

Wanborough Revisited: the Rights and Wrongs of Treasure Trove Law in England and Wales

SUZIE THOMAS

International Centre for Cultural and Heritage Studies
Newcastle University
UK

s.e.thomas@ncl.ac.uk

Paper Presented at the Forum UNESCO University and Heritage
10th International Seminar
“Cultural Landscapes in the 21st Century”
Newcastle-upon-Tyne, 11-16 April 2005

Revised: July 2006

Introduction: Cultural Landscapes, antiquities and understanding the past

Landscape and archaeology are widely accepted as inextricable. An individual archaeological site's place within the wider landscape has been long accepted as a vital component of its interpretation (Tolan-Smith, 1997, p.1; Thomas, 2001, p.165). Knowing the site's *context* is an essential part of the process of research. Many archaeologists will accept that this concept is important for understanding the “conventional archaeological sites” within this all-important context (Tolan-Smith, 1997, p.1). Additionally, the theoretical concept of landscape archaeology has expanded beyond the empiricist view of landscape, to incorporate the importance of people's beliefs and perceptions of the world around them, in addition to (but not in stead of) the process of plotting and recording landscape features (Thomas, 2001, p.181). For example, an evaluation of Stonehenge would not be considered a thorough piece of academic research if it did not at the very least take into consideration its own setting within the landscape, alongside the significance of Avebury, Woodhenge and the other prehistoric sites in the surrounding landscape. The current theoretical environment for landscape archaeology would suggest that this landscape and any other would need to be analysed in two ways (Thomas, 2001, p.181). These analyses would be both for the empirical sequences evident in the remaining features - “a history of things that have been done to the land” (Barrett, 1999, p.26) –and also referring “to earlier experiences or to the cultural expression of some metaphysical order” (Barrett, 1999, p.29), as much as it can ever be possible to understand peoples' philosophies in the past.

It is the reliance on the context, which is significant not only in the larger picture of relating a site to its environment, but also, particularly for the purposes of this paper, down to the much smaller scale of understanding a single artefact. It is self-explanatory to all archaeologists that much of the information to be discovered from an artefact stems from its physical context within the landscape, whether from underground or from within a standing structure. Without this information, an object is “orphaned” from its past and that of the people who produced it (*Stealing History*, 2001). Yet it is this information which is so commonly lost before there has been any opportunity for it to contribute to the archaeological record.

Many authors have already discussed the international trade in antiquities and its implications for the study of archaeology. They argue that it is and has been a major contributor to the scale of archaeological material being illicitly removed from its site of origin (e.g. Skeates, 2000; Renfrew, 2001; Brodie, 2002). Renfrew has stated that “...the looting of archaeological sites has become what is probably the world's most serious threat to our

archaeological heritage” (1995, p.xvii), and specific examples of sites and artefacts known to have suffered from looting for commercial gain are numerous. Angkor Wat, Cambodia (Thosarat, 2001, p.8), Sipán, Peru (Alva, 2001, p.93) and the Lydian Hoard (Kaye and Main, 1995) are only a few of the most prominent examples from thousands of instances.

This paper discusses the consideration of the loss of irretrievable information about a site and its place within the context of its assemblages and the wider landscape that looting causes, and how to tackle that threat. The 1983 incident of looting at Wanborough, Surrey will be analysed in view of its significance for the attempts by heritage professionals and academics to curtail the illicit trade in antiquities in England and Wales, and also in terms of its impact on laws operating in these two countries. England and Wales are focussed on in this paper rather than the whole of the United Kingdom due to legislative differences that exist in Scotland and Northern Ireland.

“The Battle of Wanborough Temple”

The Battle of Wanborough Temple (*sic*) has been cited as a turning point in the relationships between archaeologists and amateur metal detector users, as it demonstrated the need for co-operation, and has even been credited with changing the “ancient treasure trove law” (Gilchrist, 2003). Surrey Archaeological Society have even claimed that the *Treasure Act* 1996 “came about as a direct result of the Society’s experiences” with Wanborough (Graham, 2004, p.307). It has also been identified as a key factor in the deterioration of relations between metal detector users and archaeologists (Hobbs, 1999, p.7). But is it possible that just one incident in the 1980s could have had such a far-reaching effect in England and Wales?

