision of the illegal use. To counter the threats requires the allocation or redistribution of resources for preventive work, inspection, supervision and control, for the County Administrations, the National Council for Crime Prevention, the judicial system, the Police and the Customs. How much more resources are needed for such a development will require further inquiry in collaboration between those concerned.

The question of redemption and rewards has been central for the modification of the regulations. If metal detector users were to be paid by the State for their finds, the economic consequences for the State would be considerable, as regards both the expenses and the work required. The bulk of the consequences would then, in normal cases, not lie in the actual expenses for redemption and rewards, but in the administration, identification and valuation of the finds and subsequent investigations and even excavations of find places. If it is suggested that metal detector users, through licensing or a permit procedure, relinquish the right to redemption and reward, the situation as regards work and expenses for the State will be different. Then the administration by the State will concern the reporting and registration of finds, decisions about the distribution of finds, and payment for the management and conservation of finds, and perhaps the administration of registers and systems.

In cases where the County Administration grants permits for the use of metal detectors in order to search for ancient finds at ancient monuments and remains, conditions can also be stipulated that the users have full financing for the management and conservation of the finds they discover.

One effect of an increased influx of ancient finds would be more work for the museums, but another effect would be that the market for companies, institutions and museums working with the management and conservation of finds would grow. The market would also grow for those who provide training for licensing. The increased influx and added work that can be the result of this ought to be possible to fit into the current

funding framework. Expenses for the management and conservation of finds would be covered by funding within heritage management.

The consequences for private persons are the expenses and time spent on acquiring the necessary competence for a metal detector license or applying for a permit, and the demands or conditions related to use that can be imposed by the State through the regulations. The Swedish National Heritage Board has not been able to investigate the full consequences for private individuals within the time available.

Cooperation between public authorities and stakeholders

The modified regulations will enable increased use of metal detectors. Use can be increased in several ways in order to preserve, use and develop the cultural heritage. Particularly relevant here will be cooperation between metal detector users and heritage management and research. The local heritage movement can be an actor in these contexts. Such cooperation is being developed, in other parts of Europe as well. The responsibility for this cooperation coming into being and giving the expected effects for the cultural heritage and for the use of metal detectors rests with public authorities and private stakeholders. The responsibility of the State is to arrange for steering mechanisms and systems, to initiate and contribute to preservation and development projects, and to follow up and evaluate developments. It is clearly beyond the scope of this assignment to investigate and propose

forms of cooperation between metal detector users and professional archaeologists within the framework of excavations in contract archaeology. This kind of cooperation will also give an opportunity for increased use of metal detectors.

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A version in English of the reports above is:
Swedish National Heritage Board. 2011. *Suggestions for new regulations on the use of metal detectors in the Swedish Heritage Conservation Act*. Report from Swedish National Heritage Board.
(www.raa.se/publicerat/rapp2012_3.pdf)

This article is otherwise based on what is given by law and on public cases, assignments and committee directives. SNHB can be of service if you want more information.

4 | Laws in Europe on the use of metal detectors

Maria Barkin

Abstract: Since 1991 it has been forbidden for the Swedish public to use a metal detector for any purpose. It is possible to apply for an exemption. In 2010 the European Commission requested Sweden to amend its legislation on the use of metal detectors so as to ensure its compliance with EU rules on the free movement of goods. Most countries in Europe limit the usage of metal detectors in their legislation. Some do not mention metal detectors explicitly but forbid unlicensed excavation of ancient monuments and remains, with or without the use of metal detectors. Those countries who have explicitly limited usage in their legislation have used one or more of the following variables: rules as to who can use a metal detector, where it can be used, for what purpose it can be used and limits on the buying and selling of metal detectors. Several countries are considering revising their legislation so that they can work in unison with associations of metal detectors rather than against them.

Background

The purpose of all cultural heritage legislation, including rules on metal detectors, is of course to protect the national heritage. Ideally, legislation should be just strict enough to deter looters, but at the same time it should be a proportionate and necessary means to protect the ancient monuments and remains. For members of the EU, the legislation must also be in accordance with the regulations on the free movement of goods.

Most people would agree that the National Heritage is worth protecting. But the question is from whom. Should non-archaeologists simply wait for the professionals to explain the cultural heritage to them, or can the public play an important part in finding and interpreting archaeological finds? Should professional archaeologists be left to it, or can archaeologists and amateurs work together to obtain better results? In some countries the heritage authorities work closely with associations for detectorists and have worked with the associations to reach a code of good conduct. In other countries those who want to use metal detectors to search for archaeological finds are viewed with severe scepticism by the archaeological community. They are, rightly or wrongly, perceived more as prospective looters than anything else.

The Swedish example

Since 1991 it has been illegal for the Swedish public to use metal detectors for any purpose. Furthermore, metal detectors may not be carried on or near an ancient monument or ancient remains, except when the carrier is travelling on a road that is open to the public. However, it is possible to apply to the County Administrative Board for an exemption (see chapter 2, sections 17–20 of the Swedish Heritage Conservation Act). The Administrative Board can only grant permission if there are special circumstances. The Heritage Conservation Act does not specify in which

circumstances an exemption should be granted. The number of applications is quite low, only about 250 in 2010, but they have been steadily increasing since 2005. Most applications are granted, and only about 12% were rejected outright in 2010 (applications can be granted in part if they concern several areas). There seems to be a tendency in recent years to grant fewer applications, but it is hard to draw any statistical conclusions given the relatively small amount of applications. (Figure 4.1)

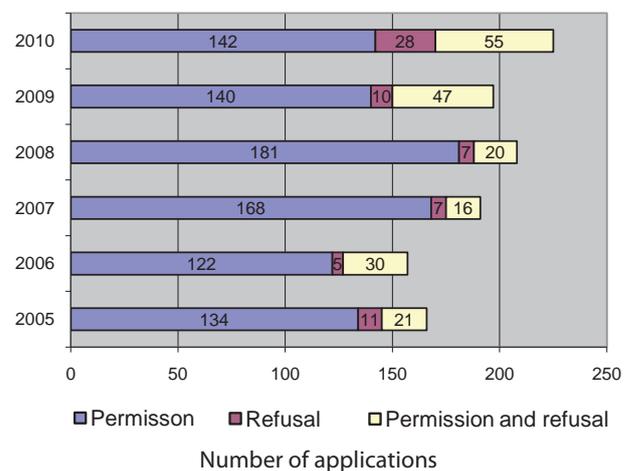


Figure 4.1: Applications for the use of metal detectors

Of the applications that were granted outright in 2010, 114 applicants stated that the purpose of the use would be recreational, 36 that they would be looking for meteorites, 19 that they were going to look for lost property, 29 that they were going to use a metal detector professionally, and 17 that they were going to use it for archaeological excavations (allowed with special permission only) and 10 wanted to use metal detectors for other purposes. (Figure 4.2)

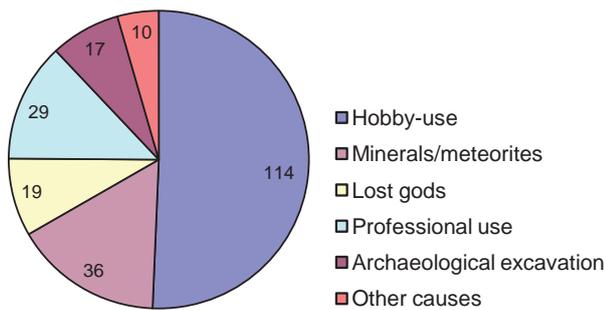


Figure 4.2: Permits given for the use of metal detectors 2010

If an application is denied, it is mostly because the proposed area where the applicant wants to detect is too near a known ancient monument or ancient remains.

It is perfectly legal to buy and sell metal detectors in Sweden. Sellers do not have to inform presumptive buyers about the ban.

The ban does not apply to Government agencies, the military, the Swedish National Heritage Board or the County Administrative Boards.

In 2008 the European Commission received a complaint suggesting that the Swedish legislation on metal detectors was not in accordance with the EU regulations on the free movement of goods. Some correspondence with the Swedish Government ensued.

In September 2010 the European Commission decided to request Sweden to amend its legislation on the use of metal detectors so as to ensure its compliance with EU rules on the free movement of goods. The Commission considered that Sweden's current legislation on metal detectors was disproportionate to the public policy objective of protecting archaeological and historical sites, and so constituted an unjustified barrier to imports of metal detectors into Sweden. The request took the form of a reasoned opinion under EU infringement procedures.

On 3 March 2011 The Swedish Government appointed a committee to inquire into the matter of Swedish cultural heritage law, including the legislation on metal detectors. In June 2012 the committee submitted a report which proposed that the ban on the use of metal detectors should remain, but that the possibility to receive an exemption should be increased when the applicant intends to look for other things than archaeological finds. An exemption should not be granted if the applicant intends to use a metal detector on or near a known ancient monument or ancient remains. The proposal has now been referred to selected bodies for consideration and comment.

Overview of legislation on the use of metal detectors in Europe

Albania: Archaeological excavations and the use of metal detectors are illegal without permission from the Minister for Cultural Heritage.

Austria: Excavation is illegal without a license.

Belgium (Flanders): Usage is forbidden for the purpose of looking for archaeological finds.

Czech Republic: Only archaeologists are allowed to look for archaeological finds with or without the use of a metal detector.

Denmark: Usage forbidden on registered sights. Otherwise it is permitted on ground owned by the state, and on private ground with the permission of the landowner.

Estonia: The use of metal detectors with the intention to search for archaeological remains is allowed only with the prior authorization of the Institute for the Protection of Cultural Heritage. Permits are only given to suitably trained persons. Sellers of metal detectors must inform buyers of the limitations of usage.

Finland: Usage allowed in general but not at certain specified sites.

France: It is forbidden to use a metal detector to look for archaeological finds. To sell metal detectors one must have a license, and it is compulsory to inform presumptive buyers of the rules on limitations of usage.

Germany: A federal state with a complicated legal situation. In general, archaeological excavations are forbidden without permission. In some states it is illegal even to look for archaeological finds, and some specify that you cannot use a metal detector while doing it (Brandenburg, Hamburg and Mecklenburg-Vorpommern for instance).

Great Britain: Usage is forbidden at certain designated places, otherwise it is allowed (with the landowner's permission). A large percentage of land is owned by the Crown or the State, from which permission is virtually never given.

Greece: Usage with the purpose of searching for archaeological finds is forbidden without permission from the Ministry of Culture. Excavations can only be made by the Archaeological Service or the Foreign Archaeological School.

Holland: No specific regulation, but it is forbidden to perform archaeological excavations without a license.

Hungary: Usage not allowed on registered sites. Exceptions can be made only for institutions and/or qualified archaeologists.

Italy: Usage forbidden in the regions of Sicily, Tuscany, Lazio and Calabria.

Lithuania: Usage is only allowed for certified researchers or archaeologists. From 1 January 2013 it will become illegal to buy and sell archaeological finds in Lithuania.

Republic of Ireland: All usage is forbidden on archaeological sites. In other places it is allowed

if the purpose is something other than to look for archaeological finds.

Slovenia: Usage with the intention of searching for archaeological objects is only allowed with the prior authorization of the Institute for the Protection of Cultural Heritage. Authorization is only given to suitably trained persons. Sellers of metal detectors must inform buyers about the legal limitations of usage.

Sweden: See above.

Analysis

The need for legislation on the use of metal detectors varies between countries. It might depend on (a) the number of ancient monuments and remains in the particular country or (b) what kind of archaeological finds are commonly found in each country. In Finland, for instance, it is uncommon to find archaeological objects that are made of gold and silver, and therefore presumably the incentive to loot ancient monuments and remains is lower. In Estonia and certain parts of Sweden where there is a large number of coin hoards, the need for regulation is more pressing.

As shown above, some European countries do not specifically mention metal detectors in their legislation. However, it is generally illegal to perform unauthorized archaeological excavations, with or without the use of metal detectors. One can discuss the need to have legislation on both the illegality of unauthorized excavations and illegal usage of metal detectors. It might be argued that it is pointless to use a metal detector if you are not going to retrieve the objects you find.

Another important factor is ownership of the archaeological finds. In some countries the state automatically becomes the owner of all archaeological finds, in other countries the find becomes the property of the finder (in some cases he or she has to share the value of the finds with the owner of the land). The question of ownership has an impact on how tough the national authorities are on monitoring the use of metal detectors. If the finds are owned by the state there is of course a natural incentive on the state's part to be tough on would-be looters. In Sweden and Norway, the right of public access leads to more people moving on privately owned land, and therefore the temptation to look for archaeological finds is perhaps greater. When forbidding the usage of a metal detector for a certain purpose (i.e. looking for archaeological finds) there is always the problem of proving that the suspect in fact was trying to find archaeological objects. Therefore, in some countries it is forbidden to carry a metal detector in certain designated places (Sweden, Ireland).

Another important factor when discussing the effectiveness of legislation is the State's ability to monitor the use of metal detectors. As in all law enforcement, a high risk of getting caught when committing a crime serves as a deterrent, and a low risk does not. But in Sweden alone there are more than

1.7 million registered sites. No police force in the world could be expected to monitor all of them at once. The cultural heritage authorities are therefore obliged to rely heavily on the watchfulness of the public. There is recent example from Sweden where a farmer in Gotland reported that metal detector users had dug holes in a field on his land. The farmer alerted the police and the Regional Administrative Board, who discovered that archaeological finds had indeed been stolen. Two men were later sentenced to 14 and 18 months in prison respectively.

Allowed in general or forbidden in general?

Most European countries have specific legislation that aims to regulate the use of metal detectors. The legislation can be divided into two categories, either the use is *generally forbidden* or it is *generally allowed*. In both categories there it is usually a possibility to make exceptions.

The important thing is perhaps not the ban or legality itself but under which circumstances an exemption can be granted. Sometimes the legislation specifically states the exceptions. If all applicants receive a permit when they apply for it, the preventive effect will presumably be small and you could just as well allow free usage. On the other hand, if metal detector use is generally allowed but there are a lot of exceptions, the effect on the frequency of usage might be the same as if it had generally been forbidden.

If the exemptions are given on a regional administrative level, the central authorities run the risk of losing control of the usage altogether, particularly if there are no explicit guidelines for the local authorities to go by. In Greece, the granting of exceptions and licenses has recently been centralized, and is now decided exclusively by the Directorate for the Documentation and Protection of Cultural Goods. On the other hand, the administrative burden on the central authority can become great if there are a large number of applications.

Limitations on the use of metal detectors, possible variables

When trying to regulate the use of metal detectors, there are at least four variables to take into consideration. You can limit where a detector can be used, who can use it, and for what purpose it can be used. You can also monitor the buying and/or selling of metal detectors. Many countries combine the different variables in their legislation.

In the Republic of Ireland for instance, it is forbidden to use or carry a metal detector on certain protected sites, but usage is also forbidden on non-protected ground if the detecting is done with the intent of finding archaeological objects. It is also forbidden to promote the sale or use of metal detectors for the purpose of searching for archaeological objects.

Limitations as to where a metal detector can be used

The use of metal detectors can be banned in certain regions (Italy).

More commonly, the usage is forbidden on or near known ancient monuments and remains. Some ancient monuments and remains are protected by law (in Sweden and Finland) while in other countries the protected sites have become protected by some action from the authorities, such as registration (UK).

Limitations as to who can use a metal detector

Archaeological excavations (with or without the use of a metal detector) can be forbidden without an excavation license (Austria).

Limitations as to what purpose metal detectors can be used for

The use of metal detectors to look for archaeological objects is forbidden in some countries, (France and Lithuania among others). Exemptions can be given by local or central authorities.

Limitations on the buying and selling of metal detectors

In some countries a license is needed to sell metal detectors (France) and the seller is obliged to inform the buyer of the rules on usage (France, Slovenia) or is forbidden to market metal detectors as a means to look for archaeological finds (Ireland).

Legislative trends

Several European countries are considering a more inclusive approach towards the metal detecting community and are trying to work in unison with

it rather than against it. In Finland, for instance, the central Cultural Heritage Authority is planning to organize meetings for both archaeologists and metal detector users in order to reach understanding and cooperation. Several countries express a wish to differentiate between looters on the one hand and metal detector users who are simply driven by their interest in archaeology and are not interested in monetary gain.

Before 2009, the approach in the state of Baden-Württemberg in Germany was very strict. There was no cooperation between the state authorities and metal detector users. No permits to use a metal detector were issued to members of the public, and people were strongly encouraged to report metal detector users. But in 2009 the state authorities organized surveys with metal detectors at sites which sooner or later would be destroyed by building projects. The state department sees this as an opportunity to get to know the metal detecting community and differentiate between looters and users who are simply interested in archaeology.

In Flanders a law is being drafted that will make it possible for metal detector users to become licensed.

References

This article is based on (written or oral) interviews with cultural heritage representatives from the different countries and/or information from the official cultural heritage websites in each country. Sources are available on request.

5 | Plunder, destruction and mentalities in current society

Keith Wijkander

Abstract: If the antiquarian authorities are to be better able to create interest in and commitment to archaeological remains, they require an in-depth understanding of what such an interest is really based on. I think it may be useful to distinguish between, on the one hand, an intellectual curiosity about history and, on the other hand, the need for anchorage in history. The interest of scientist and professional archaeologists is often dominated by the intellectual curiosity that they also want the public to share. But in parallel with that, heritage management has always also argued that the cultural heritage may give the individual a sense of context and anchorage in society that he or she would otherwise often lack.

In this paper, I attempt to show that the idea of cultural heritage is linked to the process of modernization that Europe underwent from the end of the eighteenth century and which was characterized by phenomena such as secularization, industrialization and urbanization. It was only during the second half of the nineteenth century that the very idea of a cultural heritage began to emerge. Most of the evidence suggests that the idea of cultural heritage is modelled on evolutionary theory.

The social transformation of industrialization which characterized the Western world from the latter part of the nineteenth century until the 1970s has now switched to a completely new phase. It is characterized by a new type of economy, new forms of urbanization and new religious beliefs. This most likely means that the past century's sense of time and view of history in various respects will change. Today's challenge for heritage management is therefore to understand what contemporary new emerging perceptions of cultural heritage will look like.

Introduction

The starting point for my paper is the invitation to this year's EAC meeting. The 2009 conference in Strasbourg had the heading "Who Steals Our Past?" It was focused on the need to protect the archaeological heritage through legislative action and crime prevention.

The idea of this year's meeting is to bring the discussion to a social welfare perspective. In short, how can we create a broad social basis and a public opinion for protection of the remains? How can we create societal participation and support for the idea that it is important to preserve the archaeological heritage? My question is: does such an ambition require that heritage administrations begin to perceive and think about their role in a different way from hitherto?

There is no reason to see contradictions between, on the one hand, strengthening the legal protection and the respect for the existing laws, and on the other, efforts to create awareness of the values of the archaeological heritage among the public. The rule of law in modern democratic states must always be able to return to the public legal consciousness. The majority must recognize that the laws are a just and reasonable way to regulate public affairs. Without that support, every form of legal protection will sooner or later be undermined, restricted or reduced. The eagerness of the law enforcement authorities to maintain protection will show alarming weaknesses long before.

From what I know of Swedish and also European preservation services, they have generally been working with the dual strategy. The arguments for strong and effective legal protection have gone hand in hand with efforts to create opinion and greater awareness. If we concentrate on the latter efforts, one can say that they have followed two different main lines or paths in recent times. We can call them the knowledge path and the anchor path.

There are of course other ideas of argumentation too, for example as a source of national pride. But as I have to limit myself, I leave that aside.

Two types of arguments for preservation:

- intellectual curiosity
- anchorage in history

The knowledge path starts from the archaeologist's own fascination with the opportunity to know the history and the communities that created the archaeological remains.

Generations of archaeologists have been captivated by the opportunity to look into a more or less unknown past and with the scientific methods as tools reveal the secrets of history. Later on they have had this as a starting point for professional activities in the heritage management authorities.

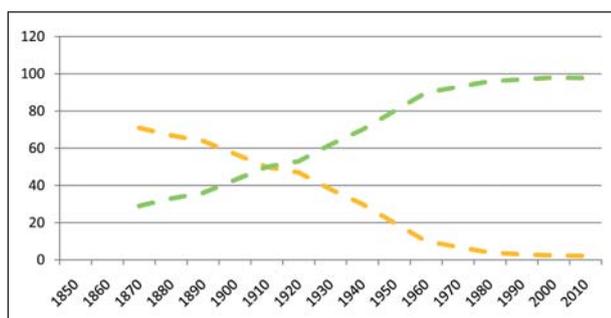
They – or we – have put great effort into inspiring, informing and involving the public in the – in our own eyes – fascinating exploration of history. The underlying idea has been that a historical interest amongst the general public would, so to speak, spill over into a wish to preserve and protect the sites and other remains. The public would copy the scientists' road to dedication.

But heritage management has probably always wanted to supplement this engagement based on intellectual curiosity with a more emotional image. We have never imagined that the pure concern for scientific knowledge could provide sufficient justification for the protection measures. Therefore we have argued that the archaeological remains – together with the other built and cultivated heritage – can give the individual a sense of context and anchorage in society. This is what I call the anchorage line.

In short, heritage management authorities have – usually by implication – argued that the archaeological heritage can work in opposition to the ailments of the modern societies that have variously been called alienation (Hegel, Marx), the loss of *Gemeinschaft* (Ferdinand Tönnies), Anomie (Durkheim) or *Verzauberung* – “de-enchantment”, as the German word of Max Weber should be translated. These are four different designations of the sociological observations of the mixed feelings of satisfaction and discomfort which seem to accompany every new step in the process of modernization.

The modernization of the nineteenth and twentieth centuries has meant, overall, that Europe's citizens have reached increasingly higher material standards. But this satisfaction with progress and the blessings of modernization is tempered by a feeling that something important at the same time has been lost. This has taken place when we have left the traditional way of life and the old shapes of society behind us.

This is not only a sociological observation. Many believe – and I am among them – that this is a problem which has marked both twentieth-century art and the political ideologies and their agendas. There is no room here to develop this theme further. But I think that when we in the heritage authorities argue for the importance of having a presence in cultural heritage, we actually print a recipe for an antidote against modernity, a dose of *Gemeinschaft* against sensations of disgust, alienation and loss.



Today, we meet response in many social groups for both of the given paths, both the knowledge line and the anchorage line. But still, we have to admit that neither the one nor the other approach is working as properly as would be desirable. Could it be that they both are about to become antiquated? I shall try to discuss this matter. I'll also try to examine what tomorrow's justification for the archaeological remains and sites – or the archaeological heritage – might look like.

Concepts of time in modern traditional societies

We can begin by investigating the background to today's archaeological science and the authorities concerned with heritage management. Very briefly, we can say that these phenomena themselves are outflows or fruits of modernization during the nineteenth and the twentieth centuries.

A key concept for understanding the nature of modernization is *secularization*. This is the story of the dethronement of the almost total power over people's senses, spiritual life and worldview that the Church and the Christian religion possessed in traditional society. The Church and religion have since then been given an increasingly subordinate position in relation to other, secular authorities. Modern political power derives its legitimacy from the people's mandate instead of from God's decrees. The scientific world-image has replaced the religious world-image. Archaeology is included among these image-creating sciences.

Secularization is commonly described as a companion to three other phenomena behind the development of modern societies. Firstly the prevalence of *general literacy*, which is the same as the renewal and democratization of the Enlightenment, secondly *industrialization* and thirdly *urbanization*. These phenomena are closely linked to each other.

I will show you a graph that depicts the modernization process in Sweden and its dating. It shows how the proportion of industrial workers, along with those working in commerce and services during the nineteenth and the twentieth century grew steadily and began to predominate over those who were occupied in agriculture. We can also see how the population settled in cities and urban areas in a second wave, and came to dominate over those who still lived in rural areas (Figures 5.1–5.2).

Essentially the same pattern holds for all European countries. The differences lie in the starting points of the wave movements. In the UK (1780) and France (1825), for example, the entry points are earlier than in Sweden, while in Eastern Europe (Russia 1890) they are a little later. But other than that, it is the same picture.

Figure 5.1: The proportions of industrial workers along with those working in commerce and services (green line), and occupied in agriculture (yellow line) in Sweden during the nineteenth and the twentieth centuries. Source: Diagram constructed by the author on the basis of data from Statistics Sweden.

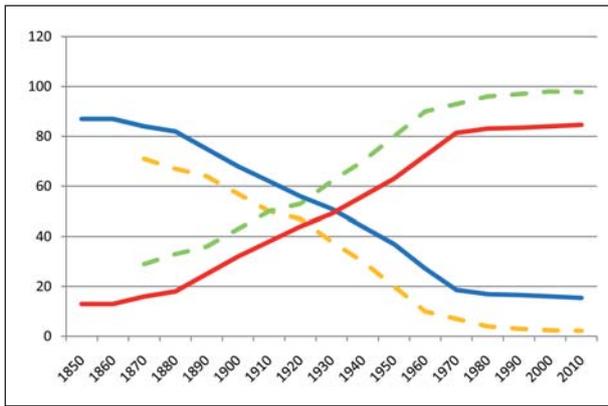


Figure 5.2: As fig. 1, but supplemented with the corresponding graphs showing the parts of the Swedish population living in rural (blue line) and urban areas (dark red line). Source: Diagram constructed by the author on the basis of data from Statistics Sweden.

Through these waveforms the conditions of people's daily lives changed fundamentally.

They (or we) had to earn their living in a totally new way. They had to organize their social relationships in a whole new way. They (or we) went to live in environments that were organized in a completely different way than in the rural communities. And – as a consequence – they also began to perceive the world in quite a new and different way.

The very concept of *culture* is interesting in the context of secularization. The original connection between the concept of culture and farming, i.e. the obvious relation between culture and agriculture, is often stressed. More rarely the link to the religious sphere – or the origin in it – is stressed. But the idea of what we now call *culture* can be derived from religious cult. I would even go so far as to say that traditional society – pre-modern society – is averse to the idea of a culture that is not enrolled in, or governed by the religious world-image. When the idea of a culture free from, or outside, the idea of religious cult, emerges, this is in itself an important expression of the process of secularization.

This development is not as old as one might think. We return to the graphs illustrating modernization.

I now complement the graphs with a markup of dates for the inauguration of state cultural institutions in Sweden and its capital city of Stockholm. These are the National Theatre, the Opera House, the National Library and National Archives, as well as several museums (Figures 5.3–5.4).

This new institutions should be perceived as manifestations in the cityscape of the new idea of a culture that exists in its own right, outside religion and cult. From a general viewpoint, these new cultural and secular institutions are replacing the old religious institutions. We can call them secular shrines. They become more and more numerous during the twentieth century, while the last church in Stockholm city centre was dedicated in 1923.

The modern idea of (a secular) culture is closely connected to a new conception of *history*. In the traditional world-view of Christianity, history had a starting point, the Foundation, which was not very far away. It was agreed to have taken place about four thousand years BC. The history also had an end, Judgement Day, which was expected to occur approximately two thousand years AD. The history was so to speak, already known right from the start to the end. Its core consisted of biblical stories. Pre-modern historiography was therefore not about exploring history in the sense of our time, but rather about inserting other stories, for example various chronicles, into the Bible's half-mythical, half-real chronology.

With modernity, and with the influence of science, the new idea of history as an *open chronology* arose. History was changed from primarily having been *known* to being mainly *unknown*. We ended up knowing less about the beginning and absolutely nothing about the

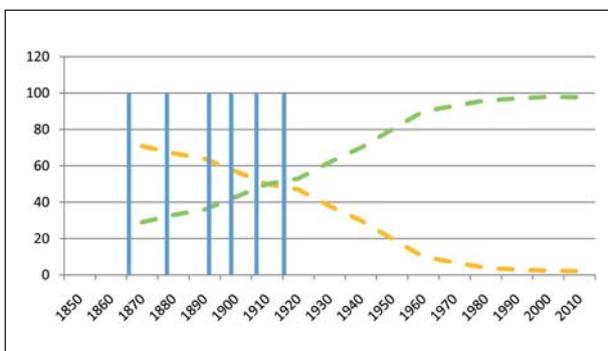


Figure 5.3: As fig. 1, but supplemented with lines marking the years for inaugurations of state cultural institutions in Sweden and its capital city of Stockholm – the National Theatre, the Opera House, the National Library and National A, and several museums. Source: Data from Statistics Sweden, diagram composed by the author.

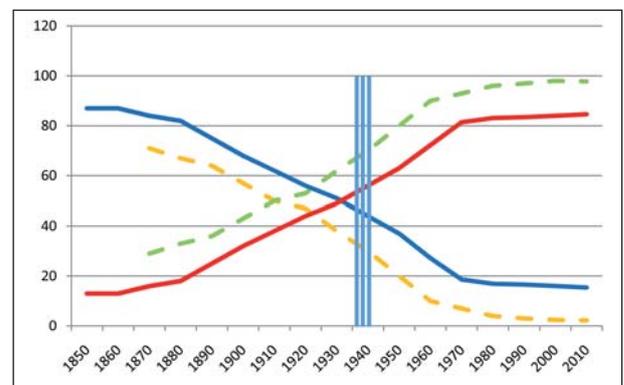


Figure 5.4: As fig. 2, but supplemented with lines marking the years for the inauguration of the new state cultural institutions – museums – in Stockholm during the 1930s. Diagram constructed by the author on the basis of data from Statistics Sweden.

end. This development can be followed from the early nineteenth century, when eighteenth-century natural philosophy was turned into the new century's geology and biology. The new scientists could draw new conclusions about the Earth and the long history of universe. They could tell that creation had not emerged in finished form, and that it instead must be regarded as the result of an evolutionary process. Darwin's *The Origin of Species*, published in 1859, is a milestone in this development, but can just as easily be seen as a confirmation of ideas that had been developed over three or four decades.

When the idea of evolution came to shape the perception of Nature, it did not take long before the same approach was transferred to the cultural field. This creates the picture of history as a *course of changing or transforming events*, that is, one starts to see significant differences between modern society and previous times. Sciences specializing in interpreting the progress of cultural evolution developed. Archaeology was one of them. Archaeology, in my opinion, essentially deals with trying to reinterpret data about artefacts in terms of cultural change.

In the biological context, it was long unclear how evolution really took place. A fully comprehensive answer to this question has hardly been given even today. But in the new cultural field the question seemed to be easier – human culture gradually changed with history and passed from generation to generation with minor or major changes.

In this way the idea of *the cultural heritage* was born during the latter part of the nineteenth century. It is based, I think, on the conception of history as an evolutionary process. The concept of cultural heritage makes no sense in a static, non-evolutionary society. It is only in relation to a society that is changing that cultural heritage becomes valuable. The reason is that heritage contains something different from current society. Cultural heritage obtains its value as a form of counterbalance to change.

To illustrate the difference between traditional society's idea of history and the modern evolutionary approach, we can look at two examples of traditional "Dalecarlian paintings". These are wall paintings or tapestries made by local artists in the province of Dalarna, in the context of a popular tradition that extends from the end of the eighteenth century to the end of the nineteenth century. The paintings were adornments of peasant homes put up primarily for celebrations (Figures 5.5–5.6).

The motifs are almost always drawn from the Bible. Here we see vineyard workers according to Matthew chapter 20. Another picture shows the adoration of the magi. As you can see, the biblical figures are dressed in nineteenth-century costumes. This is not because the artists or their clients could not imagine that people had other clothes in Palestine at the time of Christ's birth, or that they lacked information about this relationship. No, as I understand it, this practice manner reflects the idea of history in pre-modern society. This is history without evolution.



Figure 5.5: An example of a so called Dalecarlia-painting. The worship of the three kings (1827). By Back Erik Andersson (1778–1847) from the village Leksand. Foto Pär K Olsson, detail. ©Dalarnas Försäkringsbolags Kulturstiftelse/Dalarnas museum.

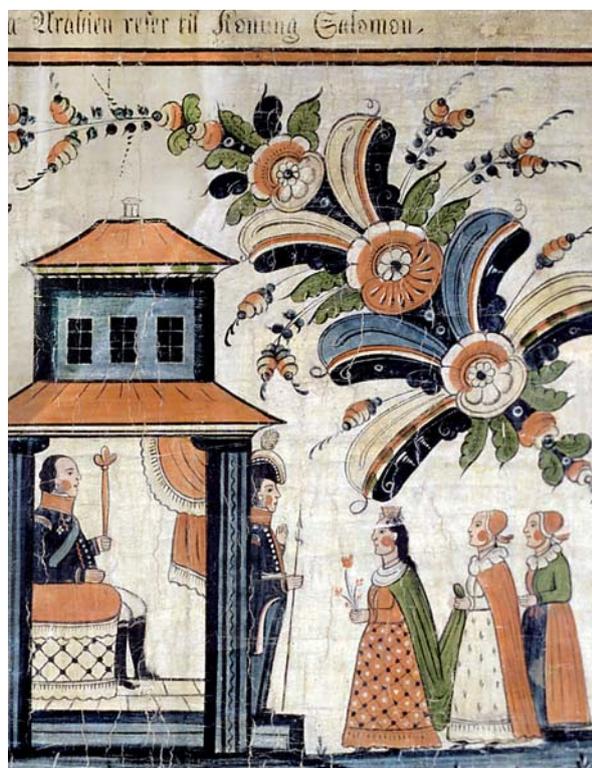


Figure 5.6: Example of a Dalecarlian painting. The Queen of the rich Arabia visits King Solomon, by Kers Erik Jönsson (1802–1851) from the village of Leksand. Photo: K. G. Svensson (detail). ©Dalarnas Museum.

In this way the two main lines of approach to the archaeological heritage, initially pointed out above, are established. On the one hand, the intellectual curiosity about the unknown antiquity and the unknown history, on the other hand, the notion of a cultural heritage as a factor that creates context and continuity in a changing society. The given character is in many ways a replacement for the old world-view. In the traditional Christian world-view, man had his fixed place in life through God's plan for the world (from creation to doomsday). In the world-view of modernity, he can at best find his place as a link in humanity's cultural journey from the Stone Age to ... well, to what? Where are we actually going?

A changing world

I have in this way tried to remind you that the things we tend to perceive as the obvious foundation of our activities are, in fact, rather young. They are not much more than one and a half centuries old. This goes for the notion of a culture outside of the frame of religion. This also goes for the notion of an open history and the related idea of a cultural heritage. The usefulness of the reminder is that we understand that everything that has a beginning also has an end. So the next question is: when does that come? And the answer is: it's already here – or at least, we can already see the clear signs of a shift.

Of course, the development has gone further since the nineteenth- and twentieth-century industrialization and urbanization. We have entered the post-industrial society, often also called the service society. This development can be illustrated, with Sweden as example, in the next graph (Figure 5.7).

This one shows the growth of the proportion of people employed in services and white-collar jobs on the Swedish labour market. As a consequence we can see a decline in the share employed in industry and agriculture. If we measure from the shift to a new majority on the labour market, we can say that Sweden entered post-industrialized society in 1968, the year of the student revolutions in Paris and elsewhere in Europe.

We can also see that the new post-industrial society is accompanied by new cultural institutions. We have a new national archive, a national institute for film production and institutes for public-service radio and television. I interpret these as an expression of the establishment of new ideas about culture. The ones that prevailed during the industrial era are being replaced by other ways of thinking, for example about culture (Figure 5.8).

Figure 5.8: As fig. 7, but supplemented with lines marking the years for the inauguration of new state cultural institutions – linked to the shift to the post-industrial society. Diagram constructed by the author on the basis of data from Statistics Sweden.

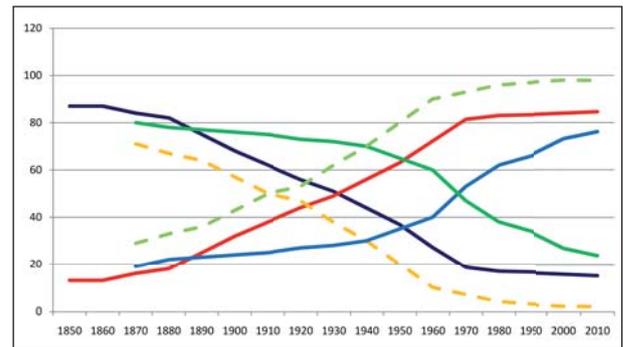
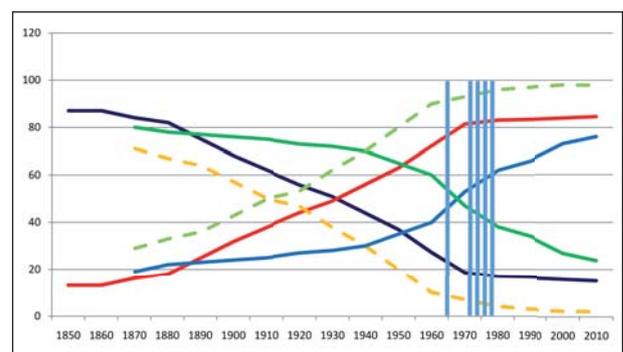


Figure 5.7: As fig. 2, but supplemented with graphs showing the proportion of people employed in services and officials (light blue line) and in industry and agriculture on the Swedish labour market (green line). Diagram constructed by the author, based on data from Statistics Sweden.

In order to understand the character of the new evolving world-view we can use the World Values Surveys. Perhaps some of you are familiar with them. The surveys have been carried out in various rounds since the 1980s. The aim has been to collect data through systematic interviews about cultural values in a broad sense in different countries and to compare them. The project started as a joint European research venture but is now worldwide. About 90 countries are involved.

According to the project's own presentation the World Values Surveys were designed to measure all major areas of human concern, from religion to politics to economic and social life. It turns out that two dimensions dominate the picture: (1) Traditional vs. Secular-rational values and (2) Survival vs. Self-expression values. These two dimensions explain more than 70 per cent of the cross-cultural variance on scores of more specific values.

The dimension of Traditional/Secular-rational values reflects the contrast between societies in which religion is very important and those in which it is not. A wide range of other orientations are closely linked to this dimension. Societies near the traditional pole emphasize the importance of parent-child ties and deference to authority, along with absolute standards and traditional family values. They reject divorce, abortion, euthanasia, and suicide. These societies have



high levels of national pride, and a nationalistic outlook. Societies with secular-rational values have the opposite preferences on all of these topics.

The second major dimension of cross-cultural variation is linked with the transition from industrial society to post-industrial societies, which brings a polarization between Survival and Self-expression values. The new wealth that has been accumulated in advanced societies during the past generation means that an unprecedented share of the population has grown up taking survival for granted. Thus, priorities have shifted from an emphasis on economic and physical security above all, towards an increasing emphasis on subjective well-being, self-expression and quality of life.

The project has compiled a World Values map. This shows that the populations of countries within the same cultural circles tend to have similar values. In the combination of the geographical and chronological perspective, the surveys shows that the geo-regions tend to remain constant and keep together over the different surveys. But they are also moving in such a way that they all follow the same direction over the value map. As has already been mentioned, this means that the secular-rational values are gaining ground at the expense of the traditional (Figure 5.9).

The second wave means that Self-Expression values are gaining ground at the expense of survival values. It corresponds roughly to the way that the economies of countries are beginning to be dominated by service industries.

But these values also create an interesting distance in relation to the typical rational-secular values. As stated earlier, in the twentieth century the latter represented the emancipation from traditional authorities – Church, kingship and the authority of the old aristocracy. But secularization did not mean just the loss of these authorities. It also denoted the rise of the new secular authorities. Examples of these are the political parties,

trade union movements and other organizations and companies with high demands on the loyalty of their members or employees. I think even science should be classified as one such authority. The modern strivings for self-expression tend to go against even that type of authority.

There is much to indicate that the concept of cultural heritage as it is presented in museums and by cultural heritage authorities is relatively close related to the secular authorities. The concept of cultural heritage has grown up, so to speak, in the protection of the secular authorities. The interpretation of cultural heritage has been largely controlled and inspired by the scientific academics – among them the professional archaeologists.

If we have the experience that people's engagement in cultural heritage leaves something to be desired, this may be because we tend to interpret it in terms closely linked to the secular ideas of culture which actually had their boom in the twentieth century – and which we now are leaving behind us.

In the European countries we have left a traditional society which recognized culture in terms of the religious world-view. Perhaps we are now also leaving the secular-rationalistic society which – as far as I can see – has interpreted History (and Culture) very much through an approach mainly based on the concept of cultural evolution. It is within this world-view that today's ideas of cultural heritage have been chiselled out. Is it possible that these concepts are about to shift? And, if so, in what way will the shift go?

Of course I cannot give you a precise answer. On the contrary, there are trends that are pointing in different directions. I shall try just to touch on this discussion (Figure 5.10).

One interesting fact is that when self-expression values begin to gain ground in societies, then the interest of the public in culture expands as well. The next picture displays on the X axis how European countries themselves are ranked with respect to the spread of self-expression values according to the World Values Surveys. The Y axis shows the corresponding rankings in terms of population, with higher cultural consumption in the form of visiting theatre, music-making, reading books, etc. These data I downloaded from a survey carried out in 2007, published by the EU's Statistical Office. We can see that there is a high correlation between the two phenomena.

