

Chapter 3: Metal detecting and the antiquities market: a global perspective

3.1 Introduction: sales from England and Wales, sales from other countries

Research into the relationships between archaeologists and metal-detector users inevitably has to address the issues of illicit activity and of the impact of market demand for antiquities on the vulnerability of archaeological sites. That is not to say that all metal-detector users act illegally, as this thesis demonstrates, but there is without doubt an illegal element, so-called nighthawking, that also has to be considered. However, what are the challenges faced in other countries? What is the global perspective, and how does this compare, contrast with, and affect the relationships between archaeologists and metal-detector users in England and Wales? Moreover, what is the theoretical context for the research into these global issues? This chapter discusses looting and the international trade in antiquities, including what measures countries other than England and Wales employ to attempt to control metal detecting and other forms of artefact hunting.

The international trade in antiquities, including both the licit and the illicit channels, and the role of internet salerooms in widening the market for English and Welsh artefacts, is explored through existing literature. This provides a broad context of the impact of the antiquities trade on archaeology, and the ethical frameworks within which the thesis sits. Following on from introducing the issues surrounding the trade in antiquities, the position of metal detecting and other forms of artefact hunting in other countries is discussed. A main case study is presented of the situation in the USA. Legislation in the USA, the ways in which American archaeologists and law enforcers interact with ‘relic hunters’, and conversely some of the ways in which some of these relic hunters respond to archaeological interventions, are discussed. The differences in Northern Ireland, Scotland, and the UK Crown Dependencies regarding policies towards archaeology and metal detecting are then analysed in Section 3.5, demonstrating the differences between these parts of the UK and England and Wales. Finally, some conclusions are made about the international trade in antiquities, its relationship to the situation in England and Wales for archaeology and metal detecting, and about how the thesis relates to broader bodies of research into the illicit trade in antiquities and into non-professional approaches to archaeological heritage.

3.2 The international trade in antiquities

‘Illicit antiquities’ as a concept – antiquities that have been unlawfully removed from their site of origin and/or illegally exported – was introduced in Chapter 1. Bland (2005b: 444-5) discussed the issue of sales in the UK of illicit antiquities originating from England and Wales, and some potential solutions for making it harder for offenders to sell their finds. The online auction site eBay (2008a), for example, is a popular place to sell artefacts and antiquities of all kinds, from British flint scrapers through to Greek and Egyptian antiquities, and even items from further afield. The internet ensures that the audience of potential buyers is global rather than national. Not only are the ‘Antiquities’ categories significant on eBay for observing the sale of different artefacts, but also the ‘Coins’ categories, where both ancient and more recent coins are available, many of which may have been found using metal detectors. The decision by some metal-detector users to sell the artefacts that they have found, albeit often legally, along with the cash incentive effectively offered for reporting Treasure by the rewards available under the *Treasure Act* 1996, and under treasure trove before then, has led some archaeologists to question the integrity of metal-detector users’ motives:

“...the one remaining bugbear I have, and I think the CBA has collectively, which I understand why it is done, but it may be one of these things they may in due course press a bit harder on, is the issue of rewards for finders of Treasure... ...it seems to me personally, and the CBA view is, that that sends the wrong signal. When you’re trying to talk up the archaeological value of objects, and you’re trying to downplay the financial value of objects, the fact that time and time again you get these awful newspaper headlines talking about... ...‘lucky win for detectorists’, because they’ve ‘scooped the jackpot’ of a Treasure reward... ... sending absolutely the wrong messages. And actually, I think people who are going out detecting and following the code⁶ they shouldn’t be looking for rewards, that’s not why they’re doing it.”

(Heyworth, *pers. comm.*, 13th September 2006)

⁶ The *Code of Practice for Responsible Metal Detecting in England and Wales* (CBA *et al* 2006).

Yet the sale of metal-detected artefacts, as with many antiquities (but see below for some exceptions), is not illegal *per se*. That is not to say that sales of artefacts from England and Wales are all lawful either, as recent research into sales on eBay demonstrates (e.g. Montalbano 2007). In recent years, PAS staff monitored eBay, and were “*discovering a very significant number of unreported Treasure finds being offered for sale*” (Bland, *pers. comm.*, 8th November 2006). These were items that were not declared as Treasure, indicating a breach of the *Treasure Act* 1996 and offences under the *Theft Acts*. As a result of negotiations between PAS and eBay (PAWG Minutes, 15th December 2005), the auction site now has a page of advice to sellers of “*Artefacts, Antiques, Cultural Items and Grave-Related Items*” (eBay 2008b), covering the legal obligation, in the cases of artefacts originating from England and Wales that:

“*...sellers should be able to provide proof that items found before 24 September 1997 were reported under Treasure Trove or under the Treasure Act if found after that date. Sellers should be able to provide Crown Disclaimer documents and include these within their listing.*”

(eBay 2008b)

Similar guidance is offered regarding the laws for artefacts originating in Scotland, Northern Ireland, and the Republic of Ireland. The requirements of the *Dealing in Cultural Objects (Offences) Act* 2003 are also mentioned. This Act is still relatively new, and it is clear that time will tell whether it will prove to be effective in the combat against illicit trade in antiquities (Pretty, *pers. comm.*, 20th March 2007).