Wanborough is a picturesque little village in Surrey, famed for its Great Barn (Guildford Online, 2005), and recommended as a “delightful situation” for prospective homebuyers (*The Good Move Guide*, 2004). Yet in the past 22 years its name has become synonymous in British archaeology and metal detecting with an infamous series of trials of metal detector users.

Apart from an initial discovery of Roman pottery and roof tile in 1969 and a small excavation in 1979 (Graham, 2004, p.7), not much attention had been given to the Romano-British temple site at Wanborough until the 1980s. In 1983 metal detector users discovered a number of coins at the site. Initially the discoverers acted responsibly by reporting their find to a local museum. During a coroner’s inquest, the procedure used for investigating possible treasure trove cases, the location of this site was given out publicly in open court (Hanworth, 1995, p.173). This release of information led to the large-scale looting of the site. Before an emergency dig by the Surrey Archaeological Society could take place, looting occurred on such a scale that some reported that, at times, up to 30 or 40 individuals were digging illegally on the site overnight (Sheldon, 1995, p.178). It is unknown how much material was removed in this period, but some estimate that around £2 million in coins was lost, possibly appearing on American and European antiquity markets (Hanworth, 1995, p.173). “Nighthawks” – “...illicit metal detectorists who go secretly and illegally by night onto private land in search of marketable antiquities” (Renfrew, 2001, p.86) – were responsible for this loss.

Criminal trials at Kingston Crown Court followed in June, July and August 1986 for some of the treasure hunters deemed responsible for looting the site (trial transcripts by Wakeford, 1986). Of the five cases noted by Miss Wakeford, copies of which are held in the Council for British Archaeology (CBA) archives, one trial collapsed, one defendant was found not guilty. Three were found guilty, and of these one was fined £1000, one £400, and one was fined £250 along with the confiscation of his metal detector, with imprisonment threatened if they

failed to pay their fines in the time required (Wakeford, 1986).

Effect on treasure laws in England and Wales

The treasure trove law was, until its cessation in 1997, the oldest law still in use in Britain (Gilchrist, 2003). Its history traces back to the 12th Century, and it remained largely unchanged since its description in the account of Henry de Bracton circa 1250 (Graham, 2004, p.312). Its principal features were based on the notion that anyone finding gold or silver in the ground was obliged to report it to the coroner. If it was demonstrated at the coroner's inquest that the objects were probably buried with the intention of recovery but that the owner could not be found then they were determined to be treasure, and as such property of the Crown. If inquest was satisfied that the objects had been lost accidentally or buried without the intention of the recovery, then ownership passed to the landowner (Cleere, 1984, p.57).

Although it was widely accepted that the site was a temple, it was the interpretation of the context of the objects, which was significant. This included sceptres and chain headdresses as well as substantial amounts of coins (Sheldon, 1995, p.178). The most obvious interpretation of the objects, given the nature of the site, was that they were votive offerings. This would mean the people who deposited the objects had no intention to recover them, and thus the objects could not be classified as treasure trove. However, if the British Museum (and the Surrey Archaeological Society), on the side of the prosecution, could demonstrate convincingly that at least the gold and silver was not votive, the Crown would have been identified as the owner. The objects would have gone to the British Museum, or another museum, and prosecutions could take place on the grounds that the material had been stolen from the Crown (Collis, *pers comm.* 2005).

One version of interpretation offered by the prosecution was of a tower-like wooden temple, which may have been storing the treasure on an upper floor, with the argument that when the temple fell down, or was destroyed or burnt, the coins would have been scattered (Collis, *pers comm.* 2005; Wakeford, 1986). Interestingly, as it could not be demonstrated whether it was deposited for recovery, lost or votive, no ownership could be demonstrated. It was noted by Wakeford (1986) in the records that she made of the trials that the prosecution had decided not to bring in the issue of landowners' rights to artefacts found on their land, in stead focussing on treasure trove, in other words theft from the Crown. This was apparently to avoid "straying into the realms of Chancery" (Wakeford, 1986). Yet without ownership through treasure trove, no theft from the Crown could be demonstrated. Another reason for following the avenue of treasure trove, rather than theft from a private individual, could have been that, if found guilty, the British Museum would automatically have claimed ownership of the artefacts, on the Crown's behalf. If the items in question had been treated as private property, then ownership would have stayed with the landowners in stead, leaving no guarantee that the owners would wish for the artefacts to go to a museum.