But this trend also seems to tie in with a tendency that the concept of culture is interpreted in an increasingly narrower sense. According to the EU study, a majority of Europeans see culture as a concept that is essentially synonymous with expressions of fine arts. There are regional differences stemming from different regional historical traditions in the north, south, east and west of Europe, but in any case for the northern (Scandinavian)

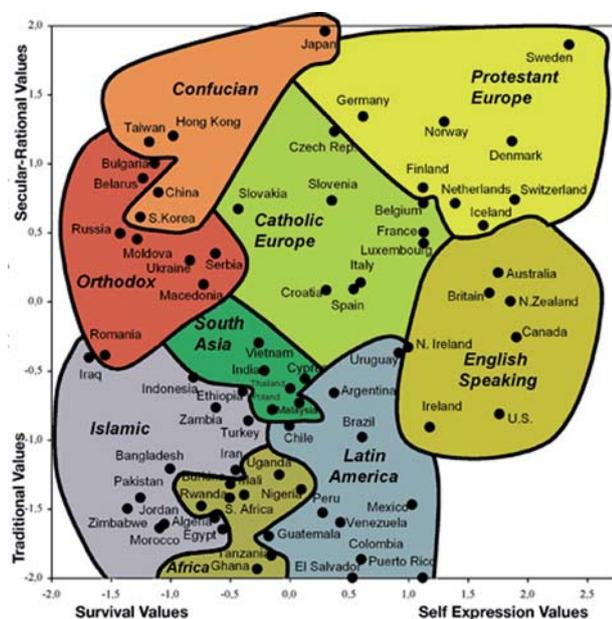


Figure 5.9: World Values map. Source: www.worldvaluesurvey.org.

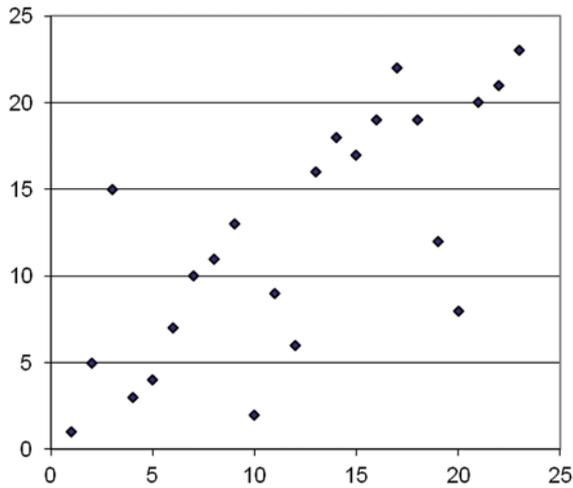


Figure 5.10: The correlation between rankings of European countries with respect to the spread of self-expression values according to the World Values surveys (X-axis) and the corresponding rankings in terms of population with a higher cultural consumption in the form of theatre, music-making, reading books, etc. (Y-axis). Source: Report from the Swedish Commission on Cultural Policy, *Betänkande av kulturutredningen* (SOU 2009:16, part I, p. 295). Diagram constructed by the author on the basis of data from Welzel and Deutsch 2007, p. 244 and the European Commission report *European Cultural Values*, 2007.

region, it seems obvious that *culture* in the public consciousness in the course of the twentieth century has come to be perceived in a more specific sense. What we call the varieties of the anthropological concept of culture have all lost ground in relation to concepts which more specifically link culture to the concept of fine arts.

Finally, a marked tendency may be noted, that culture in the political and public discussion is often mentioned and debated in terms indicating that it is increasingly perceived as a kind of *being* in itself, with its own will and capacity for action. This is evident for not at least in the rhetoric figures of the Eurocratic language. Culture is mentioned in the definite singular form. Expressions such as that *culture is a force*, or *culture has its own value* have become increasingly common. It seems as if we can see a concept of culture heading in a direction which is again reminiscent of the religious sphere. Culture is associated with higher spiritual values in general. Culture seems to be on the way to becoming a part of what is known as the polytheistic religions of the post-secular society. Or perhaps we should use the world pseudo-religiosity. It looks as if this is a form of religiosity that is particularly attractive to well-educated academics.

Its background could be that people's spiritual needs can no longer be accommodated in traditional religious expressions. Therefore they look and find other objects for religious projections. We can see quite similar projections, for example, towards Nature. The other day I read an article by a professor of theology who claimed that the Forest has become a new religion in Sweden. And as I said, it seems as if culture is affected by similar trends.

There is, I believe, also a tendency for this type of cultural interest to be connected to concrete artefacts. Interest in culture is linked to objects of fine art, which in turn are perceived to represent high symbolic values. Fine-art objects are functions which are reminiscent of the insignia of religious cult.

But there are also tendencies in a completely opposite direction, that history is attracting a new kind of interest. We find it in popular scientific contexts, within the

framework of amateur archaeological activities and in many other settings. I will characterize it as a form of passion, or an interest, among individual to take part in the activity of interpreting history. It is natural to link this tendency towards modern self-expression values as well.

It is as if people are no longer so willing just to follow the academic professional narrative of what the archaeological remains have to tell. It seems as the self-conscious members of society want to develop their own understanding of what I would call *agreement about the meaning of history*.

What could such agreements be about? It is hardly a question of a total volte-face in relation to today's prevailing view of history. But perhaps we can get an idea of the direction when we are mindful of the degree to which the twentieth-century view of history was shaped by the idea of cultural evolution, understood in a broad sense. What happens if we try to downplay this, or perhaps even to imagine a History that is not dominated by the underlying thoughts of History's supposed direction, from low to high, or from the simple to the more complex.

By this I do not mean at all to question the idea of biological evolution. But I am in serious doubt about the notion of *cultural* evolution. My suspicion derives from the development of archaeology in recent decades. When I studied archaeology in the 1970s the idea of different archaeological cultures was still relatively unproblematic. An archaeological culture could at that time still be translated into a set of artefacts mirroring the supposed culture. But since then the archaeological concept of culture has become just more and more difficult to manage. Today, you can hardly find a qualified thesis that does not in some way reflect the difficulties of relating to the established archaeological concepts of culture.

The conclusion is therefore that the concept of *cultural evolution* basically becomes meaningless if – and when – the evolutionary idea could no longer be related to a consistent concept of culture. This is – I suspect – definitely not an interdisciplinary problem. It is an expression of the Zeitgeist.

Twenty-first-century European societies are characterized by profound changes. Migratory flows are heavy. A new wave of urbanization has taken place just during the last decade. The largest cities and most dynamic regions have started to grow faster and faster

at the expense of others. Working life is transformed at an increasing pace. It touches more and more people. The days when you could get one education and then have the same profession through a whole working life are long since gone. Perhaps this new condition responds to a social need to perceive the story in a different way than hitherto. Maybe it is a condition for the individual that he himself has been able to shape the image of history, that he wants the feeling of being involved in history.

When merging these two directions – the pseudo-religious and the tendency to comprehend history in a new way – I see connections with the two traditional forms of interest in the archaeological heritage, the ones I called the knowledge line and the anchorage line. In current forms it looks as if they are about to lose their relevance. They are about to be rewritten and mixed with the new ways of looking at the world. These new ways cannot be called either bad or good. They are just different from what we are used to.

Consequences for the maintenance of archaeological heritage

What are the implications for the authorities responsible for the archaeological heritage? There is of course much to say about this subject. But I will limit some concluding comments to the theme of the conference. I here repeat my introductory note that measures to strengthen the legal protection against looting and destruction should not be seen in any opposition to the efforts of advocacy, or otherwise improving the understanding of the archaeological heritage among the public. However, we certainly share with - in all the European countries the problem of expanding so-called everyday crime that the police and judiciary make every effort to keep in check. Formally strengthened legal protection and tougher penalties for plunder and destruction can certainly be justified, but generally speaking it will likely have quite a small real effect if law enforcement authorities do not at the same time understand that there is pressure from the public to have offences prosecuted. Otherwise the crimes that are reported will be put in the tray containing cases to be investigated in the future – or not at all.

I also believe that the modern tendency of connecting strong cultural symbol values with fine art, unfortunately, might lead to increased looting

and illegal treasure hunting. This business operates in relation to the international market for arts and antiquities and its more dubious zones. Increasing demand in this market will lead to increasing risk of looting.

The key question is therefore whether archaeological remains will become part of the new agreements on the meaning of History which I think we are about to reach. Citizens will probably ask for other aspects of the story than those the twentieth-century scientists used to stress. It is perhaps not so much about rechecking the facts, but more a need to be able to understand *the meaning* of the story in a way that relates to citizens' own lives. Citizens want to be involved in that reinterpretation themselves. It is not enough just to listen to scholars and experts.

The time has likely passed when the antiquarian authorities and museums could regard it as their task to bring an awareness of the significance and value of the cultural heritage to the public just by *telling* them about history. The programme associated with the secular authorities' ways of working will be less and less relevant. Now comes the task of ensuring that the new agreements about history we are about to reach will also include the archaeological remains and not leave them aside. As I see it, this requires a new form of *communication* about history. Perhaps we should talk about conducting negotiations on history with the citizens of Europe.

When we do so, the interest in protecting the archaeological heritage will grow. This is a challenge which to me seems extremely stimulating.

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Website

www.worldvaluesurvey.org.

6 | Excavating archaeology in a globalizing world

Ubaldu de Vries

Abstract: The world is in a state of flux where what seems to speak for itself is no longer so. We turn to the state for guidance and demand that it takes action to preserve a sense of security. Criminal law is an instrument to which one easily turns to “achieve” this sense of security. Considering archaeological heritage, I sense a similar demand. Taking the Valetta Convention as a guiding line I wish to explore (i) the worth and function of preserving archaeological objects; (ii) the role of the state; (iii) legal instruments to regulate archaeology, physical heritage and excavation; and (iv) alternative ways of thinking that could be explored to redefine the first aspect.

Introduction

The world is in a state of flux. That which seems to speak for itself is no longer so: all is up for grabs; everything demands reconsideration. Old certainties have lost their validity and we have to get to grips with new uncertainties. Indeed, we live in a state of (new) uncertainty (Francot and De Vries 2008). This state of uncertainty makes us anxious, nervous, insecure. This existential state also relates to how we perceive traditional institutions such as the state. We turn to the state for guidance and demand that it takes action to preserve a sense of security. Criminal law, or penal law, is an instrument to which one easily turns to “achieve” this sense of security (Boutellier 2005). Indeed, as of late criminal law is used as an instrument to effect change and manipulate behaviour repressively (rather than using it as a last-resort measure). The measures pertaining to fighting terrorist threats are illustrative, but other measures such as camera surveillance, area restrictions, stop-and-search actions in city centres and elsewhere are also illustrations of the instrumental repressive use of criminal law. But does it work? What do we gain? What do we lose?

Considering the protection of the archaeological heritage and its exploration, there seems to be a similar demand: regulation through a variety of legal instruments to preserve the heritage as well as to preserve, or so it seems, the monopoly on heritage preservation. So the solution is easy: repressive action through criminalization, effected by proper organizational backup by inspectors, police and administration. It will be sold well, politically, considering the goal: preservation of the physical past combined with the need to re-establish national identities throughout Europe.

The turn to law often seems to happen mindlessly and blindly, where *the law* is considered as the elixir of social cures. I wish to break through this assumption and, indeed, this is not necessarily a radical position as we are aware, more and more, of the shortcomings of law as an instrument of social change and stability (Luhmann 2004). As a legal scholar, I seek to bridge the gap between law and society or, in more abstract terms, between legal theory and social theory. The

reason why is actually quite simple and is based upon the following assumption: to understand law, its function and shortcomings, etc., is to understand the environment of law, i.e. society, as law in one way or another fulfils a particular function in respect of society. Understanding society can take place from a variety of perspectives, such as sociology or philosophy. I choose the perspective of social theory, which, to me, describes society, its structures and developments in a convincing way. It allows me to construct a social theoretical framework which can give meaning to developments and events that confront law (existing law) with questions in order to analyse whether law can answer these questions and, if not, why that is so. The work of a variety of thinkers on what is now termed the theory of reflexive modernization has allowed me to do just that. Authors such as Ulrich Beck (e.g. 1992, 2006) are representative of this theory, as I consider other authors to be, such as Zygmunt Bauman (1993, 2000), Anthony Giddens (1990), Manuel Castells (2010), even Slavoj Žižek (2009) and many more. All these thinkers point to the problems of modernity and how we must think fundamentally differently – a *Gestaltschwitz* as it were – in order to address these problems, which are of a structural nature. It is these thinkers that inspire and inform me about how to think about law, its role, function and limitations.

In this paper, following the Paris lecture in March 2012, and its discussion, I want to do two things. Based on a cursory description of what I think law is and does, I want to say something about the extent to which it can serve the interests of archaeology, as it is currently under threat from a variety of sources: illegal or what is termed “black” archaeology and subversion of archaeology by economic and political interests. (I must note, as a legal philosopher I have little experience with the positive law and the regulatory framework relating to archaeology. What I hope to do is to show the limitations of law.) Following this, by way of some concluding remarks, I focus on the role and function of archaeology in a global world, hoping to provoke a discussion on the state-centred perspective on archaeology and by implication the function of law.

Expectations, interests and law

We like to believe that law is a panacea for societal problems. But, as the descriptor to the theme of this symposium rightly points out, “laws and conventions in themselves do not solve any problems” but they may function as a “societal statement”. To a large degree I would support this statement. Let’s start at the beginning: what is law and what does it serve?

We like to live in a state of order rather than in a state of chaos. Order provides a degree of certainty and security, and self-realized order provides freedom too. Think of how you organize your music collection, for instance, and the variety of options new technology has offered. So, when using an mp3 apparatus (like an iPhone) it allows you to create order in your music collection (or book or photo collection for that matter) in many different ways, simultaneously. And, with order comes a sense of certainty, knowing where to find what, and not be disappointed or surprised.

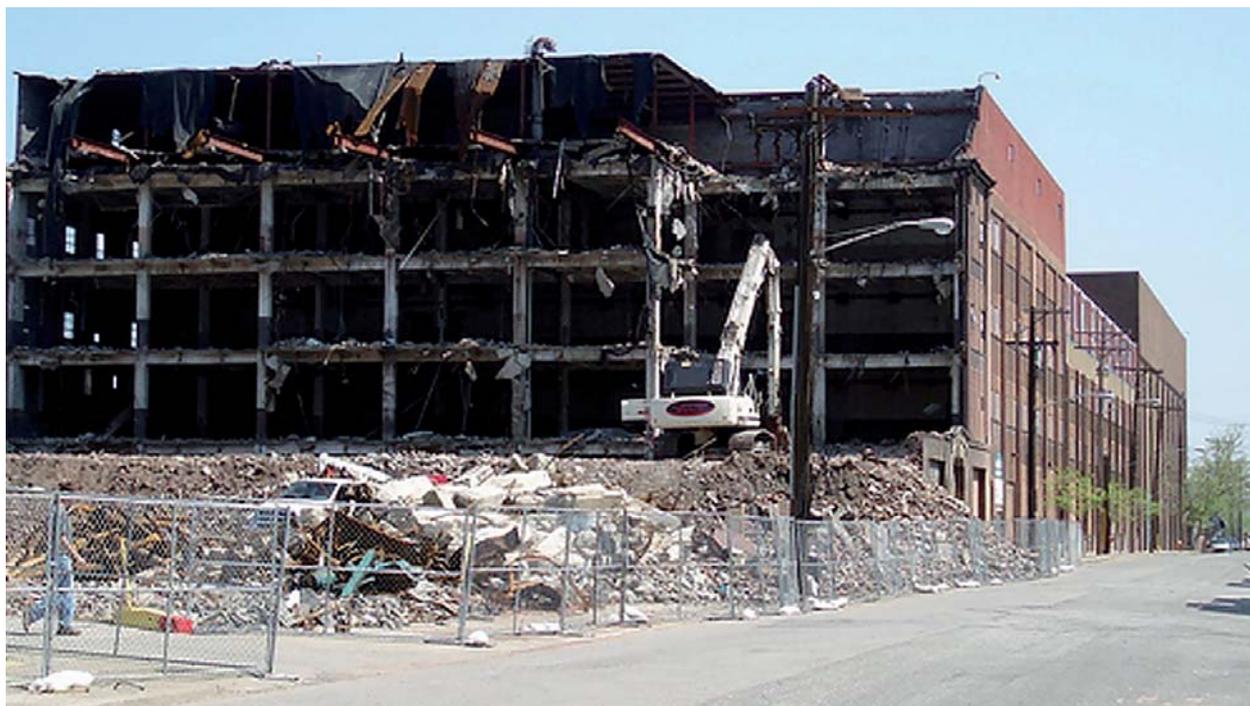
But this type of order, within the individual sphere, is different from the social sphere. The important question is how does *social* order come about? Does it come about through law, ordering the collection of the social? We often like to think it does; without law, chaos. But, with respect, I would disagree. Law is not a *necessary* condition for order to exist. This is not to say that our modern society can do without law; we would be at a loss, obviously. But this has more to do with the function we ascribe to law and how we have come to rely upon it, than law itself.

The establishment of social order can best be explained by reference to what the social entails. And this starts with the assumption that we, as individuals, are both

individual and social. And this duality provokes a constant tension. How does this tension come about? It would be obvious to state that the social entails human individuals. Indeed, humans are a necessary condition for the social to exist, but not a sufficient condition. The social is rather what human individuals are about in relation to each other, and this is best explained through communication, as social interaction exists by virtue of communication (Luhmann 2004). But what do we communicate or, rather, what should we communicate?

As individuals we have interests; ideas about life which we would like to fulfil. In addition we have expectations about how to achieve or materialize these interests. These expectations relate to others with whom we live and to the community within which we live. What do we expect from them, from it? And what can they, it, expect from me? Living together entails knowing what we can expect from each other. We communicate our expectations and interests (about our lives, about the other and vis-à-vis the collective) and the trick is to coordinate these communications about interests and expectations, with the aim of fruitful cooperation. The coordination of expectations and interests may lead to know what we have in common and where we differ, culminating in agreements about social interaction. When needed, these agreements can be consolidated into explicit rules. Some of these rules we can call law, particularly those rules that enjoy what we can term an organizational backup, in terms of application and enforcement. So, law, we can argue, follows the social and can be defined as the “consolidation of agreements about social interaction in a particular shape and form, enjoying an organizational backup of enforcement and application”.

Figure 6.1: Excavating modern ruins. Attribution: Eddy-S, Demolition at Rockwell <http://www.flickr.com/photos/pointshoot/2512097851/>



Modern law

The above is an analysis of the idea of law in the abstract. When we seek to employ a more empirical notion of law we need to contextualize law and, more importantly, contextualize the nature of social communication. Doing that, in a summary way, is, first, to state that we take Europe as the focus of analysis and, second, to state that Europe represents the idea of a modern society, typified by a number of meta-interests and meta-expectations. What are these? First of all, Europe continues to consist of a collection of nation states. Indeed, generally, we like to view the world as an order structured by nation states, along the axis national/international (Beck 2006). The nation state is, for all intents and purposes, our point of reference, serving as a main feature of identity provision. Nevertheless, the state, the nation are social constructions and not naturally given.

Modern society coincides with the nation state; we speak of Dutch society, German society, Turkish society, etc. In terms of the coordination of interests and expectations, the aim of fruitful cooperation is geared towards cooperation for mutual benefit, as described, for example by John Rawls (1973). To be more concrete, Western states and societies are geared towards the production of wealth aiming at a proper distribution of this wealth. Fundamental organizing principles that underscore this idea of cooperation for mutual benefit are encapsulated within the modern ideals of freedom, equality and solidarity. These ideals take shape, or are made more concrete, through notions of democracy, the rule of law, market economy, etc. (see also later, below). Modern (today's existing) law itself consists of those rules with which these principles and notions take effect. Law encapsulates, among other things, the way in which political power is legitimated, prescribing how power can be exercised and controlled (public law); law encapsulates the way in which the market can function, prescribing the establishment of individual property and the exchange of property rights through contracts (private law); law encapsulates the manner in which we can sanction non-conformist behaviour, prescribing how the state can intervene repressively, for the benefit of the social, the collective (criminal law). (Figure 6.1)

On the whole, we associate modern law with those rules emanating from the state, serving national societies, their aims and goals. Law is a means to distribute responsibilities (demarcating legal responsibility from, for example, moral responsibility) through agreement, democratically structured. It enjoys an organizational backup that sees to the execution, adjudication and the application of the rules. In this sense law can give concrete meaning to the way we seek to shape society. Indeed, as rightly pointed out, law is to a certain extent a "social statement"; a means to express how we think about social issues and the responsibilities attached to them. But this is not without its problems.

The threats to archaeological heritage

The theme of this year's symposium addressed the issue of how to combat "acts of plunder and vandalism

affecting European's archaeological heritage". What are appropriate measures? It requires first exploring what we understand as acts of plunder and looting. In the broadest sense, it could refer to any act that threatens archaeological heritage. I follow the taxonomy as set out in the conference booklet to differentiate these acts. We can distinguish between, roughly speaking, three threats, that each demand a different response, or so it seems.

The first threat is the criminal threat. What is meant here, are those acts that consists of plunder and looting proper. These acts refer to the deliberate distortion of archaeological sites with the aim of getting hold of archaeological finds with ulterior aims: selling them on the (illegal) market, to name but one. The other two threats refer to the subordination of archaeological interests to other, not necessarily illegal, interests. The second threat, then, is political in nature and refers to what is of archaeological value. To be sure, what is of value archaeologically, deserving protection and promotion, is a political decision (considering the financing of the archaeological heritage) and this in itself constitutes a threat. In its pathway, there is another, third threat, which is economic in nature. This threat refers to hazards relating to property development, land and water exploitation and cultural "deforestation". It is clear that the latter two threats are intertwined. Indeed, many development projects are preceded by political decisions (often at the local and regional level) in terms of planning permits and the like, which "normalize" development at the cost of archaeology. (In addition, development projects may deliberately breach planning rules in respect of archaeological interests to save time and money.)

An example in the Netherlands that shows how economic interests are served at the cost of other interests, including archaeological interests is found in the so-called Crisis and Restoration Act, 2010. It is a piece of legislation that facilitates speedy planning permission procedures for all kinds of development projects, both public and private. The rationale behind the Act, as set out in its Preamble, is to allow for economic activity to continue and flourish in the face of the economic crisis. It is not that these other interests are completely disregarded; these interests must be included in weighing the different interests but only insofar they are shown to have been included.

Before we address these threats in turn, it is informative to first set out the regulatory framework, as it exists in Europe. It allows us to gain a better understanding and insight as to how to evaluate and analyse the way we can address the threats. It is also informative about the way we think about archaeology, its role and function. The paragraph will also address certain measures elsewhere, at the international level.

The regulatory framework (in Europe)

The relevant legal framework is formulated by the European Convention on the Protection of the Archaeological Heritage, concluded in 1992 in Malta's capital Valetta (hence its colloquial name: The Valetta

Convention). To be sure, the convention was instigated through the Council of Europe (rather than the European Union). This means that its scope expands to over 45 countries, subscribers to the Council of Europe, whose main aim is to foster the European bond through the promotion of human rights, democratic principles, the rule of law, and cultural identity and diversity (Council of Europe website).

Background to the Convention

The Valetta Convention sets out the general aim of the protection of archaeological heritage and points to the responsibilities of member states in respect of that aim. Indeed, the Valetta Convention is a social statement. It consolidates and revises the previous 1969 Convention and certain other Conventions (such as those of Granada and Delphi). Its main aim is to: “protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study” (art. 1 of the Convention). Protection is geared, when we read the whole Convention, to the aforementioned threats and the protection enables, in its turn, the creation of the European collective memory, or so it seems. The Convention goes on to state in article 1 (section 3), that archaeological heritage includes “structures, constructions, groups of buildings, developed sites, moveable objects, monuments of other kinds as well as their context, whether situated on land or under water”. In doing so, it follows the Charter for the Protection and Management of the Archaeological Heritage, drafted by the International Council of Monuments and Sites (ICOMOS website).

The Convention is placed within the wider framework of European cultural heritage, against which convention it must be explained. The European Cultural Convention, signed in Paris in 1954, obliges states to take “appropriate measures to safeguard and to encourage the development of its national contribution to the common cultural heritage of Europe”. It is clear from the texts that archaeological and cultural heritage is a European interest as well as a national interest and that the normative values the Conventions express imply the realization of a common European identity, as a matter of cultural and social construction and that this deserves protection.

The focus in the revised Convention has shifted, emphasizing not only clandestine excavation (such as in the original London Convention) but instead considering large-scale construction projects as “the major threat to archaeological heritage” (Explanatory Report). This threat is due to increasing populations and higher living standards, requiring the development of large-scale infrastructural, housing and industrial projects as well as physical planning schemes such as reforestation and land consolidation.

State obligations

The Valetta Convention obliges states to institute a legal system for the general aim of preserving and protecting the archaeological heritage, making provisions for the maintenance of an inventory of its heritage and the designation of monuments and areas, the creation of archaeological reserves and mandatory

reporting of chance discoveries (article 2). In particular, member states oblige themselves to undertake action in respect of about six areas.

1. Preservation of archaeological heritage serves the function of allowing scientific study. To this end, states have procedures to authorize and supervise excavation to prevent illicit excavation and to ensure that the excavation activities take place in a scientific manner. In any event, states ensure that non-destructive methods of investigation are applied where possible, that measures are taken to protect uncovered elements, that excavation is carried out by qualified and authorized persons, and that the use of metal detectors or other equipment/processes is subject to prior authorization. (Art. 3)

2. Furthermore, for the purpose of facilitating study and the dissemination of knowledge, states undertake to make and keep up to date what is done in their respective jurisdictions, surveying, mapping and making inventories of archaeological sites, as well as to take measures to allow for the publication of summary and comprehensive studies of archaeological sites and operations. (Art. 7) States also undertake to facilitate the national and international exchange of elements of archaeological heritage for the purpose of scientific study, to promote the pooling of information about ongoing operations and to contribute to the organization of international research programmes. (Art. 8) States, finally, undertake to afford mutual technical and scientific assistance, to pool experience and exchange specialists. (Art. 12)

3. States also seek to implement measures for the physical protection of archaeological heritage. In particular, states make provisions (i) to protect areas intended to hold archaeological reserves, for example through the acquisition of such areas, (ii) to conserve and maintain heritage *in situ*, and (iii) to have appropriate storage place for archaeological remains removed from their original location. (Art. 4)

4. A big threat to archaeology is the development of land (the third threat). The Convention considers it as an economic necessity, or perhaps, as a present and future reality to which the past must submit. (Indeed, property development provides for future archaeology.) The idea, though, is that states seek to reconcile and combine these contradictory interests – to reconcile and combine requirements of archaeology and development plans. States do so by ensuring that archaeologists participate in planning policies in a structured and systematic way, all along the planning process and its execution. Furthermore, these policies must ensure well-balanced strategies for the protection, conservation and enhancement of sites of archaeological interest. These involve, among other things, the allocation of time for scientific study, the consideration of archaeological sites in environmental impact statements and the conservation *in situ* of remains when found during development work when that is feasible. (Art. 5)

5. Financing is a public concern and states undertake to arrange public financial support and to increase the material resources to rescue archaeology. The latter undertaking refers to the safeguarding of archaeological operations in big public and private development schemes by covering the costs of such operations, either through public or private funding, and to give them a place in budgets (similar to budget provisions in relation to impact statements such as the better-known environmental impact statement). (Art. 6)

6. As archaeology is meant to facilitate the construction of (cultural) identity, the Convention sees to the promotion of public awareness. Thus, states undertake to conduct educational action with the aim of promoting awareness about the value of archaeological heritage and how it is threatened, and about the importance of understanding the past. Furthermore, states promote access to important sites and encourage the public display of archaeological objects. (Art. 9. See also the contribution of Marc Drouet in this collection: "Perspectives on public awareness, participation and protection".)

7. The Convention also makes provisions for combating the illegal trade in archaeological objects, or, in the terms of the Convention, the "illicit circulation of elements of the archaeological heritage". The focus here is on sharing and pooling information among public authorities, scientific institutions and museums, about identified illicit excavations and offers of objects coming from these excavations, as well as restricting the transfer of suspected or unlawfully obtained objects, through education, information, vigilance and cooperation. In respect of museums, the convention makes a distinction between those museums that are under state control and other, private museums. Thus, states undertake steps to ensure that museums whose acquisition policy is under state control do not acquire suspected elements or objects. In respect of other museums (whose acquisition policy is not under state control), states have fewer options but to stress to those institutions the importance of not acquiring suspected elements and objects which the principles of this convention seek to protect and to convey to them the text of the Convention. (Art. 10)

Application and control

Conventions like the Valetta Convention function on the basis of voluntary cooperation among the signatory states. No provisions are made for court proceedings (and to date no reference to the Convention has been made by European courts, in particular the European Court of Human Rights). A cursory analysis of Dutch case law shows that the Convention has not been referred to in cases concerning planning permission and archaeology or in respect of illegal archaeology. This is not to say that the Convention has not been transposed into Dutch law (and other jurisdictions). On 1 September 2007, the Archaeological Monuments Care Act, 2007 came into force in the Netherlands, which amended existing legislation in the spirit of the Valetta

Convention, such as the Monument Act, 1988, and the Environmental Care Act, 1979 (STAB website).

The control of the application of the Convention is instead overseen by a committee of experts, set up by the Committee of Ministers of the Council of Europe. This committee has three main tasks. First, it reports on the situation of heritage protection in the states that are party to this Convention and on the implementation of the principles set out in this Convention. Second, it proposes measures for the implementation of the Convention, including measures to shape public opinion about the purpose of the Convention. Third, it makes recommendations to enable other states, not member to the Council of Europe, to accede to the Convention. (Art. 13)

Similar instruments elsewhere

It seems that the Valetta Convention is unique in that it is the only international treaty that seeks to preserve archaeological heritage. Although there are all kinds of instruments at the international level, facilitated through the United Nations framework, these do not have the status of (international) law. This is not to say that these instruments do not provide important guidelines and can be regarded as somehow binding to those to whom they apply. Prominent among them is the Convention Concerning the Protection of the World Cultural and Natural Heritage, under the auspices of UNESCO, which seems to focus on *existing and visible* objects still in use. Two other (non-governmental) examples are the Charter for the Protection and Management of the Archaeological Heritage (1990) and the ICOM Code of ethics for museums. Furthermore, there are various other non-governmental organizations promoting archaeology and the preservation of archaeological heritage, such as ICOMOS and ICOM as well as the World Archaeological Congress (WAC), which seeks to represent practising archaeologists, promoting interest in the past, encouraging the development of regionally based histories and fostering international academic interaction. (Why I mention it here will become clear later on.)

About combating the three threats

Member states have made provisions in each of their legal systems. It would take us me too far to go into these in detail, and some of it is touched upon elsewhere in this collection (as in the contribution of Drouet). In this section of the contribution, I seek to make some general comments about how to combat the three threats and what role law can play in these.

These general comments imply, first of all, two basic assumptions. The first assumption is that elements of archaeological heritage are no one's private property. These elements, either *in situ* or *in manu*, are considered to fall under the authority of the state for the purpose of preserving a particular heritage. This basic assumption seems unquestioned and instructive as to how the law intervenes. Another assumption is that actual regulation takes place *within* states and not *across* states. Each state is itself responsible for protecting its archaeological heritage, fulfilling, among other things, the undertakings of the Convention.

The criminal threat

The first threat – plunder and looting proper – speaks most to the imagination and is at first sight unproblematic. States have a duty to see to it that illegal excavation and related crime, such as illegal trade, is prevented. Criminal law is where we turn to, almost automatically, when it comes to addressing this threat.

These acts must be distinguished from accidental finds by accidental trespassers or amateur archaeologists. Here, finds are regulated through private or public law in respect of finders-keepers and finders' rewards. For example, the Treasure Act, 1996, of England and Wales stipulates what to do when one comes across a find that may be of archaeological value, how this is determined and who can seek a reward and under what conditions, often depending on who the landowner is and whether permission has been granted by the landowner for exploring the fields with a metal detector for example (Lincolnshire Heritage website).

The criminal acts are usually intentional and serve other purposes than contributing to archaeological heritage. Rather, these acts serve financial interests or personal interests, perhaps a private interest in history. Within the field, it is referred to as black archaeology or perhaps better: piracy archaeology. (As a side note, the term "black archaeology" may be a misnomer as the term also refers to archaeology in respect of Black heritage. This is seen when using the term as a search term in, for example, Google or Bing.) These acts happen incidentally, but more often structurally and in a well-organized way and, I suppose, serving a global market.

How to prevent these acts from happening? There are two strategies to combat this threat. It could be argued, as has been done previously (as indicated in the conference descriptor) that the increased transparency, in respect of (potential) archaeological sites, digs and finds makes it easier to break the law. The solution, then, would be less transparency, but this is in itself problematic also as it hinders professional archaeology and cuts across an important function of archaeology, which is to educate people about their heritage.

Criminal intervention

Criminal intervention is the other strategy, but it remains to be seen how effective criminal law in itself is to combat illegal manifestations of archaeology, considering the function we ascribe to criminal law. It has long been a shared assumption in Europe that criminal law was a last-resort measure to punish offenders for certain societal wrongdoings. It serves as a system of retribution to appease societal unrest. It does so in stipulating what society deems conduct that is of such a nature, trespassing upon societal expectations in such a way, that the infraction demands retributive intervention. Thus, criminal law on the one hand makes clear what type of conduct is "forbidden" and, on the other, comes into action after the event; when the conduct has taken place and the damage has been done and normality needs to be restored. The preventive capacity or function of criminal law has always been taken with a pinch of salt (and the focus

was on resocialization). Nevertheless, the last decade or so has seen a different view, a more instrumental view of the application of criminal law (Boutellier 2005). It has become a measure of social control and social conditioning, trampling, in my view, on basic rights and freedoms. What is meant here is that criminal law seeks to be applied to prevent and condition behaviour. Methods and possibilities of criminal investigation and research have been expanded, and at the local level the executive has appropriated extended powers to curtail behaviour, such as stop-and-search strategies in inner cities, camera surveillance, area restrictions, minimum sentencing, tougher sentencing, etc.

This development corresponds to a wider sense of uncertainty and insecurity that characterizes current society where we are willing, or so it seems, to give up freedom for security. This security is a false one as law is unable to guarantee it, although it comes across as a convincing story during political campaigns. What is expected then in respect of illegal archaeology? All criminal law can do is to stipulate what is considered illegal acts of archaeology and undertake action when these acts have occurred. Preventing them through criminal law is not an option, also practically, as it requires the allocation of funds and manpower: policing sites or policing streets? This is not to say we should devalue criminal law. And a proper criminal regulatory framework, accompanied by the proper executive backup is crucial to avoid the complete devastation of cultural heritage as it occurs in certain other parts of the world. The regulatory framework that exists in respect of organized crime, allowing police and prosecutors more freedom in investigating preparatory acts of looting, plunder and smuggling, is a way but also problematic, as stated above.

Globalization: towards a cosmopolitan archaeology

In addition, combating these criminal threats is problematic in another way. The criminal regulatory framework is essentially nationally orientated, whereas illegal archaeology seems to ride on the crests of the waves of globalization. How to understand this new buzzword: "globalization"? In the abstract, globalization suggests social interaction that transcends existing political boundaries, ignoring the borders of nation states, both geographically and conceptually, posing challenges to our assumptions about social life, creating new problems which existing instruments, legal and otherwise, do not yet have an answer for. One basic assumption is that we like to view the world in terms of states. We see, particularly as lawyers but I assume others do also, such as social scientists and archaeologists, a state-organized world order along the axis of the national-international. This state-centred approach is further qualified in terms of fruitful cooperation. In modern Europe, at least, this has evolved in mutual cooperation for mutual benefit, in terms of wealth production and distribution (market economy based on an increasingly radical form of capitalism), democratic power relations, the rule of law and legality (political power (properly distributed) legitimized by pre-prescribed rules), and human rights

Conclusion

Such a global world may call into question the function of archaeology and what it serves: the creation of what identity, of what heritage? And who is to determine this: states, Europe, the archaeological discipline itself? Is it to contribute to fostering a sense of belonging and if so, what belonging, what collectivity do we mean: that of the nation, the world, the region or locality or even, merely family or the autonomous self? I consider this a worthwhile question before we can turn to the instrumental function of law and how it can contribute to archaeology. Indeed, this global perspective may be of special interest to archaeology and, at the same time, it calls into question the role of professional archaeology and the interests it seeks to serve: that of the state or of another political entity (Europe), or for its own sake and, in this vein, contribute to a global or cosmopolitan archaeology. It also demands a fresh perspective on law and what interests it should serve.

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7 | Merely searching for treasures or valid interest in cultural history? Various motivations in Germany

Jonathan Scheschkewitz

Abstract: The intention of metal detectorists leads to a still existing discussion between German archaeologists. There are different opinions about how to deal with them based on different experiences but also on different legal situations. It must be borne in mind that there is no uniform law in Germany concerning the protection of cultural heritage. In this paper an overview of the different legal regulations in Germany will be given concerning the use of metal detectors, but the focus will be on the situation in Baden-Württemberg, which is still different from the other federal states of Germany.

The legal situation in Germany

To talk about the German “Legal regulations for the protection of cultural heritage” means to talk about sixteen different laws. Germany is a federal republic, which means that each federal state has its own competences in cultural fields such as schools, university and also cultural heritage. Some of the legal regulations for the protection of cultural heritage are quite similar but some of them differ a lot from each other. The different legal situations in Germany are quite problematic, as all state archaeologists are aware, especially because some of the federal states have strong laws compared to others. These quite heterogeneous preconditions for dealing with metal detectorists result in different practices. This is a general problem in German archaeology and therefore the Association of State Archaeologists of the Federal Republic of Germany (Verband der Landesarchäologen) was founded in 1949 to exchange experiences as well as to discuss problems of the preservation of archaeological monuments.

A commission on “illegal archaeology” was established back in 1978 due to the emerging use of metal detectors. In those years, distributors of these tools promoted metal detectors by pointing out the possibility to

detect archaeological objects for the first time. The legal situation was checked by the different federal state offices and the conclusions they drew were quite different. While any digging needed permission under legal regulations for the protection of cultural heritage in Baden-Württemberg and Schleswig-Holstein the responsible Hessian ministry did not see any possibility to take action against metal detectorists (Geschwinde 2008, 116–117). This leads to the legal basis of the different states and the most important articles of the different legal regulations. It must be borne in mind that, except for the “new federal states” in the east of Germany, these were all regulations which were mostly older than the phenomenon of metal detectors. For example the legal regulation in Baden-Württemberg was passed in January 1972. If you compare these laws you can find regulations which they all have in common, such as the need for an official permit for an excavation, issued by the responsible public authority (Figure 7.1). Special protection applies to “Grabungsschutzgebiete”, which means areas of prominent archaeological sites with special, much more restrictive legal protection. But these articles cannot be applied to the use of metal detectors because localizing a metal object by a metal detector is not an excavation as long as no one can prove that the metal detectorists dig for the find. Most federal states have an article which regulates the need for permission merely if you are searching for cultural heritage. Some of the laws even mention searching for archaeological monuments with technical equipment, as in Brandenburg, Hamburg, Mecklenburg-Vorpommern, Rheinland-Pfalz, Saarland, Schleswig-Holstein and Lower Saxony. This is the basis for regulating the use of metal detectors. Using metal detectors means searching for cultural heritage because you cannot decide whether the signal was caused by

Federal State	Obligation to obtain a permit for excavations	Obligation to obtain a permit for investigations	Obligation to obtain a permit for archaeological protected area
Baden-Württemberg	§21	§21	§22 para. 2
Bayern	article 7 para. 1	-	article 7 para. 2
Berlin	§3 para. 3	-	§3 para. 4
Brandenburg	§9 para. 1	§10 para. 1	§9 para. 1
Bremen	§16 para. 1	-	§17
Hamburg	§15 para. 1, 2	§15 para. 1	§17
Hessen	§21	§21	§22
Mecklenburg-Vorpommern	§12	§12	§14
Niedersachsen	§12 para. 1 §13 para. 1	§12 para. 1	§16
Nordrhein-Westfalen	§13 para. 1	§13 para. 1	§14 para. 2
Rheinland-Pfalz	§21	§21	§22 para. 3
Saarland	§10 para. 1	§10 para. 1	§10 para. 2
Sachsen	§14 para. 1	§14 para. 2	§22, 23
Sachsen-Anhalt	§14 para. 3	§14 para. 3	§14 para. 2, 3
Schleswig-Holstein	§18	§18	§19 para. 3
Thüringen	§18	§18	§19

Figure 7.1: Articles of the different legal regulations of the federal states about the obligations to obtain permission for excavation, investigations and the obligations to report archaeological finds. ©Landesamt für Denkmalpflege Baden-Württemberg.

Federal State	Treasure trove	Obligation to handover for a compensation
Baden-Württemberg	§23	§24 para. 1
Bayern	-	-
Berlin	§3 para. 2	§17 para. 3
Brandenburg	§12 para. 1	§ 12 para. 2
Bremen	§19	§20 para. 3
Hamburg	§18 para. 3	§18 para. 3
Hessen	§24	§24 para. 3
Mecklenburg-Vorpommern	§13	§23
Niedersachsen	§18	§18
Nordrhein-Westfalen	-	§17
Rheinland-Pfalz	§20 para. 1	§20 para. 2
Saarland	§14	§13 para. 4
Sachsen	§25 para. 1	§25 para. 2
Sachsen-Anhalt	§12	§12
Schleswig-Holstein	§22	§22
Thüringen	§17	§21

modern objects or by archaeological ones. Therefore you need permission for the investigations. Additionally, all legal regulations require that all archaeological finds as well as all information concerning the site have to be reported to the responsible office. Metal detectorists without that permission commit an administrative offence against the legal regulations for the protection of cultural heritage. Illicit digging theoretically breaks the law in many ways. Often the landowners are not asked for permission which means the detectorists trespass on the land. The civil code also defines that half of the finds belongs to the finder and the other half to the landowner. If the landowner does not know anything about it, it is a wrongful extraction. This means that if these finds were sold it is like handling stolen goods and, moreover, the illicit digging could also qualify as an element of an offence such as damage to property (Löhr 2006, 136–138).

