

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

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INTRODUCTION

Wanborough is a small, pleasant village near Guildford in Surrey, famed for its 14th-century Great Barn (Guildford Borough Council 2007) and recommended as a ‘delightful situation’ for prospective homebuyers (*The Good Move Guide* 2004). Yet in the past few decades its name has become synonymous in British archaeology and metal detecting with an infamous looting incident, when the Romano-British temple site was raided, and the almost equally infamous subsequent series of trials of metal detector users. While Wanborough is not unique in its status as a looted site in England – other documented cases include Corbridge in Northumberland (Dobinson and Denison 1995; Addyman and Brodie 2002, 181) and Donhead St Mary in Wiltshire (McKie 1996) – it is this chapter’s argument that the significance of Wanborough was not so much in its importance as an archaeological site, but in the opportunities taken to politicise the looting of this site, and also the subsequent trials, ultimately contributing to a major change in the law concerning the treatment of finds of archaeological importance in England and Wales.

The initial incident of looting at Wanborough, in 1983, is analysed in view of its significance for the attempts by archaeologists to curtail and control treasure hunting in England and Wales, especially their growing concern in the late 1970s and 1980s with the rise in popularity of metal detecting. It is also analysed in terms of the incident’s impact on laws relating to archaeology in England and Wales. England and Wales are focused on in this chapter rather than the whole of the United Kingdom simply because of legislative differences in Scotland and Northern Ireland and in the UK Crown Dependencies. At the time of the Wanborough looting incident, the predominant law affecting portable antiquities in England and Wales was the Treasure Trove common law, which was replaced by the 1996 *Treasure Act* (which came into force in 1997). This change came about, however, only after years of campaigning for a change in the law, a pursuit that was arguably assisted by the severity of the damage at Wanborough and the determination of those involved to use the unfortunate incident to their advantage as a way of illustrating the need for change.

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 this is underground or within a standing structure. Without this information, an object is 'orphaned' from its past and that of the people who produced it (University of Cambridge 2001). Yet it is this information that is often lost before there has been any opportunity for the object 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 problem of archaeological material being illicitly removed from its site of origin (eg Skeates 2000; Renfrew 2000; Brodie 2002). Renfrew (1995, xvii) has stated that '... the looting of archaeological sites has become what is probably the world's most serious threat to our archaeological heritage', and specific examples of sites and artefacts known to have suffered from looting for commercial gain are numerous. Angkor Wat, Cambodia (Thosarat 2001, 8), Sipán, Peru (Alva 2001, 93), and the Lydian Hoard (Kaye and Main 1995) are only a few of the most prominent examples from thousands of instances. This chapter only touches on the consideration of the loss of irreplaceable 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 primary focus, instead, is the political context of the looting, and its impact on metal detecting. While much of the more high-profile international trade deals with prices much higher than the market value of objects most commonly found in the UK, it is not unknown for items of huge financial value to be discovered in England or Wales, as coin hoards such as Wanborough have demonstrated. The issue of market value is, however, only one of the features that made Wanborough significant.

'THE BATTLE OF WANBOROUGH TEMPLE'

'The Battle of Wanborough Temple' (*sic*) (Gilchrist 2003) has been cited as a turning point in the relationships between archaeologists and amateur metal detector users, sometimes referred to as treasure hunters, in the UK. The relationships between archaeology and metal detecting in the UK was initially largely antagonistic, with alarmist reactions from professional archaeology to the growing hobby and the potential threat that it represented to the integrity of archaeological sites, which could now be easily combed for metal artefacts. There were also angry retaliations by metal detector users towards archaeologists, through treasure hunting magazines, for example. There were, of course, exceptions to this stance among archaeologists. The counties of Lancashire, Hampshire and Yorkshire saw working relationships established between archaeologists and local metal detecting groups as early as the 1970s (STOP Committee 1980). In East Anglia in the late 1970s a system had even been arranged to encourage metal detector users to record their finds (eg Green and Gregory 1978), on which model the current Portable Antiquities Scheme (PAS) is based (Bland 2005, 442).