The monitoring of eBay has successfully identified some artefacts that perhaps should have been declared for inquest to establish whether they qualify as Treasure. However, it cannot identify other types of objects that might have been nighthawked originally. For example, an artefact that does not qualify as Treasure, (and hence does not need to be declared under the *Treasure Act* 1996), might still have been obtained illegally, either from private land without permission or even from a SAM. Without precise find spot information available, it is impossible to tell whether the law has been broken in these circumstances. The likelihood of

any find spot information being available for artefacts found illegally is very low, and it is even possible that a false find spot has been recorded in some cases, either with PAS or through other recording systems, to disguise the fact that laws have been broken. For example, there is concern at some of the larger metal detecting rallies, as it provides an opportunity for dishonest metal-detector users to create a ‘provenance’ for artefacts that were nighthawked elsewhere (Critchley, *pers. comm.*, 13th January 2007).

Other research has followed on from this initial monitoring of eBay, including Montalbano (2007: 51-52), who speculates that, while the number of potential Treasure items being listed on eBay appears to be falling, this may mean that dealers are simply finding other outlets to sell the material, rather than desisting from selling potential Treasure altogether. Ferguson (*in prep.*) takes into account the role of eBay in the sale of artefacts related to battlefield archaeology (Pollard 2009: 187): artefacts that almost never qualify as Treasure.

While the continued sale of artefacts from England and Wales, often unbeknownst to observers of the trade, is both frustrating and worrying, in other countries the situation faced by vulnerable artefacts is often much more desperate. For example, countries with much weaker economies and limited natural ‘resources’, such as oil, uranium or diamonds (Togola 2002: 250), have experienced huge-scale looting carried out by local inhabitants. In Mali, inhabitants destroy the cultural heritage around them simply to survive on the meagre money they can make from the sale of the artefacts that they find (IARC 2000; Togola 2002). Interestingly, Abungu has argued that in many African countries, traditional beliefs may have protected archaeological sites by designating them ‘sacred’ and even dangerous if disturbed (2001: 37). Conversely, the arrival in many regions of Christianity and colonisation did much to “*demytify such places*” (Abungu 2001: 37), thereby removing the protection once provided by cultural beliefs and customs.

In many countries, the initial finders of artefacts gain only a tiny amount of the antiquity’s final price at auction or private sale, while the ‘middleman’ dealer who buys from the “*original finder/excavator/thief*”, retains the higher share of profits (Brodie 1998: np). Peru is another country where looting has become a “*way of life*” for many people (Toner 2002: 10), although the long-term consequences for the historical and archaeological record are

potentially disastrous: “...if countries everywhere are bleeding history, Peru is hemorrhaging” (Toner 2002: 10 *sic.*). This questions the extent to which local people benefit financially from archaeological heritage where looting is involved. Local people earn some money in the short term, but this is rarely close to the amount that many objects finally raise in international auctions or through sales made by high-end dealers. On the longer term, archaeological material is finite: “*Trees and animals may grow again, but once the knowledge from an archaeological site is lost, the story is gone forever*” (Alva, quoted in Toner 2002: 12).

The observation that archaeological material will not last indefinitely has been echoed elsewhere by Hollowell (2006a: 82-3) in her discussion of so-called ‘subsistence digging’. Hollowell (2006a: 84) explored some of arguments about the morals of this type of activity, including the argument that digging for artefacts as a form of income needs to be better understood rather than simply condemned by archaeologists, particularly in circumstances where there are few other options available. She has said, regarding the research into looting, or subsistence digging that:

“...I take the stance that everyone concerned with working towards solutions to what is, for archaeology, a troubling dilemma benefits from a closer look at the situation and trying to understand the social, economic and historical standpoints involved.”

(Hollowell 2006a: 69)

Hollowell’s argument relates very strongly to the objectives of this thesis, in which a better understanding of metal-detector users and their relationships to archaeologists in England and Wales are investigated. However, metal detecting differs, as it is a hobby, and not a form of ‘subsistence’.

In many cases of looting, a lack of resources and evasion of responsibility at government administration levels can cause the problem, rather than any acts of destruction carried out by

a local community. This argument is used to explain the lack of protection for archaeological sites in China (Shuzhong 2001: 19). Looting continues to take place on a large scale in certain areas of China, despite the apparent anger at the loss of antiquities to the illicit trade shown by many Chinese people (Shuzhong 2001: 24). Atwood (2004: 31) adds that, while looting is theoretically “*punishable by death*” in China, it seems “*evidently legal, or at least tolerated*” in Hong Kong, where many looted Chinese artefacts are ultimately sold.

In certain cases, the extent to which the trade in antiquities is fed through looting, as well as the forgery of artefacts, has rendered particular fields unobservable to academic enquiry. Cycladic figures from Greece are a well-known example of this. Sought after for their aesthetic appeal, the scale of illicitly excavated figures now in circulation, not to mention the number of fakes, have made it doubtful to some observers as to whether it is now possible to gain an understanding of Cycladic prehistory at all (Chippindale and Gill 1995: 134). Gill and Chippindale (1993) have discussed the material and intellectual consequences of the esteem of these figures – the value being placed on newly discovered figures regardless of their provenance (or lack of) – and the implications this has had for archaeological research into the era which produced them.