But the ownership of the finds could also be regulated by another article. In this context, the "Schatzregal" – which could be compared to treasure trove – is of great importance (Figure 7.2). There are two versions of this article in Germany (Figure 7.3). The usual version, as in Baden-Württemberg, means that finds from governmental investigations, from areas of prominent archaeological sites and finds of high scientific value

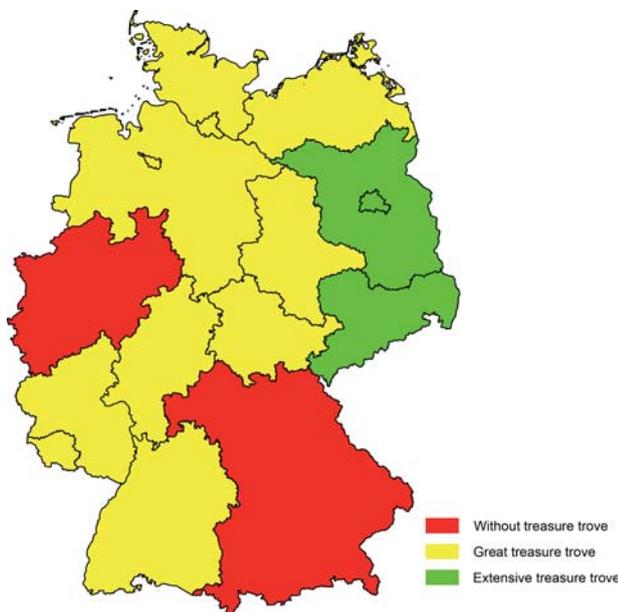


Figure 7.2: Articles of the different legal regulations of the federal states about treasure trove. ©Landesamt für Denkmalpflege Baden-Württemberg.

belong to the state if the former owner is unknown. Hesse and Lower Saxony amended their law in 2011 and now this version of treasure trove also applies there. Until then a small version was valid in Lower Saxony where only finds found during a governmental excavation belonged to the state. The expanded version which exists in Berlin, Brandenburg and Saxony includes all archaeological finds of scientific value (Otten 2008, 30–32). The legal regulations without a treasure trove like in Bavaria and Nordrhein-Westfalen, lead to a great deal of problems. Sometimes state archaeologists there even have problems becoming the owner of the finds from regular excavations.

Illicit excavations

In Frechen, a small town in the Rhineland known for widely distributed late medieval pottery production, two fans of medieval pottery tried to acquire some finds from the production centre in 2004–05. They rented a small property near to the production centre and mined a real tunnel to the site (Figure 7.4). Unfortunately, a neighbour subsided into that tunnel together with his veranda and so both were detected before they could reach the site. However, a house search revealed a great many cases filled with medieval stoneware vessels. These finds were obviously illegally excavated but were not found during this mining experiment and the illicit origin could not be proved (Figure 7.5). The great version of treasure trove would have been helpful in that case, but that article does not exist in Nordrhein-Westfalen. So the court decided that all vessels had to be given back to the pot hunters (Otten 2008, 18–21).

On the other hand the Nebra sky disk is a prominent example of the importance of treasure trove. In 1999 two metal detectorists found this bronze disc together with two bronze swords and some other objects in Saxon-Anhalt. They sold the finds and the new "owner" offered to sell them to the Museum für Ur- und Frühgeschichte in Berlin as well as to the state archaeologists. But both refused to buy them due to the legal requirements and the penal consequences. The looted objects appeared on the antiquity market and one and a half years later the new state archaeologist Harald Meller was able to acquire the objects by setting a snare for the seller. The way this happened still sounds like a mystery story with a happy ending. Because of treasure trove the objects belonged to the state and many details of the discovery, but of course not all, could be reconstructed (Meller 2004, 22–23). Surely most pot hunters won't make this mistake again. Next time they will suppress the find spot and they will say the objects came from the territory of a federal state without treasure trove.

Figure 7.3: Mapping of the different forms of treasure trove in Germany. ©Landesamt für Denkmalpflege Baden-Württemberg.

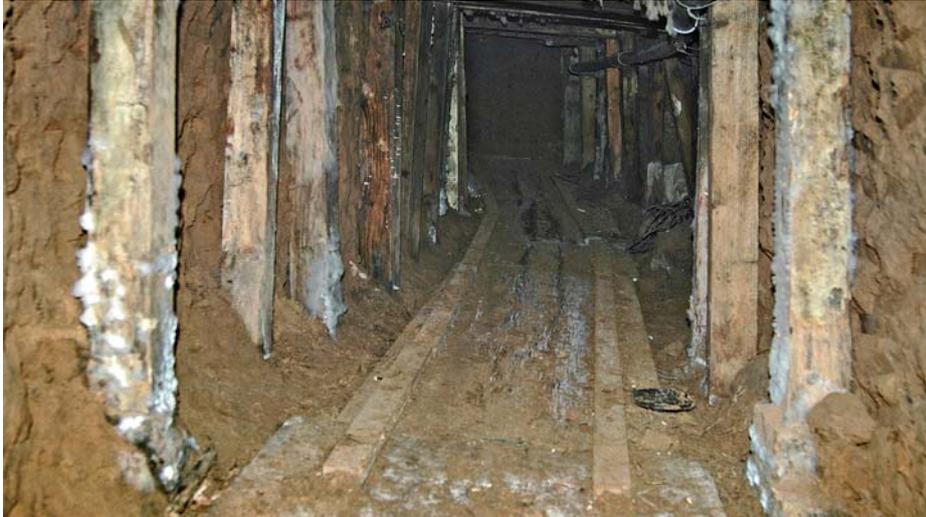


Figure 7.4: Frechen (Rheinland). View into the tunnel of the illicit digging. Photo M. Thuns. ©LVR-Amt für Bodendenkmalpflege im Rheinland.

If illegal metal detectorists were caught by the police, sometimes they were condemned but much more often the cases were not even prosecuted (Schönleber 2006, 150; 2008, 205). As far as public opinion is concerned treasure hunting is an exciting hobby. Many people do not understand why archaeologists are against it. On the contrary, they think archaeologists should be happy if private individuals find such interesting objects. Television broadcasts as well as magazines often support this opinion. From time to time magazines and newspapers publish articles about the chance of finding treasures in Germany (in June 1997 the *P.M.* magazine wrote: Schätze: Wo man sie in Deutschland findet. (*P.M.* 7/1997, 20 June 1997). The German *Bildzeitung* nearly urged people to search for treasures in an article from 25 May 2005 (Schoellen 2006, 182, note 27). In 2008 a metal detectorist from Hesse told about all the finds he made with his metal detector in the children's section of a newspaper (*Rhein-Neckar-Zeitung*, 28 October 2008, p. 16). Nothing was written about the fact that a permit is needed for that kind of search until someone made a complaint. The article "Wer sucht, der findet" in the *Rems Zeitung* of 28 September 2011 was also for children, telling them that you can find a lot of coins in the ground if you search for them with a metal detector. In January 2012 the German television station ZDF broadcast a programme entitled "Auf der Jagd nach verlorenen Schätzen" ("Hunting for lost treasures in Germany"). In one of the stories they reported about a metal detectorist who found important pieces of the treasure of the Saxon royal family Wettiner in 1996, which was hidden during the end of the Second World War. Nearly nothing was told about the problem of illegal metal detecting. Instead the treasure hunter was presented as an honest good man, who helped the State Office for Archaeology, and nothing was said about the later dissensions about the treasure. But there are also positive examples of critical articles mentioning the problems of illegal metal detectorists. Negative aspects of metal detectorists had been

mentioned in an article in 1974 (E. Nitschke, Spürgerät für Schmalspurarchäologen entwickelt: Schatzsucher Versandhaus alarmiert deutsche Museen, in *Die Welt*, 12 October 1974).

A lot of attention was sparked by an article in the *Frankfurter Allgemeine Zeitung* from 22 August 2000, no. 194, p. 14; see also: *Die Welt als Goldgrube*, *Der Spiegel* 23/1991; G. Stockinger, Plünderung vor der Haustür, *Der Spiegel* 28/2006) and investigations done by the journalist Thomas Claus (2006) showed the dimension of illicit archaeology in Germany. An exhibition dealing with metal detecting was shown in 2008 in Ravensburg (Brunecker 2008). In 2011 an exhibition called "Kriminalarchäologie" made by the Römisch-Germanisches Zentralmuseum Mainz and the Hesse State Criminal Office concentrated on fencing with illegal archaeological objects (Müller-Karpe and Laufer 2011).

Apart from the protection of archaeological sites there is also another much more dangerous aspect. There is a lot of warfare material which can still be found in Germany. If this was reported it could be recovered. (A man and his grandson were searching for a crashed aeroplane from the Second World War and found still dangerous grenades instead; reported in hr-online.de on 1 November 2011: see: http://www.hr-online.de/website/rubriken/nachrichten/indexhessen34938.jsp?key=standard_document_43033902&rubrik=36090&seite=1). On 23 October 2011 tagblatt.



Figure 7.5: Frechen (Rheinland). The finds from the house search were registered by the police and archaeologists. Photo M. Thuns. ©LVR-Amt für Bodendenkmalpflege im Rheinland



Figure 7.6: View of the “Runder Berg von Urach”.L7522-013-01_2018-20.Photo O. Braasch. ©Landesamt für Denkmalpflege Baden-Württemberg.

de mentioned two metal detectorists who unearthed a fragmentation grenade and accidentally removed the locking pin. Fortunately it did not explode and the police could remove it (http://www.tagblatt.de/Home/nachrichten/reutlingen/pliezhausen_artikel,-Maenner-buddeln-Splitterhandgranate-aus-_arid,150672.html), but things like this are also left behind and endanger playing children as well as adult walkers. Some people even take this military equipment home, and André Schöllén (2006, 176) reports a case where a right-wing extremist used a metal detector to search for explosive substances for a planned assassination.

Current developments

There are prominent examples where metal detectorists have found archaeological sites of great importance, such as the discovery of the Roman battlefield near Kalkriese in Lower Saxony, which is most probably the site of the famous Battle of the Teutoburg Forest (Schlüter 1993, 19–20). In 2008 two metal detectorists reported some Roman objects they found near Harzhorn in Lower Saxony a couple of years previously. The local archaeologist realized the importance and the subsequent archaeological surveys revealed an unknown Roman battlefield of the third century in the centre of Germania Libera. The reconstruction of this event was only possible because of the exact documentation of the finds (Geschwinde et al. 2009). Also the discovery of the fragments of a Roman equestrian statue from Frankfurt in 2010 is due to cooperation between a metal detectorist and the Hessian State Office for the Preservation of Monuments (Grönke 2011).

These cases are enough to show that there are federal states that cooperate with metal detectorists, while others refuse any cooperation. There are still differing opinions as to how to deal with metal detectorists. It is very difficult to find a way to protect the sites on the one hand and to cooperate with culturally interested metal detectorists on the other. And how can we differentiate between treasure hunters and people with a valid interest in cultural history? The experiences of the different federal states are quite different. At least in 2007 the state archaeologist came to a general agreement concerning the standards for responsible use of metal detectors (Geschwinde 2007). It does not sound much but it made way for standardized interaction with metal detectorists.

On the basis of this paper the federal state of Schleswig-Holstein developed a certification system for metal detectorists, including a course of instruction with examination as well as rules for the handling of finds, defined search areas and close cooperation with the Archaeological State Office of Schleswig-Holstein (Segschneider 2009). To date Mecklenburg-Vorpommern and Lower Saxony have followed this example. Similar systems exist in Saxony and Hesse. Also Nordrhein-Westfalen gives permission to use metal detectors. Bavaria simply prohibits the use of metal detectors in areas with archaeological monuments, which can be checked on the Internet (Geschwinde 2008, 121). Some kind of cooperation also exists in Brandenburg and Rheinland-Pfalz.



Figure 7.7: Celtic brooches from the "Heidentor" hoard near Eggesheim from the illicit digging. ©Regierungspräsidium Freiburg, Ref. 26 – Denkmalpflege

The situation in Baden-Württemberg

Baden-Württemberg traditionally is one of those federal states which pursue a restrictive model. There are diverse reasons for this. From the cultural point of view Baden-Württemberg is one of the federal states which has a high density of prominent archaeological monuments characterized by a great amount of metal objects, from the Celtic as well as the Roman era, the early medieval Alamannic period and the castles from the Middle Age. The strong legal regulations for the protection of cultural heritage might reflect the rich cultural heritage. But personal experiences also add a lot to the position that cooperation between State Office for the Preservation of Monuments and metal detectorists is difficult.

This can be illustrated by two very popular examples from Baden-Württemberg. In 1981 a great hoard from the Migration Period at a site called "Runder Berg von Urach" was found by two metal detectorists who were caught by the police. This site is well known as place of residence of an Alamannic chieftain in the late third to fifth century (Figure 7.6). Before that someone had come to the State Office for the Preservation of Monuments telling the responsible archaeologist about two metal detectorists who were searching for finds at that site. The archaeologist had pressed charges against them and police began to observe the site. One day the police were lucky and recognized the cars of the suspected persons. Obviously they found something of interest and the police interfered. The hoard they found contained iron tools for different functions. Many other archaeological objects were found during

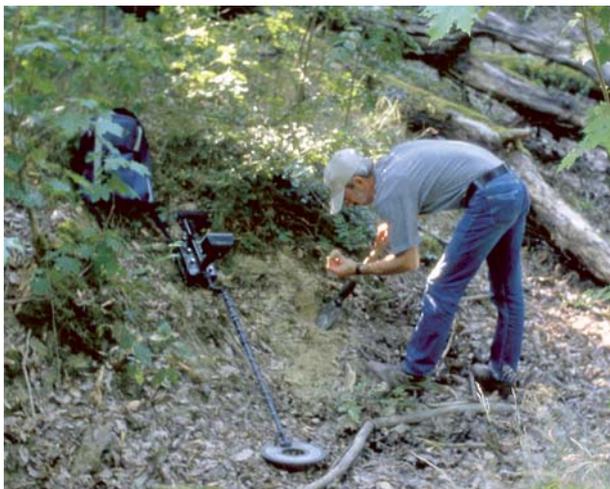


Figure 7.8: Unknown pot hunters dug a nearly 4 m deep pit into the great burial mound of "Katzenbuckel" near Ilsfeld. ©Landesamt für Denkmalpflege Baden-Württemberg.

Figure 7.9: View of plundered early medieval graves from Philipsburg. ©Polizeirevier Philipsburg.

the subsequent house search, but not everything was found by the police. In the 1980s a pair of gilded brooches were sold to New York via Switzerland, which probably belonged to that site. During the suit it became obvious that one of metal detectorists earned his living by searching for archaeological objects, but this could not be proved. On 11 March 1982 one of them was sentenced by court to pay 3,200 DM and the other to pay 1,600 DM, but there is no reason to hope that the court decision will protect the site. Already in 1990 the police caught two other metal detectorists there (Legant 2008a).

A concentration of Hallstatt and early La Tène brooches as well as other metal objects came to light in 1990–91 at the “Heidentor” near Eggesheim. The objects were found by metal detectorists who wanted to sell them anonymously (Figure 7.7). Even if the context was clear there were great problems proving an illegal excavation



Hinweise zum Verhalten und zur Beweissicherung beim Antreffen von Sondengängern und Raubgräbern



Baden-Württemberg
WIRTSCHAFTSMUSEUM

although they were witnessed by lumberjacks. As a result, in one case a conviction was not possible and in the other the suit was discontinued against a payment of 1,500 DM due to the lack of evidence (Legant 2008b). Until now this site is the only known early Celtic sacrificial place in Baden-Württemberg. Obviously it is a highlight of our cultural history but as in the former example the brooches were found illegally and lot of important information were lost by the way they were excavated.

There are many other examples of illicit diggings (Legant 2008c), such as a nearly 4 m deep pit in the centre of the great burial mound called Katzenbuckel near Ilsfeld in 2004 (Figure 7.8) (Stork 2008, 183). In January 2012 two early medieval burials of a known cemetery near Philipsburg were totally plundered (Figure 7.9). But mostly we never find out about these diggings.

In Baden-Württemberg the decision was made very early that there should be no cooperation between the State Office for the Preservation of Monuments and metal detectorists. A leaflet published in 2006 summarizes the problems caused by metal detectors and tells what to do if you see someone using them (Figure 7.10). It also tells that usually no permission will be given to private persons to use a metal detector (http://www.denkmalpflege-bw.de/uploads/tx_ttpproducts/datasheet/Flyer_Raubgraeber.pdf).

If someone is caught by the police the State Office for the Preservation of Monuments in Baden-Württemberg suggests proceedings against simple administrative offences punishable by a fine. In Baden-Württemberg there is a clear line from the very beginning of the use of metal detectors. Of course it is widely known that illegal metal detectorists also search in Baden-Württemberg. Some websites clearly show how many people are actually more or less active metal detectorists. There are even web pages telling people which sites are most promising for archaeological finds. This is still a rather unsatisfactory situation.

Figure 7.10: Information leaflet about illicit metal detectorists and pot hunters in Baden-Württemberg. ©Ministerium für Finanzen und Wirtschaft Baden-Württemberg.

This is the reason why a new approach is being tried. Since 2009 the State Office for the Preservation of Monuments Baden-Württemberg has organized surveys with metal detectors at sites which will be destroyed by building projects sooner or later. This is a project to try to make contact with metal detectorists who are interested in taking part. For the State Office this is also a possibility to distinguish between treasure hunters, amateurs who like searching for whatever they find, and slightly dubious metal detectorist who have a weakness for military objects and so on. But there are also some who are really interested in cultural history but like to combine this interest with technical equipment. Up to now there have been about fifteen persons who come to this survey regularly. Obviously these people are very much interested, and I am quite optimistic that fruitful cooperation with metal detectorists with clear rules could also be developed in Baden-Württemberg.

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8 | Perspectives on the use of metal detectors in Estonia: Regulation and practice

Ants Kraut

Abstract: The major challenge in Estonian archaeology at present is to gain control over the use of metal detectors. The use of metal detectors is prohibited on protected heritage sites, but sites that are not previously known are more endangered. Heritage specialists, archaeologists and representatives of interest groups have proposed a number of amendments to the legislation. The amendments to the Heritage Conservation Act, commented on in this paper, came into force on 1 June 2011 and define a find of cultural value, a search device, the procedure of reporting, who may look for finds of cultural value, who has the right to receive a reward and what the sanctions for violating the law are.

Introduction

There are a number of unsolved problems that archaeologists in Estonia have to face, but the most crucial of them is the use of metal detectors. The major challenge in Estonian archaeology at present is to gain control over the use of metal detectors. Easy access to modern technical equipment and ample information publicly available on the Internet has created a situation that presents a danger to archaeological sites on a far larger scale than in the recent past. Free movement of people and goods within the European Union has not helped to solve the problem. These issues are familiar to our neighbouring countries as well, at least on the east and south coast of the Baltic Sea.

Protection of archaeological monuments in Estonia is organized according to the Heritage Conservation Act, adopted in 1994, amended in 2002 and 2011 (HCA 2011). The Heritage Conservation Act comprises the strict laws adopted from the Soviet period on the one hand, and experiences of the neighbouring countries on the other hand. The amendments and updates introduced in 2011 did not alter the basic structure or the content of the act, yet significant changes were introduced in two areas: in the protection of underwater heritage and in the search for finds with a cultural value. The article looks into these and some related changes in the legislation.



Problems that require solution

- Regulation of the use of metal detectors, including maximum possible prohibition.
- Implementing control to the full in the landscape.
- Identifying the suspect of theft or looting on site. In Estonia only the police are authorized, not heritage inspectors or local municipalities.
- Obliging owners of the antiquities shops to record data regarding the seller and origin of the item and to forward the data to competent authorities.
- Legalizing Internet-based information as a source and evidence in law suits and criminal cases.
- Controlling illegal trafficking of cultural goods within the boundaries of the European Union.

Current situation in the protection of archaeological monuments in Estonia

In Estonia the total of 6,626 archaeological monuments belonging to forty different types are inscribed in the National Register of Cultural Monuments (National Register of Monuments 2012). The majority of them are subject to danger presented by illegal use of metal detectors. For example, the cultural layers in Stone Age settlement sites are also endangered by unprofessional searches and excavations that mingle the layers. Similarly, objects that generally are not threatened by digs (trees, stones, bodies of water) have a surrounding area that may include a cultural layer, and the possible information will be lost due to unauthorized excavation. In addition to archaeological sites and objects, looting also threatens historic churchyards (medieval and early modern period, 50 under state protection) and a number of historic parks and green areas around mansions (approximately 200). Such areas were mostly established in the Middle Ages and include rich archaeological data. While typical archaeological monuments such as hill forts and strongholds are threatened (Figure 8.1), there

Figure 8.1: Endangered monuments are typical archaeological sites like hill forts and strongholds in remote places. Stronghold Soontagana on the border between Pärnumaa and Läänemaa, West-Estonia. Photo Ants Kraut © National Heritage Board



Figure 8.2: Mediaeval buildings like castles appeal to looters with their abundant metal finds (coins, weapons, tools). Toole castle in Virumaa, North-Estonia. Photo Ants Kraut © National Heritage Board

is an even greater threat to built heritage such as castles (approximately 60), which appeal to looters with their abundant metal finds (coins, weapons, tools) (Figure 8.2).

In addition to threats to a large number of archaeological monuments, three issues related to the numismatic aspect are also characteristic of Estonia:

- A relatively large number of tenth–twelfth-century coin hoards and rare coins: at the end of the prehistoric period money circulation in West European towns was booming and permanent, and therefore earlier coin assemblages were often re-stamped and consequently lost their original appearance. At the same time silver that had reached distant overseas countries in the east was often buried and stored in large assemblages or was left for some reason and later found in its original shape, revealing rare examples from various coining places (Figure 8.3).
- Numerous hoards from the end of the seventeenth to the beginning of the eighteenth century: The second period characterizes the time when several plagues and the long Nordic War had reduced the population to roughly a fifth and properties consisting of large silver coins buried in the ground were left without an owner (Figure 8.4).
- Also very rare assemblages of coins minted locally, in historic Livonia in the fourteenth to seventeenth centuries are found in Estonia, not often found in other countries (Figure 8.5).

Two groups of people using metal detectors as search devices may be distinguished:

- collectors of antiquities
- “professional” looters aiming at selling the finds and earning profit.

At times these two groups mingle, yet their motivation is considerably different, and hence their activities differ. The number people using metal detectors is not known; the estimated number is 500 up to 1,000 persons. Naturally, not all these people are looters or treasure hunters; some take an interest in more recent history and search for items from modern times. A number of people are interested in military history – both World Wars I and II have left significant material heritage in the soil of Estonia.

In Estonia the use of metal detectors is prohibited on protected heritage sites (unless a specific permit is granted by the National Heritage Board). In general, this principle is respected, but sites that are not known or protected are more endangered. In order to improve

Figure 8.3: The finder's award payed for the Late Viking Age hoard Raasiku, North-Estonia was the biggest in Estonia in history. © Archives of the Institute of History, Tallinn University.





Figure 8.4: There are numerous hoards from the long period of the Nordic War, when large amounts of silver coins were buried in the ground and left without an owner. Kaarma hoard from insel Saaremaa (Õsel). Photo Ants Kraut © National Heritage Board

legislation regarding the use of metal detectors, heritage specialists, archaeologists and representatives of various interest groups have proposed a number of amendments to the Heritage Conservation Act in recent years. The amendments cover, among other things, the import of metal detectors, trading and use of detectors.

In order to tackle the problem of illegal use of metal detectors the National Heritage Board summoned a round table of archaeologists. Here, as probably everywhere else, the archaeologists fell into two sides: Those who wanted to ban the import, sale and use of metal detectors and impose punishments for violating this rule. This, however, was in contravention of the constitution, and also EU legislation. There is also a considerable shortage of resources required to implement such a system. Other archaeologists proposed working with people using metal detectors. They also include numismatists who attach primary value to the finds. One of their suggestions was to allow the finder to keep some of the finds. Estonian legislation states that all archaeological finds are state property and may be kept only in state museums; it is forbidden to store archaeological finds, for example, in local museums or private collections.



The Heritage Conservation Act regulates a number of fields. The amendments to the Act were initiated five years ago, largely from the need to better protect archaeological monuments. The Round Table that was summoned by the National Heritage Board in autumn 2005 aimed at finding some solutions to the growing problem of using metal search devices. Illegal excavation of archaeological objects, treasure hunting and looting ancient sites was growing. In recent years the National Heritage Board had lost several cases against treasure hunters (Ulst 2010, 158–161). In spring 2005 a Viking Age silver hoard was stolen during rescue excavations and sold abroad. This became a criminal case and was just on trial when the Round Table was asked to come together.

Ancient finds in court

The rescue excavations for the Viking Age silver hoard were planned in cooperation between the National Heritage Board and the Institute of History (Figure 8.6). Everything went well according to the plan, but on the first night strangers had been spotted on the excavation site. Clear traces suggested the use of metal detectors (Figure 8.7). Permanent surveillance was immediately organized on the site, but looters were not caught. However, observations paid off a few months later, when all of a sudden silver coins were offered at an auction in Germany that, according to specialists may have originated from the looted site in Harjumaa, North Estonia. In close cooperation between the Estonian and the German police, Eurojust and Interpol the coins were recovered together with exhibits referring to the crime. The case went to trial in late autumn 2007. Although the final verdict was only announced in 2010,

Figure 8.5: Senior inspector of the National Heritage Board Armin Rudi and numismatist Mauri Kiudsoo checking the looted findplace of the hoard from Livonian War (16th century). Photo Ants Kraut © National Heritage Board



Figure 8.6: Head of the collection department of the Institute of History Ülle Tamla and chief inspector of the National Heritage Board Ants Kraut investigating the looted site of the hoard in Harjumaa, North-Estonia. © Archives of the Institute of History, Tallinn University.



Figure 8.7: Theft of the hoard and destroying the cultural layer attracted attention of the media as well. Conductor of the excavations Ülle Tamla explaining the circumstances of the crime to the TV team. © Archives of the Institute of History, Tallinn University.

a large amount of valuable information was gathered in the form of evidence and testimonies from witnesses concerning illegal use of metal detectors and illicit export of cultural goods (Figure 8.8) (Kraut 2008, 74). The defendant is accused of two misdemeanours: with the aid of a metal detector he removed part of a silver hoard deposited in the earth, including 108 silver coins, one silver ornament and one silver bar. With this action he significantly and irreparably corrupted the cultural layer and destroyed scientific information.

The case was the first serious success story of the state in fighting against looting. It has gone through the appeals in all the court instances in Estonia and has been taken to the Supreme Court, which made a decision in spring 2010 to sentence the accused person to three years' imprisonment, unfortunately only on probation. The Court found the accused person guilty of destroying a cultural monument in a manner which caused significant damage and embezzlement by a group or a criminal organization. The reason for qualifying the case as embezzlement and not as theft (as was the initial qualification by lower court instances) was that, according to the Supreme Court, the coins situated inside the land do not belong to anyone and

the ownership of the state only commences upon their excavation. In the given case, the coins went directly into the possession of the accused person upon excavation. Since it is not possible to steal something which is already in your possession, the act was legally qualified as embezzlement or illegal conversion (Ulst 2010, 162–163).

In contrast to numerous lootings, the year 2008 saw the discovery of a remarkable find. A fisherman spotted a silver coin on a river bank in Pärnumaa, south-west Estonia, and took it to the local museum. The next day an exceptional opportunity opened to archaeologists – to unearth a nearly intact silver hoard stored in a horn from its original untouched deposit place (Figure 8.9). The hoard was deposited during the Great Nordic War and consisted of 58 coins and a silver brooch. The finder reported his find immediately and according to the set regulation, and was therefore rewarded with 22,000 Estonian kroons (1400 euros). The total value of the hoard was considered and the lawful behaviour of the finder. A year before, half a million Estonian kroons (32,000 euros) was awarded to the finder of an eighteenth-century silver hoard in Saaremaa, regardless of the fact that the majority of the hoard was excavated by archaeologists and not by the finders – the construction workers (Figure 8.4) (Kraut 2008, 75–77).

The above-mentioned Round Table proposed amendments to the Heritage Conservation Act regarding the use and treatment of finds of cultural value. The proposals were not reached as consensus; at times archaeologists had contradictory opinions that were mutually exclusive. However, an agreement was reached and amendments to the Act were proposed by the National Heritage Board in 2006. With a public



Figure 8.8: Checking the place of the looting and excavation and looking for possible finds continues every year before and after the agricultural season. Photo Ants Kraut © National Heritage Board



Figure 8.9: The finder of the hoard reported his find immediately and an exceptional opportunity opened to archaeologists – to unearth a nearly intact silver hoard stored in a horn from its original untouched deposit place. Hoard from Pärnumaa, South-western part of Estonia. Photo Ants Kraut © National Heritage Board

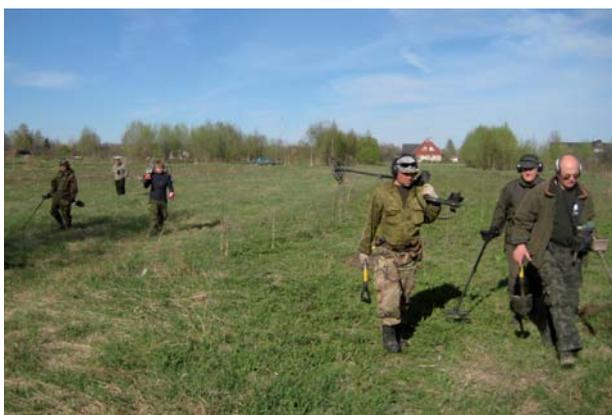


Figure 8.10: Every time someone with a metal detector was seen on landscape it was advised to contact the police to identify the person. According to Estonian law only the police have the right to identify a person. Photo Gurlu Vedru © National Heritage Board

letter in February 2008, archaeologists had drawn the attention of the Ministry of Culture to the critical situation with the protection of archaeological heritage and the need to amend the Heritage Conservation Act (Kraut 2008, 72). However, the archaeologists still retained their differences of opinion, regardless of the joint public letter. The differences continued during proceedings in the Riigikogu (the Parliament), and archaeologists have not reached an agreement even after the amendments have come into force.

During the time of ongoing discussions and when changes in the legislation were being prepared, a method of disturbing the use of metal detectors was adopted. Every time someone with a metal detector was seen in the landscape people were advised to contact a representative of a local authority and a policeman to identify the person, ask the person to present the permission from the landowner – i.e. demonstrate the presence of the state (Figure 8.10). This

Figure 8.11: National Heritage Board in collaboration with university archaeologists conducted training courses for users of metal detectors, members of hobby societies, who are willing to work together with scientists. Practical fieldwork with volunteers on a landscape near Põltsamaa, Central Estonia. Photo Ants Kraut © National Heritage Board



method gave some results, as noticed from the Internet commentaries of users of metal detectors.

Simultaneously with the method of disturbing users of metal detectors in the landscape, the National Heritage Board, in collaboration with archaeologists from the universities conducted two to three training courses a year for users of metal detectors, members of hobby societies eager to work together with scientists (Figure 8.11). After passing the theoretical courses and the practical fieldwork some of the volunteers assisted archaeologists in their work related to the construction of large roads etc. Also the public attitude was supportive, including owners and local authorities.

During the years 2007 to 2012, when the amendments to the Act were being prepared and came into force, the state awarded finders for the discovery of twenty finds, from 32 to 99,000 euro each, totalling 150,000 euro, i.e. 21,000 euros per year (Figure 8.12). These

Figure 8.12: An independent Advisory Panel of experts determines the value of the archaeological finds and makes proposal to the National Heritage Board about the finder's reward. Photo Ants Kraut © National Heritage Board





Figure 8.13: Prime Minister Andrus Ansip (second from the right) commenting the case of paying finder's reward on the government press conference as a positive example: the government wishes to help prevent illegal transactions and assists in the preservation of cultural heritage. Photo Ants Kraut © National Heritage Board

sums considerably exceeded the budget of the National Heritage Board foreseen for find rewards, so according to the regulation the rewards were paid from government funds. The Prime Minister commented on the cases at the government press conference as a positive example of how the government helps prevent illegal transactions and assists in the preservation of the cultural heritage (Figure 8.13).

The use of metal detectors was analysed in a Bachelor thesis that generalized from data collected in interviews with representatives of interested parties (Kangert 2009), and also in a Master thesis that compared the legislations in eight European countries (Ulst 2012).

Amendments to the Heritage Conservation Act in 2011

The amendments to the Heritage Conservation Act came into force in June 2011. Most of the debates that preceded the adoption of amendments concentrated on the procedures of using metal detectors, i.e. to what extent and how the use of metal detectors can be regulated in the legislation.

The legislative proposal required that the Heritage Conservation Act define the following:

- What is a find of cultural value?
- What is a search device?
- Who may look for finds of cultural value?
- What is the procedure for reporting?
- Who has the right to receive a reward?
- What is the procedure for confiscating devices used for illegal search?
- What are the sanctions for violating the law?

The proposal noted that only persons who have passed adequate training, who are competent to recognize and define finds of cultural and archaeological value and who follow all the legislative requirements may look for finds of cultural value. Such training is provided by private educational companies, and the curriculum is composed by the National Heritage Board who also supervises the programmes that the companies provide. The trained persons receive a license that is valid for one year, and they have to keep the National Heritage Board informed of their search results.

It was intended that the legislative act and other acts must regulate the following issues:

- Create a post of state inspector to monitor activities related to the use of metal detectors
- Create a network of training companies
- Cooperate with registered organizations
- Establish a database of finds that remain in the possession of the finder
- Regulate the rights of antiquities shops in handling items of archaeological value

Legislation on the use of metal detectors in Estonia

The Heritage Conservation Act Amendment Act 23.02.2011 enacted the Heritage Conservation Act (Amendments to the HCA 2011):

§ 30. Finds of cultural value

(1) A find of cultural value is a movable object found in the ground or on the surface of the ground, structure, inside a construction, water or in the sediment of a body of water, which is either a natural feature or has historical, archaeological, scientific, artistic or other cultural value and which has no owner or the owner of which cannot be ascertained.

(2) Finds of cultural value belong to the state. The finder or possessor of a thing specified in subsection (1) of this section shall allow the establishment of cultural value of the thing by the National Heritage Board.

(3) The person on whose immovable property the object specified in subsection (1) of this section is found shall allow the excavation of the thing if he/she is compensated for the damage caused thereby.

(An interesting juridical question regarding archaeological finds is the determination of the owner. It may possible that the possessor of the find did not personally find it archaeologically, i.e. from the ground, but he gained ownership of it by way of inheritance or purchase. As we speak a large coin auction is being held, offering coins dating from the thirteenth century. It is extremely difficult to ascertain that the coins are archaeological finds, i.e. belong to the state. The problem we face here is the question of bona fide buyers who have legally bought the coin from an antique shop and can therefore bear no liability for acquiring a thing that rightfully ought to belong to the state. It will be even more difficult to try and confiscate the object from the possessor. We would appreciate learning from the practice of other countries in solving the issues of antique shops selling heritage objects, both in legal and practical terms.)

§ 30¹. Searching for an object of cultural value with a search device

(1) Search for an object specified in § 30 (1) of this Act with a search device is prohibited without the search permit of an object of cultural value (hereinafter *search permit*) issued by the National Heritage Board with the term of one calendar year. A search device in the meaning of this Act shall be a technical tool or device, except a navigating instrument, with the help of which it is possible to determine the location of an object specified in § 30 (1) of this Act.

(2) Searching with a search device at an immovable monument and the protected zone thereof is prohibited except for the performance of official duties or studies which have been coordinated with the National Heritage Board.

(3) Upon searching for an object specified in § 30 (1) of this Act with a search device on the basis of a search permit the National Heritage Board, information shall be submitted concerning the time and place of the search each year about the previous calendar year no later than by 31 January.

(4) A search permit can be applied for by a person of at least 18 years of age who has passed training during which he/she has acquired the skill to recognize an object with cultural value without damage to the find or the place where it is found.

(5) The National Heritage Board shall refuse to issue a search permit if the applicant does not fulfil the requirements established in this Act or has considerably violated the requirements established in this act or the legal instruments issued on the basis thereof within the previous year.

(6) The National Heritage Board shall declare the search permit invalid if the holder of the permit violates the requirements established in this Act or the legal instruments issued on the basis thereof.

(7) The National Heritage Board shall review the search permit application within one month of its submission.

(8) The applicant or owner of the search permit shall be notified of the issue, refusal or annulment of a search permit within five working days in a format which can be reproduced in writing.

(9) The procedure for issue of a search permit and reporting the search for objects of cultural value and the format of the search permit shall be established by regulation of the Minister of Culture.

Figure 8.14: According to the law a find shall be left at the place it is found until it is delivered to the National Heritage Board, it may be removed from the place it is found only if its preservation is endangered. Sometimes archaeologists should do it even late at night. A hoard from the 16th century, found in 2012 in East Estonia. © Archives of the Institute of History, Tallinn University.

§ 31. Temporary protection of finds of cultural value

Finds of cultural value are under temporary protection from the moment they are found.

§ 32. Duties of finder

(1) A finder of an object specified in § 30 (1) of this Act is required to preserve the place of the finding in an unaltered condition and to notify the National Heritage Board or the rural municipality or city government promptly of the find.

(2) A found object shall be left in the place where it is found until it is delivered to the National Heritage Board. A found thing may be removed from the place where it is found only if its preservation is endangered. (Figure 8.14) It shall not be damaged by cleaning, refurbishing, breaking or in any other manner, or by severing parts from the whole.

(While the bill was being processed in parliament a question arose about the most suitable term: finder's reward or fee. *Riigi Teataja* (The State Gazette) uses the term "fee" in its official translation.)

§ 33. Entitlement to fee

(1) The finder of a thing specified in subsection 30 (1) of this Act, except for the finder of underwater submerged water craft, aircraft or other vehicle, is entitled to receive a fee. The amount of the fee shall be determined by the National Heritage Board on the basis of an expert assessment. Upon establishing the amount of fee, the natural, historical, archaeological, scientific, artistic or other cultural value of the object found, the circumstances of finding and transfer to the state shall be taken into account. The procedure for the payment of fees shall be established by a regulation of the Government of the Republic.

(2) The receiver of fee shall be entitled to remain anonymous.

(3) An object of cultural value can be transferred to the finder without charge on the basis of the National Heritage Board's expert assessment without determining a fee.



(One of the most important provisions of the amendments regarding archaeological finds is that the finder may keep an object of cultural value – i.e. the state transfers the find free of charge to the finder, also without providing any reward for the find. This provision reflects a compromise in the disputes put forward at the Round Table. The Round Table suggested that all archaeological finds should be divided into three categories according to their value; the data about the finds should be entered into a new database and the so-called less valuable finds could be left in the possession of the owner. However, archaeologists did not all agree with the expediency and methods of implementation of this proposal. The new provision provides an opportunity to implement this proposal.)

(4) A fee shall not be paid in the following cases:

- 1) the finder's duties include searching for and excavating objects specified in subsection 30 (1) of this Act or studying monuments or supervising compliance with requirements concerning heritage conservation;
- 2) the finder has violated the obligations specified in § 32 of this Act.

Liability

§ 46. Violation of requirements related to finds of cultural value

(1) Failure to report a find of cultural value and knowingly removing a find of cultural value or part thereof from the place where it is found and for damage to the find of cultural value, part thereof or an archaeological cultural layer is punishable by a fine of up to 200 fine units (*the amount of a unit is a changing value; currently one unit equals 4 euro*).

(2) The same act, if committed by a legal person, is punishable by a fine of up to 2,000 euros.

§ 46¹. Use of a search device without permit

Use of a search device with the objective of searching an object of cultural value without a search permit issued by the National Heritage Board is punishable by a fine of up to 300 fine units.

§ 46². Violation of the prohibition on searching with a search device at immovable monuments and protected zones thereof

Violation of prohibition on searching with a search device at immovable monuments and protection zones thereof is punishable by a fine of up to 300 fine units.

§ 47¹. Violation of requirements for diving to underwater monuments

(1) Diving to underwater monuments without the permission of the National Heritage Board or providing diving service to underwater monuments without an activity licence is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.

§ 48¹. Confiscation of search device

(1) The National Heritage Board and a court may confiscate the search device which is the immediate object to the misdemeanour specified in § 46–46² of this Act according to § 83 of the Penal Code.

(2) The procedure for preservation, transfer and delivery for destruction of the search device confiscated under subsection (1) of this section shall be established by a regulation of the Minister of Culture.

Training courses

When the amendments to the Heritage Conservation Act had come into force on 1 June 2011, the National Heritage Board put together a sample training programme for users of metal detectors according to paragraph 30¹ (4). The programme consists of 36–40 hours of training, spread over four days and including theoretical studies, practical fieldwork and tests.