When the looting of the site at Wanborough occurred, however, it demonstrated the need for cooperation between archaeologists and responsible metal detector users, who were concerned not only with the damage to the physical remains of the past but also

the damage to the reputation of metal detecting. It has been credited with changing the ‘ancient treasure trove law’ (Gilchrist 2003), with Surrey Archaeological Society claiming that the 1996 *Treasure Act* ‘came about as a direct result of the Society’s experiences’ with Wanborough (Graham 2004, 307). On the other hand, it has also been identified as a key example in the deterioration of relations between metal detector users and archaeologists (Hobbs 1999, 7). But is it possible that just one incident in the 1980s could have had such a far-reaching effect?

Apart from an initial discovery of Roman pottery and roof tile in 1969 and a small excavation in 1979 (Graham 2004, 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 finds to a local museum. During a coroner’s inquest – the procedure used for investigating possible Treasure Trove cases – the location of the site was given out publicly in open court (Hanworth 1995, 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 had occurred on such a scale that it was reported that, at times, up to 30 or 40 individuals were digging illegally on the site overnight (Sheldon 1995, 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, 173), and the site’s integrity was severely disturbed (Fig 1). ‘Nighthawks’ – ‘illicit metal detectorists who go secretly and illegally by night onto private land in search of marketable antiquities’ (Renfrew 2000, 86) – were responsible for this loss. Even during rescue work carried out by Surrey Archaeological Society in 1986, involving metal detecting surveys of the site using ‘five known and trustworthy metal detector users’, fresh holes were discovered between the two survey days, indicating that unauthorised detecting was continuing (Graham and Graham 1986). In 1986 too, astonishingly, some of the looted coins were sent to Surrey Archaeological Society, accompanied by an anonymous letter from a ‘well-wisher’ (Anon 1986). The anonymity of the sender indicates their anxiety not to be recognised, not only to avoid prosecution by association with the looting, but also to remain anonymous to the illegal detector users from whom they (the sender) had received the coins (Anon 1986).

Criminal trials of some of the treasure hunters deemed responsible for looting the site followed in June, July and August 1986 at Kingston Crown Court in Surrey (Wakeford 1986a; 1986b; 1986c; 1986d). Five of the six initial trials were noted by Joan Wakeford on behalf of the Surrey Archaeological Society. The first trial, involving three servicemen, ended when a *nolle prosequi* was entered, with indications after the closure of the case that they had ‘turned Queen’s evidence’ and assisted the police in tracing coin dealers who were ‘trading in the W coins’ (Wakeford 1986a, 1). According to the Wakeford notes, another trial collapsed and one defendant was found not guilty. Two more men were found guilty in subsequent trials. Of those who were found guilty one was fined £1000, one £400, and one £250 along with the confiscation of his metal detector, with imprisonment threatened in all cases if they failed to pay their fines in the time required (Wakeford 1986a; 1986b; 1986c; 1986d).

FIG 14.1: JOHN GOWER, JOINT HONORARY SECRETARY OF THE SURREY ARCHAEOLOGICAL SOCIETY, EXAMINING DAMAGE BY TREASURE HUNTERS AT WANBOROUGH IN 1985.



(PHOTO: MARIAN GOWER 1985, REPRODUCED BY KIND PERMISSION OF MARIAN GOWER)

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 traced back to the 12th century, and it remained largely unchanged since its description in the account of Henry de Bracton *c* 1250 (Graham 2004, 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: this was effectively a medieval safeguard against tax evasion by hiding one's valuables rather than declaring them to the monarch. Hence, 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 the inquest was satisfied that the objects had been lost accidentally or buried without the intention of recovery, then ownership passed to the landowner (Cleere 1984, 57).