The illicit trafficking of antiquities is acknowledged as one of the foremost threats to archaeological material in the world (Greenfield 1999: 204). Yet, many authors feel that the so-called ‘licit’ trade in antiquities is also responsible for encouraging the illegal removal of antiquities. This is due not only to the attractively high prices realised at auction and in private sale, especially since the inflation of such processes in the 1970s (Gregory 1986: 25), but also to the liberal attitude taken by dealers and auction houses when accepting artefacts to sell on (e.g. Brodie 2002: 3; Renfrew 2000: 37). To expand further on this point, it must be established that most businesses and professional bodies concerned with the sale of antiquities do adhere to a code of ethics, but some consider these codes too ambiguous. For example, the code of conduct, to which members of Britain’s Antiquity Dealers Association (ADA) are expected to adhere, states in Clause 2 for each dealer that:

“I undertake not to purchase or sell objects until I have established, to the best of my ability, that such objects were not stolen from excavations, architectural

monuments, public institutions or private property.”

(ADA 2008)

This pledge applies to archaeological excavations among other scenarios, presumably in cases where specific archaeological sites have been identified as such. Its application to the pillage of previously *unknown* sites, which may not have been excavated or documented at all, is ambiguous. Renfrew (2000: 37) points out the ‘Catch 22’ nature of the difficulty of proving that an item has been looted from an archaeological site. He also argues that simply relying on Codes of Practice that are not legally enforced is ineffective against illicit trade (2000: 91).

It is potentially misleading to portray all commercially available antiquities as ‘looted’ or ‘illicit’ in origin, due to the existence of the *licit* trade in antiquities. For example, metal artefacts detected in England and Wales, which are not identified as Treasure and have been legally removed from unscheduled land with prior permission can be sold on legally, even if their find spot has not been recorded anywhere. Hollowell (2006b: 98) notes that, with St Lawrence Island’s legal trade in artefacts in Alaska, “*we tend to characterize all undocumented digging as illicit looting, but sometimes it can be a legitimate activity and part of a legal trade in antiquities.*” This statement in some ways also reflects the situation in England and Wales, in terms of there being a principle of carrying out undocumented digging without it being illegal and hence labelled as ‘illicit looting’. However, as the survey results, discussed in Chapter 7, indicate, metal detecting to find artefacts to sell on is a relatively rare motivation, as compared to an interest in the past, for example.

As Hollowell’s case study indicates, there is a ‘licit’ trade of antiquities which have entered the market through legal channels, whether out of old private collections, undocumented (but not illegal) digging, or even from properly documented and recorded excavations. However, the presence of even this market is likely enough, according to some, to encourage illicit trade, especially when one considers the high market values that some artefacts can fetch. Elia (1995: 245) has suggested that, due to legal loopholes, the demand of collectors and

other factors, the licit and illicit markets are in fact “*one and the same*”. Meanwhile Renfrew (2000) has asserted that collectors must be persuaded that:

“...if they really respect and value the past, they should in no case purchase **unprovenanced** antiquities, and certainly not on the pretext that they are ‘giving them a good home’. The most simple principle is to treat unprovenanced antiquities as looted antiquities.”

(Renfrew 2000: 90)

3.3 Issues of ownership and responsibility

It is widely understood that, for trading in antiquities, “*proponents and opponents are often deeply entrenched in starkly contrasting positions holding convictions which are passionately believed and defended*” (Tubb 1995: xv). It can also often be difficult to prove whether an antiquity originally came through legitimate channels onto the market or whether it was looted, stolen or smuggled. However, the existence of a trade in antiquities has led to debate on the nature of ownership and the treatment of cultural property. Supporters of the antiquities trade argue that, for example, collecting has been “*a victim of overwhelming disinformation*” (Ortiz 2007: 15), or that a condemnation of unprovenanced collections may mean that interesting pieces already in collections would become unavailable for study (Ede 2007: 79). Ede (1995: 211) has also noted that the trade “*is not a single entity, unified in its views and aspirations*”. This apparent misconception of the antiquities trade, which Ede asserts is held by some, might be tentatively compared to arguments made by metal-detector users that they, too, are not a single entity, and hence are not all out for profit regardless of their impact on the archaeological heritage. Hence the concern that nighthawks give the responsible hobby a bad name (e.g. Austin, *pers. comm.*, 25th November 2006).

The motivations for, and arguments in favour of, private individuals collecting antiquities often have their origins in aesthetic appreciation. Ortiz (2007: 15) has argued in favour of collecting – and appreciating – antiquities for their aesthetic value: “*it is no crime to love beauty*”. He also points out that museums themselves originated from private collections and cabinets of curiosities (2007: 16). According to Brodie, Doole and Watson (2000: 12), one antiquities dealer (USA-based Torkom Demirjian) has claimed that aesthetics has taken

priority over archaeological considerations, and there is often a claim of even wider benefits from the trade in antiquities:

“Some collectors have claimed that the trade in cultural material helps promote a universal appreciation of human creativity, and in so doing engenders mutual respect in our diverse and often divided world. The trade, it is argued, is thus a force for good.”

(Brodie, Doole and Watson 2000: 12)

One convicted antiquities smuggler, now an author on his experiences, Jonathan Tokeley, has also made the argument that without the antiquities market many more antiquities would be lost (2006: 307). He suggested that the laws in countries such as Egypt, where he was most active, are unworkable and in effect discourage finders of antiquities from going to the authorities. Instead, he argues, they sell on illegally, or even destroy the artefacts that they find to avoid potentially losing their land (Tokeley 2006: 195-203). This illustrates how the regulations in some countries are rendered unworkable in practice, leading to almost a ‘necessity’ for illegal activity in the eyes of at least some observers. Norman (1995: 143-144) also claimed that most London antiquity dealers are more than happy to deal with smuggled goods, and that this is partly due to the impracticality of many national laws.