The sample programme covers the following topics:

- The importance and preservation of cultural heritage
- The system of heritage protection and the Heritage Conservation Act
- Misdemeanour, crime, proceedings, punishments
- The procedures for using metal detectors
- Finds of cultural value and their significance
- Finds of cultural value. Archaeological finds
- Finds of cultural value. Coins
- Finds of cultural value. Objects of art and cemeteries
- Finds of cultural value. Military equipment and war graves
- Handling explosives. Legal aspects
- Explosives. Safety and rescue
- Underwater heritage and finds of cultural value
- Practical study of finds in repositories and collections
- Fieldwork. Supervised search with metal detectors
- Test
- Evaluation and attestation

Persons who have passed the training course may receive a permit to use a search device to look for objects of cultural value outside heritage protection areas from the National Heritage Board, which is the government body charged with supervision of cultural heritage in Estonia. The main objective for conducting such courses was that persons who have passed these courses will be able to recognize finds of cultural and especially archaeological value and consequently act responsibly at the find site. Until now four courses have been held for a hundred people. The National Heritage Board has issued written permits to 75 people to use a search device to look for items of cultural value. The National Heritage Board has acknowledged one private company, "Kameraad", with its diploma for excellent delivery of the courses, and another company, "The Estonian Society of Detectorists", for good cooperation with archaeologists.



Figure 8.15: The silver ornaments from the hoard from Järvamaa, Central Estonia. This kind of finds need a good knowledge to understand, that discovered items have a great historical value – deposit hoard from the 16th century. Photo Martti Veldi © National Heritage Board

Conclusion

Changes in legislation helped to solve the following issues:

- It became clear that it is impossible to ban the use of metal detectors; instead we need to find a legal means for cooperation.
- It is forbidden to use metal detectors on all forms of monuments, protected sites and their protection zones.
- The reward for discovering a find is not an award, a fee given for the find and is not directly connected with the commercial value of the find, but recognition for law-abiding behaviour.
- A state register of finds will be created. This database will include data on finds of cultural value.
- A state inspector was employed to monitor activities related to the use of metal detectors and finds of cultural value.
- A better system of awards for finders of chance discoveries (earlier half of the value of the find was always provided, but currently the amount is not restricted, it depends on the decision of independent experts)
- Better cooperation with law-abiding amateurs and registered organizations, involving them more actively in tracing illegal activities.
- Amateurs need to pass courses and apply for permission to work with metal detectors, and they also need to report to the National Heritage Board.
- In the case of substantial awards the money comes from a reserve of the government.

- It is now possible to leave some finds of lesser importance to the finder.
- Possibility to confiscate the search device.

The following issues remained problematic:

- Only the police have the right to identify a person in the landscape; heritage inspectors and local authorities do not have this right.
- It is difficult to establish how the finder should have realized that he has discovered an item of cultural value, if he claims ignorance (Figure 8.15). The regulation seems efficient at first glance, but one of its shortcomings is the complexity of determining or proving the aim for which a search device is being used in the landscape. The regulation allows law-abiding citizens legal right to practice their hobby, if a violation of law is determined it is difficult to find evidence to prove the violation. Solutions to this and possible needs for changes will probably evolve in practical cases.
- How to define cultural value? It is not possible to make a comprehensive list of items of cultural value.
- Division of archaeological finds into different categories.
- Assigning the duration of search permits for limited areas.
- Applying the principle of “no rewards” to people who are issued a search license
- Considering the owner’s consent when deciding on the reward

- Introducing the status of Monument of Local Importance.
- Regulating the rights of antiquities shops in handling items of archaeological value
- Control over sales on the Internet.

Results and perspectives

- Cooperate with registered organizations (clubs) who work with metal detectors
- Registered clubs are interested in cooperating with archaeologists, and report illegal activities
- Permits issued by the National Heritage Board increase the number of legal organizations and make it easier to distinguish them from illegal actors.
- Money for rewards is quite remarkable and motivates people to report the finds.
- The media are interested in this topic and help to create a positive attitude.
- Gradually the attitude of landowners is changing – they monitor their fields and inform authorities of activities on their land.
- The police are involved more often, especially in cases related to arms and explosives from the two World Wars.
- A network of companies providing training courses is being established.
- Punishments for violations have been specified (i.e. fine units)

The Master thesis on the topic has proposed the following:

The discovery and protection of archaeological heritage would be more efficient in the form of responsible detecting and cooperation between heritage protection authorities and metal detectorists than simply strictly regulating metal detecting activities.

The Danish system with the combination of cooperation and reasonable regulatory requirements would serve best as a model for Estonia (Ulst 2012, 69).

An essential precondition for achieving the best results is to considerably increase the systematic field-walking of archaeologists and regular inspection of archaeological monuments, in cooperation with students and landowners. It is also critical to continue the training of the police in matters concerning illicit excavation and the sale of archaeological finds.

Objectives of international cooperation:

- Creating or fostering a system of surveillance and information between countries.
- Exchange of experiences in regulating the activities of antiquities shops between countries.
- Fostering the surveillance of cultural goods traded via the Internet.

Despite a few cases of abuse of the issued permits, the new Heritage Conservation Act has already given positive feedback; people who have discovered items of cultural value and respected the law have been given considerable rewards. This in turn has created greater public interest and consequently better protection for cultural heritage.

The near future will present us with possible new challenges in the light of the adopted amendments to the Heritage Conservation Act. It depends on the archaeological community which answers and solutions will be found, but these solutions will definitely help us be better prepared for the next legislative changes and updates. The development of collaboration between users of metal detectors, wreck divers and heritage specialists will be a touchstone for the amended Heritage Conservation Act of 2011.

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9 | Protection of archaeological monuments in Ireland

The experience of enforcing the legislation

Sean Kirvan

Abstract: Since Sean Kirvan has been unable to contribute an article, his abstract for the conference is published here.

Until the mid-1990s most archaeological monuments in Ireland were not legally protected under the relevant code (the National Monuments Acts) and application of such protection took place on a case-by-case basis. During the 1980s and 1990s there was substantial progress in the compilation of a national database of identifiable archaeological monuments. This database laid the foundation for the introduction from 1994 of a statutory system of legal protection for recorded archaeological monuments. However, the most immediate impact of this database was to allow greater consideration for archaeological concerns in the statutory processes for regulating construction. The question of damage to archaeological monuments in the course of agricultural work remained at issue in the 1990s and 2000s, but given the intensity of construction work the main focus was on mitigating its impact on archaeological heritage. However, recently there has been increased focus on the systematic documentation and investigation of reported cases of damage to monuments outside the established (at least until recently) scope of the planning control system. This has included the referral of a small number of cases to the police for formal investigation.

Local authorities have many ruined medieval churches and associated burial grounds in their ownership. Local groups may wish to carry out what they see as restoration and in some cases do so without reference to the relevant authorities. These cases have presented particular problems in terms of enforcement of the National Monuments Acts.

While the number of concluded prosecution cases is small, the experience of them and others in progress allows a number of issues to be identified which are of importance for the future. Issues examined will include the following. Firstly, whether there is any identifiable pattern to occurrences of damage to monuments. If, for example, it can be said that change of ownership of land creates a period of special threat to archaeological monuments then one response might be to focus on increasing awareness among legal professionals of the statutory record of monuments and the legal duties in respect of monuments. However, it may be that the relatively small number of detected cases of monument damage creates difficulties in saying conclusively whether any patterns are evident. This leads to a second issue for consideration; should there be an active programme of monitoring of recorded archaeological

monuments? While the obvious answer might appear to be yes, the resourcing implications could be very large. Also, since any such programme could at best hope to achieve only periodic inspection it might not produce conclusive answers as to when and why damage took place. This would also have implications for the evidential value in legal proceedings of the results of a monitoring programme.

This leads to a third point for consideration; the continuing need to base enforcement on information provided by private individuals. The implications for the future arising from this may be the need for the enforcement agency to maintain rigorous standards of impartiality and confidentiality. A fourth issue, related to impartiality, is how to decide on a consistent basis when to refer a case for investigation leading to prosecution. A particular aspect of this is when to take the step of seeking to prosecute a local group in the case of unauthorized restoration work as referred to above and the difficulties in investigating such cases. A fifth issue may be the need in the future to avoid seeing enforcement functions and advisory functions under the planning and development code as entirely separate. What is meant by this is that there could be cases where individuals take pre-emptive steps to remove archaeological monuments with a view to avoiding onerous conditions being imposed in the planning and development process. The implication may be that maintaining an effective enforcement capacity is essential to maintaining an effective advisory capacity.

Finally, it is submitted that a future in which enforcement action is an ongoing and significant aspect of the work of the National Monuments Service was a future predestined once the decision was taken to introduce a system of general protection for known archaeological monuments. With so many monuments spread throughout the country subject to such legal protection, breaches of the law are inevitable (most will be minor but some may be serious) and have to be responded to at some level unless the rule of law is to become devalued. This leads almost inexorably to an involvement by National Monuments Service in the prosecution of some cases, albeit most likely only in a small minority of the total number. This leads further to the longer-term question of whether a state archaeological service should use existing (or seek greater) direct investigative and prosecutorial powers or rely on police support in that regard.

10 | The value of archaeology: Resource, heritage or pure fun?

Paulina Florjanowicz

Abstract: There is no common definition of what archaeology is. There is not even any consensus as to whether it is a scientific discipline of its own, or just a method supplementing historical research by investigating other types of records than written ones. Is it more science or more humanity? Different approaches to this issue worldwide result in different understandings of the value of archaeological heritage and its perception by society. In Poland, professional archaeology started quite early. However, it is known more for its solid fieldwork than for the actual research, elaboration and dissemination of results, not to mention lack of policy-making. Archaeologists in Poland, focused more on the method than the actual idea, create a rather hermetic environment, inaccessible to outsiders. This leads to the situation, shown in recent survey, where society does not regard archaeological remains as part of its heritage, and therefore does not understand the need for protection. Polish society does not appreciate the work of archaeologists either, considering it to be a waste of money (mostly public money) and generally foolish. In consequence, most damage to archaeological heritage is done by people who are completely unaware of the value of archaeology and what irreversible loss they cause. This also relates to the question of professional ethics in today's archaeology in Poland, since some archaeologists regard archaeological remains more in terms of collector's items than as shared heritage. The National Heritage Board of Poland has been investigating these processes over the past five years, trying to neutralize or reverse them. Our observations and surveys show that there is a very strong need to raise awareness by various programmes and promotion of sustainable heritage management, aimed at different groups of society, including archaeologists. Otherwise, given the rapid changes in Poland's economy and society combined with an inadequate and outdated approach to the understanding of the wider social and economic benefits of archaeology among practitioners, this heritage will be gone in no time.

This paper is an attempt to find out how archaeological heritage is regarded in countries like Poland today and what the reasons for that are. It is just my personal point of view, although based on the study of different types of data, and on my personal experience as an archaeologist and head of the National Heritage Board of Poland as well. It also includes some results of a qualitative and quantitative survey conducted by our agency on a representative group of Polish society in 2011.

The first question one must ask is: what is archaeology? There is no commonly approved definition. There is not even any consensus as to whether it is a scientific discipline of its own, or just a method supplementing historical research by investigating other types of records than written ones. According to my professor at Warsaw University – Jerzy Kruppé – it is not an independent science discipline, since in science you are able to prove something without a doubt and in archaeology all is mainly based on interpretation.

Another question to be posed is whether archaeology is more science or more art. Different approaches to this issue worldwide result in different understandings of the value of archaeological heritage and its perception by the society.

Either way, modern archaeology as we know it now, started from the urge to understand the past that was long forgotten, the past that was too far away for any memory of it to survive, or related to a completely different culture. This need to understand the past by analysing its physical traces started quite some time ago, although it is a relatively young trend. Let us just remind ourselves that one of the most famous Polish chronicle writers – Jan Długosz, who lived in the fifteenth century – passed on a story about “ceramic pots growing in the ground”. The story had seemed so unbelievable that the Polish king, Władysław Jagiełło, conducted excavations in 1416 in the village that had been mentioned by the chronicler. The works had actually revealed several ceramic pots of unknown origin, but it was not until the seventeenth century that they were affiliated with some former inhabitants from the past. Right now we know that it was a quite detailed description of a Bronze Age cemetery in central Poland. At that time and for a long time after there was no methodology in archaeology; it was more like a quest for discovery.

In the Mediterranean region, archaeology derived from the history of ancient art and was about collecting works of art of the past civilizations in order to unveil their history. These works were so impressive and numerous

that no more data seemed necessary. In northern Europe, however, the finds were not as spectacular, so other methods of collecting information were developed, mainly based on the experience of geological studies. And this is how modern archaeology was born. Archaeology and artefact collecting have gone their separate ways (or should have done so at least!).

In Poland, professional archaeology started quite early. When Poland regained its independence after World War I, after 123 years of foreign occupation, the Heritage Decree (31 October 1918) was one of the first legal acts declared by the re-established State. It referred to historic artefacts found in the ground as well. The first body of archaeological conservators was established soon after (in 1920) and the State Archaeological Museum in Warsaw was established in 1923.

World War II changed everything. The losses in people, possessions and heritage were devastating. On top of that, a new philosophy was introduced with the Soviet occupation that influenced every single aspect of life, including archaeology. In Marxist theory – the doctrine of communists – materialistic aspects of life are more important than spiritual ones. Marx claimed that all evolution of man is driven by the urge to improve the economic quality of life.

With reference to archaeology – even its name was changed in the beginning of communism in Poland – it has been called the history of material culture, and it was limited to the study of materialistic aspects of human life in the past with no further conclusions, and no reference to history.

Archaeologists became completely disconnected from society, as their work focused on studying the artefacts and differences between them, and developing methodology. Some very important projects were carried out at that time, too, such as the nationwide archaeological land survey started in 1978 (AZP – Archeologiczne Zdjęcie Polski), which covered almost the entire country and allowed for the creation of an archaeological inventory of *in situ* protected archaeological sites numbering almost 500,000.

Unfortunately, the term heritage was no longer used for the artefacts archaeologists discovered, since no links between the past and present were made. Researchers became experts in recognizing the smallest bits of material they found, but society was left out of this process. It created a hermetic environment, inaccessible to outsiders. With time, it seems that most of them forgot what the initial idea behind archaeology was – this quest to discover our past, to learn as a society, as a whole, who we are and where we come from.

Society, on the other hand, did not forget this feeling and still was very keen on discovering mysteries from the past. With the lack of information on the past here in Poland, it focused on the great achievements of the Polish archaeologists active in the Mediterranean area, especially in Egypt, Lebanon and Syria. During those times, the world-famous archaeologist Professor Kazimierz Michałowski (Figure 10.1) fired the imagination of millions in Poland and abroad.

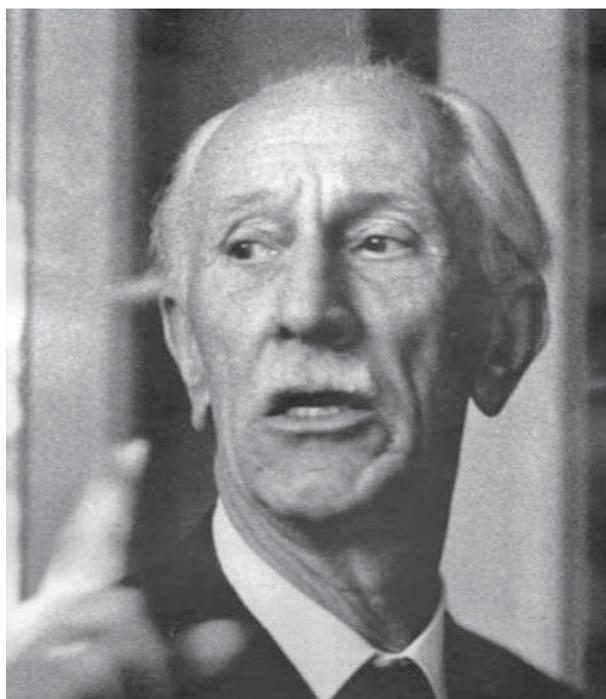


Figure 10.1: Professor Kazimierz Michałowski. ©Narodowe Archiwum Cyfrowe

Until this day, if I say to a non-archaeologist what my profession is, the immediate question asked is: do you excavate in Egypt? When I admit that my specialty is medieval Poland, I always hear a sigh of disappointment.

After 1989, so much changed so quickly that heritage policy seemed to be the least important and least urgent issue (unlike in 1918, as mentioned above). It seems a paradox that people believed in the Marxist theory they had been fed with for so many years, that everything would be fine now if only economic activity improved. The free market seemed to be the remedy for everyone. It included archaeology as well. Archaeologists gained thousands of new contracts thanks to the rapid development of the infrastructure (mainly highways) (Figure 10.2), universities significantly increased the number of students in archaeology, and new job opportunities and new financing opportunities appeared. For a moment it actually seemed that all problems had gone away.

To understand this process with reference to archaeology a little better, we at the National Heritage Board of Poland decided to conduct a short survey at the archaeology departments' offices and among present-day archaeology students. The survey was conducted in the first quarter of 2012.

In Poland, there are archaeology departments at eleven public universities. Among other things, we asked how many archaeologists graduated with a degree in archaeology in the past years and now. The increase is enormous! In the 1960s and 1970s there were approximately 30 master degree graduates nationwide per year (there was no bachelor degree back then). In 1985 there were already 59 master degree graduates in



Figure 10.2: Rescue excavations on future highways in Poland seen from the air. ©W.Stępień, Archive of the Archaeological and Ethnographic Museum in Łódź.

archaeology and in 1995 there were 103. The numbers have kept rising, to 252 Bachelors and Masters in 2005 and 575 of them in 2011!

The total number of places for new students in archaeology in 2011 in Poland was 900.

The only thing that was forgotten in the meantime was the link between archaeology and society. No education or awareness policy was introduced to re-establish this link or to explain why the archaeologists do their work. Most importantly, it is a common opinion that the most important thing about archaeology is the finds, not the sites!

This was not explained to students of archaeology either. A recent survey shows that their main motivation to study archaeology was a passion for discovering mysteries of the past and the wish to travel (95% of the responses). Only 1 person (out of 118) said that his/her motivation was to protect the heritage for future generations.

In effect, society does not regard archaeological remains as part of its heritage, and therefore does not understand the need for protection. Polish society does not appreciate the work of archaeologists either, considering it to be a waste of money (mostly public money) and generally foolish.

Archaeology students in today's Poland do not seem to see anything wrong in it, since 95% see excavating (especially abroad) as their dream job after graduation. The remaining 5% do not want to work in this field at all. No one plans to work for heritage administration.

In consequence, most damage to archaeological heritage is done by people who are completely unaware of the value of archaeology and the irreversible loss they cause.

This also relates to the question of professional ethics in today's archaeology in Poland, since some archaeologists regard archaeological remains more in terms of collector's items than as shared heritage. Their aim is to get as much information on the period of prehistory they specialize in at whatever cost, even if it means collaborating with treasure hunters conducting illegal searches. These archaeologists do not see archaeological heritage as our common good but as data for their private scientific research – not to mention that by doing this they encourage site destruction, legitimize looting, and mislead public opinion. When the question of treasure hunting is discussed in the media in Poland it can be often heard that "if a professor of archaeology says treasure hunting is good for heritage, and no harm is being done, and it is the law which is out of date then it must be so! Plus it so much fun".

To refer to our survey once more, it is worth mentioning that students of archaeology were asked to say what is the most important thing about archaeology (it was a multiple choice question). The most popular choices they made were as follows:

- Dissemination of research results (55)
- Researching the finds (51)
- Conservation of finds (43)
- My own excavations (35)

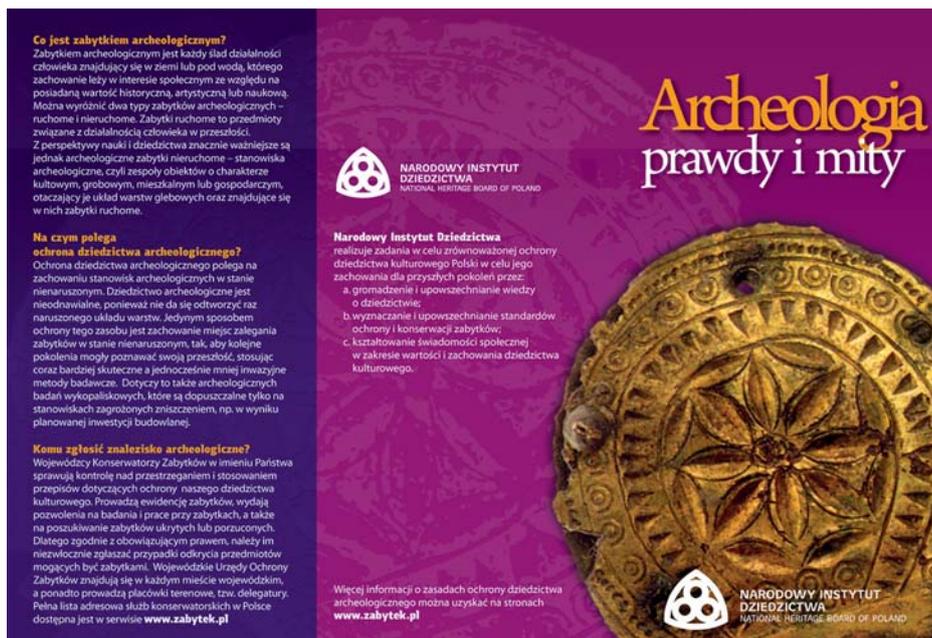


Figure 10.3: *Archaeology: True or False?* – a widely distributed leaflet developed by the National Heritage Board of Poland presenting basic facts about values and ways of archaeological heritage protection in Poland ©National Heritage Board of Poland.

There were only 14 votes for making inventories of archaeological sites, and another 14 (probably the same people) thought that *in situ* protection was something important for archaeology.

Pop culture enforces this stereotype even more. Heroes like Indiana Jones are role models to many people, many of whom decided to become archaeologists after seeing films about him (some students in our survey indicated Indiana Jones as their role model in archaeology even though the films are older than they are). Others are inspired to become treasure hunters at least. These films and other ones (also recent documentary series on various adventures or even history channels) show that archaeology is only about getting finds – more and more of them. I do not think I have ever seen a production targeted at a wide audience promoting *in situ* protection.

The National Heritage Board of Poland has been investigating these processes over the past five years, trying to reverse or at least neutralize them (Figure 10.3). We have a rather good law on archaeology, based on the Heritage Act of 2003. Poland has also ratified all major conventions on heritage protection, including the Valetta Convention in 1995. Based on this legislation, all archaeological heritage belongs to the state and all archaeological excavations, as well as amateur searches, require permits. The reality is, however, much more complex.

Therefore, the National Heritage Board of Poland developed a programme to combat and prevent crime against archaeological heritage. It has many components of an active fight for the heritage, such

as “black market” surveillance and reporting of offences to the police, and providing expert opinions on archaeological objects and sites secured during crime investigations. We soon learned that, apart from that, the most neglected area is education. By this we mean education for specialists (experts, but also police, customs etc.) and also awareness-raising programmes.

We started the educational process by re-introducing the term “archaeological heritage” and we use it in all our publications and activities. We keep on explaining why archaeology is so important, that it is our common heritage, that it a non-renewable asset, and that it has to be preserved for future generations and so on.

We cooperate with everyone who might have anything to do with archaeological heritage: police, customs, the

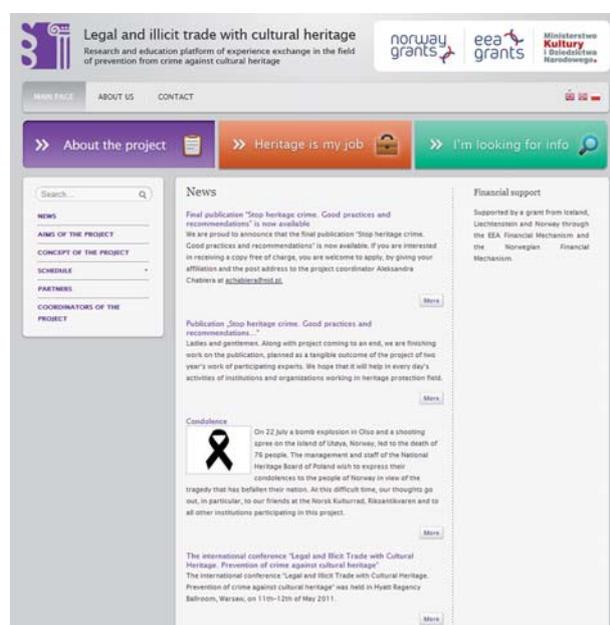
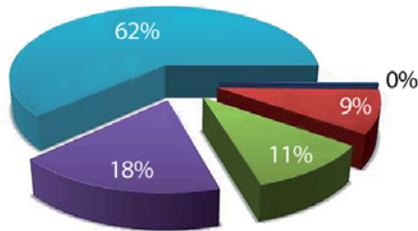


Figure 10.4: Cover of the final report of the project “Legal and Illicit Heritage with Cultural Heritage”, published by the National Heritage Board of Poland. ©National Heritage Board of Poland.

What is the greatest value of a heritage site/object?

62% - it is evidence of our common past
 18% - it is authentic
 11% - it is worth money
 9% - it has aesthetic value
 0% - it has scientific value



These answers might seem quite comforting for the heritage sector, but unfortunately it is not that easy when it comes to the perception of archaeological remains. When we asked people in our survey to indicate heritage sites they know and value, everyone indicated works of architecture, and famous historic buildings, mainly from the UNESCO World Heritage List. No one mentioned anything related to archaeological heritage in any way!

There was also a question about the attitude towards metal detectorists/treasure hunters. The replies were as follows:

- 40% – “they are harmless freaks”
- 29% – “they save heritage”
- 17% – “they steal heritage”
- 14% – “they destroy heritage”

Figure 10.6: What is the greatest value of a heritage site/object?

©National Heritage Board of Poland.

We also asked whether treasure hunters should own their finds; 42% of the answers to this question were positive and 58% were negative.

Our observations and surveys show that there is a very strong need to raise awareness by various programmes and promotion of sustainable heritage management, aimed at different groups of society, including archaeologists. With reference to archaeology, the sites and finds must be regarded as part of heritage in order for people to understand their protection. Otherwise, given the rapid changes in Poland’s economy and society combined with an inadequate and outdated approach to the understanding of the wider social and economic benefits of archaeology among practitioners, this heritage will be gone in no time.

Websites

www.stop-heritage-crime.org

www.interpol.int/Crime-areas/Works-of-art/Works-of-art

Abstract: This paper discusses some of the problems faced by heritage managers in Iceland. Iceland had heritage legislation as early as 1907 and the current act is from 2012. Under it, a state agency, the Cultural Heritage Agency of Iceland, under the Ministry of Education, Science and Culture, is entrusted with heritage management. The main problem it faces is a lack of funding, which is clearly felt in all aspects of its work. This paper focuses mainly on forces responsible for the destruction of archaeological remains in Iceland: natural forces and the nature or attitude of certain citizens, and how these problem are being addressed.

In this paper I aim to examine some examples of the main threats to the archaeological sites in Iceland. The ambiguity of the word “nature” was firmly in mind when the title was chosen, referring on the one hand to the forces of nature, which can be violent and destructive at times, and on the other to human nature and human attitudes, which can be extremely complicated. While the great majority of people are honest and feel remorse if they happen to damage cultural remains, there are others to whom they mean nothing and whose main concern is to have their own interests come first.

Under the Icelandic Heritage Act (Heritage Act, No. 80/2012), all ruins over 100 years old are considered archaeological remains. By a rough estimate there are about 200,000 such remains in Iceland. This uncertainty is because only about 25% of the archaeological remains in Iceland have been registered, leaving 75% unregistered. Of those registered, about 800 are listed specially as being of great importance to the country (Georgsson, 1990). Iceland is thus among very few countries in Europe which have not completed the registration of their archaeological sites and cultural landscapes. This is of great concern to us who work in archaeological heritage management, as most sites are under constant threat both from the forces of nature and from the inhabitants.

Iceland has for centuries been known to the world not only for its volcanic eruptions but also for the Icelandic Sagas, Snorri Sturluson’s cycle of sagas of the kings of Norway (*Heimskringla*) and unique records of its early history in *The Book of Settlements*, *The Book of the Icelanders* and other works. Those who visited the country before the middle of the twentieth century came mainly due to their interest in the culture and the Icelandic Sagas. In the nineteenth century it was common that travellers bought antiquities and took them back to their countries. The first Heritage Act was passed in Iceland in 1907, mainly in order to stop the export of antiquities (Heritage Act, 1907).

In 1964 the Iceland Tourist Board was established in order to develop tourism in the country (Ferðamálastofa 2012). At that time Iceland’s special appeal, according to the Tourist Board, was its varied, rough and unspoilt natural environment, and this was the main point of focus in its

marketing during the following years. As a result, state funding available for developing tourism was spent on infrastructure and preservation of natural attractions, while no funding was allocated for preservation or improving tourist access to archaeological sites. This is now changing.

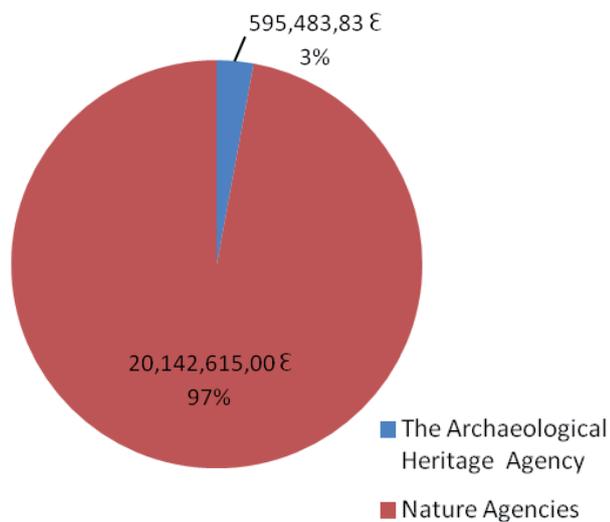
A visitor survey conducted by the Iceland Tourist Board in 2011 indicated that 38.6% of tourists visiting Iceland came due to their interest in its history and culture (Ferðamálastofa 2011). In promoting culture, the authorities have placed the main emphasis on music, food, museums and the ancient literature. They have not given historical places or archaeological remains any comparable attention, and seem not to have realized that Iceland has an abundance of available resources for the travel industry in its archaeological sites.

The main tools needed in order to operate efficient heritage management are funds and personnel. These we lack in Iceland, for the time being. For the last ten years, the nature conservation agencies have received approximately 97% of all state funding for environmental affairs every year. The Archaeological Heritage Agency, which is the predecessor to the Cultural Heritage Agency of Iceland, has received the other 3%. In 2012, the nature conservation agencies received about EUR 20 million each year, while the Archaeological Heritage Agency received about EUR 595,500. This lack of funding places heavy constraints on our work, and in the absence of the care it needs, our heritage is exposed to ongoing destruction.

Natural forces

Volcanic activity

Iceland is one of the most active terrestrial volcanic regions in the world. Thirty volcanic systems have been responsible for most of the Holocene activity in the country, with eruptions on average 20 times per century (Thordarson and Höskuldsson, 2008). Some of our most active volcanoes such as Hekla, Katla and Öraefajökull/Vatnajökull, which are all in southern Iceland, have had a great influence on the life of the people in their vicinity. The areas worst affected have had to be evacuated, as thick layers of ash and pumice,



and in some cases avalanches of glacial deposits, have covered once fertile farmland. One can say that one of the positive results of the eruptions is that the tephra has preserved interesting remains for later generations to enjoy and study.

One of the most interesting sites preserved due to an eruption is Húshólmi in Ögmundarhraun, on Reykjanes not far from Reykjavík, where we have remains of a farm, fencing, a church and churchyard and some outhouses. The eruption causing the desertion of the farm is thought to have been in the volcano Trölladyngja on the Reykjanes peninsula in the 12th century. It seems that the church was used for a few more centuries (Jónsson 1982, 196; Jóhannesson and Einarsson 1988, 83). Some C14 datings done in the area indicate that it was settled as early as the ninth century AD, which corresponds to what is known from ancient documentary sources on the period of the settlement of Iceland (Jóhannesson and Einarsson 1988, 83; *The Book of the Icelanders* 2006; *The Book of Settlements* 1921).

What seems to have happened at this site is that the lava flowed across most of the farmland, destroying the

Figure 11.1: State funding, in euros, to nature-conservation and archaeological agencies in 2012. © The Archaeological Heritage Agency of Iceland.

fields but stopping at the walls around the churchyard and the walls of the farmhouse and its outbuildings. The farmhouse might have burnt down or simply rotted away as time passed, leaving impressions of the remains in the lava. Thus we can now see the outlines of the farm and some of the poles which carried the roof construction, as well as some remains of the church and churchyard.

Such remains are easily damaged, as the lava can easily be broken and disturbed by visitor pressure. This is even more the case now at Húshólmi since a new main road linking the Reykjanes peninsula and regions further east has been laid near the remains. The Archaeological Heritage Agency and the town of Grindavík decided to cooperate in a preservation project, involving laying paths at the site in order to steer the flow of visitors and provide some information and interpretation of the remains (Harðarson 2011).

The town of Vestmannaeyjar (in “the Westman Islands” off the south coast) suffered a similar fate during the eruption in 1973 when a massive lava flow and ashfall covered a large area including some houses. In order to save the rest of the houses a method of containment was developed involving pumping jets of cold sea water over the lava in order to stop it from spreading further and destroying more of the town. This method worked and would be worth using in order to try to save archaeological sites in the future, when needed.

Among other sites affected by volcanoes are the remains of a few farms, churches and churchyards in Þjórsárdalur in southern Iceland, which were excavated in 1939. The settlement is thought to have been abandoned during the twelfth to seventeenth centuries AD due to eruptions of Hekla (Þórarinsson, 1949 and 1977). One of the advantage of the eruptions has been the development of the dating method



Figure 11.2: Húshólmi, Reykjanes, a farm which was destroyed in an eruption in AD 1151. Aerial photograph showing how the lava stopped by the walls of the farmhouse in the foreground, and by the church and churchyard at the back. © The Town of Grindavík.



Figure 11.3: The fragile lava surrounding the main dwelling house at Húshólmi. © The Archaeological Heritage Agency of Iceland.

tephrochronology, which is one of the methods used in Iceland to date archaeological sites. It was developed by the geologist Sigurður Þórarinnsson, who started his studies on tephra from Hekla in Þjórsárdalur in the 1930s (Thorarinsson, 1944).

Medieval annals mention various farms, farmlands and woodlands which were destroyed by flooding following eruptions in subglacial volcanoes (Islandske annaler, 1888, 226, 359–360). All of the sites threatened in this way by glaciers are in southern Iceland. The scale of the threat and damage resulting from subglacial eruptions became evident in 2010 in the eruption in Eyjafjallajökull. Being the biggest glacial eruption during the lifetime of the people living now in Iceland, this opened our eyes to how hard it must have been for our forefathers to survive the ashfalls without goggles or masks to cover the mouth and nose, which people are able to use today.

No systematic study has yet been done in order to register all the farms in Iceland mentioned in the documents and said to have been destroyed as a result of eruptions. This is an interesting project that would be worth doing in the future.

Figure 11.4: An aerial photograph of Siglunes. The blue line marks the coastline as it was in 1954–1958, the yellow line shows the vegetation line in 1954–58 and the red line the vegetation line in 2009. © Loftmyndir and The Archaeological Heritage Agency of Iceland.



The sea

Another force causing problems for heritage management in Iceland is the sea. The North Atlantic can be extremely rough at times and this threatens various archaeological sites along the coast, including sites connected with the fishing industry.

There is clear visual evidence that the coast in Iceland is being altered greatly in various parts of the country. Inquiries made by the Archaeological Heritage Agency about how much land is lost per annum have not produced any results, as none of the governmental agencies in Iceland has been assigned the task of monitoring coastal erosion.

In order to find out how much the coastline has changed over time, the Archaeological Heritage Agency made a study of the coastline at Siglunes, in the north of the country, in 2009. This study was made in connection with the excavation of some ancient fishermen's huts which were being destroyed by the sea. Aerial photographs showing the coastlines and vegetation lines at various times were compared with the situation as it was in 2009 as shown using the Trimble ProX GPS system. The oldest aerial photographs were from 1954–1958; these, and another one from 2000, were compared with the measurements taken in 2009. The result showed that the coast receded by about 21 metres from 1954/58 to 2000 in the areas worst affected, and by a further 9–10 metres from 2000 to 2009 (Hjaltalín, 2012, 6). We are now continuing with this project in order to analyse the effects of erosion on archaeological sites along the coast.

In some parts of the country it is possible to combat sea erosion by building rubble mounds in order to protect the shore. The Icelandic Maritime Administration has been given the task of securing the coastline, including that at the coastal archaeological sites (IMA Act, No. 6/1996. Article 3). The Archaeological Heritage

Figure 11.5: Fishermen's hut, Breiðavík, Barðastrandarsýsla, damaged by the sea. © The Archaeological Heritage Agency of Iceland.



Agency and the Icelandic Maritime Administration have undertaken a few such projects in recent years. However, it is difficult to fight the sea, and as a result our main tactic in order to save information regarding the sites is to excavate those that are under threat, thus preserving information regarding the sites for future generations.

Wind erosion

Wind erosion is by far the largest environmental problem in Iceland. Vast areas of the country have been desertified by erosion following exploitation for various purposes including fuel, farmland and livestock grazing. Horses and sheep cause severe damage by eating the vegetation and also by wearing away the vegetation cover on their habitual trails, so exposing vulnerable soil to erosion. The speed of erosion is magnified by volcanic activity and harsh weather conditions. Wind erosion is thus a severe threat to archaeological sites in Iceland. Thorough recent studies into the effect of wind erosion on the sites are lacking, but a doctoral thesis written in 1956 indicates that 39% of the pagan graves known in Iceland at that time had been discovered due to erosion (Eldjárn, 1956, p.197).

The Soil Conservation Service, a governmental agency under the Ministry for the Environment, is entrusted with combating soil erosion and reclaiming and restoring degraded land (http://www.land.is/index.php?option=com_content&view=article&id=135). In collaboration with the Archaeological Heritage Agency it has carried out some reclamation projects in areas rich in archaeology in recent years. These include the previously mentioned farm sites in Þjórsárdalur in southern Iceland, which have been badly damaged by wind erosion and volcanic eruptions. When the campaign against erosion started, over half a century ago, the main method adopted was to use fast-growing foreign plants, often originating in Alaska or Siberia, to bind the soil quickly and effectively. One of the most popular plants used for this purpose was a type of lupin, *Lupinus nootkatensis*. Now Iceland has started to fight against the spread of this fast-growing plant. Some decades ago it was unfortunately planted on some twelfth-century ruins at Sámstaðir in Þjórsárdalur, and covered them completely.



The method now used in the vicinity of archaeological remains is to use an appropriate fertilizer in order to encourage the original plants of the area to grow, excluding all foreign trees and plants.



Figure 11.7: Sámstaðir in Þjórsárdalur: the ruins after removal of the lupins. © The Archaeological Heritage Agency of Iceland.

Human nature

One of the main tasks of this paper was to analyse the attitude of Icelanders themselves to their archaeological remains. A few separate surveys made by the Archaeological Heritage Agency in 2010 revealed that most of those who are interested in the preservation of archaeological remains were middle-aged women and young people in the 18–34 age range (Rannsóknir og ráðgjöf ferðaþjónustunnar 2010; Fornleifavernd ríkisins 2010).

An informal survey with five open questions regarding the destruction of archaeological sites was sent by e-mail to about 150 archaeologists and museum curators in Iceland in 2012. Forty-five answers were received (response rate approx. 30%) and some of the answers were eye-openers for us.

The questions asked were as follows:

1. Do you know whether people are using metal detectors without permission from the authorities?
2. Do you know whether people have disturbed sites when using metal detectors?
3. Do you know whether people consider that they own the objects they find?
4. (For archaeologists): Has it happened that your excavation site has been damaged while you were not around?
5. (For archaeologists): Do you know of any cases where people have damaged archaeological remains, either by removing ashlar from stone constructions or by levelling fields or graves?

Figure 11.6: The farm site Sámstaðir, overgrown with lupins (*Lupinus nootkatensis*). © The Archaeological Heritage Agency of Iceland.

The use of metal detectors without permission from the antiquarian authorities was prohibited under the Heritage Act (No. 107/2001 Heritage Act, Article 16). It is not so in the new act no. 80/2012. Under Article 18 of the Act, all objects found through excavation in Iceland, as well as those found at random, being over 100 years old, belong to the state. All such objects must be handed in to the National Museum of Iceland.

Most of those answering the survey had not been aware of any illegal metal detector users damaging archaeological sites. Only two knew about the illegal use of metal detecting, and one of the cases they reported was well known to the heritage authorities; the other was not.

The case we knew about dated from 2004 and involved a teenager who held an exhibition of archaeological objects he had collected by searching sites using a metal detector, which is prohibited. The heritage authorities invited the boy to spend some time with the employees of the Heritage Agency to gain some knowledge of the work done there and to learn about heritage legislation in Iceland. He did not show any interest in this offer.

Only a handful of people have contacted us during the last ten years asking for permission to use metal detectors. At the beginning we told them that it was forbidden by law. Two years ago we decided to arrange collaboration with one of the users. We gave him permission to search for objects at a site dating from the Second World War. The Archaeological Heritage Agency is a small agency with a small staff, however, and this arrangement turned out to be too time-consuming for the employee who was our contact person and has thus been stopped for the time being.