Although it was widely accepted that the site at Wanborough was a temple, it was the interpretation of the context of the objects that was significant in court. The objects included sceptres and chain headdresses, some of which are now displayed in Guildford Museum, as well as substantial quantities of coins (Sheldon 1995, 178). The

most obvious interpretation of the objects, given the nature of the site, was that they were votive offerings. This would mean that the people who deposited the objects had no intention of recovering them, and thus the objects could not be classified as Treasure Trove. However, if the prosecution could demonstrate convincingly that at least the gold and silver was not votive, but deliberately hidden and/or intended for recovery at a later date, 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 archaeological interpretation offered by the prosecution was of a tower-like wooden temple, in which the Treasure may have been stored on an upper floor; the argument runs that when the temple fell down, or was destroyed or burnt, the coins would have been scattered (Collis *pers comm* 2005; Wakeford 1986c, 3). As it could not be demonstrated in the end whether it was deposited for recovery, lost or votive, no ownership could be demonstrated. The looted site covered land belonging both to Surrey County Council and to a private landowner. Interestingly, it was noted by Wakeford (1986a) in her records of the trials that the prosecution had decided not to bring in the issue of landowners' rights to artefacts found on their land, instead focusing on Treasure Trove – in other words, theft from the Crown. This was apparently to avoid 'straying into the realms of Chancery' (Wakeford 1986a, 2). 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 the prosecutions had been successful, 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, although the *Theft Act* as well as trespassing laws could have been applied, ownership would have stayed with the landowners, leaving no guarantee that the owners would wish for the artefacts to go to an institution such as the British Museum.

Interestingly, the defence for one of the metal detector users on trial even called a university archaeologist, John Collis, as an expert witness to testify to the likely votive nature of the objects found (Wakeford 1986d, 9–12). This move caused concern among some professionals, and naïveté was suggested in the handling of the matter (eg Cleere 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 and its supporters to try to interpret objects in a certain way, when evidence suggested otherwise, in order to obtain the desired verdict, of a finding of Treasure Trove, and hence Crown ownership, in a court case.

What was especially demonstrated through the Wanborough cases was the weakness of the laws intended for the protection of archaeological sites: that the undoubtedly importance of what was allegedly found on site could not be protected, not only through Treasure Trove restrictions, but also because the site in question was not scheduled, and thus not protected under the other most relevant law, the 1979 *Ancient Monuments and Archaeological Areas Act*. This Act includes Section 42, which came into force in 1980 (Munro 1980), making it an offence to use a metal detector without permission on protected (ie scheduled) sites (HMSO 1996, 31).

Ultimately it was the system of Treasure Trove that was criticised for its inability to support the case satisfactorily in the criminal trial (Hanworth 1995, 174). There had been previous attempts to pass Treasure Trove amendments, which would have strengthened the law's protection of archaeological material. The *Abinger Bill* had been presented to the House of Lords in 1982, just before the incidents at Wanborough, and had 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, 174). Even one of the successful Wanborough prosecutions brought for theft was overturned in 1990 by the Court of Appeal, based on the argument that the Crown Court Judge had ‘misdirected the jury’ about whether they had to be sure that the coins in the case were Treasure Trove, rather than simply sure about the possibility of them being Treasure Trove (as happened in the 1986 trials), before a conviction could be made (Ayres 1992, 404). As it is virtually impossible to prove beyond doubt the conditions under which archaeological material was originally deposited (as was required for the concept of *animus revertendi*), the success of the appeal further demonstrated the weakness in the Treasure Trove law when trying to secure a criminal conviction (ie theft from the Crown).

The *Abinger Bill* was successful in the House of Lords, but then failed in the House of Commons. Explanations for this have differed: for example, Cleere (1984, 57) suggests a certain amount of cynicism and deliberate action on the part of the Commons. Cleere’s stance is supported by McKie’s newspaper article in 1996, in which he claimed that the 1982 Bill was ‘... killed by infanticide when the Tory MP who had volunteered to steer it through the Commons deliberately throttled it, revealing that he’d secretly been opposed to it all along’ (McKie 1996, np). However, other parliamentary debate suggests that the *Abinger Bill* failed ‘not because of opposition in either House but because of a lack of parliamentary time’ (Hansard 1996, col 570). Whichever version is closer to the truth, it took another ten years after the Wanborough trials for the Treasure Trove common law finally to be discarded and replaced by the 1996 *Treasure Act*, which came into force in 1997.