From an economic perspective, the antiquities trade is clearly significant. For example, in 1991, the London art market was estimated to import fine art and antiquities (including the ‘licit’ trade) to the value of around £1.45 billion (Skeates 2000: 51). Estimates for the worldwide *illicit* trade have ranged from \$150 million a year up to \$2 billion (Brodie, Doole and Watson 2000: 23), with the exact scale hard to measure due to the trade’s clandestine nature. The illicit trade in antiquities is also believed to be the world’s third largest ‘black market’, after narcotics and weapons (Brodie 2006b: 54), highlighting the trade’s considerable scale.

The antiquities market as a whole has also been criticised for creating an environment that encourages looting. Renfrew (1995: xxi) suggested that such major antiquities collectors as George Ortiz, (who in turn has written about his viewpoint- see Ortiz 2007 for an example), should be made to understand their role in *“financing the large scale looting which is the*

ultimate source of so much” of their collections. In 1997, Peter Watson, a freelance journalist, published the results of extensive undercover research into the dealings of Sotheby’s, the world-famous international auction house, revealing apparently widespread corruption in the antiquities department and beyond. He exposed Sotheby’s’ role in the regular smuggling of art and antiquities to sell in its western salerooms. Through two television programmes and the publication of a book (Watson 1997), Watson’s exposé led to the cessation of sales of antiquities by Sotheby’s at their London saleroom (Brodie, Doole and Watson 2000: 28). However, the continuing stance of auction houses to place client confidentiality before other ethical considerations, which may in turn shield illicit activities, is regarded as “*an unsatisfactory state of affairs*” (Brodie, Doole and Watson 2000: 30). It does illustrate, however, the way that archaeologists as compared to auction houses, who apparently prioritise protecting clients over the protection of archaeological heritage, interpret the idea of ‘ethical behaviour’.

Conflict can also increase the availability of antiquities and other cultural property (Brodie 2002: 6). An *Antiques Trade Gazette* report on the increased appearance of antiquities of Afghan origin, particularly Gandharan sculpture, with a readership based within the antiques trade, suggested that the market demand for such items had stemmed from “*extensive press coverage*” of the region (Hunt 2002: 58). No mention was made that “*taking of booty*” (Brodie 2002: 6) or other dubious practices might have taken place. Saleable items were probably also exploited to fund militia fighting, as was rumoured at the time (Ward Anderson 2006).

When war started in Iraq in 2003, the looting of the National Museum of Antiquities in Baghdad was also widely publicised, with estimates that around 13,000 artefacts were stolen (Atwood 2004: 1; and see Stone and Farchakh Bajjaly 2008). The difficulty of returning any objects to the museum was exacerbated by the fact that much of the inventory of the museum’s collection was also stolen, damaged, or destroyed (PAWG Minutes, 6th December 2004). The catastrophic situation continues to unfurl in Iraq, with the humanitarian crisis obviously taking precedence over any considerations for cultural heritage (Hamilakis 2003: 108). However, it could be argued that some of the results to have emerged from the UK’s experience in the continuing conflict, with regard to heritage protection at least, may prove to be beneficial in the future. The *Dealing in Cultural Objects (Offences) Act 2003*, in Private Members Bill form at the time of the invasion of Iraq, probably gained attention as something

that could be carried out as a perceptible reaction by the Government to the international outrage caused by the looting of the museum in Baghdad. This was because it drew attention to the vulnerability of cultural heritage (Allan, *pers. comm.*, 21st May 2004). Stone (2005: 940-941) also advised that the Government support the *Dealing in Cultural Objects (Offences) Private Members Bill* among a list of recommendations made to staff from the Ministry of Defence, the Department for Culture, Media and Sport (DCMS) and others, a few months after the commencement of the Second Iraq War. This Act, while still in its early years, has made dealing in illicit antiquities in England and Wales (regardless of the origin of the antiquity), a criminal offence for the first time. This in itself has made a significant impact in raising awareness of the issue of illicit antiquities (Bland, *pers. comm.*, 8th November 2006).

A further development out of the British experience in Iraq was the publication of the *Cultural Heritage (Armed Conflicts) Bill*. The Bill, sponsored by DCMS (Culture, Media and Sport Committee 2008), was “*designed to enable the UK to ratify the Hague Convention and to accede to its two protocols*” (Stone 2008: 48). Despite apparent strong support expressed for the Bill in a June 2008 DCMS report (Stone 2008: 48), it was left out of the Queen’s Speech in December 2008, which listed the Bills to be debated in the 2008-9 Parliamentary session, and so the progress that it promised may have to wait, at least for now.