Interestingly, the defence for one of the metal detector users on trial even called an archaeologist, John Collis, as an expert witness to testify to the likely votive nature of the objects found (Wakeford, 1986). This move caused concern among some professionals, and naïveté was suggested in the handling of the matter (e.g. Cleere to Hanworth, unpublished letter, 8th October 1986). Yet, in light of the attempts to demonstrate treasure trove in the trial, it also raises the question of how ethical it was of the prosecution to try and interpret objects in a certain way, when evidence suggested otherwise, in order to obtain the desired verdict in a court case.

Ultimately it was the system of treasure trove, which was criticised for its inability to support the case satisfactorily in the criminal trial (Hanworth, 1995, p.174). There had been previous

attempts to pass amendments, which would have strengthened the law's protection of archaeological material. The Abinger Bill was presented to the House of Lords in 1982, just before the incidents at Wanborough, and sought to broaden the categories classed as Treasure Trove, and to remove *animus revertendi* – the “guessing game, in which one seeks to decide the intention of the person who deposited something in antiquity” (Hanworth, 1995, p.174). This Bill was successful in the House Lords, but was finally unsuccessful in the House of Commons. There have been different explanations as to why this happened, for example Cleere (1984, p.57) suggests a certain amount of cynicism and deliberate action on the part of the Commons. However, more recent parliamentary debate suggests that the Abinger Bill failed, “not because of opposition in either House but because of a lack of parliamentary time” (Whittingdale, 8th March 1996, col 570). Whichever version is closer to the truth, it took another ten years after the Wanborough trials for the treasure trove law finally to be discarded and replaced by the *Treasure Act* 1996, which came into force in 1997.

“Stop Taking Our Past!”

The looting at Wanborough occurred within a broader political context of the aftermath of an arguably controversial campaign launched in 1980 by the archaeological profession entitled STOP (Stop Taking our Past). STOP tried to persuade public opinion against the growing metal detecting hobby, but which, in reality, “probably did more harm than good” (Addyman and Brodie, 2002, p.179). The campaign has been criticised for creating a polarity between metal detector users and archaeologists (Gregory, 1986, p.26). Public opinion was an important issue: “A professional approach is vaguely deplored – or savagely attacked as a means of getting public money for a private hobby, according to recent polemics by the metal-detecting treasure hunters” according to Cleere (1984, p.61).

STOP seems far removed from the current initiative of the Portable Antiquities Scheme (PAS), which was launched in 1997 to coincide with the *Treasure Act*. One aim of the nation-wide PAS is: “to increase opportunities for active public involvement in archaeology and strengthen links between metal-detector users and archaeologists” (Resource, 2003, p. 7). There had, however, been numerous other cases emerging of nighthawking around the time of STOP. It would be wrong to give the impression that Wanborough was the only case of looting that had occurred in England in the 1980s. However, in contrast to the 1990s (when PAS started) metal detecting was still a relatively new hobby in the United Kingdom, which must have greatly alarmed archaeologists with its rapid growth in popularity (Gilchrist, 2003).

The STOP campaign took the form largely of posters and leaflets, and a significant war of words began between some prominent archaeologists (through STOP) and metal detector users, primarily through the Detector Information Group (DIG), an organisation formed by metal detector users around the same time that STOP was being formed. One notable article in a prominent metal detecting magazine declared as its title “STOP SCUM (that's you)”, claiming the letters to be that of the archaeologists' campaign (Payne, 1979, p.4). It would seem that the SCUM part of the headline had been taken from the acronym for Standing Conference of Unit Managers, and was not at all related to the language of the STOP campaign (Cleere, series of unpublished letters, 1979). Whether this was a deliberate misinterpretation of STOP or not, the intention of the article to expand further the existing animosity of metal detector users towards archaeologists seems clear.

Conclusions

This paper has presented the case of Wanborough in its *political* context, while acknowledging the loss of archaeological knowledge presented by the loss of *physical*

context in any case of looting. As with all cases of looting and undocumented removal of archaeological material, it is the loss of information from the context of the site and its relationship to the surrounding landscape, which is irretrievable. That the initial looting of Wanborough took place around the time of the tense "STOP!" period probably accounts greatly for its notoriety. Hobbs asserts that when the looting happened it even led to calls for metal detecting to be banned (2003, p.18). Certainly authors on the subject have referred to high profile cases of looting from England and Wales: the Salisbury Hoard (Stead, cited in Renfrew, 2001, pp. 85-89), for which investigations began in 1988 (Stead 1998) although the site is believed to have been looted in 1985 (Addyman and Brodie, 2002, p.180); incidents at Corbridge between 1989 and 1993 have been cited as an example of a site vulnerable to metal detecting (Addyman and Brodie, 2002, p.181); and the 2002 incident of looting at Yeavinger Bell, which the author has heard cited at conferences and seminars (e.g. Allan, 2004), have all occurred, or at least been addressed, later than the Wanborough case. Wanborough remains the "best documented" site, seeming to have achieved "almost mythic status with illicit treasure seekers" (Addyman, 2001, p.142).