‘STOP TAKING OUR PAST’

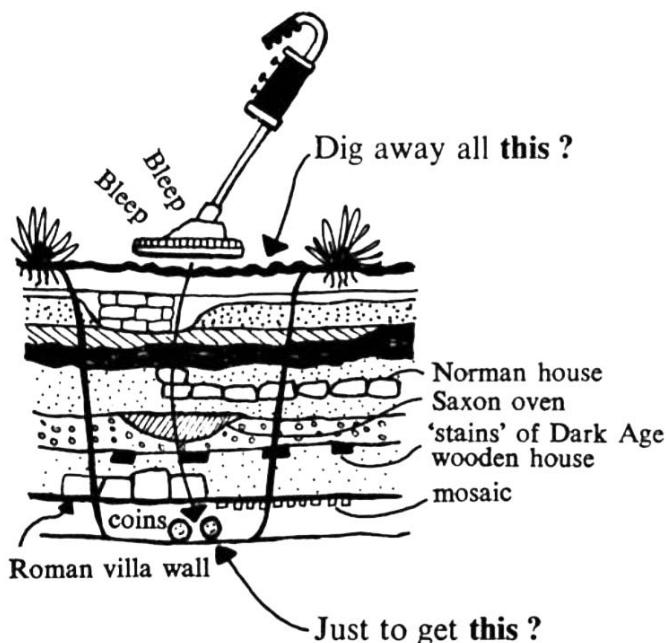
The looting at Wanborough occurred within a broader political context of the aftermath of an arguably controversial campaign entitled STOP (Stop Taking Our Past), which was launched in 1980 by several key organisations representing the archaeological profession (see Addyman, Chapter 5, this volume). Even before STOP was planned and launched, treasure hunting (ie metal detecting) had already been identified as a threat to archaeology by groups such as Rescue, the British Archaeological Trust (eg Fowler 1972, 15). STOP tried to persuade public opinion against the growing metal detecting hobby, particularly the irresponsible side of it, but, in reality, ‘probably did more harm than good’ (Addyman and Brodie 2002, 179). The campaign has been criticised for creating a polarity between metal detector users and archaeologists (Gregory 1986, 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, 61).

STOP seems far removed from the current initiative of the Portable Antiquities Scheme (PAS), which was launched in 1997 to coincide with the 1996 *Treasure Act*. One aim of the nationwide PAS is: 'to increase opportunities for active public involvement in archaeology and strengthen links between metal detector users and archaeologists' (Resource 2003, 7). There had, however, been a number of cases emerging of nighthawking around the time of STOP, adding to the concern felt by the heritage sector at that time. Wanborough was by no means the only case of looting that had occurred in England in the 1980s. However, in contrast to the later 1990s (when PAS started), metal detecting was still seen as a relatively new hobby, even though the technology had been around since World War II (see Addyman, Chapter 5, this volume).

The STOP campaign itself took the form largely of posters and leaflets (Fig 2), as well as an educational strategy for use in schools, but a significant war of words began between some prominent archaeologists (through STOP) and metal detector users and manufacturers, primarily through the Detector Information Group (DIG), an organisation formed by a number of metal detector users with the support of metal detector manufacturers 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, 4). It

FIG 14.2: SECTION FROM A STOP CAMPAIGN LEAFLET, 1980. (REPRODUCED COURTESY OF CBA)



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 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 is clear.

CONCLUSIONS

Wanborough still formed a bone of contention in the continuing tensions between archaeologists and metal detector users almost a decade later. In 1990, in light of the draft Bill to change Treasure Trove (nicknamed the '*Surrey Bill*'), speculations of a conspiracy were even put forward in *Treasure Hunting*, one of the leading metal detecting magazines, when John Castle asked of archaeologists' actions towards the still unscheduled Wanborough site: 'Did they deliberately allow the site to get looted to: (1) exert pressure on the landowners to allow them access to the site which he had previously refused to do? (2) provide an excuse for another attempt to change the law?' (Castle 1990, 50).