3.4 Metal-detector users in other countries

Among the different methods used for finding saleable artefacts, metal detecting is just one: “*the metal detector has found its place alongside the long probing rod of the Italian tomb robber and the car aerial of the American pot-hunter*” (Brodie, Doole and Watson 2000: 9). This chapter has thus far illustrated many of the concerns expressed by archaeologists about the trade in illicit antiquities, as well as some of the apparent economic motivations of looters in poorer countries, and even the perspective of participants in the antiquities trade such as the collectors and the dealers. However, what of metal detector *hobbyists* in other countries, those who search for artefacts as a hobby rather than as an economic necessity? The following section is merely an illustration rather than an in-depth review of other countries, as there is still scope for far more extensive research in this area for other countries, as is currently being carried out by a number of theses by North American researchers (e.g.

Goddard *in prep.*; McGill *in prep.*). Certainly, there are countries where little, if any, metal detecting takes place due to the nature of artefacts found there, such as some American states such as in Arkansas, where ‘pothunting’ is the preferred method, (e.g. Davis 2002: 236). In Kenya and Somalia, too, while there is looting and destruction of archaeological material, the use of metal detectors does not seem to occur from examples that have been discussed (e.g. Abungu 2001). The fact that metal detectors are likely to be out of the price range of many inhabitants, as well as a lack of electricity in many areas are probably also factors in this. In other countries, metal detecting is prevalent. In many European countries, there is a relatively high occurrence of metal artefacts. The legal situation, as well as the threat posed by unauthorised metal detecting, is summarised for a number of European examples. That PAS seems to be a unique mechanism for communicating with metal-detector users becomes apparent when some of these countries’ policies and situations are analysed.

In Poland, current legislation retains state ownership of any archaeological find, and metal-detector users can be punished with fines if discovered to be searching for archaeological material (Kobyliński and Szpanowski 2009: 15). Kobyliński and Szpanowski (2009: 16) suggest that since the mid 1990s metal detecting has increased dramatically, being only an occasional problem before then. They suggest that a number of factors are responsible for this increase, including:

“...accessibility to cheap electronic metal detectors; a rise in unemployment and the ‘pauperisation’ of society following the decline of the utopian concept of the ‘protective state’; an increase in crime after the collapse of the Communist system due to the deterioration of social respect for the law; and also the activities of some professional archaeologists especially those working on numismatics and on the Period of the Roman Influences, from several universities in Poland (particularly Warsaw, Cracow and Lublin).”

(Kobyliński and Szpanowski 2009: 17)

As a means of trying to cooperate, the Conservator General in Poland issued guidelines for negotiating with metal-detector users, including suggesting issuing permits to search areas where there are no (known) archaeological sites (Kobyliński and Szpanowski 2009: 22). However, the indications seem to be that, despite these permits, illegal metal detecting of

archaeological sites (including battlefield sites from the First and Second World Wars) is still a cause of concern in Poland. Kobyliński and Szpanowski (2009: 22) indicate that further work in the education of metal-detector users and other stakeholders such as landowners and law enforcers is needed, as well as tightening legal and administrative protection of sites, for example by withholding information about the exact locations of significant sites.

In many European countries, metal detecting is completely prohibited by law apart from with a permit. In France, a permit to use a metal detector on an archaeological site is only granted if applied for as part of professional archaeological fieldwork (Collis, *pers. comm.*, 17th May 2004). While this appears to add an extra layer of control over the activities of metal-detector users in France, in reality metal detecting still takes place, but unlike in England and Wales, artefacts discovered by metal-detector users are less likely to be shown to archaeologists or officially recorded. Collis (*pers. comm.*, 17th May 2004) suggested that while undertaking fieldwork in France, he and colleagues were aware of artefacts found by metal-detector users, but felt that they were unable to record any of the information because “*the legal situation made it so difficult*”. This highlights the risk that an outright ban on metal detecting in the UK would result in the loss of data through the continuation of metal detecting as an illegal activity, rather than discouraging or even stopping the activity as a whole. Interestingly, there is currently a campaign in France titled *Halte au Pillage du Patrimoine Archéologique et Historique* (HAPPAH), which has been described as similar to Britain’s STOP Campaign (Barford 2008a). It was launched in October 2007 (HAPPAH 2009), and presents a potential case study for further research, to see whether it is successful in affecting the scale of unauthorised metal detecting in France.

The Netherlands, in contrast, has a liberal attitude towards metal detecting, as while officially metal-detector users are forbidden to use metal detectors to search *intentionally* for archaeological remains, they are rarely, if ever, challenged (de Jager, *pers. comm.*, 19th August 2005). The extent to which this is the case varies across the country, with some cases of toleration by universities and others, while other municipalities have tried to enforce stricter rules, with mixed results (de Jager, *pers. comm.*, 9th June 2008). In the Netherlands, there have been no major discoveries of hoards (as has occurred in the UK), and even less so (as far as is known) a spectacular loss of artefacts to the antiquities black market (Boogert *pers. comm.*, 19th August 2005), as happened in England with Wanborough and other cases (see Chapter 6). Perhaps, it has been suggested, such incidents, while disastrous at the time,

can have a use as a catalyst for legislative change, as without such an incident, there seems to be little momentum for the Government to make changes (Boogert *pers. comm.*, 19th August 2005). This is certainly something that would seem to be true in the case of Wanborough, as the incident was without doubt cited as a key example in the campaigns for changes in the law (see Chapter 6). A more recent example of a ‘heritage disaster’ being used to effect legislative change is mentioned earlier in this chapter with the influence of the looting of the National Museum of Antiquities in Baghdad. This apparently drew attention to the Private Members Bill that was to become the *Dealing in Cultural Objects (Offences) Act 2003* (Allan, *pers. comm.*, 21st May 2004 – see above). To this end, the 2002 nighthawking at Yeavinger Bell in Northumberland was also cited to draw attention to the need to tighten control on illicit antiquities (Allan 2004). Until such an instance emerges in the Netherlands though, the law perhaps will not be tightened, with the continued concern that artefacts with the potential to add information to the archaeological record are found by metal-detector users but not necessarily researched by archaeologists. De Jager (*pers. comm.*, 19th August 2005) pointed out, however, that due to the higher concentration of population in the Netherlands as a whole, it is less likely that unlawful metal detecting is taking place without onlookers noticing the activity, as there are relatively few ‘remote’ regions, as can occur in parts of England and Wales.