The 1983 incident also almost coincided with attempts to pass a new Bill through parliament, and so may have been seized upon as an opportunity to highlight the need for change. Therefore the timing of the incident, and even the unsatisfactory result of the trials for the archaeologists involved in the prosecution, seem to have been crucial for the site's "value" as a key example to use for the argument to amend legislation in England and Wales. To take a recent legislative example, the Private Members Bill which led to the *Dealing in Cultural Objects (Offences) Act 2003* arguably benefited from the high media publicity for cultural property under threat, which was afforded by the situation in Iraq (Allan, 2004a, *pers comm.*).

Another important aspect to the fame of Wanborough is the reports of how much money might have been made from the illicit findings in the 1980s, with dealers even buying the coins at the site as they were being uncovered in some instances (Graham, 2004, p.307). The power of money, both as incentive to loot, and as a way of emphasising the severity of an instance of looting, must not be underestimated.

Wanborough has been looted on other occasions since 1985, for example in 1997 (British Archaeology, 4), and even in 2005 (Graham, 2005, *pers. comm.*). However, on these occasions there was no STOP campaign, and with relations far improved since the 1980s local metal detecting clubs even joined archaeologists in condemning some of the raids (British Archaeology, 1997, p.4). Even since the arrival of the 1996 *Treasure Act* other instances of looting have occurred, including the looting of Yeavinger Bell in 2002, which made national news (Kennedy, 2002). This raises the question of whether changing legislation makes any difference to the rate of nighthawking. In the case of the 2003 *Dealing in Cultural Objects (Offences) Act* it is still early days but it will be interesting to see how many convictions are made as a result of it.

There are still questions to be asked about how significant Wanborough has been in the process of introducing changes to the law regarding treasure trove, and why it has become such a "classic" example of looting, which this paper has attempted to introduce rather than to answer categorically. The author is in the process of analysing archival information held by the CBA dating from this period and earlier, and this paper represents the development of a process of investigation, which stems from this continuing research.

References

- Addyman, P. V. (2001) Antiquities without Archaeology in the United Kingdom, in N. Brodie, J. Doole and C. Renfrew (eds) **Trade in Illicit Antiquities: The destruction of the world's archaeological heritage**, pp. 141-144 (Cambridge: McDonald Institute for Archaeological Research).
- Addyman, P. V. and Brodie, N. (2002) Metal detecting in Britain: Catastrophe or Compromise? in N. Brodie and K. W. Tubb (eds) **Illicit Antiquities: The theft of culture and the extinction of archaeology**, pp. 179-184 (London: Routledge).
- Allan, R. (2004) "The Dealing in Cultural Objects (Offences) Bill 2003", unpublished lecture at DCMS Open Seminar "Recent measures to restrict the illicit trade in cultural objects", British Museum, London January 15th 2004.
- Allan, R. (2004a) unpublished interview with the author, Sheffield, 21st May 2004.
- Alva, W. (2001) The Destruction, Looting and Traffic of the Archaeological Heritage of Peru, in N. Brodie, J. Doole and C. Renfrew (eds) **Trade in Illicit Antiquities: The destruction of the world's archaeological heritage**, (Cambridge: McDonald Institute for Archaeological Research). #####
- Barrett, J. (1999) Chronologies of Landscape, in P. Ucko and R. Layton (eds) **The Archaeology and Anthropology of Landscape**, pp.21-30 (London: Routledge).
- British Archaeology* (1997) In Brief, **British Archaeology**, 24 (May), p.4.
- Brodie, N. (2002) Introduction, in N. Brodie and K. W. Tubb (eds) **Illicit Antiquities: The theft of culture and the extinction of archaeology**, pp. 1-22 (London: Routledge).
- Cleere, H. (8th October 1986) unpublished letter to Viscountess R. Hanworth.
- Cleere, H. (1984) Great Britain, in H. Cleere (ed.) **Approaches to the Archaeological Heritage**, pp. 54-62 (Cambridge: University Press).
- Cleere, H. (1979) series of unpublished letters (various dates) to R. Smith.
- Collis, J. (2005) personal communication, Cork, 10th February 2005.
- Gilchrist, A. (2003) "There's gold in them there hills" in *The Guardian* 17th November 2003, available <http://www.guardian.co.uk/arts/features/story/0,11710,1086627,00.html> [4th February 2005].
- Graham, D. (2005) personal communication, Guildford, 14th February 2005.
- Graham, D. (2004) To change the law: the story behind the Treasure Act 1996, **Surrey Archaeological Collections**, 91, pp. 307-314.
- Gregory, T. (1986) Whose fault is treasure-hunting? in Dobinson, C. and Gilchrist, R. (eds) **Archaeology Politics and the Public**, pp. 25-27, (York: York University Archaeological Publications).