While it is not alleged in this chapter that such a conspiracy occurred, the tone of Castle's article indicates wider feelings of scepticism and suspicion on the part of many metal detector users towards archaeologists, no doubt at the time reciprocated. Herein lies an important, and sometimes under-emphasised, issue in the relationships between archaeologists and metal detector users. There are, of course, metal detector users who would never have been comfortable with, or prepared to work alongside, archaeologists, particularly if they are metal detector users who indulge in nighthawking. And equally, even the most responsible metal detecting causes concern to some archaeologists, even today, owing to the fact that even the most diligent of finds recording by metal detector users cannot provide the same level of detail as professional archaeological excavation, taking into account as it does stratigraphy, related non-metal finds, organic material and so forth. However, campaigns such as STOP had their own part to play in closing doors to possible communication. Some have even claimed that many responsible metal detector users, who were keeping detailed records of their finds, site information and so on, were so discouraged by the messages of STOP that they promptly destroyed their records rather than have them be seen by museums and archaeologists (Critchley *pers comm* 2007). Thus, what records there had been of much of the metal detecting hobby in the STOP period were deliberately removed as a reaction to the campaign.

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 area which is irretrievable. That the initial looting of Wanborough took place within a period marked by the STOP campaign and the promotion of the doomed *Abinger Bill* 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, 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 2000, 85–9), for which investigations began in 1988 (Stead 1998), although the site is believed to have been looted in 1985 (Addyman

and Brodie 2002, 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, 181); and the 2002 incident of looting at Yeavering Bell, which has been cited at conferences and seminars (eg Allan 2004) and made national news when it was discovered (Kennedy 2002); all these occurred, or at least were addressed, later than the Wanborough case. Wanborough remains the 'best documented' of looted sites in terms of the damage caused, and seems to have achieved 'almost mythic status with illicit treasure seekers' (Addyman 2001, 142).

Another important aspect to the fame of Wanborough are 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, 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.

Perhaps one of the most important factors for the significance of Wanborough, however, was the determination of the individuals involved in its exploitation to make changes to the law. Although it was another decade before legislation was passed, Surrey Archaeological Society, along with staff from the British Museum and the Department for Culture, Media and Sport (DCMS) were persistent in pursuing the legislation. In the words of Lady Hanworth, the then President of the Surrey Archaeological Society, the *Surrey Bill*, which eventually became the 1996 *Treasure Act*, was successful '... because of our persistence – we persisted in this for ten years before we achieved our goal.' (Hanworth *pers comm* 2006).

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 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 media publicity regarding cultural property under threat, and the attention given to this issue by the Government, which resulted from the conflict in Iraq and its ramifications for Iraqi heritage and museums (Allan *pers comm* 2004; Stone 2005, 940–1). The 2002 looting by nighthawks of Yeavering Bell Iron Age hillfort in Northumberland also found a role as an example in the arguments for the Act to be passed (Allan 2004).

Since 1985, Wanborough has been looted on other occasions, as in 1997 (*British Archaeology* 1997, 4) and even in 2005 (Graham *pers comm* 2005; Fig 4). 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, 4). Even since the arrival of the 1996 *Treasure Act*, other instances of looting have occurred. 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. With a national survey of nighthawking commenced in 2007, further data should shed light on this issue and whether illicit metal

FIG 14.3: RECENTLY DISTURBED SOIL AT THE ROMANO-BRITISH TEMPLE SITE AT WANBOROUGH, THE FOREGROUND IS ON PRIVATELY OWNED LAND, WHILE BEHIND THE TREES IS GREEN LANE, OWNED BY SURREY COUNTY COUNCIL.



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detecting still occurs at such a rate as previously believed. Whether it does or not, one has to wonder whether another incident infamous (or famous?) on the scale of Wanborough will ever emerge.

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