3.5 American relic hunters

Where scheduled sites in England and Wales are protected through the AMAAA 1979, regardless of whether they occur on private or publicly owned land, the legal system in the USA regarding the protection of archaeological sites is somewhat more complicated. Land ownership can fall into different categories, such as federal or private. In theory, different laws apply depending on the status of the land, although the way in which this difference is managed varies from State to State. The laws are so complex in fact, with limited clarity regarding ownership status of artefacts, that it is often only possible to deal with issues on a case-by-case basis (Giesen, *pers. comm.*, 14th May 2008). In the context here a comprehensive understanding of the situation in the USA is not necessary, but the following paragraphs give a general summary.

Among the legislation effecting archaeological heritage in the USA, the *Antiquities Act* of 1906 is one of the earliest attempts through law to curtail looting, resulting as it did from alarm at the increasing looting, carried out both by museums and private collectors, of significant archaeological sites, particularly in the Southwest (Fowler 2000: 2-3). Section 1 of the Act deals with illegal excavations and other vandalism:

“Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government or the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.”

(National Center for Cultural Resources *et al.* 2002: 5)

What is significant with the *Antiquities Act* 1906 is that it applies only to “*lands owned or controlled by the Government*” (National Center for Cultural Resources *et al.* 2002: 5). Section 2 covers the possibility of relinquishment to the Government private land in the event of the proclamation of a historic landmark or other object of historic or scientific interest (National Center for Cultural Resources *et al.* 2002: 5). The implication for archaeological material uncovered on private land, unless that land is declared of historic or scientific importance and relinquished to the Government, is that it is not protected. In practice, the Register of Historic Sites contains few sites predating the colonial era (Renfrew 2000: 81), and thus “*only those ancient sites located upon federally owned land are protected*” (Renfrew 2000: 81). Gerstenblith (2000: 12) has argued that the USA is unusual in not providing for the protection of archaeological material discovered on private land, unlike most countries, and that this is largely due to the provisions of the Fifth Amendment⁷. Although known cemeteries and marked burials are protected under other statutes, and a number of states have moved to protect Native American and unmarked burials regardless of whether they occur on

⁷ “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” Fifth Amendment text from About.Com (2009).

private or public land (Gerstenblith 2000: 13), she suggests that the preservation of archaeological heritage found in private property needs to be taken more seriously:

“The United States is one of the few nations in the world not to impose obligations on those individuals who own, often fortuitously, objects of cultural significance or land where historic and cultural resources are located.”

(Gerstenblith 2000: 16)

Other laws affecting archaeological heritage in the USA include the *Historic Sites Act* 1935 and the *Historic Preservation Act* 1966, the latter of which has been referred to as the “*keystone of all subsequent federal legislation relating to historic preservation... ..and what would become cultural resources management*” (Fowler 2000: 4). In addition to nationwide laws, there are extra regulations peculiar to each state:

“Every state has different laws. Not every state has comparable laws about antiquities. Virginia has its, but its are not the same as, say, California’s or Florida’s. And that makes local enforcement a real challenge.”

(Hicks, *pers. comm.*, 10th August 2006)

Among other legislation in the USA affecting cultural material is the *Native American Graves Protection and Repatriation Act* 1990 (NAGPRA). This federal law:

“...provides a process for museums and Federal agencies to return certain Native American cultural items -- human remains, funerary objects, sacred objects, and objects of cultural patrimony - to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.”

(National NAGPRA 2008)

There has been much debate over the effectiveness and the interpretation of NAGPRA. King (1998: 149) describes NAGPRA as “*very well-intentioned, highly justified, and virtually impossible to work*”. Schneider (2000: 49) has gone further to suggest that some academics

and activists seek to advocate an “*anti-science interpretation*” of the Act, politicising repatriation issues beyond a “*fact-orientated process*” (Schneider 2000: 54). However, supporters of the Act have seen it as a timely attempt to redress some of the injustices suffered by Native American groups (e.g. Shown Harjo, in Lowawaima *et al.* 2000: 44).