Apart from this sole example, we have so far not had any great problems regarding the use of metal detectors. The archaeologists who replied to the survey had not been aware of anybody damaging their sites by using metal detectors. However, we have some reason for concern, as the newly passed Heritage Act, No. 80/2012, which took effect on 1 January 2013, contains no prohibition against the use of metal detectors. The Archaeological Heritage Agency advised against the removal of the article prohibiting the use of metal detectors from legislation as it will be harder to prevent people from looking for archaeological remains.

Most Icelanders are honest and let us know, as is obligatory under the Heritage Act, if they find archaeological objects in the field. But we are aware that there are those who do not. Although this is not a great problem, it is a problem and we need to solve it by means of improved awareness.

We received quite a number of stories in response to Question 4, in which the archaeologists were asked

whether people had damaged their excavation sites in their absence. We were familiar with some of them but not with others.

One story concerned the practical joke in which a Roman coin had been placed in one of the excavations in Reykjavík, thus confusing the archaeologists for a while. What we find serious, and what worries us, is that this Roman coin is mentioned in a recent book about Icelandic archaeology, and may thus confuse archaeologists in the future (Eldjárn and Friðriksson 2000 (2nd ed.), 37).

We were also told about an event which happened during the period of vigorous protests during the first months of our financial crisis in 2009. At that time an excavation of a Viking site, dated to the ninth century AD, was taking place on a lot belonging to the Parliament of Iceland. One of the acts of vandalism during the protests was the digging of a large hole on the site. The protesters apparently also stole some stone objects dating from the ninth or tenth century AD which they used to throw at the parliament building, breaking the windows and damaging the building itself. Whether they knew that they were destroying the scientific work of their fellow citizens is unclear, but in order to dig the hole and take the stones they had to break through a strong fence and in the latter case into a house where the archaeologists kept the newly-excavated objects.

Some digging by vandals has also taken place at some of the rural excavations. It is not common, but it happens.

Some damage is not due to deliberate vandalism, but the result of ignorance and disrespect for the work of other people. The previously mentioned Viking excavation site in the centre of Reykjavík recently suffered some damage due to flooding which occurred during the night. Apparently a mixture of glue, cement and colourings from a building on the other side of the road was washed across over a newly-cleaned fireplace and floor, which the archaeologists were working on (see Figure 8). When the people responsible were spoken to, one answered that he could not see that it was really a problem as it was only an archaeological site. Their problem was greater, according to this person, as they had to clean the house and lay the floor again.



Figure 11.8: Damage at the Viking site in the centre of Reykjavík due to flooding from the building opposite. Photo © The Archaeological Heritage Agency of Iceland.



Figure 11.9: Frolicking cows damaging a scheduled site in northern Iceland. Photograph © The Archaeological Heritage Agency of Iceland.

The rural sites in Iceland are far greater in number than the urban ones. In the rural areas it is mainly animals – cows, horses, sheep and even dogs – that disturb or damage sites. Large and medium-size animals, such as cows, horses and sheep, damage the sites by walking over the surfaces or rubbing against the standing remains. Smaller animals, such as dogs, have been known to dig up bones in churchyards which are being excavated. None of the rural sites are protected by fences in order to hinder access by animals to the excavation sites. Animals damage not only excavation sites but also scheduled sites. Figure 9 shows cows damaging a scheduled site in northern Iceland. The cows are kept inside in cow-sheds day and night during the winter. During the summer they are kept outside during the day. When they are first let out after being inside the whole winter, they run around in high spirits, jumping, disturbing the soil and damaging anything in their path.

Most of the damage by the animals can be prevented by putting up a fence around the sites or by using an electric fence while digging. This can be more complicated regarding the scheduled sites as fencing is not possible in all cases there.

The archaeological sites in Iceland seem to some people to be unimpressive. The structures are mainly made of turf and stone, and occasionally of wood. The simplicity of the building material could be the reason why some Icelanders do not regard their archaeological remains as valuable. Such people tend to tear down old structures and reuse the stones for other purposes.

In Question 6 we asked of any known instances of people having damaged archaeological remains, either by removing parts of stone constructions in order to reuse the stones, or levelling fields or graves in the churchyards. The archaeologists knew of several cases of damage to archaeological sites by inappropriate and/or unmonitored development or land-use change. They mentioned examples of developers digging for foundations outside the limits of the building site during the night. This was done after the authorities had told them to stop digging as archaeologists needed to do some research before the developers could continue their job.

Civilians, and even some local government officials, find it normal to take stones from the ruins of old farms or walls and reuse them in constructions elsewhere. Levelling of fields and old churchyards happens because people find it inconvenient to use time-consuming methods of mowing and prefer to use modern machines with which they can work fast. There are some examples that show that heritage managers cannot even trust other state agencies as they do not always give all the information needed. We have evidence that roadwork has not always gone ahead in accordance with the information submitted for environmental impact assessments. Connecting roads have been built, or quarries dug, without them having been mentioned in connection with the environmental impact assessment, and in some cases they have threatened or even damaged archaeological sites.

One of the archaeologists answering the questionnaire said: "One does not want to believe that people would damage sites deliberately, but of course it is something that can be expected when financial interests enter the picture."

My second story involves such financial interests. In the boom years before the financial crisis of 2008, many of Iceland's businessmen bought land for private development of various types. One of the properties sold during that period was a place of historic importance in eastern Iceland. It was first occupied in the ninth century AD and one of five remaining turf churches in Iceland stands on it. One of the owners of the land, a lawyer, visited my office a few years ago and asked what he might expect to have to do under the Heritage Act if he bought a property of historic importance. At that stage I did not know which property he was thinking of, and he was not willing to tell me. I told him that he might expect to have to pay for an excavation if he intended to build on a spot where archaeological remains were likely to be found. A few years later a representative from the Archaeological Heritage Agency was asked to attend a meeting in eastern Iceland, as this man intended to build a hotel on a spot where archaeological remains were likely to be found. At the meeting, my employee learnt that the contractor had already dug for the foundations of the hotel, naturally without permission. Some cultural layers dating to the settlement of Iceland in the ninth century AD had been seriously damaged. Some months earlier an old turf house had been torn down at the same place, also without permission. The Archaeological Heritage Agency contacted the police and brought a charge against the owner for damaging the site and for digging through archaeological remains without obtaining prior permission. The owner sent a counter-charge against me personally, as Director of the Archaeological Heritage Agency, for lying, since according to him there were no archaeological remains on the spot where the digging had taken place. I was asked to come to the police station in Reykjavik, a few

months later, where I was interrogated as a suspect in the case, which came as a surprise as my lawyer and I both thought I was being asked to come for questioning as a witness in the case. A few months after this, the police announced that they were dropping the case because there was not enough evidence, according to them, that archaeological remains had been damaged. This was in flat contradiction to a report sent to the police and written by an archaeologist who inspected the site after the digging (Einarsson 2010; Eskifjörður District Commissioner 2011).

As is clear from these two examples, people outside the archaeological profession can sometimes show a bewildering lack of understanding when it comes to the value and protection of heritage sites. To return to the survey findings, what worries us the most is the apparent attitude of some of the younger archaeologists, or archaeology students, towards archaeological finds. Among the cases mentioned was the one of a young archaeologist who had been digging at various sites in Europe, including in Iceland, who appeared to have taken beads from the sites where that person had been working and used them as hair accessories. So it is clear that it is not only the natural forces and animals, but also human nature and the attitudes of people in of all classes and professions, that pose a threat to archaeology in Iceland.

The results of our short survey have been a wake-up call. They show that in some areas where we thought we had adequate safeguards, this is simply not the case and there is a need for the Heritage Agency to make some radical improvements regarding public awareness.

I would like to thank all those who answered our survey, thus providing us with valuable information which we continue to work with.

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Abstract: If archaeology at an earlier stage of its history contributed significantly to the ideological platform of the nation state, and provided encouragement for the unshakeable belief in progress and European superiority, what then could be good reasons in a contemporary context for investing in archaeological excavations? The problem is not that archaeologists as such are out of touch with contemporary society, but rather that the format in which they most frequently exercise their trade (rescue archaeology) has too much in common with a ritual practice that has been cut loose from the frame of reference that once gave it meaning. The legal instruments that have given us as archaeologists the means to pile up data, samples and objects from an infinite number of sites have provided us neither with the obligation nor with the means to embed our excavations into a productive ecology of knowledge and culture. This situation cannot last. The question is just, who is going to end it? We still have a chance, and I believe an ethical obligation to do this by ourselves. Archaeology must focus on the issues that are of importance to people in contemporary society and use those issues as a basis from which to develop questions and approaches that can guide our choice of sites and methods for our excavations.

Archaeology in the service of nation state and empire

Archaeology originated to serve purposes relating to identity and curiosity. Whether we like it or not, archaeology was frequently driven by desires to:

- Fill museums and private collections
- Bolster national pride
- Give prestige to the ruler
- Put us in the “right place” on the evolutionary ladder
- Explain the big questions about origins, rise and fall

In short, archaeology gave meaning to society in return for the resources it consumed. Its scientific breakthrough occurred in the dual context of modernity and of the construction of the nation state. This adherence can be illustrated by reference to J. J. A. Worsaae. He was one of the mid-nineteenth-century international pioneers of interdisciplinary archaeology with big questions on the agenda. However, he also concluded his popular history of Danish antiquity with a strong manifesto about the role of archaeology in the construction and bolstering of a Danish national identity (“Danmarks Oldtid oplyst ved Oldsager og Gravhøie”, Copenhagen 1843, 116).

Archaeology in the service of administration

Archaeology is still driven by some of the same motivators – but not in a proportion to match the resources it consumes. Today archaeology is overwhelmingly regulation-driven.

- The typical rationale behind an excavation is the need to comply with the legal framework. It is mainly in the context of radically changing land use – typically construction works threatening archaeological sites – that funding for excavation can be made available.

- This implies that the typical excavation is initiated because there is something that can be excavated, but not primarily because we have particular question to ask that can guide our excavation.
- The rationale behind the legal framework itself is an honourable desire to secure data for research and valuables for public collection.
- However there is no connection between the resources invested in securing material for research and the resources invested in research itself.
- The fact that research seldom occurs leaves us with an ever-increasing stockpile of finds and reports that nobody seems able to make use of.
- Excavations have been left “dangling in the air”; they have become the answer – but nobody seems to remember the question.
- Rescue excavation appears to have become a ritual performed as an end in itself.

When does archaeology matter?

Even if most archaeological activity is rooted in administrative rather than scientific questions, the public still responds to archaeology. Archaeology still matters when occasionally it touches people’s lives today. For instance when we bring the past back to life as has happened with recent geophysical investigations at Carnuntum (in present day Nieder-Österreich), that produced a gladiator school (<http://archpro.lbg.ac.at/press-release/school-gladiators-discovered-roman-carnuntum-austria>).

Archaeology matters when we make the past help bring about change in the present, as was done when archaeologists and the local municipality of Pollena Trocchia on the northern slopes of Vesuvius some years ago decided to clear an illegal mafia garbage dump in order to reclaim a late Roman villa with baths from a place otherwise thought to be without any significant



Figure 12.1: The Armenian Cathedral of Ani or the Holy Virgin Cathedral of Ani, Kars Province, Turkey. The Cathedral was built around AD 1000, and together with the rest of the ancient city of Ani it has an immense symbolic value for the Armenians. In 2012 the Turkish authorities nominated it as a World Heritage site, an initiative that hopefully can benefit both the preservation of the site itself and the dialogue between Armenians and Turks. Photo Carsten Paludan-Müller.

antique settlement (<http://www.apollineproject.org/>). The Apolline project was awarded the European Heritage Prize for its exemplary combination of academic and civil merits.

Archaeology matters when we bridge the time gap and confront people with their fellow humans from a distant past. The discovery in 1991 and subsequent research on Ötzi, the Copper Age man found in a retreating Alpine glacier (<http://www.iceman.it/en/node/226>) caught the attention of the general public as well as the archaeologist. The response was similar to what could be seen a couple of generations earlier with the mid-twentieth-century finds of the Iron Age humans sacrificed in the Danish peat bogs (<http://www.tollundman.dk/default.asp>). And it was similar to what we experience when we visit the caves with the blown hand-paintings reaching towards us from our Palaeolithic fellow humans. It is the response that comes from touching upon more existential questions about what defines and unites us as humans, about the scale and sense of history and culture, and perhaps about the scale and meaning of our individual lives.

Archaeology matters when we can throw light on the basic conditions of human life in the past. How was their health? What did they eat? And how did they cope with other basic issues, such as shelter and clothing? (<http://www.leeds.ac.uk/yawya/bioarchaeology/>). Archaeology matters when we put today's themes like global warming and climate change into perspective. This is what the find of Ötzi did and what was done with other high mountain finds exposed by retreating glaciers and snow dunes (http://www.khm.uio.no/utstillinger2/isensarkeologi/english/1_introtekst.html). With our discipline we are in a unique position to add time depth to the current debate on climate change. We can demonstrate the impact of earlier changes on human society, and by doing so we can nuance what sometimes appear to be positions either of denial or despair.

Archaeology matters when we touch upon identities and upon conflict. Archaeology often deals with emblematic sites on the basis of which narratives have been constructed to underpin ethnic, national and religious identities. With identities often being defined negatively in opposition to other ethnicities, nations

and/or religions, such emblematic sites are prone to be related to conflict. Ayodhya in Uttar Pradesh is one such example (<http://www.bbc.co.uk/news/world-south-asia-1143524>), where archaeologists have been involved in the task of sorting out whether a Hindu temple dedicated to Ram was demolished to leave place for the sixteenth century construction of a mosque, or whether the temple was already gone before the arrival of the Muslim Moghuls. The dispute blew open when in 1992 an angry Hindu mob demolished the sixteenth-century Babri Mosque on the former temple site.

Another example would be the ancient town of Ani in Turkey's Kars Province. Ani was an important early medieval trading city on the Araxes River forming the border between Turkey and Armenia. For the Armenians Ani is the ancient capital of their West Armenia. For the Turkish authorities the site is, among other things, also a Turcoman site and the site of Manucehr Mosque, the first mosque in the Eastern Anatolian plateau and a hub in a widely spun cultural and commercial network (Figure 12.1). But also Ani is part of the troubled relations between Turks and Armenians. The Turkish authorities have now submitted Ani for addition to the tentative list of World Heritage sites (<http://whc.unesco.org/en/tentativelists/5725/>).

The Temple Mount in Jerusalem and the archaeology of the entire region of Israel-Palestine are highly linked with the conflict between the Jewish state and the Palestinian people. Luckily there are archaeologists and citizens who put up a fight against the ideological instrumentalization of archaeology (<http://www.alt-arch.org/>).

Archaeology matters when we add to the understanding of today's geopolitical hotspots. This is what we can do by studying the long history of empires in regions like the Middle East and North Africa and how they contrast with the short history of today's nation state in the way they relate to cultural complexity and hybrid identities. These are issues that cannot be fully understood, or at least not without the (material) evidence from everyday life often left out of the written sources, which tend to emphasize difference rather than similarity and hybridity (http://www.coe.int/t/dg4/cultureheritage/culture/baku/Panel_2_EN.pdf).

Finally archaeology matters when we are able to open access to the lives of people who lived before us, where we live the routines of our everyday lives today. This is what often happens in urban archaeology, when the pavement and asphalt are removed and the remains of a city's walls, cellars or burial grounds are exposed, as happens in many places right now, for instance



Figure 12.2: In the basement of the Barcelona City Museum you can stroll around streets and buildings from the Roman and medieval periods. This allows a very tactile connection between the vibrant life in Barcelona of today and the equally vibrant life of the earliest citizens of the city. Photo Carsten Paludan-Müller.

in Copenhagen (http://www.copenhagen.dk/en/excavations/at_the_metro_stations/).

In Barcelona's city museum you can descend the stairs into the late antique streets. This is a true time-well that allows you to relate in a very tactile way to the long unbroken history of urban life in this place (http://www.bcn.cat/museuhistoriaciutat/ca/muhba_placa_del_rei.html) (Figure 12.2).

The awareness of the past under our feet in the everyday landscape as an entry point should be of some comfort to rescue archaeologists. Whereas it can be difficult to strike upon some the grand themes lined up above, any urban excavation that is worth undertaking should produce finds, knowledge and perspectives that can illuminate the lives of our long-gone fellow citizens.

And yet far too many of the resources that society as a whole invests into archaeological excavations do not produce any proportional amount of new knowledge or insight that touches the lives of people today.

Will it last?

For the time being we are allowed to continue rescue excavating without giving back sufficiently much of importance to the general public. We should not let ourselves be disturbed by the fact that there are a variety of mechanisms behind the financing of rescue archaeology. We should regard this as societal investment anyway, because the private developer-financed rescue excavation are also products of a social consensus expressed through the antiquarian laws and regulations. So regardless of whether we are dealing

with public or private financing, rescue archaeology must make real sense to the wider audience. If not, we may envisage (more) situations where laws are changed or public money is diverted to other uses – not least in situations of extreme austerity and crisis such as those that are currently affecting the lives of people and the legitimacy of states and authorities over much of Europe.

We may prefer to think that as long as we keep quiet and continue our business as usual, we can sit out the current crisis and feel assured that nobody would really want archaeologists to change their ways as long as there is money available. This relies on the belief that basically cultural heritage, including its archaeological components, are self-explanatory as assets to society. I believe that it would be not only risky but also wrong to lean back in order to wait and see what happens.

My point is that, whether we like it or not, the present legal and financial schemes that support rescue archaeology are hardly sustainable culturally or politically. The time perspective for a collapse will vary depending on the situation in each country, but anyway we as archaeologists have to ask ourselves where we want the push for change to come from. If we wait we might wake up to find ourselves confronted with a radical political push to cut back archaeology as a cost imposed for apparently obscure reasons on investments in development projects of various kinds.

We should act

If not for ethical reasons, then at least for pragmatic ones we should act and seize the initiative to change the modus operandi of rescue archaeology and hence

the major part of the current archaeological field activity. We need to act along four lines:

- We must change the way archaeological excavations are funded
- We must change the rationale behind the selection of threatened sites for investigation
- We must change and diversify the methodologies we apply during investigation
- We must change the way we report back to the community

Changing the funding

We must move away from a system where some developers pay a huge price and others none, depending on whether their project happens to touch upon archaeological deposits or not. We must instead change to an insurance-based system, where every developer pays a small fraction of his project budget to insure against any further costs from archaeological investigations related to objects affected by the project.

Changing the rationale

With the revenue from the insurance, we can build a financing facility that can allow us to select and fund investigations of the sites that hold the best prospects for yielding finds and information that can contribute something of value to our insights into the past. This means that we will no longer be excavating just because a site is threatened, but we will need the extra criterion of having questions to ask. Our excavations will, so to speak, again become driven by curiosity, rather than by bureaucracy.

Changing the methods

With curiosity-driven investigations, we will need to refine and further diversify our concepts of investigation and our toolkit. We will need a high emphasis on prospecting so that we can retrieve information that at different stages provides us with sufficient information about the meaning and potential for further investigation. We should become unafraid of deciding not to excavate. We should become highly skilled in extracting exactly the type and amount of value from each site that can be its particular and significant contribution, and then stop, before we reproduce insignificant or already established insights. New technology-intensive methods are under rapid development these years that can help us extract more knowledge and give us better support for our research design.

Changing what we give back

Already when we design our investigations we should integrate the ideas about what we want to give back to the community where the investigations take place. The community focus will be our best guarantee of being relevant in what we do. It will challenge our ability to ask interesting questions that respond not only to our own curiosity but also to that of the surrounding community of which we are a part. What we give back will of course vary from case to case – reaching from a new permanent heritage site to visit and build activities around to mere intangible values such as new insights into the lives of those who lived in the same place before us.

Do we dare?

Do we dare to embark on this voyage, where we cannot be sure of the outcome? If we unscrew the cork, we may never be able to get the genie back into the bottle. Furthermore, rescue archaeology provides a lot of employment as it is today. Do we really want to risk losing that?

Then there is the debate that we will raise when we ourselves begin suggesting new ways of doing things. Can we actually provide the arguments that will convince people and politicians that archaeology is still worthwhile as an economic liability for developers? Finally, do we think that we can actually in the end deliver the results that will justify the costs of our investigations?

No, we cannot be sure how this will end. On the other hand, if we believe in the relevance of archaeology, we really should not be scared of standing up to a challenge that is already there to be unleashed, if not by ourselves then by someone on the outside of the discipline.

The pitfalls

Becoming relevant is not just positive. It all depends on what we become relevant to. We have seen earlier periods where archaeology has been relevant to racism, imperialism, nationalism and totalitarianism of various kinds.

Archaeology has also been relevant to collectors – both private and public – who favoured destructive treasure hunting for research and respectfulness to the heritage of other people.

Finally, there is the ever-present potential for becoming relevant to commercial overexploitation of vulnerable sites.

No, we cannot be sure that relevance will always be a good thing. There is always the risk of being instrumentalized by actors with an unethical agenda. However, this is a condition that is shared by a lot of other professions that we would consider as highly relevant in our contemporary society. Doctors have been and are still being instrumentalized in totalitarian systems to bring dissidents under control with torture and drugs. Teachers have been and are being instrumentalized for purposes of indoctrination and gathering of information about dissidents.

Still, no one would advocate teachers or doctors to consider becoming irrelevant as such. Alongside other relevant professionals, archaeologists should be able to handle the ethical challenges and choices that come with relevance.

The ethics of reciprocity

Indeed, we may ask ourselves the question whether it is ethically sustainable in the long run to pursue activities financed by society without reciprocating by giving back a proportional amount of benefits in the form of

insights and points of fascination to our fellow citizens and to ourselves.

We should act now and initiate the discussions about how we can seize the initiative in an ambitious reshaping of archaeology in contemporary society. But if we have enough confidence in ourselves and the legitimacy of our discipline we should not be afraid of testing the strength of our arguments and our ability to touch upon what fascinates our fellow citizens.

Europe is living through dangerous times in these years, as the continent is balancing between a regression into ancient nationalisms and authoritarian solutions on the one hand and a further political integration and centralization on the other hand. In either case culture and history are important for good and for bad. They can easily be instrumentalized to serve unsympathetic solutions. But they can also serve as a bulwark against those.

Furthermore, Europe is increasingly moving into a culture-driven economy where cultural assets can be developed into economic assets, and into a society where identity and culture come into the centre of how we define ourselves and our relations to others.

Archaeology has a role to play – in fact it should be highly relevant.

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13 | Raising awareness in the younger generation: An educational programme for illicit excavations and trafficking of cultural goods

Elena Korka

Abstract: Clandestine excavations and the illicit traffic of cultural goods has been at its peak internationally in recent years and continues to be a very serious threat today as well. One of the basic ways to curb this phenomenon is the sensitization of the younger generation through information campaigns. Greece has suffered extensively from looting and loses many important cultural goods almost every year. In 2008 a new service was founded in the Ministry of Culture, the Directorate for the Documentation and Protection of Cultural Goods of which I had the honour of being the first Director. In 2010 we organized an educational programme for elementary school pupils. We prepared and printed a brochure in Greek and English, which was distributed in major museums and sites. It aims to sensitize children concerning the protection of cultural heritage. This brochure was sent to UNESCO, ICCROM and other international organizations.

We also organized an educational activity for elementary school pupils in Athens named "Searching for the missing archaeological information..." It was a hands-on experience which shows the difference between systematic excavation and looted archaeological sites. This is a pilot project which can be broadly circulated and implemented in educational activities throughout Europe.

Illicit excavation is a serious phenomenon of our society, which affects us all, as the loss of cultural heritage is a loss for mankind. For this reason the illicit trafficking of cultural goods cannot be confronted uniquely through strict law enforcement, but it is also necessary for preventive measures to be taken (Korka, 2009). It is most important to sensitize the broader public and more specifically the younger generation. This is a challenge which should be duly undertaken, since the looting of sites and the illicit market for cultural goods is now rated third in the list of activities in major organized crime (Wise (ed.) 1974; Korka 2009).

Greece is a country with a very rich heritage, a common target for looters, since there is a big market for Greek antiquities. In 2008 the Ministry for Culture and Tourism, wishing to offer even better protection for its cultural property, established a new service, the Directorate for the Documentation and Protection of Cultural Goods (Government Gazette of the Hellenic Republic, Law No. 3658 "On Measures for the Protection of Cultural Goods and other provisions"). I had the honour of being the first Director. Among the goals we set was the organization of a special educational programme for elementary school pupils, aimed to make them understand the value of cultural heritage, to sensitize them in regard to its preservation and protection and make them aware that in the future, as active citizens, they can play an important role in the safeguarding of our cultural wealth. We thought that through play, stories and activities children can understand this issue in a much better way, even if they live in cities.

While participating in the programme, the young pupils are slowly led to understand the importance of the loss

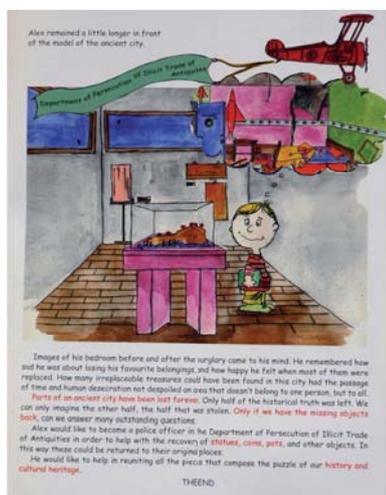
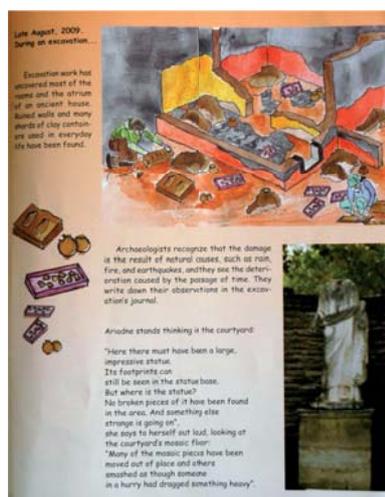
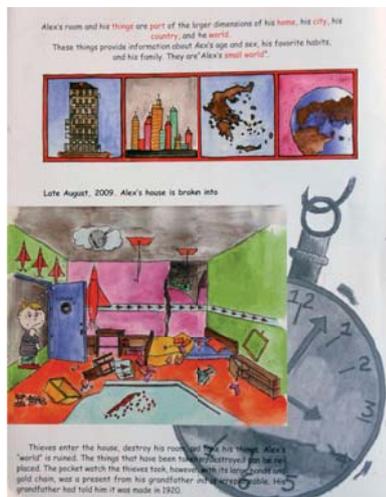
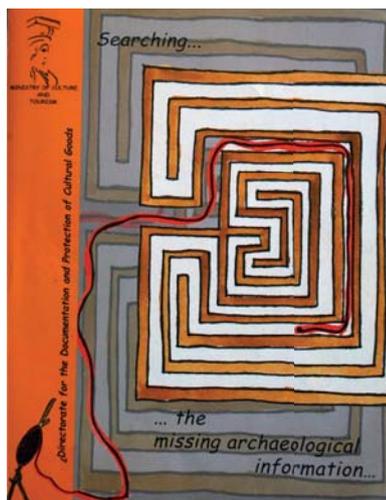
of cultural goods when these are alienated from their context, and how severely the historical environment suffers from this traumatic removal. They become aware that it is up to each and every one to react to this act of vandalism, which renders the objects orphans, as they are being torn away from their history.

For the broader dissemination of this programme we published a brochure with images and a short story on illicit excavation (Korka, 2010). In an amusing way it introduces children to this problem and serious threat to our world today. It tries to make them actively involved.

Our goal was especially for teachers to receive the brochure and use it in class, where discussion could take place concerning this issue. Key words are provided and an introductory text exists for the benefit of the teacher, the parent or other educational instructor. It also introduces the reader to the work of international organizations such as UNESCO, INTERPOL etc.

The pamphlet clearly states that the competence in the fight against illicit trafficking of cultural goods belongs to the state. The goals of the new Directorate are described, which aim to invigorate protection mechanisms. The support and collaboration of all citizens is necessary for a better result. The brochure tries to give the true extent of the problem, in order to trigger the interest and involvement of the reader.

The main text is addressed to children and a short story is provided in text and images (Figures 13. 1–4). Actually, we initially start by presenting two separate stories, which later on intertwine. They are the story of



Figures 1–8: Searching... the missing archaeological information... Hellenic Ministry of Culture and Tourism, Athens, 2010. © Hellenic Ministry of Culture and Tourism, Athens.

an archaeologist and a boy, a sixth-grade elementary school pupil, who are joined by a common feeling, the feeling of the loss of property. In the end the boy understands the sorrow and importance of the loss of cultural property, which does not belong to him alone but to all.

The boy's name is Alex. One day burglars enter his home and he suddenly sees his room in turmoil. The robbers have broken many of his cherished toys, as

they were looking for valuable things. They removed his computer, but most important of all they took his beloved grandfather's gold watch. He had given it to Alex as something very old and valuable. It's the only thing Alex had kept from him and for this reason had put it right next to his bed. This is what hurt Alex most. He can never replace this gift and its meaning to him.

Ariadne is an archaeologist working in the field on an excavation, who at some point understands that looters

have infiltrated and have removed an important statue from the site. She immediately contacts the competent service in the Ministry, but feels great sorrow for the loss of precious archaeological data. Some days later, Ariadne is guiding a class of elementary school pupils inside the local museum. Alex is among the pupils. He hears Ariadne speak about the loss of heritage and archaeological information which occurs when looters hit a site and remove antiquities to sell them on the black market. She tells them that it's like a missing piece in the puzzle.

Alex immediately understands the problem, which brings out his own memories and emotions. He finally fully acknowledges that the loss of cultural property deprives all children of their future and he decides that, when he grows up, he would like to become a special police officer to help trace the missing objects and bring them back.

This little story seems to affect children and make them understand the problem of looting and trafficking rather well. We circulated it and gave lectures at schools. Key words were used during discussion in class.

In collaboration with the teachers, excursions were organized in museums and the role of proper research and excavation was explained. The programme was entitled "As I play I learn about archaeology".

The second phase included a hands-on experience. We had thought of organizing a field trip to take the children to an excavation site, where an area would be prepared for a mock excavation. However, this presents various difficulties for city pupils, so we decided to find another way.

Pupils were invited to participate in a programme, which took place in our Service's back yard (Figures 13. 5–8). We first introduced them to the scope of the programme and then took them to the yard. We had placed broken replicas of antique vases in the dirt and asked the pupils to carry out a mock excavation with tools and materials we gave them. We even placed modern garbage on the surface such as straws, crinkled beverage cans, plastic cups etc. to make it seem real. We showed them how archaeologists excavate, how they collect data, keep log-books, measure, take pictures and interpret the finds. They also mended the pots as conservators do.

Then the teachers and pupils came into our amphitheatre and exchanged views, discussing their impressions. The children seemed thrilled, thinking that they were truly participating in a real excavation. They became very involved and participated eagerly in the discussion. Then they were given paper and crayons and drew pictures. We thought that after we gathered several prize-winning drawings we could create an exhibition and maybe even send it to UNESCO.

Back in class the children wrote about their experience. The three best essays and three best drawings were awarded and we gave the pupils books as prizes.

Half the class left wanting to become archaeologists, but we understood that the programme needed

to convey in a more vivid way the feeling of loss of property resulting from illicit excavation.

For this reason we thought of creating two boxes which we filled with dirt and which played the role of an archaeological site under excavation. The boxes can be moved about in case of rain or be placed inside. One box has low walls showing a household with a hearth, cooking vessels and a child's toys left there, as the house was abandoned, due to an earthquake which shoved the walls sideways. The other box has the same content, but looters have entered and removed the finds.

Two groups of children separate and as supposed archaeologists excavate their site. When they finish, they exchange views. Inevitably the group with the looted site cannot say anything about chronology or the use of the room or talk about the inhabitants. This way the children can fully understand the consequences of looting.

This is a pilot project which can be moved around as an exhibition for educational needs.

None the less, the idea of organizing educational activities in the field still exists. As I am the director of an excavation in Kenchreai in Corinthia, we have thought of having a children's day, with the support of a local community organization. The children of the schools in the vicinity will be the first visitors. In our case the lessons are easily taught, because we unfortunately have had a lot of looting on the site and the pits left by the looters are the sad remains of their disastrous intrusion in the archaeological remains.

In the mean time we also participated in a European programme entitled "Witness the Past" (<http://witness.thepast.org>). We produced certain films with the help of a special film company and in collaboration with other institutions in Germany, Cyprus and Egypt. The films are for children and concern illicit excavation. Furthermore, a very innovative puppet theatre was created with replicas of ancient clay dolls. This material is included in a multifaceted educational programme, which can sensitize children all over the world, as the films exist in many languages.

This educational programme can join forces with another one which we will carry out in the new service which I am heading, the Directorate for Antique Shops and Private Archaeological Collections. Children will be shown that it is essential, if some antique object is found, to hand it in and place it in a museum. They will also be shown how to take care of collections, conserve the objects well and help preserve our heritage. Through a special theatrical play, they will be taught never to buy or sell these rare artefacts to illicit dealers. This way one educational programme can link with the other.

In the mean time the brochures which we had published are now issued to the public, in Greek and English, at all major archaeological sites and museums.

Through such activities we believe that the broader community can be sensitized. Especially in times of



Figures 9–12: Educational programme, Archive of the Directorate for the Documentation and Protection of Cultural Goods, Hellenic Ministry of Culture and Tourism. © Hellenic Ministry of Culture and Tourism, Athens.

economic crisis it is essential to involve society in the protection of cultural heritage. Since resources are now limited, we must stimulate private initiative and with the guidance of the state administrators we must help in creating groups of sensitized people, who can help in surveillance and protection measures.

Most of all, however, we must educate the younger generation in this direction. We must strive to bring up children who understand the importance of cultural heritage, so that when they grow up they will become active and involved citizens for the protection of our cultural property. Without a past there can be no future. Through our educational programmes, which continuously evolve, this is the message that we primarily try to convey to the younger generation.

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14 | Protecting the archaeological heritage by promoting volunteer archaeology. Protéger le patrimoine archéologique par la promotion de l'archéologie bénévole

André Schoellen, Grégory Compagnon, Jean-David Desforges, Nicolas Minvielle

Abstract: Volunteers have long been key actors in the world of archaeology. They made archaeology a science, with its own methods and techniques. Volunteering had its golden age in the major digs (excavations) of the 1970s and 80s, which were also very destructive. Throughout France, thousands of volunteers mobilised to save valuable heritage information. Through "associations", they invented preventive archaeology, and some of them ended up as professionals themselves. These associations have also spearheaded local research. For decades, passionate volunteers have, amongst other things, led both planned and emergency excavations. They have contributed to the development of archaeological methods but more importantly, they have educated and sensitised the public about the fragility of this heritage. While discussions in the Council of Europe in 1981 were expected to lead to greater public involvement, volunteer association leaders of the 1990s have sometimes felt devalued and rejected by politicians who did not include them in decisions and policy making.

Associations of volunteers, having lost some freedom, gradually became less and less attractive. Many of them have disappeared or have a greatly reduced activity. The number of members decreased while their average age increased. Meanwhile, clandestine activities, very detrimental to a heritage that is impossible to protect as a whole, have blossomed.

The public appears to show more interest in archaeology, but does not always find appropriate structures in which to participate and learn, particularly in regard to regular fieldwork. The metal detector lobby promotes an "object hunt" that attracts a growing public. This activity, like the one which leads to the collection of flints, should not be confused with volunteer archaeology. The treasure hunter cannot be called an archaeologist or even a prospector.

To (in order to) fight effectively against illegal archaeology, it seems appropriate to empower the public in regard to its heritage. It is by valuing the work of the public, i.e. volunteers, that we will better protect heritage. Reconsidering the place of volunteer archaeology would also improve the visibility of official archaeology not only in areas marked by major developments, but throughout the country.

Introduction

« Les détecteurs de métaux et l'archéologie » est le texte de référence sur lequel nous prendrons appui dans le présent article. Issu du rapport de 1981 de la commission de la culture et de l'éducation, il s'agit d'une série de propositions émanant des débats qui eurent lieu alors au Conseil de l'Europe sur les problématiques coalescentes de la vente et de l'utilisation des détecteurs de métaux. Étrangement, et presque trente ans plus tard, les mêmes questions sont encore posées un peu partout en Europe, et en particulier en France. Si en 1980, l'utilisation massive et libre des détecteurs de métaux posait déjà – et depuis la fin des années 1960 – un très grave problème pour la protection, la préservation et l'étude du patrimoine archéologique, le phénomène s'est considérablement aggravé et connaît aujourd'hui des proportions plus alarmantes que jamais.

Les mots sont-ils bien choisis ?

En tout premier lieu, il convient de considérer les termes utilisés dans ces débats, toujours en gardant à l'esprit que les objectifs de la chasse aux trésors et les problématiques de l'archéologie sont antagonistes – ce qui ne sera pas démontré ici – considérer les termes utilisés dans ces débats est déjà parlant. « Public », « archéologue amateur », « bénévole de l'archéologie », « chasse aux trésors », « utilisateur de détecteur de métaux » sont parmi les occurrences les plus fréquentes.

Le terme « public »

Dans le document 4741, le terme « public » désigne tour à tour, et de manière indifférenciée, les adeptes de la chasse aux trésors et le grand public au sens de « la population civile ». Cette confusion a nourri les

revendications des partisans et défenseurs de la chasse aux trésors. Elle leur confère en quelque sorte une légitimité aux yeux du public, et donc des droits dans leurs activités, alors que les règlements et les lois de la plupart des pays leur imposent des interdictions ! Les partisans et défenseurs de la détection de métaux (les commerçants de matériels afférents, les responsables associatifs et les chasseurs de trésors eux-mêmes) ont entretenu à dessein cette confusion, en usant jusqu'à l'amalgame avec finalement une interprétation ciblée, qui abonde dans le sens voulu par eux.

Dans ses analyses, l'association HAPPAH considère que le terme « public » désigne l'ensemble des citoyens, et non les seuls chasseurs de trésors.

La proposition de sensibilisation exprimée en 1981 ne peut tenir face à l'absolue majorité des chasseurs de trésors et des marchands de détecteurs : l'expérience des trente dernières années a prouvé que cette sensibilisation n'a eu aucun effet sur leurs activités. La chasse au trésor telle qu'elle est pratiquée en France et dans la majorité des pays européens, est jugée comme un acte de délinquance, à en croire les jugements des cas passés en justice. La sensibilisation se joue donc en amont de l'acquisition du détecteur de métaux et non pendant l'achat ou après. C'est une gageure de l'envisager dans une boutique, ou maintenant sur Internet, par des acteurs du commerce de matériel de détection de métaux, de documentations scientifiques détournées et de mobiliers archéologiques comme les monnaies. En effet, les points de ventes de détecteurs de métaux sont aujourd'hui également des librairies, et des boutiques de numismatiques et de rachat d'or. Mais ne l'était-il pas en 1980 ? Les intérêts des pouvoirs publics et de ce commerce ne peuvent plus dès lors converger.

Le terme « utilisateur de détecteur de métaux »

L'expression « utilisateur de détecteur de métaux » (anglais: metal detector user), employée dans les mêmes débats, est tout aussi inadéquat. Pourquoi? Le

détecteur de métaux est un instrument électronique utilisé à des fins multiples par de nombreuses personnes, organismes et institutions.

A l'origine, l'appareil est un détecteur de mine à vocation militaire. C'est toujours sa mission première. Les détecteurs de métaux « civils » sont également utilisés à bon escient et avec beaucoup de succès par la police, les archéologues dûment autorisés, les services des eaux, du gaz et d'électricité, par les services techniques communaux, par les travailleurs forestiers et par les scieries, par les services de sécurité (contrôle de personnes), par l'industrie agricole et agro-alimentaire, par les vétérinaires, etc.

Mais ils sont malheureusement aussi utilisés en très grand nombre à des fins de collection, d'enrichissement, de récréation et de divertissement. Cette dernière utilisation porte le nom générique de « chasse aux trésors ». La lecture des catalogues de détecteurs depuis quarante ans montre que les études ergonomiques, le design et le marketing sont entièrement tournés vers cet usage. Or ce sont uniquement les « chasseurs de trésors », qui sont à l'origine des prédatons sur le patrimoine archéologique, et non pas l'ensemble des autres utilisateurs susmentionnés !

Accuser tous les « utilisateurs de détecteurs de métaux » de destructeurs du patrimoine archéologique serait une aberration, car seuls les adeptes de la « chasse aux trésors » méritent ce reproche.

Le terme « détectoriste »

Depuis plus d'une décennie, le terme « détectoriste » connaît un succès certain dans le milieu de ces prospecteurs la chasse aux trésors. Inventé par un responsable associatif et défenseur de l'activité, il est la transposition d'un néologisme anglais, metal detectorist. Produit lui-même par des activistes anglais, il est une réaction à la campagne STOP (Stop Taking Our Past) menée par les archéologues dans les années 1990.



Figure 14.1: Importantes traces de pillages sur un chantier de diagnostic INRAP, ZP3 du Canal Seine Nord Europe, à Noyon en février 2010. Photo J.-D.Desforges, INRAP / HAPPAH.

Le concept du « détectoriste » s'oppose, pour ceux qui s'en réclament, à celui de pilleur. Le « détectoriste » se prétend d'une affiche une attitude citoyenne, louable et de loisir dans l'utilisation de son détecteur. Mais il ne s'agit là que d'un vernis. Les exemples sont innombrables où le « détectoriste » ne fait rien d'autre que sonder les sols ou les bâtiments à la recherche de trésors avant de les fouiller véritablement. Le « détectoriste » prélève, collectionne, détériore échange et vend les objets archéologiques et historiques de la même manière qu'un pilleur n'ayant pas prétention à ce vocable. Le terme est conçu pour faire passer les pilleurs constitués en associations bruyantes pour une communauté de personnes responsables. L'utilisation de ce terme, visant à conférer une certaine légitimité à cette activité, est à éviter, les actions pour la protection du patrimoine étant menées contre des pratiques délictueuses.