Guildford Online (2005), available <http://www.guildford.gov.uk/GuildfordWeb/Tourism/Group+Visits/The+Great+Barn+-+Wanborough.htm> [8th February 2005].

Hanworth, R. (1995) *Treasure Trove: New Approaches to Antiquities Legislation*, in K. W. Tubb (ed.) **Antiquities Trade or Betrayed**, pp.173-175 (London: Archetype).

Hobbs, R. (2003) **Treasure: Finding our past**, (London: British Museum Press).

Hobbs, R. (1999) Showing our metal, **British Archaeology**, 46 (July), p.7.

Kaye, L. and Main, C. (1995) The Saga of the Lydian Hoard Antiquities: from Uşak to New York and back some related observations on the law of cultural repatriation, in K. W. Tubb (ed.) **Antiquities Trade or Betrayed**, pp. 150-161 (London: Archetype).

Kennedy, M. (2002) Thieves pillage Iron Age fort, **The Guardian**, 21st October 2002. Available http://www.guardian.co.uk/uk_news/story/0,3604,815938,00.html [29th October 2002].

Payne, G. (1979) STOP SCUM (that's you!), **Treasure Hunting**, November 1979, pp. 4-5.

Renfrew, C. (1995) Introduction, in K. W. Tubb (ed.) **Antiquities Trade or Betrayed**, pp. xvii-xxi (London: Archetype).

Renfrew, C. (2001) **Loot, Legitimacy and Ownership**, (London: Duckworth).

Resource (2003) **Portable Antiquities Scheme Annual Report 2001/02 – 2002/03**, (London: Resource).

Sheldon, H. (1995) The Lure of loot: An example or two, in K. W. Tubb (ed.) **Antiquities Trade or Betrayed**, pp.176-180 (London: Archetype).

Skeates, R. (2000) **Debating the Archaeological Heritage**, London: Duckworth.

Stead, I (1998) Catching the Salisbury Hoard looters, **British Archaeology**, 38 (October), pp. 10-11.

Stealing History (2001) Touring Exhibition text © University of Cambridge, available <http://www.mcdonald.cam.ac.uk/IARC/Display/Interactive.htm> [8th February 2005].

The Good Move Guide (2003), available <http://www.thegoodmoveguide.com/Locations/Surrey/Boroughs/Guildford/Guides/villages/wanborough.htm> [8th February 2005].

Thomas, J. (2001) Archaeologies of Place and Landscape, in I. Hodder (ed.) **Archaeological Theory Today**, pp. 165-186, (Oxford: Blackwell).

Thosarat, R. (2001) The Destruction of the Cultural Heritage of Thailand and Cambodia, in N. Brodie, J. Doole and C. Renfrew (eds) **Trade in Illicit Antiquities: The destruction of the world's archaeological heritage**, (Cambridge: McDonald Institute for Archaeological Research).

Tolan-Smith, C. (1997) **Landscape Archaeology in Tynedale**, Newcastle: Department of Archaeology.

Wakeford (1986) Wanborough coins cases, unpublished transcripts of the trials at Kingston Crown Court of treasure hunters connected with Wanborough, Surrey.

Whittingdale, J. (1996) House of Commons debate on 8th March 1996, Hansard Column 571, available <http://www.parliament.the-stationery-office.co.uk/pa/cm199596/cmhansrd/vo960308/debtext/60308-05.htm> [18th February 2005].