The different arguments are not explored further here, but NAGPRA illustrates an issue faced in countries such as the USA, which is not experienced in the English and Welsh situations: the need to consider a minority indigenous population with sometimes-differing beliefs and values attached to material culture. Effectively, many metal-detector users are in fact from the ‘indigenous group’ whose heritage they are detecting and handling (rather than, say, a European-origin pothunter handling Native American material), inasmuch as the UK can be said to have an ‘indigenous population’. There have been claims of ‘ownership’ of certain aspects of English or Welsh heritage from an ‘indigenous’ point of view, such as the appropriation of ‘druids’ in creating connections with cultural and theological identities for both the English and the Welsh, and in turn the ‘druidic’ connection with sites such as Avebury and Stonehenge (Bender 1993; English Heritage 2008: 27). In 2008, arguments were made during and after the World Archaeological Congress in Dublin, concerning indigenous Irish claims to the ancient site of Tara in Ireland (e.g. Bleach 2008). This sparked a debate about the nature of ‘indigenous’ culture in modern western European countries, where the belief systems originally associated with ancient sites may no longer be known or in common use, despite the majority of the population apparently being made up of an ethnically ‘indigenous’ population. Such examples aside, ‘indigenous’ issues do not come into play in the British situation as often or in the same way as it does in countries like the USA, Australia and New Zealand.

Returning to the complex legislation in the USA, including NAGPRA, not only does the law vary from case to case, and from State to State, but also the types of artefacts available to those wishing to search, not all of which are metallic and hence distinguishable with a metal detector. For this reason, the term ‘relic hunter’, is generally used to describe treasure hunters in the USA, including metal-detector users as well as other types of relic hunter such as pothunters (Hicks, *pers. comm.*, 10th August 2006).

In areas of the USA where forms of relic hunting other than metal detecting take place include the Southwest, historically an area where looting has been prevalent since the

Nineteenth Century (Fowler 2000: 2). Native American pottery is particularly popular. Figure 3.1 shows an example from the University of Arizona's research collection, similar to that which is often looted from the region (Mills, *pers. comm.*, 14th March 2005).



Figure 3.1 Native American pottery at the University of Arizona, Tucson, the type of pottery popular with collectors and relic hunters. Photograph taken with kind permission of Barbara Mills, 2005

Goddard (*in prep.*) studies the culture surrounding artefact hunting by Mormon communities in southern Utah, observing among other things an explicit hostility from the artefact or relic hunters towards professional archaeologists (Goddard 2007). In addition, while the market for artefacts is present, the prime motive for digging for artefacts seems more rooted in “*the survival of being and identity and generally has very little to do with the market*” (Goddard 2008: 32-3). In this case, there seems to be a long cultural tradition associated with the digging for artefacts, not to mention a disregard for the Native American communities with whom many of the excavated artefacts are associated, again connected with local traditions and even with personal interpretations of the Mormon faith itself (Goddard 2007). This is possibly similar to the sense of traditions and customs seen at metal detecting rallies in England. These are not so much an expression of religious beliefs, but certainly, there was a sense of continuity with several cases observed by the researcher of several generations of a family being keen metal-detector users, the younger members apparently introduced to the hobby by their older relatives. A number of respondents interviewed claimed that they had been introduced to metal detecting by older family members, while others attend metal

detecting rallies as much for the social aspects as for the potential of actually finding anything (see Chapter 7).

Certainly legally and culturally, there are differences between the American situation and that in England and Wales, including the nature of artefacts to be found. Since in parts of the USA there are relatively few metallic objects to be found, and certainly a far more narrow span of periods from which these metal finds originate, there is concern from some observers about the development of companies specialising in organising treasure hunting holidays from North America to the UK (Addyman and Brodie 2002: 180). In addition, “*planted hunts*” (Perry, *pers. comm.*, 22nd October 2007) take place in the USA, where metal objects are planted specifically to be found by metal-detector users as part of a rally-type event.

It is important to point out that there are also positive examples of cooperation between metal-detector users and archaeologists in the USA, as there are in England and Wales. Battlefield archaeology, a field more developed in the USA than in the UK (Pollard 2009: 181), has employed the assistance of metal detectors, for example in fieldwork at the site of the Battle of Little Bighorn (Scott and Connor 1997: 29). David Perry, the National Secretary of the Federation of Metal Detector and Archaeological Clubs inc. (FMDAC), of North America, also affirmed that many metal-detector users in the USA are keen to be involved in archaeological research (Perry, *pers. comm.*, 22nd October 2007).

3.6 Metal detecting in other parts of the United Kingdom

While England and Wales form the main thrust of the focus of the thesis, it is helpful to consider the provisions and frameworks in place in the rest of the UK. Reasons for these differences should be understood, and questions asked as to whether these other approaches are more, less, or as effective as the English and Welsh arrangements.

In Scotland, the law regarding the discovery of archaeological material is still known as ‘treasure trove’, and is far more exhaustive than that which formerly operated in England and Wales. Rather than certain materials (i.e. precious metals) meeting certain criteria, *all* archaeological material, regardless of what it is made of and what type of land it was found on, is classified as ‘treasure’ and needs legally to be reported: applying *bona vacantia* – the

law applying to “*ownerless goods*” (Treasure Trove Unit 2008). The Treasure Trove Secretariat, based in Edinburgh at the National Museums of Scotland, is responsible for processing the reported finds from across the whole of Scotland. Alan Saville, until recently the head of the small team responsible for treasure trove in Scotland, suggests that treasure trove in Scotland differs so much from that in England and Wales due both to the ways in which treasure trove was applied historically and differences in the treatment of landowners’ rights:

“I think that historically, the treasure trove system in Scotland developed differently to south of the border... ..one of the earliest cases we know is in 1808 where a hoard of... ..copper alloy coins was... .. ‘treasure troved’ and... ..given by the Exchequer to the Society of Antiquaries of Scotland for its museum, which is the predecessor museum of the National Museum... ..so even back at the beginning of the Nineteenth Century there was the recognition in Scotland that it wasn’t just precious metal that was capable of being considered as treasure trove... ..I think that’s one of the key differences that there was between the way in which treasure trove operated north and south of the border. That north of the border, it was always considered perfectly okay to claim... ..a pot, for example, and... ..if you look back through the records of the Nineteenth Century you can see that, although it’s completely arbitrary what got claimed and what didn’t... ..nevertheless there were things like pottery – prehistoric pottery vessels, and obviously at the time nobody saw any particular problem about that being regarded as treasure trove. The other key element... ..is this question of landowners’ rights. There isn’t this right north of the border for the landowner to own, to have a claim on ownerless goods, which are found on his or her land.”