L'expression « amateur d'archéologie »

L'expression « amateur d'archéologie » est souvent employée dans le contexte des prospecteurs, chasseurs de trésors au moyen de détecteurs de métaux. C'est ce terme qui est proposée aux médias par cette communauté chasseurs de trésors eux-mêmes, dans le but d'entretenir la confusion.

Certes, il est littéralement possible de considérer que le chasseur de trésors aime ce qu'il cherche, dans la mesure où cette notion est une partie constituante de sa motivation. Toutefois, s'agit-il d'archéologie ? La chasse aux trésors, est une quête de perdant : dans l'espoir de toucher le trésor fantasmé et plus ou moins improbable, les petits artefacts sont ramassés et considérés comme l'écume d'un El Dorado. Cette pratique n'a rien de comparable avec l'archéologie contemporaine, et il est même légitime, de se questionner sur une comparaison avec les pratiques plus anciennes des antiquaires des XVIIIe-XIXe siècle qui ne se sont pas exclusivement attachés à l'objet.

Cette pseudo-archéologie axée sur l'objet trouve difficilement une justification en-dehors de la logique de la collection. La chasse aux trésors recourt parfois à l'aide de quelques typologistes (monnaies, fibules, armements, etc.) qui osent la dérive en arguant que l'artefact peut être pris en compte pour ses seuls données intrinsèques. Cependant, à regarder leurs publications, la simple constitution de carte de répartition ou les tentatives de comparaisons font malgré tout appel aux données extrinsèques... faussées par le fait même du mode d'acquisition (le pillage). On ne fait que passer de la collection esthétique à la collection pseudo-scientifique.

« Archéologue amateur ou bénévole »

Afin d'éviter de nourrir l'amalgame entre « amateur d'archéologie » et « archéologue amateur », l'association HAPPAH choisit l'expression « archéologue bénévole ». Elle recouvre un ensemble d'acteurs de l'archéologie officielle, de l'étudiant réalisant un stage de formation au professionnel de l'archéologie préventive prenant des responsabilités en archéologie programmée,

en passant par le citoyen formé et intégré au réseau scientifique et consacrant une partie de son temps libre à un sujet d'étude. Si la pratique de l'archéologie doit demeurer une source de plaisir, elle n'est en rien comparable avec les aspects ludiques et lucratifs de la chasse aux trésors. En outre, elle se déroule sous le contrôle de l'Etat (services régionaux de l'archéologie) et des instances scientifiques (commissions interrégionales de la recherche archéologique) et en intégration parfaite avec des programmes et des groupes de recherches, des dynamiques de diffusion et de publication. L'archéologie amateur, autrement dit l'archéologie bénévole, existe et ne serait admettre d'être captée par le discours des défenseurs de la chasse aux trésors ou assimilée par méconnaissance du dossier à cette activité.

« La chasse aux trésors »

Nous en arrivons au terme phare de la « chasse aux trésors ». La définition en a été donnée : utilisation de détecteurs de métaux par une minorité du « public » à des fins de collection, d'enrichissement, de récréation, de divertissement et de plaisir en transgression des règlements patrimoniaux.

« Chasse aux trésors » est le terme générique employé à travers le monde entier pour désigner l'activité de chercher, de déterrer et de s'approprier des objets archéologiques. Même si des stratégies sont déployées pour neutraliser les connotations négatives de la formule, telles détection, prospection, détection ou prospection de loisir, détection responsable, détection électromagnétique, détection libre, détection autonome, détection à la billebaude, dépollution etc., elles ne parviennent cependant pas à maquiller la réalité de cette activité somme toute délictuelle, destructrice et parfois dangereuse.

Il est impératif de ne pas se laisser prendre au jeu des adeptes de cette activité. Appelons les choses par leur nom, sans contournement : « chasse aux trésors » et « chasseur de trésors ». Ces pratiques ne peuvent être associées avec les qualificatifs d'amoureux de l'histoire, d'amoureux de l'archéologie ou d'archéologues amateurs. Le mal est difficilement réparable pour tous ceux qui oeuvrent le sont avec une démarche saine et cadrée.

Qui sont les chasseurs de trésors ?

Au sein des chasseurs de trésor, on constate qu'effectivement, certaines personnes manifestent un intérêt réel et non dissimulé pour l'histoire et l'archéologie. Si l'on cible encore parmi eux, on peut en rencontrer qui admettent avoir été mal aiguillées et systématiquement désinformées par des reportages complaisants, des publicités par l'intermédiaire des marchands de détecteurs de métaux. Des témoignages indiquent de bonne foi que c'est le désir de se pencher sur leur histoire locale qui les a amenés à l'acquisition du détecteur. Ce cheminement n'est pas si surprenant si on se penche sur la présentation de la détection dans les points de ventes ou le contenu de ces reportages complaisants.

Si une frange des chasseurs de trésors peut écouter les arguments de l'archéologie, on note d'une manière générale que l'organisation de l'archéologie bénévole ne répond pas à ses besoins. L'appropriation de l'objet et le recours à l'intuition pour le dénicher n'ont pas leur place dans une opération archéologique. Les sorties ou rallyes au détecteur à la chasse ne réclament pas d'engagement dans une structure et aucun compte n'est à rendre. La difficulté est d'identifier et de toucher sensibiliser cette population désorientée. L'effectif des chasseurs de trésors s'appréhendent au travers des médias spécialisés (magazines, sites internet, associations), soit lorsqu'il est aux mains de réseaux qui ont pour fonctionner la nécessité absolue de garder le contrôle en maîtrisant les informations qui circulent. Mais lorsqu'on met en évidence jour après jour que des responsables associatifs sont aussi des maillons du trafic de biens culturels, que chaque membre est une composante d'un réseau d'acquisition d'objets archéologiques, comment envisager que la préservation du patrimoine entre dans leurs considérations ? Est-il utile dans cette mesure de chercher des solutions officielles d'encadrement, de faire montre d'une tolérance dosée ou d'un laxisme ? Pour quels résultats ? Pour quelles problématiques scientifiques et avec quels acteurs ?

Pour l'association HAPPAH, les associations de chasse aux trésors ne sont pas des interlocuteurs. Elles sont dans l'ensemble les instruments du lobbying d'un commerce des détecteurs sans scrupules ni éthique, point de départ du trafic de biens archéologiques ! Les associations les plus importantes sont fondées par des boutiques de détection. Les plus petites et les plus locales sont des projets suggérés aux clients et dûment parrainés pour assurer une survie aux marchands de détecteurs. Le discours, depuis 30 ans, ne va pas dans le sens de l'étude, de la préservation et de la protection du patrimoine archéologique et historique enfoui mais de son exploitation.

Les associations prônent l'exercice libre de chasse aux trésors, sans contrainte ni obligation d'aucune sorte. Au plus, accepteraient-elles des solutions allant dans le sens de leur renforcement comme un permis remis par une fédération... et gérée par des vendeurs de détecteurs de métaux. L'autorisation de conserver les trouvailles ou de les céder à la collectivité contre une récompense est une autre revendication. L'objectif principal des associations de chasse au trésor, aussi bien en France qu'à l'étranger, est l'introduction d'un équivalent du système anglo-gallois, système à la fois très libérale et irresponsable (Treasure Act et du Portable Antiquities Scheme (PAS)). Cette revendication est irrecevable et illusoire pour bien des raisons qu'il serait trop long à développer ici.

Se pose alors encore une autre question de fond: Les représentants de l'Etat (ministères et administrations sous leur tutelle) devraient-ils [encore] dialoguer avec des associations revendiquant la pratique d'activités dont les faits prouvent qu'elle est somme toute néfaste, illégale et criminelle ? Si la réponse est oui, tous les groupes revendiquant l'exploitation économique du patrimoine par sa disparition devraient être reçu par le ministère de la Culture. On assisterait au

démontage en règle de toute une politique culturelle et patrimoniale. En effet, bien que non connus et non inventoriés puisque enfoui, le patrimoine archéologique n'en est pas moins protégé. Pourrait-on accepter qu'un monument historique soit dépouillé de ses décors ? Est-il concevable qu'on découpe pour la vente des illustrations dans des manuscrits de la Bibliothèque Nationale ou que les sceaux des chartes des Archives soient retirés et vendus ? Peut-on considérer comme interlocuteurs culturels une partie du réseau qui dépouille après sélection notre patrimoine ? On passerait de victime consentante à une complicité criante. Le constat de la situation de ces trente dernières années est claire : la fourberie et la malhonnêteté de ce milieu de la chasse aux trésors étant connus, il n'a pas à avoir voix au chapitre. Alors pourquoi tient-il ? Est-ce parce qu'il fournit le secteur économique de la numismatique ? Il suffit d'interroger les intéressés.

30 ans de tentative de conciliation

La chaîne du trafic étant éclairée et ses maillons identifiés, qui resterait-il comme interlocuteurs ? En fait, contre qui la collectivité n'aurait aucun grief ? La vente des appareils de détection de métaux conformes pour la chasse aux trésors étant autorisée, comment conduire leurs acquéreurs à une conduite conforme à la législation ?

La question est très complexe. L'association HAPPAH s'est penchée sur des expériences menées dans divers pays comme le préconisait la recommandation n° 921 de l'Assemblée Parlementaire du Conseil de l'Europe. En Rhénanie-Palatinat (Trèves) et au Grand-Duché de Luxembourg, des « permis de chercheur en surface » ont été introduits, mais l'expérience est loin d'être concluante. Même lorsqu'on arrive à connaître une majorité de chasseurs de trésors, cela ne signifie pas pour autant qu'on arrive à les « contrôler », voire à les « éduquer ». Le fait de délivrer des autorisations de prospection en surface fait croire à leurs détenteurs que leur passe-temps est reconnu et qu'il est même utile à l'archéologie. Beaucoup de détenteurs de ces autorisations sont résistants aux recommandations et aux prescriptions des archéologues et font ce que bon leur semble. Si on les oblige à une discipline trop stricte, ils ne déclarent plus rien et passent dans la clandestinité. La même réaction est constatée pour les utilisateurs de détecteurs qui recherchent des souvenirs militaires et qui trouvent régulièrement des munitions non explosées. Si, par exemple, le service de déminage appelé leur fait des remontrances pour avoir bougé des munitions déterrées, ils ne finissent par ne plus rien déclarer !

Au début du moins, l'introduction de permis de recherches a vu augmenter les déclarations de trouvailles de manière vertigineuse, publiées par la suite dans des livres et des revues d'histoire, d'archéologie et de numismatique. La documentation géographique des trouvailles laissait cependant beaucoup à désirer ! Et que faire de trouvailles isolées, souvent dépourvues de contexte et aux provenances bien souvent invérifiables ?



Figure 14.2: Importantes traces de pillages sur un chantier de diagnostic INRAP, ZP₃ du Canal Seine Nord Europe, à Noyon en février 2010. Photo J.-D.Desforges, INRAP / HAPPAH.

L'Internet et la chasse aux trésors/L'Internet a facilité la chasse aux trésors

A partir du milieu des années 1990, avec la multiplication des échanges et de l'explosion de l'Internet, la situation est devenue quasiment incontrôlable et ingérable : les points de vente de détecteurs de métaux ont décuplé, le nombre de revues de chasse au trésor a augmenté tout comme le nombre des adeptes de la détection. Un constat s'impose toutefois : la chasse aux trésors n'a jamais vraiment eu de reconnaissance officielle, mais tout au plus une certaine tolérance comme en Angleterre ou au Pays de Galles. Elle n'a pas non plus eu une quelconque légitimité comme vient de le souligner le Ministère de la Culture et de la Communications en France dans ses réponses aux questions parlementaires. Pourtant, il existe bon nombre de naïfs [et d'hypocrites] qui croient que la chasse au trésor est utile à l'archéologie et qu'elle puisse un jour pouvoir participer à l'archéologie et en pourrait devenir une part constituante de la recherche scientifique.

Ainsi dans le document 4741, on avait songé (sub 38) à faire appel à des aides non qualifiées chargées d'effectuer des prospections de surface ou des fouilles, de vérifier les déblais ou les sites après les fouilles - autant d'opérations très intensives en main-d'œuvre qui pourraient être avantageusement effectuées par des amateurs non qualifiés armés de détecteurs de métaux [...].

Cette proposition faite en 1981 n'est plus acceptable aujourd'hui, puisqu'elle est contraire à la Convention de La Valette (16.1.1992), art. 3, sub ii. qui exige qu'on veille à ce que les fouilles et autres techniques potentiellement destructrices ne soient pratiquées que par des personnes qualifiées et spécialement habilitées. L'article 3 ne signifie pas qu'il faut être diplômé en la matière pour pouvoir pratiquer l'archéologie, il exige tout simplement l'acquisition de connaissances fondamentales en matière d'archéologie et de méthodologie archéologique. Manier habilement un détecteur de métaux n'est pas suffisant!

De nos jours, les adeptes de la détection électromagnétique sont appuyés dans leur conception erronée de l'archéologie et dans leur idée saugrenue d'être utile à l'archéologie par une poignée d'archéologues, spécialistes en typologie d'objets métalliques et par quelques spécialistes en numismatique indécents. Ceux-ci vont systématiquement glaner le petit mobilier métallique prélevé par les chasseurs de trésor, essentiellement des monnaies et des fibules, sur les forums de l'Internet et les sites de ventes aux enchères en ligne pour les intégrer à leurs banques de données, à leurs études et publications. Leur manière inappropriée de procéder est non seulement contraire à une déontologie professionnelle, mais également à la limite de la légalité, puisque par le fait de tirer profit d'activités illégales et d'artefacts volés extraits dans un contexte clandestin, ces scientifiques pratiquent ni plus, ni moins, une forme de recel. En cautionnant la chasse au trésor, ces archéologues spécialistes et numismates se rendent complices d'agissements délictueux, voir criminels.

Les défenseurs de la chasse au trésor continuent à prétendre depuis au moins 1980 que les découvertes archéologiques les plus spectaculaires sont entièrement dues à leur activité. Encore tout récemment, un article favorable à la chasse au trésor allait dans cette direction. Prenons trois exemples au hasard: le disque céleste de Nebra, le casque de Crosby Garrett et le dépôt saxon du Staffordshire : le disque céleste a failli disparaître à tout jamais sur le marché des antiquités sans l'intervention déterminée et courageuse des archéologues allemands. Le contexte archéologique du casque de Crosby Garrett demeure inconnu et le casque a fini par rejoindre une collection privée suite à une vente aux enchères et une restauration annihilant toutes les études archéologiques sur l'objet. Les cinq

jours de fouille sauvage par l'inventeur du dépôt du Staffordshire ont largement détruit le contexte archéologique restant de ce dépôt exceptionnel. Les défenseurs de la chasse au trésor passent sous silence que la majorité des trouvailles faites par des chasseurs de trésor ne sont ni documentées, ni enregistrées, ni déclarées, ni publiées et ainsi donc perdues pour la science! Voilà la triste réalité de la chasse aux trésors.

La voie à suivre

La chasse au trésor, même si elle est quelque peu encadrée par les autorités officielles (exemples allemands et luxembourgeois), ne peut et ne pourra jamais devenir un véritable auxiliaire de l'archéologie, qu'on s'en rende à l'évidence. Les intérêts des pratiquants de ce passe-temps sont trop diversifiés. La majorité des gens effectuent la chasse au trésor par pur plaisir ou dans l'espoir de toucher un jour le « gros lot », donc par goût du lucre. Ils n'ont bien souvent ni intérêt, ni respect pour l'archéologie en tant que science. Vu le caractère préjudiciable, dangereux périlleux et généralement illégal de cette activité dite de loisir, ils devront tôt ou tard se résigner à abandonner leur passe-temps au profit d'un autre, moins néfaste. Il est évident que la chasse au trésor n'a pas plus le droit d'exister que la piraterie, le braconnage, le vol à l'étalage ou le vandalisme!

Parmi les adeptes de la détection, il y a toutefois une petite partie qui présente un intérêt véritable pour l'archéologie et l'histoire. Des expériences intéressantes, menées au niveau local, montrent qu'il est parfois possible de leur faire abandonner le détecteur de métaux et de les intégrer aux équipes de bénévoles. Mais cela reste une histoire d'individualités, une rencontre entre un archéologue et un voisin qui a mal compris son intérêt pour le passé.

Pour agir efficacement, il faut prendre le problème à la source. Il faut éviter que les personnes intéressées par l'archéologie tombent dans le piège d'une archéologie noire. La chasse au trésor est une facilité.

Rappelons que les bénévoles ont longtemps été les principaux acteurs de l'archéologie. Ce sont eux qui ont fait de l'archéologie une discipline scientifique avec ses méthodes et techniques spécifiques. Ce bénévolat a vécu son âge d'or à l'heure des grands chantiers des années 1970-80, très destructeurs. Partout en France, des milliers de bénévoles se mobilisaient pour enregistrer des informations précieuses sur un patrimoine collectif. Passant par le biais d'associations, ils ont inventé l'archéologie préventive et se sont professionnalisés pour une partie d'entre eux.

Ces associations ont également été les fers de lance de la recherche locale. Pendant des décennies, des bénévoles passionnés ont, entre autre, animé des chantiers de fouilles programmées et conduit des fouilles de sauvetage. Ils ont ainsi contribué à développer les méthodes de l'archéologie mais ils ont surtout éduqué et sensibilisé le public à une échelle locale quant à la fragilité de ce patrimoine.

Avec la professionnalisation de l'archéologie et les nouvelles réglementations en matière de protection du patrimoine, les bénévoles ont peu à peu perdu la possibilité de mener des fouilles en amont des aménagements du territoire. La professionnalisation a également capté une part importante des forces vives du milieu bénévole. Parallèlement, de nombreux bénévoles n'ont pas su s'adapter aux nouvelles contraintes réglementaires et aux nouvelles exigences méthodologiques. Ecartelé entre ces deux tendances, tributaire des personnalités des différents acteurs du milieu, l'archéologie bénévole a peiné à maintenir sa place.

Avec la création des premiers Services Régionaux de l'Archéologie, le statut bénévole de correspondant régional des antiquités historiques a été supprimé. L'État a renforcé son devoir de protéger le patrimoine archéologique tout en retirant des responsabilités qui incombaient naturellement au milieu bénévole. Ceci a été vécu par la plupart comme un reniement du travail accompli.

Alors que les discussions au Conseil de l'Europe en 1981 présageaient une meilleure implication du public, les responsables associatifs des années 1990 se sont parfois sentis dévalorisés et rejetés par des politiques ne les prenant pas assez en compte. Les associations bénévoles, ont perdu des marges de manœuvre, sont devenues peu à peu moins attractives. Pour beaucoup, elles ont disparu ou ont une activité très réduite. Leurs effectifs diminuaient alors que leur moyenne d'âge augmentait.

Pour lutter efficacement contre l'archéologie clandestine, grise ou noire, il semble opportun de responsabiliser le public vis-à-vis de son patrimoine. C'est en valorisant le travail du public, donc des vrais bénévoles, que l'on assurera au patrimoine sa meilleure protection. Reconsidérer la place de l'archéologie bénévole serait aussi redonner une visibilité à l'archéologie officielle sur l'ensemble du territoire, et pas seulement dans les secteurs marqués par les grands aménagements.

L'une des solutions consisterait donc à insuffler une nouvelle vie aux anciennes associations d'histoire et d'archéologique, en leur déléguant ou en leur confiant certaines missions et en assurant une éducation adéquate à leurs membres. L'éducation du public compte notamment parmi les missions légales dans beaucoup de pays européens. Les associations d'histoire et d'archéologie pourraient alors jouer un rôle dans le domaine de la prospection archéologique, la vraie, l'authentique (à ne pas confondre avec la chasse au trésor). Les associations d'histoire et d'archéologie pourraient ainsi encadrer d'anciens collectionneurs d'artefacts archéologiques, pourvu que ceux-ci soient prêts à se laisser former, et à renoncer à l'usage irraisonné du détecteur de métaux.

Un dernier conseil aux archéologues

Face aux propositions présentées ici, une vive riposte de la part du secteur commercial est à prévoir,

donc des fabricants et des marchands de détecteurs (également marchands d'objets archéologiques). Ceux-ci voudraient participer aux délibérations concernant l'avenir de la chasse aux trésors. Dans ce contexte, il faut rappeler que nous sommes en présence d'un conflit vieux de près de 40 ans entre archéologues professionnels, conservateurs du patrimoine et chasseurs de trésors, destructeurs du patrimoine. Depuis quand dans un conflit [ou une guerre], les fournisseurs d'armes (ici en l'occurrence les fabricants et marchands de détecteurs) sont-ils conviés aux négociations de paix ??? Au moins depuis les réflexions de 1980, ce commerce a eu l'occasion de guider sa clientèle vers une conduite conforme aux lois. Durant plus de 30 ans, ce même commerce a fait tout le contraire : les marchands de détecteurs ont imaginé de nouveaux prétextes pour contourner les lois ou pour justifier la chasse aux trésors : la dépollution ; SOS objets perdus, la contribution à l'archéologie... Le plus répugnant dans le conflit entre archéologues et chasseurs de trésors est que les marchands et les producteurs de détecteurs de métaux ne cessent de faire la promotion de cette prédation du patrimoine dans la presse écrite, radiophonique et télévisée, et maintenant sur Internet, sans se soucier des dégâts

qu'occasionnent leurs clients. Ils incitent d'un côté et recueillent de l'autre les objets prélevés par leur clientèle. Il tire profit du patrimoine archéologique commun de manières directe et indirecte. Il faut mettre un terme à cette stratégie de mise en coupe réglée et dire halte au pillage.

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15 | Amateurs and professional archaeologists: Legal models for their cooperation in the Czech Republic

Jan Mařík

Abstract: The Czech Heritage Act was issued in 1987. The right to conduct any archaeological research was restricted only to the people with appropriate university education. However, besides professional archaeologists, another group of people interested in local history – amateur historians/archaeologists whose number could be counted in hundreds was already firmly established at the end of 1980s. This state of affairs changed radically in the 1990s when metal detectors became more accessible. According to recent estimations there are about several thousand of metal detectors in use in the Czech Republic. Even though only a minority of detector users tend to cooperate with professionals, it is beyond doubt that their number surpasses several times the number of professional archaeologists. Although the Czech Heritage Act includes rather high penalties for illegal archaeological research it has been applied in only a few cases per year. This decidedly inefficient system of restrictions leaves us with several questions: How ought we to handle the fact that thousands of archaeological finds disappear every year in illegal private collections without appropriate documentation or on the black market, or they are left unrecognized? This paper aims to explore approaches and methods that could minimize the losses. The primary goal is to establish effective contact with amateurs who are ready to cooperate with professional archaeologists and to respect the law. What is sought is a platform on which these two worlds apart can find a common language and mutual cooperation.

Introduction

The beginnings of Czech archaeology are, undoubtedly, connected with a rather large group of enthusiasts whose activities facilitated the foundation of the majority of archaeological museum collections. The National Museum in Prague, established in 1823, may be used as an example. The so-called Archaeological Group was established in 1841 as an integral part of the Museum, with the aim of protecting works of art, and subsequently also to save and purposefully obtain archaeological finds. In the years 1843–1848, the Archaeological Group consisted of thirteen members, but regular employees of the Museum represented only one third of them. In the next twenty years (1851–1871), the Archaeological Group reached 123 members; however, participation of the Museum's regular employees decreased to only one tenth. Thus, the majority of the members were clergymen, nobility, teachers, clerks, students, lawyers and physicians (Sklenář 2011, 14).

The foundation of the State Institute of Archaeology in 1919, following the establishment of the independent Czechoslovakia, represented a considerable step towards the professionalization of archaeological fieldwork. Apart from other responsibilities, the newly established Institute was entitled to perform archaeological fieldwork (i.e. excavations), and was also privileged to permit and supervise the excavations conducted by museums and private individuals. The latter two responsibilities were the Institute's exclusive rights. However, even the inter-war State Institute of Archaeology could not exist without a large group of

regional collaborators and correspondents. At the same time, the professional archaeologists began to warn against non-professionally conducted excavations that destroyed the scientific value of archaeological sources. As a kind of guidelines for unprofessional archaeologists, methodological instructions regarding excavations of endangered sites and accidental finds were published in 1922.

The earliest legal regulation that systematically adjusted the conducting of archaeological excavations represented a decree issued by the government of the Protectorate of Bohemia and Moravia in 1941, whereby archaeological fieldwork was entrusted exclusively to trained professional archaeologists. This situation was subsequently also confirmed by a post-war law from 1958.

According to the current effective law regarding state monument care from 1987, archaeologists conducting archaeological fieldwork must have had a university education (M.A. degree) in archaeology, and two years of practice.

Professionals and amateurs

In the same year (1919) when the State Institute of Archaeology was founded, the Czechoslovak Society of Prehistorians was also established, with professional as well as amateur archaeologists as members. This Society was incorporated in the newly

established Czechoslovak Archaeological Society that consequently excluded non-professionals from its ranks. However, already in 1964, amateur archaeologists regained the status of correspondents. A transformation of the political system in 1989 entailed, among other things, the restoration of association life when new organizations were founded and old ones were restored. The aims of some of these societies also touch the issues of archaeological monuments (to mention just some of them: the Czech Society of Antiquaries was originally founded in 1888; the Club of August Sedláček was established in 1990 and concentrates on scholarly research into seats of the nobility, their protection and help with the care of these buildings). Today, however, the only platform for amateurs interested in archaeology is the above-mentioned Czechoslovak Archaeological Society that since 1991 has also incorporated a non-professional archaeologists section.

The problem of metal detectors, which the Western European countries has had to face at least since the mid-1980s, appeared in the region of Czechoslovakia (the Czech Republic since 1993) as late as the 1990s and it was caused by the overall social transformation. The new and relatively accessible technology of metal detectors attracted a completely new category of people interested in history. It is obvious that the metal detector users represent a very heterogeneous group of people who are linked together only by the type of technical equipment they use, while their interests and motivation significantly differ. Let us leave aside the distinct criminal aspect of this phenomenon, i.e. the purposeful search for archaeological finds for personal enrichment. The group of the so-called “detector users” also includes explicit collectors who desire only to expand their own collection without a thought as to whether these finds represented Second World War, modern-era buttons or buckles or metal fittings from medieval castles.

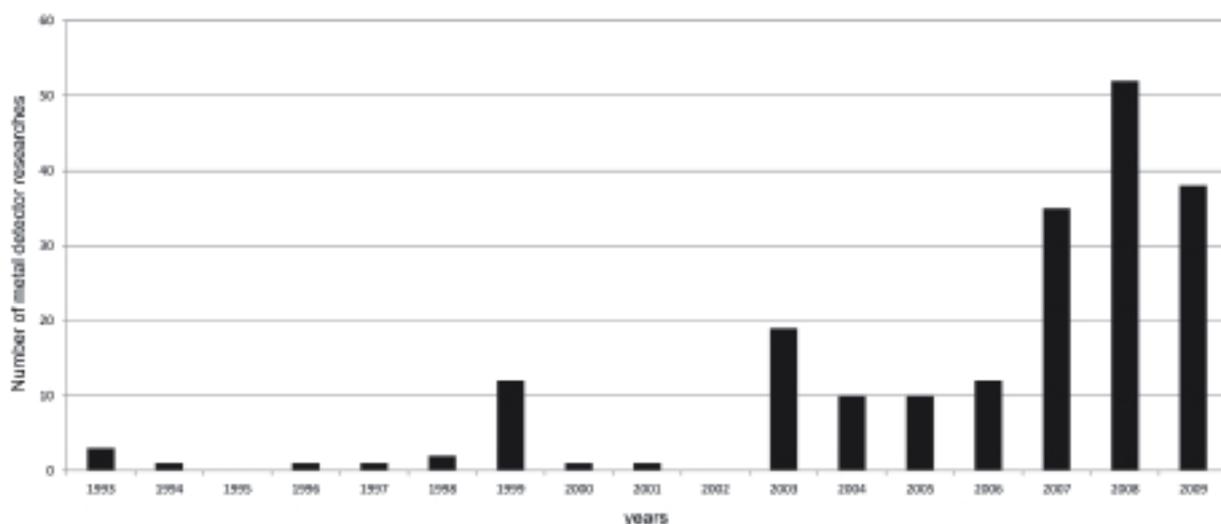
Increasing numbers of metal detector users remained for a quite long of time without a proper response from the professionals. Even though the earliest brief reports on this topic had appeared in scientific press in the mid-1990s, broader discussion occurred in the *Archeologické rozhledy* journal only after eleven years (Waldhauser 1995). This discussion resulted in rather wide range of opinions. One point of view is represented by a strictly formulated appeal not to deal with the finds obtained non-legally and to avoid any possible communication with the finders (Vencl 2000, 2006). On the other side, an opinion stressing the scientific potential of irretrievably disappearing sources has recently been aired (Vích 2006). Altogether, this discussion has had no effect and has not offered any suitable solution.

A rather ambivalent approach towards metal detectors is also evident at archaeological excavations where the device has been regularly applied only in the last ten years. This situation is also very clearly illustrated in the evidence of archaeological fieldwork in Bohemia: the earliest mention of metal detector research as an independent scientific approach occurred in 1993, and the number has increased only since 2003 (Figure 15.1).

Evidence of numbers

The current state of Czech professional archaeology was analysed within the scope of the project “Discovering the Archaeologists of Europe” that was realized in the years 2006–2008. Results of this project showed that 425 professional archaeologists were employed in the Czech Republic in 126 organizations (Frolík and Tomášek 2008). Altogether, hundreds of people, mainly amateurs interested in archaeology, are members of various societies. The non-professional section of the above-mentioned Czechoslovak Archaeological Society has 251 members, the Czech Society of Antiquaries approximately 600 members, and the Club of August Sedláček 250 members.

Figure 15.1: Evidence of metal detector research as an independent scientific approach in the Archaeological Database of Bohemia (Institute of Archaeology of the Academy of Science of the Czech Republic, Prague, v. v. i.). © Institute of Archaeology of the Academy of Science of the Czech Republic, Prague.



Estimates of the number of people who do metal detector searches in their leisure time are rather hard to obtain. Only non-official estimates of metal detector salesmen are available, and they state that the number of sold devices ranges from 3,000 to 20,000. Furthermore, the visitor statistics for the most favourite articles on the websites of these salesmen also number several thousand.

In-between the two worlds

Cooperation between professionals and amateurs has been cultivated in the Czech Republic as in other European countries for more than a century. Both sides respect certain basic rules. The majority of amateur collaborators understand that destructive research methods have to be exclusively reserved for archaeologists with university qualifications. On the other hand, professionals respect the right of amateurs to discover history and tangible relics in their vicinity. Nor is surface collection believed to be problematic, even though according to the strict interpretation of the law these people manipulate and gather the property of the state. Generally speaking, the amateurs are considered to benefit the development of the discipline.

Traditional patterns of cooperation were significantly changed with the appearance of new technologies and their large-scale accessibility. Transformations of social conditions that followed the year 1989 have, among other things, brought a rather loose sense of liberty and scant respect for legal standards. On the other hand, the incompetence of the professionals in responding to the new situation, which was later replaced by disdain and lack of interest, represented one of major causes of the emergence of two completely separate worlds of thought. Both communities have expressed certain stereotyped utterances which have only resulted in the stabilization of already established communication barriers:

The archaeologist says:

“A metal detector in the hands of a non-professional always represents a threat to archaeological finds.”

“Metal detector users are only collectors without an interest in and with disrespect for the context of finds.”

“Metal detector users have not sufficient knowledge of material culture and are not able to distinguish important finds from unimportant.”

“Metal detector users are motivated only by their own enrichment.”

The metal detector user says:

“Archaeologists are not able to present the majority of interesting artefacts to the general public, and many of them remain hidden in storerooms.”

“Rather insufficient conditions in storerooms, and limited resources for rescue archaeological excavations result in the destruction of artefacts.”

“Archaeologists are confident that only they are entitled to learn about history. Furthermore, they are sure that their approach and methods are the only right ones and they are not interested in and reject the opinions of non-professionals.”

“Rather low salaries force archaeologists to sell the artefacts on the black market.”

Even though it is clear that both communities make generalizing and even demagogic statements, some of them are based on real foundations. It is true that private collections without proper evidence of find circumstances substantially degrade the value of a series of finds. Moreover, poor knowledge of material culture may result in damage or complete loss of exceptional artefacts. However, this paper is not about searching for the guilty party but about looking for some reasonable solutions.

Looking for solutions

Professionals were primarily motivated in their efforts by their quest to get the maximum information regarding the exceptional artefacts that would be otherwise lost to the professional public. The thought that metal detector usage can yield finds that fundamentally change the state of research, mainly in later prehistory and the Middle Ages, has meant that these archaeologists do not hesitate to borrow artefacts from the illegal private collections while tacitly approving that majority of these artefacts may eventually disappear on the black market. However, this approach of *hunter-gatherers* cannot be considered the solution to the problems. Despite their statements that they are rescuing the information value of the finds, there is no gainsaying that they are, in fact, satisfying their own short-sighted personal and professional ambitions. The results of such scientific research are inevitably deformed by the arbitrariness of illegal treasure hunters who decide which finds they give to the archaeologists. Moreover, it is also difficult to check whether the stated place of origin was not intentionally changed to give the find greater exclusiveness. Due to the dubious ethical approach and the relative unreliability of the find circumstances, some professional journals have refused to publish such finds.

This approach has recently undergone gradual change in connection not only with the ever-increasing number of metal detectors at archaeological institutions and companies but also a change of generation among professional archaeologists. Metal detectors have been increasingly used not only as integral parts of archaeological fieldwork, but also new research projects are launched that are purposefully aimed at metal detector surveys (Šmejda 2007; Chroustovský and Janíček 2009; Blažková 2011) (Figure 15.2). Some of these surveys have been conducted with the aid not only of archaeology students but also of voluntary members of societies whose primary goal is long-term cooperation with professional archaeologists. These voluntary members are also interested in additional education, and their considerable interest was manifested by their

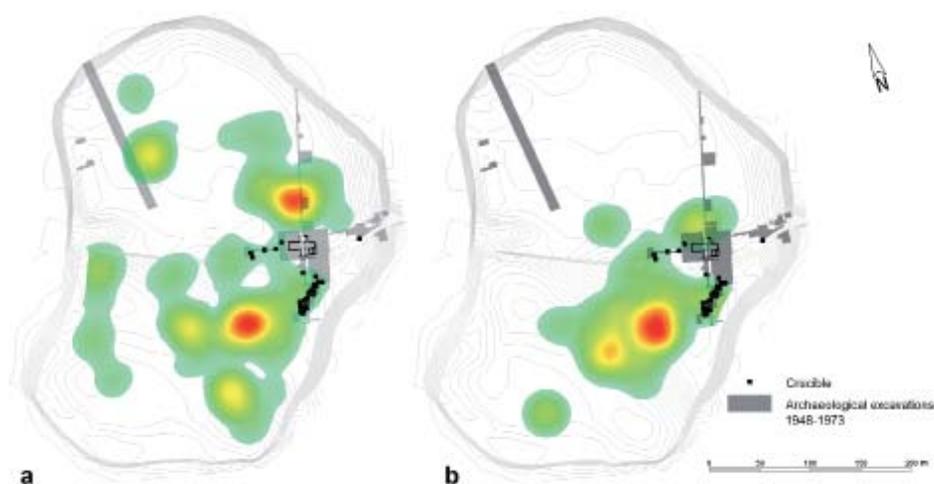


Figure 15.2: Early medieval stronghold in Libice nad Cidlinou – systematic detector research 2009–2012. Concentrations of non-ferrous metals indicating positions of workshops. a) lead alloys, b) copper alloys. © Institute of Archaeology of the Academy of Science of the Czech Republic, Prague.

presence at the one-day training focusing on the non-destructive archaeology that was held by the Institute of Archaeology of the Academy of Sciences of the Czech Republic, Prague (cf. <http://www.arup.cas.cz/?cat=695>) at the beginning of 2012. The number of participating non-professionals considerably exceeded the capacity of the Institute's lecture theatre. Currently, the number of amateurs cooperating with archaeologists may be estimated at 300–500 persons.

To sum up, the solution to the current state of affairs may be sought mainly in further education of both communities (professional archaeologists and metal detector users as well) and the preparation of professional methodologies aimed at metal detector survey. The only real means for successful achievement of these goals are research projects aimed at metal detector surveys that will provide education for not only to archaeology students but also to amateur collaborators. Any future crucial changes in the attitudes of both communities can be only caused by intensive communication and mutual respect between professional and non-professional archaeology.

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16 | Policing the past, protecting the future. Tackling crime and anti-social behaviour in the historic environment of England

Mark Harrison

Abstract: The Heritage Crime Programme seeks to raise awareness of the existence and significance of heritage assets at a national, regional and local level. Parliament has provided specific offences in law to protect the historic environment against damage and unlicensed alteration. The task given to the authorities is clear. The aspiration is to hand over our historic sites to the next generation in as good or better condition than we find them (the definition of sustainability) But in reality the split of responsibility between local authorities, the police and English Heritage, the relative rarity of incidents and the lack of expertise and understanding of the nature of the harm has meant that task has not been fulfilled as well it might. In response to the perceived need for a more coordinated approach, English Heritage, the Government's advisor on the historic environment, and the Association of Chief Police Officers (ACPO) seconded Chief Inspector Mark Harrison of Kent Police, to act as policing advisor and to develop the Heritage Crime Programme. The key objectives will be to develop a sustainable and coordinated approach to crime reduction amongst the statutory agencies and stakeholders. The system has to recognize the limited and shrinking resources available, but also to embrace the great enthusiasm and mass appeal of England's historic environment.

"The more I got involved in the heritage field, the more it became clear to me that we are losing the sites and the stories faster than we can physically preserve them."
(Kacyra 2011)

The key objective of the crime programme has been to develop a coordinated, cost-effective and sustainable approach to crime prevention and case investigation in collaboration with statutory agencies, non-governmental organizations and community stakeholder groups.

Background

This paper provides a brief overview of the development and implementation of the Heritage Crime Programme (HCP) in England.

The programme seeks to raise awareness of the existence and significance of heritage assets at a national, regional and local level and to provide agencies, stakeholders and local communities, with the tools and expertise required to protect the fabric and setting from the impact of crime and anti-social behaviour.

Heritage assets in this context are defined as:

- Scheduled monuments
- Listed Buildings
- Protected marine wreck sites
- Conservation Areas
- Registered Parks and Gardens
- Registered Battlefields
- Protected military remains of aircraft and vessels of historic interest
- World Heritage Sites
- Undesignated but acknowledged heritage buildings and sites, e.g. local designations

Heritage crime is defined as "Any offence which harms the value of England's heritage assets and their settings to this and future generations" (English Heritage, 2011a).

Heritage Protection

"Make the Bill as effective as possible, and one which would really preserve these interesting monuments, which were the unwritten records of our early history, and some of the grandest and most interesting in the world." Sir John Lubbock, sponsor of the Ancient Monuments Protection Act (Hansard 1882)

The UK Parliament has recognized the need to protect historic sites and buildings for over a century. The Ancient Monuments Protection Act of 1882 (<http://heritagelaw.org/AMA-1882>) made arrangements for the "guardianship" of a number of prehistoric sites; the introduction of a national inspectorate; and the aspiration of consigning the nation's historic sites to successive generations, in as good or better condition: the definition of sustainability.

The protective regime for sites and monuments continued to develop during the early part of the twentieth century. The most significant changes, however, were seen at the conclusion of the Second

World War with the introduction of The Town and Country Planning Act of 1947 <http://www.nationalarchives.gov.uk/cabinetpapers/themes/post-war-policy.htm>. The Act began the system of protecting buildings and structures of special historical, architectural or cultural importance. This has been complemented in later years in the provision of protection for shipwrecks and military remains.

The role of the enforcement agencies would appear to be clear. But in reality the division of responsibility between local authorities, the Police, English Heritage and the Crown Prosecution Service; the apparent rarity of incidents; and the lack of expertise and understanding of the nature of the loss and harm has meant that the task has not been fulfilled to its full potential.

English Heritage

English Heritage (EH) is the Government's statutory adviser on the historic environment of England. Officially known as the Historic Buildings and Monuments Commission for England, it is an executive Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport and was created within the National Heritage Act 1983, <http://www.legislation.gov.uk/ukpga/1983/47/contents>.

English Heritage also advises local authorities on the management of change to the most important parts of our heritage and is also responsible for the National Heritage Collection of historic sites and archives. Similar systems and structures exist in Scotland, Wales and Northern Ireland.

Development of the Heritage Crime Initiative

In March 2010, English Heritage and the Police Service, through the auspices of the Association of Chief Police Officers (ACPO) recognized the need for a more coordinated approach to tackling crime and anti-social behaviour within the historic environment. To this end a senior police officer was selected to act as policing and crime advisor and to devise a framework that would:

- Develop a sustainable and coordinated approach to reduce crime and anti-social behaviour within the historic environment;
- Define the characteristics and typology of crime prevalent within the historic environment;
- Raise awareness of the existence and significance of heritage assets to statutory agencies and community stakeholders at national, regional and local level.
- Integrate an intelligence-led business model used by law enforcement agencies to gather, manage and analyse information;
- Embrace the great enthusiasm and mass appeal for England's historic environment within local communities.

Developing a partnership model

A scoping exercise was undertaken in order to gain an understanding of the level of support and enthusiasm for the development of a partnership model and to formulate and agree a definition of "heritage crime".

A series of meetings and discussions were held with representatives from a range of enforcement agencies; professional bodies responsible for the regulation of historic sites and buildings; and community groups with an active interest in heritage issues.

The results were broadly supportive of the concept but clearly identified that the introduction of a partnership model should be focused on the:

- Identification and understanding of risk to assets and settings;
- Prevention of crime;
- Capability of delivery within existing resources and structures, in particular, the existing models of Neighbourhood Policing and Community Safety Partnerships.
- Sustainability;
- Capacity to increase its coverage and effectiveness over time.

Neighbourhood Policing and community involvement is expected to contribute considerably to improved intelligence and data at a local level. Communities are being urged to understand the range and location of heritage assets that exist within their immediate locality and to report suspicious activity and behaviour to members of the Neighbourhood Policing Team.

Community Safety Partnerships (CSPs) are defined within the terms of the Crime and Disorder Act 1998. CSPs have a statutory duty to "work together to develop and implement strategies to protect their local communities from crime and to help people feel safe" [and] "work with others who have a key role, including community groups" (<http://www.homeoffice.gov.uk/crime/partnerships/>). There are over 300 CSPs in England operating to reduce crime and anti-social behaviour in local communities.

Memorandum of Understanding

In order to underpin and define the willingness to collaborate it was agreed to prepare a formal Memorandum of Understanding (MoU). The MoU delineates responsibilities between the strategic partners and encourages the use and development of collaborative practice at a local level (English Heritage, 2011).

In February 2011, the Memorandum of Understanding was endorsed by

- The Police Service (through the Association of Chief Police Officers (ACPO))
- The Crown Prosecution Service (CPS);
- English Heritage;
- Canterbury City Council.



Figure 16.1: Damage to Neolithic enclosure, Somerset. ©English Heritage.

Alliance to Reduce Crime against Heritage

The Alliance to Reduce Crime against Heritage (ARCH) was conceived in recognition of the desire and enthusiasm of the wider heritage community to support, engage and galvanize action to tackle heritage crime at a local level.

ARCH is a voluntary national network, which encourages groups and individuals to share knowledge, expertise and information through the:

- Delivery of conferences, seminars and training workshops;
- Highlighting effective practice;
- Forging of local contacts and networks.

Members of ARCH include: the National Trust, the Church of England, Crime Stoppers, the Ministry of Defence, English National Parks, the Woodland Trust and the Historic Houses Association, as well as a wide range of archaeological and historical societies.

The second conference organized by the Alliance to Reduce Crime against Heritage was held in London on 21 March 2012. Representatives from a wide range of organizations came together to discuss the problem of heritage crime and to learn more about the Heritage Crime Programme and how they could tackle heritage crime in their local areas and communities (English Heritage 2011c).

The size of the problem – setting priorities

In line with terms of the National Intelligence Model, a Strategic Assessment must be undertaken in each twelve-month period in order to identify the scale, extent and location of crime and anti-social behaviour and make recommendations concerning the tasking and direction of future policing and partnership strategy and tactics.

The first strategic assessment for the historic environment was published in November 2010 (Kent Police). The findings identified and recommended the following issues as priorities:

- Preventing and detecting criminal damage caused to the historic environment; (Figure 16.1)
- Preventing and detecting unlawful excavation and removal of articles from the historic environment;
- Preventing and detecting architectural theft, including metal theft, from the historic environment;
- Prevention and enforcement of unauthorized works and alterations to listed buildings.

The second assessment was undertaken as part of research commissioned by English Heritage and conducted by Newcastle University, Loughborough University and the Council for British Archaeology in October 2011 (English Heritage 2012a).

The findings indicate that:

About 75,000 crimes affected protected buildings and sites in a twelve-month period – an average of 200 incidents a day.

The biggest single threat is metal theft and the most threatened type of building is a church. (Figure 16.2) See <http://www.english-heritage.org.uk/content/imported-docs/p-t/researchpaper.pdf>.

National Heritage Protection Plan

“Over the next four years the first, and over-riding, priority remains to safeguard for the future the most significant remains of our national story.” Baroness Andrews OBE, Chair of English Heritage (English Heritage, 2012b)

In May 2011, English Heritage published the first National Heritage Protection Plan (NHPP). The plan



Figure 16.2: St Peter's Church, Cheshire. ©Cheshire West & Chester Council.

sets out how English Heritage, with help from partners operating within the heritage sector will:

- Identify;
- Prioritize;
- Deliver heritage protection at a time of unprecedented social, environmental, economic and technological change.

Heritage Crime has been identified as a discrete activity within the National Heritage Protection Plan (NHPP) Activity 2B2, now known as the Heritage Crime Programme (HCP) (English Heritage, 2012c). This is a major step forward, showing the level of commitment that English Heritage and the wider heritage sector have to addressing the issue and the impact of crime and anti-social behaviour.

Progress of the Heritage Crime Programme 2011–12

The Heritage Crime Programme is now developing into a national partnership. Elements of the English programme have now been reviewed and adopted in Scotland, Wales and Northern Ireland (Department of the Environment Northern Ireland 2011).

Active partnerships are developing across England and practitioners and community groups are gaining the skills and competence to effectively tackle and investigate heritage crime.

Fifteen local authorities and community safety partnerships, including the Peak District National Park Authority, have become signatories to the Memorandum of Understanding and many others have highlighted their intention to engage in the process during 2013 (Peak District National Park Authority 2012).

The Crown Prosecution Service has implemented a national network of fourteen senior prosecutors to act as Heritage Crime Coordinators (Crown Prosecution Service 2012).

The membership of the Alliance to Reduce Crime against Heritage continues to grow, with over 180 groups and organizations working together to share and receive information and intelligence and to galvanize action at a local level (November 2012).

A growing number of English police services have appointed officers to act as a single point of contact for matters relating to heritage crime. The function is often aligned to the investigation of offences within the natural environment.

A nationwide series of heritage crime conferences, seminars and workshops have been delivered to over 6,000 practitioners and community activists.

The profile and understanding of the extent of crime and anti-social behaviour and its impact on heritage assets will continue to develop as the annual assessment regime adopts the full-range of quantitative and qualitative research methods.

Next steps

Over the duration of the National Heritage Protection Plan (2011–15), English Heritage and partners from across the heritage sector will be:

- Encouraging local authorities and community safety partnerships to implement the partnership model and to become signatories to the Memorandum of Understanding;
- Publishing a range of online guidance for owners, community groups and heritage practitioners that will include:
 - Risk Assessment
 - Crime Prevention Measures
 - Heritage Crime Impact Statements Interventions
 - Interventions - Prosecutions and Alternative Disposals
 - Sentencing Guidance
- Developing a range of awareness briefings and training courses that will raise the level of knowledge and understanding of:
 - Assessment of risk
 - Preventative measures
 - Investigation techniques
 - Evidence gathering and forensic methods
- Extending the membership of the Alliance to Reduce Crime against Heritage.

Conclusion

How will we know that we are starting to make a difference? In a period of just over two years the term "heritage crime" has become a term frequently used in academic journals, parliamentary proceedings and across the media.

The academic sector has also recognized that the theme of heritage crime provides a rich and diverse opportunity for research and innovation.

Figure 16.3: Clifford's Tower, Yorkshire. ©Yorkshire Press.

The ability to report, record and analyse intelligence and data in an accurate and consistent manner will, in the coming months and years, provide a major opportunity to highlight high-risk locations and preventative opportunities that will generate protective outcomes.

In the interim I will close with a statement made by District Judge Roger Elsey during sentencing of an offender who painted graffiti on some of York's most historic landmarks, namely York Minster and Clifford's Tower (Figure 16.3):

"Given the worldwide significance of the historic sites you damaged with graffiti... I am satisfied the offences were so serious only a custodial sentence is appropriate."
(Yorkshire Press 2011)

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17 | Do as we say, not as we do! Archaeological heritage protection and the excluded Austrian public

Raimund Karl

Abstract: In 1905, Georg Dehio clearly stated that the only way to achieve efficient heritage protection is by means of public participation. Yet, archaeological heritage legislation in Austria almost completely outlaws any active participation by the public in the management and protection of the archaeological heritage. And not just that, our laws and practices tell the public to do as we say, not as we professionals do. The result is a crisis of legitimacy and of information flow: members of the public who want to protect heritage consciously decide to break the law, since they realize it is counter-productive; but simply do not tell professional heritage managers about what they do (and what they find). By wanting the best possible protection for archaeology, we have achieved the worst imaginable situation.

Archaeological heritage protection in Austria is regulated and organized mainly through the provisions of the Denkmalschutzgesetz (DMSG). This law has been made significantly more restrictive in its latest two revisions, that of 1990 (Bundesgesetzblatt BGBl. 473/1990) and 1999 (BGBl. I 170/1999), particularly where public participation in archaeological research and the protection of the archaeological heritage are concerned. Before I discuss the reasons for, implications, and practical consequences of these changes, a short overview of the main provisions of the DMSG for archaeological heritage protection is necessary.

The trouble with potatoes

Let us start with what has not significantly changed: in § 1 (1) DMSG, cultural heritage is defined as all portable and immovable objects made or transformed by human action (including remains and traces of

human adaptation and artificially created or modified soil formations) whose protection is of public interest because of their historical, artistic or other cultural significance. Quite literally, this means that, according to the law, any object found in or on the ground, including every feature on or in the ground that has been made or modified by human action, could be archaeological heritage. This was confirmed as recently as 13 March 2012 in an official letter by the president of the Bundesdenkmalamt (BDA) who, asked whether the BDA could determine what classes of objects could under no circumstances be cultural heritage, explicitly stated that no age or type of object could be excluded. Note that this, strictly speaking, includes potatoes, which have certainly been introduced into the ground not by natural processes, but by human action, leaving aside that they have also been transformed by centuries of human selection and thus, in German, are considered a *Kulturpflanze* (a cultural plant), rather than a wild ("natural") plant (Figure 17.1).

Figure 17.1. A particularly significant archaeological find in situ. ©2012 R. Karl.



According to § 8 DMSG, all objects found under or on the surface of soil or water that could apparently be subject to the provisions of the DMSG have to be reported (directly or indirectly) to the BDA within a day after the find was made by the finder (and/or some other person, provided they know about the find). According to the standard legal commentary on the DMSG (Bazil et al. 2004, 87), whether a find is subject to the DMSG must be determined objectively, not based on the subjective level of knowledge of the finder. Note that this means that the average finder of a potato, e.g. a farmer, since he cannot objectively determine whether that potato could be archaeology reportable according to § 8 DMSG, is legally required (as he must be in doubt) to report it to ensure that he is not committing a heritage crime.

According to § 9 DMSG, the “find site” has to be left unchanged until a person authorized by the BDA has given permission for any works at the site to resume, or for a maximum of five days after the find was made. Again according to the standard commentary (Bazil et al. 2004, 90), the “find site” is the soil surrounding the find to the extent that its preservation is necessary for properly recording the context of the find itself. Note that this, in the extreme, means that the farmer wanting to harvest his potatoes cannot legally do so without stopping every time he finds yet another potato, reporting the find to the BDA and waiting up to five working days to resume any work on the site (only to stop again, since – hopefully – he will find another potato almost immediately).

What has significantly changed since before the 1990 revision is § 11 DMSG, which deals (mostly) with archaeological excavations. Archaeological excavations have required a permit by the BDA since the DMSG first came in force in 1923 (BGBl. 533/1923, § 11), which could be issued to everyone until the revision of 1990 (BGBl. 473/1990, § 11 (1)). In the latter, the right to apply for a permit was restricted to archaeology graduates or persons who had passed a special exam. In the most recent revision (BGBl. I 170/1999, § 11 (1)), the latter group has also been dropped and the right to apply for permits been restricted to, exclusively, archaeology graduates. The law also defines archaeological excavation in § 11 (1) DMSG; as digging or any other search *in situ* for the purpose of discovering and researching portable or immovable cultural heritage. Note that this means that, since it apparently cannot be determined by the BDA that potatoes can never be archaeological heritage, potato farmers would need to graduate in archaeology to harvest their potatoes, at least if the law were applied strictly, since if they have not, the BDA cannot give them a permit for digging up any potatoes.

The Mona Lisa Principle

It is of course patently silly to require potato farmers to get an archaeological excavation permit for harvesting their potatoes, and of course, the BDA does not apply the DMSG in this way; in fact, it would never even consider that the DMSG could apply to potatoes. Yet, there can be little doubt that, strictly speaking, potatoes constitute culturally transformed, rather than purely

natural objects even before taking the possibility of genetic modification of crops into account, and that they are intentionally deposited by humans, and thus clearly could be subject to the provisions of the DMSG – and that digging for them thus should require the issuing of an archaeological excavation permit if the law were applied to the extent of its letter. So why is the letter of the law so patently silly?

The predominant cultural heritage management paradigm in Austrian, and not just Austrian, archaeology is based on what I would like to call the “Mona Lisa Principle” (because that rather famous painting was used by one of my Austrian colleagues as a metaphor for every archaeological object and context *in situ*; a similar metaphor was used recently by Robert Ballard regarding the *Titanic*: “You don’t stick your finger in the Mona Lisa when you go to the Louvre”; quoted in *The Independent*, 16 April 2012, 10). The archaeological “Mona Lisa Principle” is the belief that all archaeological finds and contexts still preserved *in situ* could be of the same significance as the Mona Lisa, and thus, all yet undiscovered archaeology needs to be protected and treated by everyone as if it were the Mona Lisa.

Of course, this metaphor suffers from several very serious category errors. Not least among these is that the significance of the Mona Lisa is known and (reasonably universally) accepted as very high, while that of as yet undiscovered archaeology is unknown and in the vast majority of all cases bound to be extremely low (even if not opting for a strict interpretation of the letter of the law which would include potatoes as archaeological finds). Also, the Mona Lisa is owned by the Louvre (with a second possible original in the Prado), where it is publicly displayed in accordance with the statutory purpose of that museum, while the majority of undiscovered archaeology is, and will most likely remain for the foreseeable future, private property of individual citizens with no statutory requirement for the private owners to even preserve it from wilful destruction, let alone put it on public display. But such category errors don’t bother those who are on a mission to preserve all undiscovered archaeology at any costs.

The greatest threat we, as a discipline, seem to see where the protection of our precious archaeology is concerned, seems to be that it might be damaged by irresponsible individual members of the public. This is seen as a much greater threat than natural erosion of the archaeological resource, building development, or any other potential threat to the archaeological record like chemical fertilizers or the influence of the plough (not just on potatoes); or at least it is seen as the only threat against which we can at least try to protect the archaeology, with all other threats seemingly perceived as unavoidable.

Thus, Austrian archaeology has come up with legislation that entrusts the protection of the archaeological heritage exclusively to those it perceives as professional archaeologists – those with a degree in the subject – and defines any man-made or man-modified object under or on the surface of the earth or water as potential archaeology. Rather than properly defining what archaeology deserves protection, and what does

not, or even what is considered to be archaeology and what is not; it excludes the public from any involvement with anything that could be considered archaeology. And if that happens to include potatoes, too – which we, though only tacitly, accept not to be archaeology – then so be it. After all, we can simply disregard the law where potatoes are concerned and not enforce it against farmers who dig up their own potatoes; but when it suits us enforce it against farmers who dig up their own old potsherds.

The question, though, is whether this is in the best interest of archaeology, and whether it is a model that allows us to successfully protect archaeology; or whether it is detrimental to the protection of archaeology, and undermines the legitimacy of our practice and our discipline by inviting bureaucratic wilfulness and double standards.

Public engagement with archaeology

The Austrian public currently can engage with archaeology in a very limited and restricted number of ways: they can go to archaeology exhibitions and museums; read popular or academic archaeology books or watch archaeology programmes on television; they can try to volunteer for archaeological projects (e.g. digs), or can pay to participate in archaeological digs as a tourist.

There are, of course, many and very good archaeological exhibitions and museums in Austria, which are certainly worth a visit or two, but visiting such exhibitions and museums is a mostly passive experience, with the visitor either having to take or leave what an anonymous professional curator thinks he needs to know about archaeology. Academic and popular archaeology books and archaeology programmes on television are mostly the same, also a passive experience, leaving aside that there is little in terms of popular archaeology books and television programmes that satisfy the often local interests of many people; and that academic books which may occasionally satisfy such interests are difficult to get, and often even more difficult to understand.

Volunteering for archaeological digs or other archaeological projects is, of course, a much more active way of engaging with archaeology, and thus may be of greater interest to many members of the public with a local archaeological interest. Sadly, opportunities for such public participation in Austrian archaeology are rare and far between, so unless one happens to live in and be interested in the archaeology of the right place, there is nothing like this to be had. And it is not that archaeologists, even those in the civil service and thus salaried by the public, are particularly interested in offering their services to that public. Rather, the common sentiment expressed by civil service archaeologists at a recent conference at Mauerbach on the subject of unauthorized searches for archaeological finds was that it was unacceptable to have one's archaeological research priorities determined by the wishes of members of the public who just happened to want to uncover their own local archaeology and approached the civil service for assistance and support.

And finally, paying for being allowed on an excavation, leaving aside that only very limited places are available for this in the first place, is an expensive business that hardly is affordable to everyone who might wish to participate. On average, the price for the week for this currently lies at about € 1,300 plus travel costs. And even for that price, the member of the public can still not get a dig where he wants it to happen, but has to choose from a very limited number of digs available.

So all in all, what archaeology currently is on offer for the general interested public is mostly a product, a commodity, a consumable produced by us, the professionals, to be taken or left by the heritage consumer. And not just that, this product remains a product owned by us; even if the heritage consumer pays for it: what is sold is the permit to look at or participate in something that is strictly on our terms, with the content, methods and means of engagement chosen and tightly controlled by us, the professionals. The public thus has little choice, and no say whatsoever, in their own heritage, the heritage we allegedly protect for them, but which in fact, we mostly protect from them. After all, this uneducated lot could stick their finger into the Mona Lisa...

What the public can and cannot do

The result of all this exclusionary protectionism is a muddled system that fails to actually protect archaeology from almost anything. That is, with one notable exception: it “protects” the archaeology from those members of the public who would like to help with researching and protecting it, since the law excludes these – and only these – from damaging or destroying the archaeology. To demonstrate this, I need to illustrate what the Austrian public can, and what it cannot do out in the fields:

For instance, it is perfectly legal for any member of the public in Austria to search *in situ*, with or without any technical assistance such as a metal detector, for valuable items of owners unknown buried in the ground or hidden elsewhere (treasure), as long as the person conducting the search has the landowner's permission and reports any treasure found to the authorities (cf. § 400 ABGB). It is also perfectly legal to dig for such items, as long as the intent of the one digging is to find treasure.

Yet, it is illegal for any member of the public in Austria to search *in situ*, with or without any technical assistance, for as yet unknown archaeological finds or features. It does not matter in the least whether the search only takes place with the plain unarmed eye and the intent to report any finds to the BDA without removing them from where they were spotted. Nor does it matter whether there is, or can be, any archaeology in the spot where the searching takes place: if one searches for unknown archaeology by looking at the tarmac on the middle of a bridge across the Danube, one commits a heritage crime, even though there is no chance in a month of Sundays that any reportable archaeology could be found there.

What is perfectly legal again is to dig a big hole with a mechanical digger in a spot that has not been protected by the BDA as an archaeological monument (of which there currently are about a thousand in Austria), for instance to build a nice new swimming pool in one's back garden. Any such activity does not require a permit from the BDA regarding the possible destruction of archaeological heritage, nor does any such work need to be supervised by a professional archaeologist to see whether archaeology is getting trashed. All that is required is that if anyone, during these works, recognizes that archaeology is being destroyed (by accidentally finding it), is that the find is reported and the work stopped until the BDA has given permission for the work to continue, or five days have elapsed, whichever comes first.

Yet, it is illegal for any member of the public to look into any such a hole being dug with a mechanical digger with the purpose of finding archaeology, even if this search *in situ* is done with the intent and purpose to stop the works to prevent damage that might be done to the archaeology by the mechanical digging. Such a purposeful search for archaeological objects is after all prohibited by Austrian heritage protection law without a permit from the BDA, which can only be issued in advance and only to archaeology graduates.

So what the Austrian public can do is enrich themselves by digging up treasure, or wantonly wreck archaeology by digging holes with a mechanical digger for almost any reason. The only thing the Austrian public is not allowed to do is to purposefully look for archaeology in order to research, preserve or protect it; because that is a heritage crime if it isn't done by professionals with a special permit by the BDA. How silly is that?

Professional double standards

Silliness is one thing, preaching water while drinking wine quite another. Yet that is also exactly what we do: we are particularly good in Austria at telling the public to do as we say, not as we do; because, as professionals, we cannot be asked to abide by the same rules that we expect the public to respect and adhere to.

We claim, for instance, that allowing the public to search the topsoil on a field that is not protected as an archaeological monument, and has never produced any archaeological finds before, with a metal detector, is unimaginably damaging to the archaeological record: after all, unknown archaeological contexts could be destroyed by this irresponsible plunder of our common archaeological heritage by not properly trained and educated members of the public unable to properly appreciate the value of the heritage they wreck. After all, these ephemeral topsoil contexts could be of the same significance as the Mona Lisa, so the public cannot be trusted to record them properly, can they?

And do not be mistaken into believing that it is not mainly the topsoil that these metal detectorists search, but that they regularly dig into and damage previously undisturbed subsoil stratigraphies: currently, there are about 2,000 active metal detectorists in Austria (see Karl 2011, 120), who according to a community-internal survey (n=133) search on average 56 days per year each, about 3.9 hours per day (cf. Achleitner 2011, 2; Karl 2011, 120–1). That means that currently, assuming as little as 2 metal finds per hour (likely to be a rather low finds rate), Austrian detectorists dig roughly 875,000 holes every year. Since metal detecting has become increasingly popular since the 1970s, one has to assume that in the last 40 years or so, some 15 million holes have been dug by Austrian metal detectorists. If one deducts built-up (approx. 5%; Petz 2001, 2) and high alpine areas (approx. 40% of the total landmass) of Austria, this means on average around 350 holes per square kilometre, which will mostly have been concentrated in “productive” archaeological sites. This demonstrates that only a small minority of holes dug by metal detectorists can have penetrated through the topsoil and disturbed previously untouched stratigraphy: if that were not the case, every archaeological excavation in Austria carried out in recent years would have had to observe numerous recent disturbances of the stratigraphy by metal detectorist actions. Yet, hardly any such observations have been reported in site reports, even at highly productive sites (see e.g. the reports at <http://www.keltenforschung-roseldorf.com>). So in the vast majority of cases, it is the ephemeral topsoil contexts that seem to be affected by metal detectorist activity (though without doubt, there are also – far too many – cases where undisturbed stratigraphy is dug up; see Wachtler and Kandutsch 2002).



Figure 17.2: A metal detectorist working on an archaeological site.
©2012 R. Karl.

Yet, when we start proper archaeological excavations, we almost always use a mechanical digger to remove the topsoil; unsearched, unrecorded, with any finds or contexts in it unrecovered. And that is not just the case on rescue excavations caused by accidental discoveries of archaeology after the topsoil had been removed already, but equally on planned rescue excavations, and even on proper research excavations (see e.g. <http://www.keltenforschung-roseldorf.com>). Nor is this just bad practice in Austria, as the visit to the exhibition on new insights created by French rescue archaeology in the last thirty years in the Cité des Sciences during the EAC conference amply demonstrated: there, the surface cleaned after having been excavated by a mechanical digger was shown as the best practice in French rescue archaeology. Even worse, the same exhibition showed a map of the rescue excavations in Paule in Brittany, with different colours highlighting “hand-excavated” and “machine-excavated” archaeological features – that is, undisturbed archaeological stratigraphy beneath the topsoil, ripped out by a mechanical digger in the name of “professional rescue archaeology”. Nor is this something that just the French do, I know of exactly the same practice from several European countries, including the UK where I currently work. Apparently, wanton destruction of topsoil contexts, and even undisturbed stratigraphy, is perfectly fine, as long as it is done professionally with a mechanical digger, rather than amateurishly by irresponsible members of the public.

But if that soil, ripped up by a mechanical digger, discarded unsearched by the archaeologist and perhaps even carted off to a garbage (or soil) dump by lorries is searched by a metal detectorist, this seems to be completely unacceptable to many, if not most, professional archaeologists, at least in Austria. After all, we take it to be utterly beyond the pale that private collectors enrich themselves by selling off our common archaeological heritage – even if this common archaeological heritage has already been discarded and dumped by us professionals. If we can’t have it, nobody can. If we didn’t want it, still nobody else can have it. And this is hypocrisy, pure and simple: if someone gets to own the Mona Lisa, or to destroy it, it is us, the professionals.

Who owns archaeology? We do!

The core issue here is the message that is sent to the public by such silly laws that prohibit public participation in research and protection of the archaeological heritage, but freely allow its destruction; and by professional double standards where an equally destructive activity is fine as long as it carried out by professionals. And this message to the public is crystal clear: stay off our turf, the archaeology is ours, and ours alone!

What we tell the public is that the public has no right to interfere with any kind of archaeology; the most an uninitiated, ordinary member of the public is allowed to is to consume pre-packaged archaeology products, approved by the profession. And the reason we tell people why they are not allowed to participate in

and engage with archaeology is that their allegedly misguided interests threaten to destroy it, while we destroy that very same archaeology with impunity, often using the much more effective means of mechanical diggers. In effect, we tell the public what is best while in the plain view of the public doing something entirely different. All this tells the public that its input is not wanted, that it is not welcome, regardless of its wishes, intents or motives. Voluntary contribution to the protection of the archaeological heritage is forbidden, unless it is entirely on our terms, pre-approved, and happens exactly when, where and how we want it to happen.

And for good measure, we can and do make exceptions to all this for our colleagues and the odd “trustworthy” member of the public. If you think that an archaeology graduate who happened to start a dig and “forgot” to ask the BDA for a permit beforehand would be punished, you are mistaken; there have been several cases in the past where such permits were issued by the BDA retrospectively. Equally, we look the other way in some cases where the fieldwork of some members of the public is concerned: e.g. the local historian Hermann Schwammenhöfer, who certainly was searching purposefully for archaeology *in situ* without a permit by the BDA for many years even after the changes in BGBL. 473/1990 and BGBL. I 170/1999 and openly admitted as much in his finds reports printed in the official annual archaeological report of the BDA, the *Fundberichte aus Österreich* (e.g. Schwammenhöfer 2007, 788; 2008, 655), was never once charged with breaking § 11 (1) DMSG.

This behaviour is the arbitrary wilfulness to decide the fate of a thing that is the characteristic feature of ownership: exactly as defined in § 362 Austrian Common Law (ABGB), the (sole) owner of something can wilfully use or neglect, destroy, leave partly or fully to others, or abandon anything he owns; including allowing or disallowing others to use his property as it pleases him. Yet, where most of the objects that the public finds are concerned, whether they are found intentionally or accidentally, we are not the owners; in fact, not even the public whose ownership rights we allegedly represent is the owner of most of these objects: like potatoes, the overwhelming majority of objects found in the fields, meadows and forests of Austria are private property, either the landowner’s alone, or jointly the landowner’s and the finder’s. And that is true as much if they were found by digging (whether accidentally or by intentionally digging for them) or by any other means; even if they are declared to be an archaeological find of such significance that the BDA decides to protect them as a national monument (in which case the private ownership rights are restricted, but not voided and the object nationalized). In other words, we pretend as if the archaeology were owned by the public, and that this public were represented by us, which entitles us to make wilful and arbitrary decisions, particularly in ways that exclude those members of the public who would like to engage with archaeology but whom we don’t like from any meaningful participation.

This is an archaeological discipline, and an archaeological heritage management mechanism that is certainly not in the interest of the public, certainly

not in the public interest, and certainly not in the best interest of the archaeological heritage record: it is arrogant, hypocritical, paternalistic, authoritarian and egotistical. And that has consequences for how the public perceives archaeology and archaeologists.

De-legitimizing the law and the discipline

One of the basic tenets of the psychology of legal compliance, at least where modern, western, pluralistic societies are concerned, is that people obey the law not so much because of any punishment threatened for violating it, nor for any incentives for obeying it, but mostly because they perceive it and the authorities charged with its enforcement as legitimate (Tyler 2006). In very simple terms, if people perceive a law as just and moral, and feel that the authority enforcing the law has the right to dictate behaviour; they will comply with the law voluntarily. If, on the other hand, they feel that a law is unjust or immoral, or that those enforcing it lack the (legal or moral) authority to dictate their behaviour, they will by and large ignore that law, or – as a secondary consideration – adopt an instrumental approach to legal compliance, i.e. comply only if the likelihood of getting caught and punished exceeds the likely benefits of non-compliance.

Archaeological heritage protection laws, at least with current enforcement means, depend on voluntary legal compliance by the public: no heritage agency in the world can hire enough staff and install enough surveillance cameras, let alone get enough feet on the ground, to protect more than a very small percentage of all archaeology in its country. Thus, the likelihood of getting caught for non-compliance with heritage laws, let alone getting punished for it, is almost infinitesimally small. The Austrian figures, even if only rough estimates, show this: hardly anyone ever gets convicted for non-compliance with the DMSG in Austria, even though each of the estimated 875,000 holes dug by metal detectorists constitutes an individual, punishable breach of that law – a conviction rate of roughly 0.0001%. Achieving compliance with heritage laws through instrumental levers is thus practically impossible: it does not matter if you, when caught, will be ever so severely punished if the chances of getting caught are only marginally higher than winning the next EuroMillions jackpot. Thus, the only way of getting the public to comply with heritage laws is to get them to comply voluntarily. And that can only be done if both the law, and the authorities enforcing it, are perceived by the public as just and moral.

Hardly surprisingly, members of the public who wish to actively engage with the archaeology, whether out of the (entirely legal) wish to collect it privately, or the archaeologically much more acceptable (and much more accepted) wish to record, collect, report and donate it to and for scholarly research, do not think the current Austrian law is either just or moral. They do not perceive it as just because it is self-defeating: it does not protect archaeology from destruction e.g. by development or farming, but instead prohibits any member of the public who wants to from protecting

it by collecting it before it gets trashed. Nor do they perceive it as moral: the law pretends that every archaeological find and context is equivalent to the Mona Lisa in the Louvre in its significance. Yet, nobody gives a damn about it and everyone – including the authorities – treats it as if it were any ordinary bit of rubbish. That is, until a member of the public who isn't a professional archaeologist comes along and wants to pick it up, when it suddenly becomes archaeological treasure which may only be touched by professional archaeologists, and having looked for it becomes a "heritage crime".

Nor are those tasked with enforcing the law perceived as having the moral authority to dictate behaviour: quite obviously, they apply one rule to themselves (and their select few buddies), but another to everyone else; their decisions are (and that quite rightly) perceived as arbitrary and wilful, not as equal, fair and just; and they are not seen as effectively protecting the archaeological heritage. This is particularly the case if "best professional archaeological practice" is to excavate considerable parts of the archaeology with mechanical diggers – be it "just" the topsoil on research excavations, but often much more than that on rescue digs – yet constantly patronizingly lecture everyone with a metal detector and foldable spade as a criminal looter who is destroying the archaeological heritage on a grand scale. Rather, the opposite is true: the public perceives the authorities as useless, its officials as corrupt or at the very least as self-obsessed, egotistical and prone to cronyism, and archaeologists as greedy, immoral, incompetent and quite generally "the enemy" (cf. Wachtler and Kandutsch 2002, 26). In other words: the mirror image of the picture we professionals paint of "them".

With the law and the discipline thus completely de-legitimized, it is hardly surprising that many people, particularly those with an especially strong interest in protecting the archaeological heritage, simply do not obey the law that professional archaeologists have created to exclude them from the protection of the archaeological heritage, but rather do as they see fit. Some, like the brothers Steffan – thought to be amongst the worst plunderers of archaeology by many Austrian archaeologists – perceive themselves as protectors and preservers of the archaeology, presented in "their" local museum (see Wachtler and Kandutsch 2002, 24–6). Others do other things, but almost all know very well that they are breaking the law, yet do it anyway; and that very often with the intent to preserve archaeology, rather than the intent to enrich themselves.

Please note: this is not to say that there are none who are simply "in it for the money", who are digging up archaeology to enrich themselves. They undoubtedly exist, and no changes in law or professional practice (and behaviour) will ever change that. But that does not mean that these are necessarily the majority of those members of the public who search for archaeology, nor that it would not be worth trying to get those who want to preserve the archaeological heritage to comply with a better law than the one that currently exists in Austria.

This de-legitimization of the discipline also has very practical consequences: some decades ago, there was a reasonably good rapport between the officials in the BDA and many members of the public with an interest in preserving the archaeological heritage (the above-mentioned Hermann Schwammenhöfer being one of the “survivals” of that period). The result was that the then still relatively small community of interested members of the public at least reasonably regularly reported their archaeological discoveries to the authorities (and indeed were occasionally given permits or even asked by the BDA to conduct the odd small excavation when the staff base of the BDA was not sufficient to get this work done). For example, in 1987, 131 different members of the public reported archaeological finds. By 2008, this number had come down to 31, though undoubtedly, many more people are searching Austria’s fields, meadows and forests for archaeological finds than 25 years ago. Similarly, the number of reports by members of the public declined from 371 in 1987 to 107 in 2008 (Karl 2011, 115–18).

Excluding the public damages archaeology

There are lessons that can be learned from the Austrian case, even if those lessons may not sit well with our disciplinary self-perception.

Firstly, much of what we say to the public in Austria, particularly compared with what we do, seems much more like self-serving, made-up hypocritical justifications for disciplinary (rather than public, let alone private as is the law) ownership of all archaeology and its interpretation, at least when seen from the perspective of a member of the public who wishes to actively engage and be involved with researching and protecting the archaeological heritage. This is particularly the case if that member of the public does not have a professional archaeologist as a friend, who provides a legal fig-leaf by applying for permits for searches actually conducted by that member of the public without professional supervision; or even better, knows an official in the archaeology department of the BDA who either looks the other way or even legalizes any unsupervised search by that member of the public by declaring them “surveys conducted on behalf of the BDA”. That such arrangements are available for some members of the public, but not for others, supports a public perception of Austrian (archaeological) authorities and archaeologists as immoral and unjust: cronyism, rather than the law, seems to be the crucial determinant in whether somebody can or cannot do something. And such cosy arrangements invite civil disobedience: “One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws” (King 1963).

Secondly, the law itself, particularly § 11(1) DMSG, is perceived as immoral and unjust, since it does very little, if anything, to protect archaeological heritage from serious damage by erosion, development or even just farming, while seemingly obsessed with criminalizing those members of the public who do comparatively little, if any, damage and often enough are motivated by the intent to protect the heritage

they are collecting, which they feel to be neglected by the “proper” archaeologists and archaeological authorities. It matters little whether we created these laws to protect sites from “evil looters” who rip metal objects out of archaeological contexts for personal financial gain; by painting the self-interested looter and the publicly-spirited amateur archaeologist with the same broad legal brush, we have not so much discredited the looters but de-legitimized the law and our discipline. This is particularly the case if we justify these laws with the argument that the public damages archaeological contexts by (in the vast majority of cases) digging miniscule shallow holes with a spade while regularly removing those very contexts unexamined by mechanical digger on both rescue and research excavation, and by generally neglecting or not even knowing of the vast majority of sites searched by these members of the public: this quite rightly creates the impression among the interested public that there is one law for them, while there is another law for us.

As Martin Luther King Jr. defined it: “An unjust law is a code that a numerical or power majority compels a minority group to obey but does not make binding on itself” (King 1963). While we may not feel like it, we are exactly such a power majority: it is ultimately us, the academic experts, the professional heritage managers, who determine what laws will be passed by our politicians to protect the archaeological heritage, even if the laws ultimately passed will also be influenced by other power groups (like professional lawyers and the developers’ lobby). Those who have never been consulted about any of these laws, at least in Austria, are the interested public, those who actually would like to help protect the archaeological heritage, but have been systematically excluded. And it is equally us, the archaeological heritage professionals, who are tasked with the management and administration of that legislation; with the public being the *Untertan*, the subject who has little chance to influence, let alone question our decisions. Thus, excluding the public, and preaching water while drinking wine, is devastating to both legal compliance and to how we are perceived by the public.

Whether we like it or not, if we are ever to be able to effectively protect the archaeological heritage, we need the public’s voluntary participation: at the very least, we need it to voluntarily obey whatever heritage protection laws we come up with, because unless we create a total surveillance state, only voluntary public compliance will make these laws work. Georg Dehio realized this in 1905 when he argued that “truly effective protection can only be exercised by the people itself” (Dehio 1914, 273).

But to achieve voluntary compliance, we need to treat the public as partners, not as inferiors. We need to treat them as people who have rights as well as responsibilities, rather than as subjects that have to obey us because we tell them to, while we do something entirely different and allow our cronies to do so, too. And this means accepting that some of the rights that the public might wish to have, and perhaps even can justly and morally claim to have, may conflict with our private or disciplinary preferences.

These rights may well, and I would argue must, go beyond the one the public currently has, that is, to consume archaeological products created for public consumption by us professionals: it may, and I would argue must, include the right to at least have a say in decisions about what needs to be protected and what not, and how heritage should best be protected. Again, this idea is nothing spectacularly new: Georg Dehio suggested in the same speech in 1905 that there might come a time when “the people has been taught what it [heritage] is about”, and that it may “assume choice and responsibility” when “past and present come into conflict” (Dehio 1914, 274).

Only if the public are allowed to engage with archaeological heritage research and protection to some extent on its own terms, which must include at least some delegation of low-level decisions about what is and what is not appropriate for the protection and preservation of the archaeological heritage, will archaeological heritage protection become reasonably effective. Voluntary legal compliance, the precondition for archaeological heritage protection to work better than it does now, will only be forthcoming if the laws are perceived as both moral and just, and if our actions as professional archaeologists, our best disciplinary practices do not create the impression that there is one law for us and some of our cronies, and another one for everyone else.

This means that we, at least in Austria, have to clean up our laws, or even better, write new ones with honest and inclusive public consultation; and that as professional archaeologists, we have to clean up our act, stop cronyism, end double standards, apply the cleaned-up laws fairly and consistently to everyone, and most importantly, start to treat members of the public as citizens rather than as subjects. Painful as this will be, particularly for our entrenched self-perceptions of superiority and cosy long-established practices of arbitrary favouritism and wilful decision making to fit our fancy, if we are serious about wanting to improve the protection of the archaeological heritage, this is what we must embrace. And rather than telling the public ever more hysterically what it needs to do, while doing something else, it starts by listening carefully to what the public wants.

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18 | Perspectives sur la sensibilisation, la participation du public et la protection

Marc Drouet

Abstract: The presentation will be about some reflections drawn from the French Example - but no doubt transferable to other contemporary western societies - concerning the about our relationship to time (the confusion between History and nostalgia) and the consequences it brings about for the study and the protection of the archaeological heritage.

Protecting the heritage is never easy in times of crisis when the budget constraint becomes more severe. It becomes a challenge if the general public who finances its missions is not sensitive to the interest of the discipline. It is harder, if it is turned away from the historic truth by individuals inspired by other intentions than the search for the demonstrated truth. And among these charlatans, the non authorized users of metal detectors who plunder the heritage, mutilate it with the sole purpose to seize the metallic artifacts, hiding their purpose behind a fake contribution to the archaeology.

Faced with this challenge, the determination of the archaeologists must remain inflexible because the scientific sincerity is not negotiable.

Introduction

« L'avenir est un présent que nous fait le passé » a écrit André Malraux. C'est en partant de ce constat que je souhaiterais vous proposer quelques réflexions tirées de l'exemple français mais sans doute transposables dans d'autres sociétés occidentales contemporaines, concernant notre relation au temps et les contraintes qu'elle entraîne dans le domaine de l'étude et de la protection du patrimoine archéologique.

L'archéologie - au sens étymologique, l'arche signifie le fondement, le commencement – constitue une approche pluridisciplinaire du cycle de l'espace-temps, s'entendant sous ses trois aspects : passé-présent-avenir.

L'avenir demeure par nature inconnu tant qu'il ne s'est pas déroulé. C'est le domaine de tous les possibles, le champ de l'imagination du monde parfait, le berceau des utopies.

Le présent, c'est le moment délicat de la rencontre entre le possible et le réel, c'est aussi l'instant imperceptible durant lequel tout se joue, mais qui s'enfuit aussitôt apparu et que personne ne parvient à retenir.

Le passé, c'est ce qui a existé et auquel on ne peut plus toucher. Le passé, c'est la conscience de ce qui a été et d'une certaine manière, ce qui rappelle les bons choix comme les erreurs. C'est le socle réel et concret, parfois celui qui accuse, à tel point que la tentation est grande soit de l'oublier, soit de vouloir le réécrire. Comme le malade qui casse le thermomètre pour ne pas admettre la fièvre.

Dans cette hypothèse, les archéologues et les historiens deviendraient en quelque sorte des médecins de l'âme collective, des spécialistes qui pourraient nous protéger

et nous soigner de nos amnésies. Mais on le sait, la première étape d'un soin, la première démarche sans laquelle aucune autre n'est possible, consiste d'abord à accepter la consultation d'un professionnel.

En d'autres termes, la première difficulté consiste à convaincre la population de la nécessité d'une Histoire et d'une archéologie démontrées, reposant sur des bases scientifiques, et dotées de moyens financiers adaptés.

La confusion entre Histoire et nostalgie

Or, les citoyens de nos sociétés occidentales, prisonnières du matériel et de l'éphémère, témoignent plus souvent d'un besoin de nostalgie que d'un souci du passé démontré. Pourtant, la nostalgie, c'est toute autre chose. C'est le domaine du sentiment, pas celui du scientifique. Un sentiment qui exprime le regret du temps passé, auquel on associe des sensations agréables, un passé reconstruit que l'on évoque d'autant plus souvent quand le temps présent semble difficile et que l'avenir inquiète. Le piège de la nostalgie est contenu dans le fait que ce sentiment prétend que le passé était toujours mieux, toujours plus agréable. Or cette vision déformée ne correspond pas souvent à la réalité démontrée par les historiens ou les archéologues. On aime ce passé tel qu'on l'imagine ou tel qu'on nous le vend. Or, dans un tel contexte, la tentation peut être forte de préférer les charlatans qui ne s'encombrent pas de rigueur scientifique aux vrais médecins.

En observant cette confusion entre Histoire et nostalgie, le marché semble avoir repéré un segment lucratif : en d'autres termes, si le public aime le passé, on va lui en

vendre. Et s'il a des répugnances face au passé révélé dans sa brutalité scientifique, alors la tentation existe de lui proposer un produit édulcoré, moins rugueux, plus consensuel mais bien entendu beaucoup moins soucieux de rigueur scientifique. On connaît par exemple la diversité de l'offre du tourisme patrimonial partant de l'honorable mise en valeur d'un bâti supposé beau, mais pouvant dériver jusqu'aux rives plus obscures de certains « sons et lumières » peu embarrassés de rigueur scientifique et de vérité historique... Quoiqu'il en soit, le public répond présent et en redemande.

De telles dérives, qui naissent parfois de la méconnaissance et relèvent souvent de la négligence, alliées à la volonté – pour de plus ou moins sombres desseins - de se défaire de considérations scientifiques, sont de celles qui aboutissent à une méconnaissance du caractère primordial et pluridisciplinaire de l'archéologie. Autrement dit, ce caractère essentiel de l'archéologie scientifique qui définit le sens et le cycle de l'espace-temps, *passé-présent-avenir*, est alors négligé. Avec tous les dangers que de telles dérives induisent.

Les détecteurs de métaux

Ainsi mal éduqué, le risque se précise de voir le grand public s'habituer et finir par préférer des réponses qui pourtant aggravent les symptômes du mal au lieu de le soigner. Et parmi ces réponses insatisfaisantes, j'identifie plus particulièrement celles des utilisateurs non autorisés de détecteurs de métaux qui pillent le patrimoine, le mutilent au prétexte de s'emparer du mobilier métallique, et privent ainsi la communauté scientifique d'un inestimable matériel d'étude. Tout en enrobant le tout d'une supposée contribution à l'archéologie.

Or, vous le savez, mais on ne le répète pas assez, l'objet archéologique dispose d'une valeur d'étude qui ne vaut que par le soin qui est accordé à la description des conditions et des circonstances de sa découverte, et la documentation scientifique qui représente une partie intégrante des archives de fouilles, est indissociable du mobilier archéologique qu'elle doit toujours accompagner.

Le fait d'extraire un objet de son contexte sans respecter un protocole scientifique lui retire toute valeur. Une véritable fouille est beaucoup plus qu'une simple opération consistant à faire un trou et à noter son emplacement. Peu importe la valeur vénale que notre époque accorde au matériau dont est constituée une fibule mérovingienne. Ce qui est déterminant en revanche, ce qui constitue à part entière son intérêt scientifique, c'est le contexte de sa découverte et son emplacement sédimentaire. L'un ne va pas sans l'autre.

Pratiquer l'archéologie ne s'improvise pas : il s'agit au contraire d'une discipline scientifique dont la capacité est reconnue et validée à l'issue d'un cursus universitaire. Malheureusement, le grand public ignore encore trop souvent ce point. Et certains vendeurs de détecteurs de métaux, certains utilisateurs de ces matériels détournés de leur objet ont intérêt à entretenir le grand public dans cette ignorance. L'innovation technologique au

début des années 1970 a fait exploser le nombre de ces creuseurs de trous sans précaution : actuellement en France, ils seraient – selon les sources – plusieurs dizaines de milliers !

Et l'on ne peut que déplorer l'habileté avec laquelle quelques uns racontent leurs méfaits devant un nombre croissant de médias, parvenant trop souvent à transformer leurs rapines intéressées en contribution désintéressée à la cause de l'archéologie ! Je le répète : quand le citoyen s'entiche de nostalgie, il devient moins disponible pour entendre parler de science et de rigueur scientifique et s'expose aux chants – sirènes – pourtant mal intentionnés.

En France, des associations de prospecteurs s'organisent et diffusent leurs revendications : elles réclament notamment une distinction entre prospection de loisir, prospection à but archéologique et prospection à but lucratif. Elles appellent de leurs vœux la disparition de l'autorisation préfectorale nominative de prospection au détecteur de métaux à laquelle se substituerait une simple obligation de déclaration de découverte. Elles affirment que leur apport serait essentiel à l'archéologie, notamment en matière de découverte et de cartographie des sites archéologiques. Derrière une façade légale, certaines associations incitent en fait à enfreindre la loi et la critiquent ouvertement. Elles invoquent leur goût du patrimoine et de la découverte, mais parlent explicitement de trésor et de rallyes, notamment quand elles rencontrent des journalistes.

Face à ces revendications, la position du ministère de la culture et de la communication est sans ambiguïté : il n'existe pas de prospection de loisir dès lors que le but est de porter atteinte au sous sol et au patrimoine commun.

Le droit français et la protection du patrimoine

Afin de permettre dans les meilleures conditions la protection du patrimoine archéologique et son étude, le droit français pose donc les principes suivants :

- La nécessité de disposer d'une autorisation administrative pour utiliser un détecteur de métaux dans une perspective de recherches archéologiques. Il faut à la fois l'autorisation des services régionaux, c'est à dire du préfet, mais également du propriétaire du terrain. Dans ce cas, la totalité de la découverte appartient au terrain puisque la découverte n'est pas due au hasard, par dérogation aux dispositions de l'article 716 du code civil et par application de celles de l'article 552 (Article 716 du code civil : « la propriété d'un trésor qui le trouve dans son propre fond ; si le trésor est trouvé dans le fond d'autrui, il appartient pour moitié à celui qui l'a découvert, et pour l'autre moitié au propriétaire du fonds » Article 552 « La propriété du sol emporte la propriété du dessus et du dessous. » (premier alinéa - extrait).
- La loi est fondée sur la notion d'*objet archéologique*: « Nul ne peut utiliser du matériel permettant la détection d'objets métalliques, à l'effet de

recherches de monuments et d'objets pouvant intéresser la préhistoire, l'histoire, l'art ou l'archéologie, sans avoir au préalable, obtenu une autorisation administrative délivrée en fonction de la qualification du demandeur ainsi que de la nature et des modalités de la recherche » ;

- Ainsi est considéré comme objet archéologique tout objet qui appartient au passé : le champ de cette notion est donc dans cette acception très étendu. Sur cette base, la marge de manœuvre légale des prospecteurs est, on le comprend, très mince ;
- La notion de *site archéologique* n'est pas évoquée dans la loi, et on peut s'interroger sur sa pertinence. Si d'un point de vue juridique on pourrait regretter que la loi n'ait pas introduit cette notion pour circonscrire sa portée, il faut cependant noter qu'introduire une interdiction de prospection sur les sites classés serait trop restrictif puisqu'il existe encore beaucoup de sites archéologiques à découvrir (ils nécessiteraient également une interdiction de prospection). En outre, interdire la prospection sur les sites classés reviendrait aux yeux des prospecteurs à l'autoriser sur tous les sites non classés et leur fournirait un argumentaire efficace en cas de découverte et d'interpellation.

La protection du patrimoine archéologique

A la suite du pillage du site archéologique de Noyon (Oise), survenu dans la nuit du 8 au 9 février 2010, le ministre de la Culture et de la Communication a demandé au Conseil national de la recherche archéologique (CNRA) de constituer un groupe de réflexion afin de lui fournir une série de propositions susceptibles d'améliorer durablement le dispositif de protection du patrimoine archéologique face à cette menace.

Le groupe de travail a présenté son rapport en séance plénière du 2 décembre 2010.

Le CNRA s'est inquiété de cette grande menace qui pèse sur le patrimoine national et a recommandé que des dispositions soient rapidement prises pour enrayer le développement du pillage archéologique.

Le CNRA a retenu les propositions de renforcement d'actions de pédagogie, de communication et d'information, envers tous les acteurs de l'archéologie et le grand public, de manière à soutenir l'idée que le patrimoine archéologique n'était pas une ressource inépuisable et que la recherche des objets archéologiques en tant que tels n'est pas une fin en soi.

Le Conseil a également retenu l'idée qu'il était impératif de rendre l'acquisition et l'utilisation d'un détecteur plus contraignantes qu'elles ne le sont aujourd'hui et qu'il fallait clarifier les interdictions et la réglementation.

Dans le prolongement de ce rapport émanant d'une instance scientifique qui conforte la doctrine du

ministère de la culture et de la communication, des actions de communication ont été entreprises et seront poursuivies. Par ailleurs, des instructions de fermeté dans la poursuite des pilleurs ont été transmises aux services régionaux de l'archéologie. Le dépôt de plainte est systématique et des partenariats ont été mis en place avec les services de Police et de Gendarmerie afin d'améliorer la prise en compte et la poursuite de ces infractions.

Chacun doit comprendre que derrière ces contraintes, il y a l'ambition de protéger, de conserver et de transmettre ce patrimoine non renouvelable sans altérer sa sincérité scientifique.

Bien entendu, il ne s'agit pas de supposer chaque propriétaire de détecteur de métaux comme un auteur d'infraction en puissance. La seule action de répression n'est pas satisfaisante : prévention et pédagogie sont autant nécessaires. Le ministère de la culture attache un soin particulier à maintenir ce dialogue avec l'ensemble des parties qui en acceptent le principe.

Bien entendu, l'archéologue n'est pas, ne peut pas, ne doit pas être un chercheur isolé. Il travaille en lien avec de nombreux spécialistes : géologues, botanistes, zoologues, anthropologues, géographes, historiens, architectes etc... La discipline doit continuer à s'ouvrir aux autres sciences humaines.

D'autre part, l'archéologue n'est pas propriétaire de l'archéologie : il en sert la cause aux côtés d'autres passionnés qui doivent trouver leur place et être respectés. Le lien n'a sans doute pas été assez entretenu avec les sociétés savantes et autres associations de défense du patrimoine. Il devient urgent d'envoyer un signe à ces amateurs qui demeurent d'excellents avocats de la discipline, mais en direction du grand public également et surtout car ce patrimoine révélé, c'est le sien. On ne fera jamais assez de communication, de valorisation, d'évocation et d'explication des résultats de la recherche archéologique.

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Protéger le patrimoine, ce n'est jamais simple, d'autant moins en période de crise quand la contrainte budgétaire devient encore plus sévère. Protéger le patrimoine invisible, soutenir son étude, cela devient une gageure si le grand public qui finance ses missions n'est pas sensible à l'intérêt de la discipline. C'est encore pire, s'il est détourné de la vérité historique par des individus animés par d'autres desseins que la recherche de la vérité démontrée. Face à ce défi, la volonté des archéologues doit demeurer inflexible : la sincérité scientifique ne se négocie pas.

Et en guise de conclusion, je vous propose ce constat posé par Anatole France au début du siècle mais conservant toute son actualité : « Le passé c'est notre seule promenade et le seul lieu où nous puissions échapper à nos ennuis quotidiens, à nos misères, à nous-mêmes. Le présent est aride et trouble, l'avenir est caché. Toute la richesse, toute la splendeur du monde est dans le passé. »

How to care about those who cares?

Reflections on the conference

Birgitta Johansen

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The scope of the conference was broad: from the two keynote lectures about mentalities, changes in society and perspectives on the role of legislation, to lectures on the situation in the individual countries. There were different competences and experiences, both professionals and NGOs. The whole programme was built up to allow enough space for discussions between the lecturers and between them and the audience. This was rather hazardous. Not least thanks to the skilled moderator Dr Björn Magnusson Staaf, Lund University, in the end it turned out to be a working whole with discussions looking at the theme from different angles and provoking new thoughts. The similarities and differences between the participating countries and the current European experiences of changes became more intelligible and intriguing.

Below are some comments and reflections I noted at the Stockholm seminar in 2011 and in Paris in 2012.

The challenges

We live in a world in flux. The European Union is facing an economic crisis, the population is growing older, young people have difficulties getting jobs, the natural resources and the climate are under pressure. The nation state is no longer the only frame in a globalized world and the social contract is not viable. How we arrange our communities, our ways of living peacefully together, is under negotiation. The balance is changing between individual and common needs.

In this world, heritage managers, antiquarians and archaeologists need to be more conscious of the news from the world at large, leaving our zone of comfort. The relationship to the legal, social, economic and even the political sphere needs our consideration. We are facing two major challenges – serving society and protecting the heritage. And sometimes these challenges will be conflicting, dilemmas without no obvious solutions.

A third challenge is perhaps the ability to reflect on our own responsibility as professionals for the problems of heritage management today. This means that we have to shift focus again – from the outside world to reflections on our self-image and our ways of doing things. We as professionals have to some degree a responsibility for the problems concerning heritage today. And this is not just a responsibility to solve them but a responsibility for creating or contributing to them. Some of the problems we are facing are certainly a mirroring of professional ways of working and presenting the heritage. How about the common interest in treasure hunting? To some degree the profession is responsible – not, of course, for the criminal acts such as looting but perhaps for the common interest in treasure hunting. If archaeologists are allowed to go searching for finds, why can't I? The disrespect for laws protecting monuments and finds, and the rather widespread social acceptance of certain types of crimes, has perhaps a more complex background than it would seem at first sight ...

Problems connected to the professional role

But what then about the professional role, is it without difficulties? Seen from the outside, perhaps people can feel that heritage professionals are taking away their inheritance from the heirs. Of course criminals are quite a different thing, a type of logic outside society. Are we as heritage professionals protecting our own interests and telling the public to stay off our turf? Is the monopoly on heritage protection at stake? If there are advantages to this professional claim of monopoly, there are certainly disadvantages.

Several countries are right now considering a more inclusive approach towards metal detector users (see Barkin this publication). This calls for a professional ability to understand and to be able to differentiate between looters and ordinary citizens wanting to partake and to contribute. This might seem easy but it calls for consideration, since up till now there has been an opposition between pursuing legal procedures against looters and interacting more with the public and serious metal detector users. As a professional you were not supposed to embrace both these tactics but to choose sides.

The scientific knowledge, retrieved through decades of excavations and scholarly research, that humans have been interested in artefacts (and even in bodies and parts of them) through the centuries – interacting, moving, arranging and rearranging them, should perhaps tell us that there are fundamental human needs of understanding, controlling and communicating involved here.

The changing roles of the heritage professionals can be summarized in the following way:

From protector, guardian of heritage	to transformer of time and place
From archaeology as control	to archaeology as liberating
From national identity	to a complete and competent person
From a good citizen	to a good human being

The left side is the role in the modern industrialized world we are about to leave behind. The right side mirrors trends in the post-modern world where, according to World Values Survey, secular-rational and self-expression values are important. People in this society question authorities, even secular ones like the heritage professionals. Old heroes are being replaced by people who are eager to be active individuals who interpret and make their own understandings. The shift is about balancing the left side with the right side.

Are we then supposed to go on making people care, or should we be better at caring about how people care? If we really want to care about those who care, perhaps this is worth considering?

Professional ways of working

The professional ways of working with heritage can largely be summarized as in the picture below.



This picture is made up of two axes. The vertical axis is the tension between *Gesellschaft* and *Gemeinschaft* (see Wijkander this publication for an explanation of the concepts). Beneath the horizontal axis are cold colours and above warm colours. These colours are not randomly chosen; they reflect the concepts of *Gesellschaft* and *Gemeinschaft*.

The horizontal axis is the tension between authority and legitimacy or possibly common and individual interest. The traditional and secular authorities are discussed above. Legitimacy is about creating relations, listening to people and taking their needs into consideration. Increasing interaction with metal detector users is one way. Perhaps the concepts of preservation and use belong to this axis.

To the right of the vertical axis are the two traditional fields of laws and support. Laws have been and still are important to heritage management. Laws, however, are not a necessary precondition for order; they have limits and disadvantages. Perhaps they are most important as societal statements. Support is about knowledge and economic subsidies – another way of controlling, but softer.

To the left of the vertical axis are the two fields of market and relations. The market is increasingly important. Developer financing, as stressed in the Valetta Convention, belongs to the field of the market (but also to the field of law).

On the right hand people are more passive – beneficiaries of money or knowledge or people subject to law. On the left hand people are more active – citizens or buyers/owners.

It is important to stress that this is not a picture of good or bad ways of working with heritage. It is a picture that wants to make it possible to analyse what we do and to make informed choices. In the end it is necessary to be able to balance different ways of working, adjusting to the needs of society (individuals as well as groups) and the needs of heritage on a national, European and global level.

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1 | Le travail de l'Association européenne des archéologues sur le commerce illicite du matériel archéologique et culturel

Amanda Chadburn

L'Association européenne des archéologues (EAA) est une association dont les membres sont des archéologues ou autres personnes et institutions concernées par l'archéologie. En 2010, lors de son meeting annuel, une table ronde a été organisée par le comité homonyme concernant le commerce illicite de matériel culturel. Les résultats de cette table ronde n'ont pas été présentés dans leur intégralité (voir Anon, 2011, 32-40), et il est apparu qu'il serait utile de les publier dans ce volume, étant donné le recoupement existant avec le thème du symposium qui s'est tenu à Paris sur la gestion du patrimoine. En même temps, il a semblé nécessaire d'exposer conjointement le travail et la politique du comité de l'EAA (Association européenne des archéologues) concernant le commerce illicite du matériel archéologique et culturel puisque cela n'avait pas été le cas précédemment.

2 | Le PAS – une solution plutôt britannique. Les comptes rendus systématiques et l'enregistrement spontané d'objets archéologiques en Angleterre et au Pays de Galles

Michael Lewis

Dans la plupart des pays européens, la détection de métal est interdite ou délimitée par la loi, les antiquités mobiles (petites trouvailles archéologiques) doivent être enregistrées, et l'état se déclare propriétaire de toutes celles-ci. Au contraire, la détection de métal est peu réglementée en Angleterre et au Pays de Galles, ceux qui découvrent des objets n'ont que peu d'obligations de rendre compte de leurs trouvailles, et les catégories d'objets découverts réclamés par l'état sont limitées (Les pays, dont l'approche au niveau de la détection de métal est à peu près comparable, sont l'Ecosse et le Danemark. Là, la détection de métal est légale, mais les découvreurs sont contraints de signaler un nombre plus important de matériel archéologique). Ces dispositions entraînent une 'chasse au trésor' utopique et s'avèrent un cauchemar pour l'archéologie !

3 | Une manière de trouver un équilibre social concernant les propositions de lois portant sur de nouveaux règlements législatifs à l'usage de détecteurs de métaux dans le cadre du Conservation Act (Loi sur la conservation) patrimonial suédois

Michael Lehorst

Cet article concerne surtout l'obligation de trouver un équilibre – en modifiant les règlements législatifs existants - entre le besoin de circulation libre des biens et le souci de protéger, d'utiliser et de développer le patrimoine, tenant compte de l'exigence croissante de prévention et de poursuite des infractions et de l'usage consciencieux par les personnes privées ou les amateurs de détecteurs de métal afin de trouver des artefacts anciens ou d'autres objets en métal.

L'article propose d'abord un court historique de la loi suédoise concernant l'usage et l'emploi de détecteurs de métal. Il va de soi que celui-ci, qui débute au cours des années 1980 et se termine aujourd'hui, au moment de la rédaction de cet article, se poursuivra dans un futur proche.

L'évènement majeur qui justifie cet article est l'accélération causée par l'intervention de la Commission européenne en 2008 et la lettre officielle au gouvernement suédois contenant un avertissement officiel et des remarques motivées au sujet de la loi suédoise sur l'usage et la détention de détecteurs de métaux qui serait en contradiction avec les objectifs visés et donc incompatible avec les articles 34 et 36 du Traité sur le fonctionnement de l'Union européenne (TFEU) sur la libre circulation des biens – malgré les dangers croissants, au niveau international, de pillage et de marché noir des objets anciens.

La première partie de ce texte témoigne de la réaction du gouvernement suédois, donnant à l'administration suédoise du patrimoine national (SNHB) l'ordre de résoudre ce problème et suggérant de modifier la loi sur les détecteurs et de la manière dont cette administration analysa le problème, suggérant et justifiant les modifications à la loi. Cette première partie est complétée par un bref compte rendu reprenant les conséquences de ce rapport, les solutions proposées au problème et les mesures gouvernementales prises par la suite.

Dans la seconde partie, l'auteur présente un résumé des discussions et des actions les plus utiles proposées à ce sujet au sein de l'EAC, mettant en exergue, pour le début de l'année 2011, l'aide et le soutien conférés à l'administration suédoise du patrimoine national (SNHB) par l'EAC et ses membres. L'article de Maria Barkin dans cette même publication propose des

résultats plus détaillés concernant les discussions et les actions de l'EAC.

La troisième partie, plus technique, aborde l'élaboration d'un système de licence pour l'usage de détecteurs de métaux, mais démontre également la portée et les conséquences d'un tel système, répondant aux besoins de la société, c'est-à-dire, de trouver un équilibre entre ces deux exigences.

4 | Les lois en Europe concernant l'usage de détecteurs de métal

Maria Barkin

Depuis 1991, il est interdit au public suédois d'utiliser un détecteur de métal quel qu'en soit l'usage. Il est néanmoins possible de demander une dispense. En 2010, la Commission européenne demanda à la Suède d'amender sa législation sur l'usage de détecteurs de métaux afin de se conformer aux règles européennes concernant la libre circulation des biens.

La plupart des pays en Europe limitent, dans leur législation, l'usage de détecteurs de métaux. Quelques-uns ne mentionnent pas explicitement les détecteurs de métaux mais interdisent d'effectuer des fouilles d'anciens monuments ou de ruines, avec ou sans l'usage de détecteurs de métaux, sans licence préalable.

Les pays dont la législation limite explicitement l'usage des détecteurs utilisent l'une ou l'autre des règles suivantes: limitations concernant les personnes pouvant utiliser un détecteur de métal, les lieux d'utilisation, la finalité de celle-ci et les limites d'achat et de vente de tels appareils. Plusieurs pays adaptent leur législation afin de pouvoir travailler en accord avec des associations d'utilisateurs de détecteurs de métal plutôt que de les combattre.

5 | Pillage, destruction et mentalités dans la société actuelle

Keith Wijkander

Si les autorités archéologiques veulent se révéler capables de susciter intérêt et engagement à l'égard des vestiges archéologiques, ils doivent faire preuve d'une compréhension profonde de la nature de cet intérêt. Je pense qu'il s'avère utile de faire la distinction entre d'une part la curiosité intellectuelle au niveau de l'histoire et d'autre part le besoin d'ancrage dans celle-ci. L'intérêt des scientifiques et des archéologues professionnels est souvent dominé par la curiosité intellectuelle qu'ils souhaitent faire partager au public. Mais parallèlement, l'administration du patrimoine a toujours soutenu que le patrimoine culturel peut donner à chaque individu un sens contextuel et un ancrage social qu'il ne pourrait acquérir autrement.

Dans cet article, j'essaie de montrer que le patrimoine culturel est lié au processus de modernisation que l'Europe a subi depuis la fin du 18^{ème} siècle et qui se caractérise par des phénomènes comme la sécularisation, l'industrialisation et l'urbanisation. Ce n'est qu'au cours de la seconde moitié du dix-neuvième siècle que l'idée de patrimoine culturel émerge. Il nous semble évident que l'idée de patrimoine culturel se conforme à la théorie de l'évolution.

La transformation sociale de l'industrialisation, qui caractérise le monde occidental de la seconde partie du dix-neuvième siècle aux années 1970, a abordé une toute nouvelle phase. Celle-ci est caractérisée par un nouveau type d'économie, des nouvelles formes d'urbanisation et de croyances religieuses. Cela implique que l'approche du temps et du but de l'histoire, qui fut celle du passé, va connaître de nombreuses mutations. Le défi qui s'offre à la gestion patrimoniale est donc de comprendre quelles sont les nouvelles aspirations qui émergent actuellement au niveau du patrimoine culturel

6 | Fouilles archéologiques dans un monde globalisant

Ubaldo de Vries

Le monde connaît un état de changement continu et ce qui semble évident ne l'est plus. Nous nous adressons à l'Etat pour qu'il nous guide et lui demandons d'agir pour préserver un sentiment de sécurité. La loi est un instrument auquel on s'adresse afin d'obtenir ce sentiment sécuritaire. Je perçois, face au patrimoine archéologique, une requête similaire.

Me basant sur la convention de La Valette, je me propose d'explorer (i) la valeur et la fonction de préservation des objets archéologiques ; (ii) le rôle de l'état ; (iii) les instruments légaux qui régissent l'archéologie, le patrimoine physique et les fouilles ; et (iv) les manières alternatives de penser qui permettraient de redéfinir le premier aspect.

7 | Recherche de trésors ou intérêt confirmé pour l'histoire culturelle? Diverses motivations en Allemagne

Jonathan Scheschkewitz

Les intentions des utilisateurs de détecteurs de métaux suscitent une polémique constante parmi les archéologues allemands. Il existe diverses opinions sur la manière de traiter avec eux dans différents cas comme dans des situations légales différentes. Il faut savoir qu'il n'existe pas de loi uniforme en Allemagne au niveau de la protection du patrimoine culturel. Dans cet article, je donne un aperçu des différentes réglementations existantes en Allemagne concernant l'usage de détecteurs de métaux, mais me concentre essentiellement sur la situation dans le Baden Württemberg, qui est fort dissemblable de celle des autres états fédéraux d'Allemagne.

8 | Perspectives concernant l'usage de détecteurs de métaux en Estonie: Règlement et usage

Ants Kraut

Le défi majeur de l'archéologie estonienne aujourd'hui est de contrôler l'usage des détecteurs de métaux. L'usage de ceux-ci est interdit dans les sites patrimoniaux protégés. Néanmoins les sites non répertoriés précédemment courent un plus grand danger. Les spécialistes du patrimoine, les archéologues et les représentants des groupes d'intérêt

ont proposé plusieurs amendements à la législation. Les amendements à l'Heritage Conservation Act (acte de préservation du patrimoine), commentée dans cet article, prennent vigueur le 1 juin 2011 et définissent les découvertes de valeur culturelle, un système de recherche, une procédure d'enregistrement, les personnes autorisées à rechercher des objets de valeur culturelle, ceux qui ont droit à une récompense et les sanctions pour toute violation de la loi.

9 | Protection de monuments archéologiques en Irlande. L'expérience de l'application de la loi.

Sean Kirvan

Etant donné que Sean Kirvan n'a pu remettre un article, le résumé de la conférence est publié ici.

10 | La valeur de l'archéologie: ressource, patrimoine ou pure divertissement?

Paulina Florjanowicz

Il n'existe pas de définition courante de l'archéologie. Il n'existe même pas de consensus pour savoir s'il s'agit d'une discipline scientifique à part entière, ou simplement d'une méthode complémentaire aux recherches historiques permettant d'étudier d'autres types de données que les sources écrites. S'agit-il plutôt d'une science ou plus d'une philosophie? Les différentes approches existantes dans le monde résultent de compréhensions divergentes sur la valeur du patrimoine archéologique et sa perception au niveau de la société. En Pologne, les fouilles archéologiques professionnelles ont débuté assez tôt. Celles-ci sont plus réputées pour le sérieux de leur travail sur le terrain que pour leurs recherches, l'élaboration et la diffusion des résultats, sans mentionner l'absence du politique. Les archéologues en Pologne se concentrent plus sur la méthode que sur l'actualisation des recherches, créant un environnement plutôt hermétique, inaccessible aux profanes. Il résulte de cette situation, comme je le montre dans des études récentes, que la société ne considère pas les vestiges archéologiques comme faisant part de leur patrimoine, et donc ne comprennent pas la nécessité de leur protection. La société polonaise n'apprécie pas non plus le travail des archéologues, considérant que l'on gaspille inutilement l'argent (du contribuable) et que cela ne sert à rien. En conséquence, la majeure partie des dégâts occasionnés au patrimoine archéologique est le fait d'individus inconscients de la portée de l'archéologie et des pertes irrévocables dont ils sont responsables. Cette situation est à mettre en relation avec des questions d'éthique professionnelle au niveau de l'archéologie actuelle en Pologne, car certains archéologues considèrent les vestiges archéologiques plus comme des pièces de collection que comme un patrimoine national. L'institut du patrimoine national de Pologne s'est interrogé, au cours des cinq dernières années, sur ces pratiques, soit pour essayer de les neutraliser, soit pour les enrayer. Nos observations et articles témoignent de la nécessité existante d'une prise de conscience grâce à différents programmes et à une promotion de la gestion durable du patrimoine, afin de concerner différents groupes sociaux, ce compris les archéologues. Faute de quoi,

suite aux changements rapides au niveau de l'économie et de la société polonaise, mais aussi à une approche inadéquate et dépassée par ceux qui pratiquent l'archéologie de la perception des avantages de celle-ci dans les domaines économiques et sociaux, ce patrimoine ne survivra pas longtemps.

11 | Un combat contre nature

Kristín Huld Sigurðardóttir

Cet article présente certains problèmes auxquels font face les gestionnaires du patrimoine en Islande. L'Islande possède une législation patrimoniale depuis 1907 et une nouvelle législation est en cours depuis 2012. Un institut d'état, l'institut pour le patrimoine culturel de l'Islande, placée sous la tutelle du ministère de l'éducation, de la science et de la culture, est en charge de la gestion du patrimoine. Le problème majeur révèle le manque de moyens financiers qui se répercute dans tous les aspects de sa gestion. Cet article concerne plus particulièrement les causes de destruction des vestiges archéologiques en Islande : les causes naturelles et la nature en général ainsi que l'attitude de certains citoyens, et la manière dont ces problèmes sont abordés.

12 | Se soucier du passé exige de se préoccuper du présent

Carsten Paludan-Müller

Si l'archéologie, à un stade primordial de son histoire, a contribué de façon significative à la création de la plateforme idéologique de l'Etat nation, et a ainsi contribué à encourager la croyance sans faille dans le progrès et la supériorité européenne, on peut se demander quelles raisons invoquer pour continuer à investir dans des fouilles archéologiques à l'heure actuelle?

Ce n'est pas que les archéologues, en en tant que tels, n'ont plus aucun lien avec la société contemporaine, mais bien plutôt que la manière d'exercer leur métier (en particulier les fouilles de sauvetage) semble, la plupart du temps, une pratique rituelle, détachée de toute référence à sa signification primitive. Les instruments légaux, qui ont permis aux archéologues de compiler dates, exemples et objets au sein d'un grand nombre de sites, n'ont pas été complétés par l'obligation d'insérer ces fouilles dans une écologie productrice de connaissance et de culture. Cette situation ne peut perdurer. La question suivante est de savoir qui va y mettre fin ? Il nous reste encore la possibilité et, je le pense, l'obligation morale, d'y mettre fin. L'archéologie doit se concentrer sur les résultats importants pour ceux qui composent la société contemporaine et utiliser ces résultats afin de développer des questions et des approches guidant le choix de sites et de méthodes de fouilles.

13 | **Susciter la prise de conscience de la jeune génération: un programme éducatif concernant les fouilles illicites et le trafic de biens culturels**

Elena Korka

Les fouilles clandestines et le trafic illicite de biens culturels ont connu un moment culminant au cours de ces dernières années et constituent encore de nos jours un sérieux défi. Une des possibilités permettant d'influer ce phénomène est la sensibilisation de la jeune génération au moyen de campagnes d'information. D'année en année, la Grèce a profondément souffert du pillage et de la perte de nombreux biens culturels. En 2008, un nouveau service a été créé au sein du Ministère de la Culture: la Direction pour la Documentation et la Protection de biens culturels, dont j'ai l'honneur d'être le premier directeur. En 2010, nous avons organisé un programme éducatif destiné aux élèves d'école primaire. Nous avons réalisé une brochure en grec et en anglais, distribué dans les musées et les principaux sites. Celle-ci a pour but de sensibiliser les enfants à la protection du patrimoine culturel. Cette brochure a été également envoyée à l'UNESCO, à l'ICCROM et à d'autres organisations internationales.

Nous avons organisé des activités éducatives pour les élèves des écoles primaires d'Athènes sous le titre de "A la recherche des informations archéologiques manquantes..." Ce fut une expérience pratique mettant en évidence la différence entre fouilles systématiques et pillage de sites archéologiques. Ce projet pilote peut être largement diffusé et incorporé au sein d'activités éducatives à travers l'Europe.

14 | **Protéger le patrimoine archéologique par la promotion de l'archéologie bénévole**

*André Schoellen, Grégory Compagnon,
Jean-David Desforges, Nicolas Minvielle*

Les bénévoles ont toujours joué un rôle important dans l'univers de l'archéologie. Ils ont fait de l'archéologie une science ayant des méthodes et techniques particulières. Le bénévolat a connu son âge d'or dans bon nombre de fouilles au cours des années '70 et '80. Celles-ci furent également très destructives. A travers la France, des milliers de bénévoles ont été mobilisés pour sauver d'importantes informations patrimoniales. En créant des « associations », ils ont inventé l'archéologie de prévention, et certains d'entre eux sont mêmes devenus des professionnels. Ces associations ont été également le fer de lance de la recherche locale. Pendant des dizaines d'années, des bénévoles passionnés ont, entre autre, mené de front des fouilles planifiées et des fouilles de sauvetage. Ils ont contribué au développement des méthodes archéologiques, mais plus important encore, ils ont éduqué et sensibilisé le public sur la précarité de ce patrimoine. En 1981, au moment où des discussions au sein du Conseil de l'Europe, en 1981, allaient aboutir à une plus grande implication du public, les dirigeants des associations de volontaires, tout au cours des années 1990, se sont parfois senti dépréciés et écartés par les politiciens qui les avaient exclus de leurs décisions. Les associations de bénévoles, perdant quelque peu de leur liberté, devinrent graduellement moins attractives. Bon nombre d'entre elles disparurent ou

diminuèrent grandement leurs activités. Le nombre de membres diminua, par contre, la moyenne d'âge alla en augmentant. Entretemps, des activités clandestines se développèrent. Celles-ci furent préjudiciables au patrimoine qu'il est impossible de protéger dans son entièreté.

Il semble, de nos jours, que le public s'intéresse davantage à l'archéologie, mais ne trouve pas toujours les structures adéquates au sein desquelles ils peuvent s'intégrer et apprendre, en particulier dans le domaine du travail sur le terrain. Les associations de détecteurs de métaux encouragent une « recherche de l'objet » qui attire un public grandissant. Cette activité, comme celle qui mène à la collection de silex, ne peut être confondue avec l'archéologie bénévole. Un chasseur de trésor ne peut être considéré comme archéologue ni même comme un prospecteur. Pour combattre le plus efficacement possible l'archéologie illégale, il conviendrait de donner plein pouvoir au public concernant le patrimoine. C'est en redonnant une juste dimension à la participation du public, c'est-à-dire aux bénévoles, que notre patrimoine sera le mieux protégé. Reconsidérer la position de l'archéologie bénévole permettrait également d'accroître la visibilité de l'archéologie officielle, non seulement dans les zones caractérisées par un fort développement, mais à travers tout le pays

15 | **Amateurs et archéologues professionnels: modèles légaux pour leur coopération en République tchèque**

Jan Mařík

L'Heritage Act (Loi sur le patrimoine) tchèque date de 1987. L'autorisation de mener n'importe quel type de recherches archéologiques fût limitée aux personnes ayant une formation universitaire adéquate. Pourtant, parallèlement aux archéologues professionnels, un autre groupe de personnes intéressé par l'histoire locale - archéologues ou historiens amateurs, dont le nombre se compte par centaines - s'est solidement constitué au cours des années 1980. Cette situation changea radicalement pendant les années 1990, quand les détecteurs de métaux devinrent plus accessibles. Selon les estimations récentes, plusieurs milliers de détecteurs de métaux sont en usage dans la République tchèque. Bien qu'un nombre restreint de détenteurs de détecteurs tendent à coopérer avec les professionnels, il n'existe aucun doute que leur nombre est de loin supérieur à celui des archéologues professionnels. Bien que la loi sur le patrimoine tchèque inclus de fortes pénalités pour les fouilles archéologiques illégales, elle n'est d'application que dans quelques rares cas annuellement. Ce système de restrictions s'avère décidément inefficace et suscite de nombreuses questions : Comment réagir face au fait que des milliers de découvertes archéologiques disparaissent chaque année au sein de collections privées illégales sans être accompagnée d'aucune documentation contextuelle appropriée, aboutissent sur le marché noir ou demeurent non identifiées ? Cet article a pour but d'examiner quelles approches et méthodes pourraient aider à minimiser ces pertes. Un premier but à atteindre est d'établir un contact effectif avec les amateurs qui sont prêts à coopérer avec les

archéologues professionnels et à respecter la loi. Le but recherché est d'établir une plateforme où ces deux mondes distincts puissent trouver un langage commun et collaborer entre eux.

16 | **une politique du passé, une protection du futur. Aborder les problèmes de délit et de comportement antisocial au sein de l'environnement historique en Angleterre**

Mark Harrison

Le Programme des infractions au patrimoine est destiné à faire prendre conscience de l'existence et de la signification de valeurs patrimoniales au niveau national, régional et local. Afin de protéger l'environnement historique de tous dégâts ou altérations non licites, le Parlement a prévu de punir un ensemble de délits spécifiques. La tâche qui incombe aux autorités est donc claire. Le but est de transmettre aux générations futures nos sites historiques dans des conditions aussi bonnes, sinon meilleures, que celles dans lesquelles nous les avons trouvés (définition de durabilité). Mais en réalité, il apparaît qu'en raison du mauvais partage des responsabilités entre autorités locales, police et institut du patrimoine anglais (English Heritage), du peu d'incidents et du manque d'expertise ou de compréhension de la nature des dégâts, la tâche n'a pas été menée comme on aurait pu le souhaiter. En réponse à la nécessité d'une approche plus coordonnée, l'English Heritage, le conseiller auprès de l'institut gouvernemental sur l'environnement historique, et l'Association des chefs de police (ACPO), ont secondé l'inspecteur en chef Mark Harrison de la Police du Kent, afin que celui-ci puisse agir en tant que conseiller policier et développer ce programme d'infractions au patrimoine. Les objectifs poursuivis sont le développement d'une approche durable et coordonnée, permettant de diminuer les délits entre autorités officielles et les intéressés. Le système doit prendre en compte les ressources limitées disponibles et la diminution de celles-ci, mais également le grand enthousiasme et l'énorme attrait que suscite l'environnement historique de l'Angleterre.

17 | **Faites comme on vous le dit et non comme nous faisons! La protection du patrimoine archéologique et l'exclusion du public autrichien**

Raimund Karl

En 1905, Georg Dehio déclarait que la participation du public était le seul moyen d'obtenir une protection du patrimoine efficace. Pourtant, la législation du patrimoine archéologique en Autriche rejette pratiquement toute participation active du public dans la gestion et la protection de ce patrimoine. Et en plus de cela, notre législation et nos règlements informent le public de faire ce que les professionnels leurs disent et non de les imiter. Il en résulte une crise au niveau de la légitimité et de l'abondance d'informations : Ceux qui dans le public souhaitent protéger consciencieusement le patrimoine sont contraints d'enfreindre la loi, puisqu'ils sont conscients de sa contre-productivité ; dès lors, ils préfèrent tout simplement ne pas informer les professionnels de la gestion du patrimoine de de

leurs recherches ou découvertes. En voulant obtenir la meilleure des protections au niveau de l'archéologie, nous avons abouti au pire des résultats imaginables.

18 | **Perspectives sur la sensibilisation, la participation du public et la protection**

Marc Drouet

Cet article souhaite présenter quelques réflexions au niveau de la situation française – mais qui sont sans nul doute applicables à d'autres sociétés contemporaines occidentales – concernant la relation au temps (la confusion entre histoire et nostalgie) et ses conséquences pour l'étude et la protection du patrimoine archéologique. Protéger le patrimoine ne se révèle jamais simple en temps de crise où les restrictions budgétaires deviennent plus drastiques. Le défi est d'autant plus important lorsque le grand public, qui finance ce type de missions, n'est pas sensible à l'intérêt de cette discipline. C'est encore plus ardu si des particuliers, motivés par d'autres intentions que la démonstration de la vérité, détournent ce grand public de la vérité historique. Parmi ces charlatans, il faut citer les utilisateurs non autorisés de détecteurs de métaux, qui pillent le patrimoine, le mutilent, dont le seul but est de faire main basse sur des artefacts en métal, sous prétexte d'une contribution factice à l'archéologie. Face à un tel défi, la détermination des archéologues doit rester inflexible car la sincérité scientifique n'est pas négociable.