(Saville, *pers. comm.*, 19th October 2006)

There are potential advantages to having more-exhaustive legislation regarding the reporting of finds, and some who have campaigned for change in English and Welsh law look at Scotland’s situation with envy, particularly the aspect of *bona vacantia* (e.g. Graham, *pers. comm.*, 29th July 2006). These advantages include the fact that, because archaeological material falls automatically into ownership of the Crown, there is no need for negotiation with landowners or developers regarding ownership rights (Saville, *pers. comm.*, 19th October

2006). In effect, any ownership disputes are removed, since only the Crown can own any artefacts or other archaeological material, whether found by a member of the public or during a professional excavation.

There are, however, disadvantages as well to this system. As with other countries where state ownership prevails, this comprehensive approach rarely means that all material is reported to the appropriate authorities. The difficulty to enforce the system in Scotland is exacerbated by there not being a nationwide system equivalent to PAS:

“...we are, I would have to say, green with envy about the existence of FLOs, and the exponential rise of recording or reporting which happens when you have a local person on the ground, and a contact point for people to go to. We tried to interest the Scottish Executive in developing a similar system in Scotland, because we realised that there were difficulties in getting reporting throughout the country, in that we’re based in Edinburgh and we have no local representation throughout most of the country. We’re reliant on the few museum archaeologists that exist outside the central belt, and local authority archaeologists where they exist. Clearly we feel that if we were able to have local representatives of our system, we think that we would be going a long way towards cracking the other reporting nut, that we feel that we suffer from at the moment.”

(Saville, *pers. comm.*, 19th October 2006)

Some metal-detector users have also praised the arrangements that can be found in England and Wales, as compared with the more stringent rules applied in Scotland:

“I think we’ve got one of the best laws in Europe, particularly when you compare it with Scotland, which, I know a lot of detectorists in Scotland don’t like, you know. And, yeah, I think, through negotiation, we’ve arrived at something that encourages people not only to metal detect but to record their finds, and that’s what’s important – the information. It’s not necessarily the find but the information that that find can tell you. That’s what is the important thing. That’s what’s made the Treasure Act such a success. And the Portable Antiquities Scheme, of course.”

(Austin, *pers. comm.*, 25th November 2006)

Saville (*pers. comm.*, 19th October 2006) acknowledges that there are also disadvantages to PAS as it currently operates, for example that the Scheme's coverage in Wales is “*not so impressive*” as in England, as well as concerns about the “*minimal fashion*” in which artefacts are recorded. Chapter 8 discusses more fully these and other criticisms of PAS.

The legal position of metal-detector users in Northern Ireland is different again, including correlations with the legislation found in the Republic of Ireland (Cleere, *pers. comm.*, 17th July 2006; Hurl, *pers. comm.*, 8th May 2007). In addition, the scale of metal detecting in Northern Ireland compared to England and Wales seems considerably lower:

“...as far as I know, the problems of metal detecting in Northern Ireland are few. I gave a lecture there last year, in which I gave the statistics for reported Treasure and reported metal detected objects in England, and my colleague from the Ulster Museum, Dr Richard Warner, gave a similar statistic for the same period for Northern Ireland, and my statistics were talking in tens of thousands of objects, his were talking in tens of objects. So it doesn't sound as though it's a big problem.”

(Addyman, *pers. comm.*, 30th November 2006)

The lower occurrence of metal detecting in Northern Ireland may be in part due to different political priorities compared to other parts of the UK, with a traditional focus on the sectarian issues (Corbishley, *pers. comm.*, 28th January 2008).

Since 2000, archaeologists in the Department of the Environment for Northern Ireland (DOENI) have been in regular contact with what was, at that time, possibly the only metal detecting club in Northern Ireland – the Banbridge and District Metal Detecting Club (Hurl, *pers. comm.*, 8th May 2007). The fact that there was only one club – now perhaps only two following the schism of the group after a disagreement on reporting finds to the DOENI (Hurl, *pers. comm.*, 8th May 2007) – demonstrates the lesser extent to which metal detecting takes place, at least at club level, as compared to England and Wales.

On the other hand, the lesser degree of collaboration between archaeologists and metal-detector users in Northern Ireland, and even in Scotland, as compared to England and Wales, may also suggest that metal detecting may have been pushed underground largely (Heyworth,

pers. comm., 13th September 2006). Criticism of the Northern Irish handling of non-professionals has also suggested that amateur archaeological societies and public participation in general in archaeology has been limited by the strictness of the country's laws (Heyworth, *pers. comm.*, 13th September 2006; Graham, *pers. comm.*, 29th July 2006). Certainly nighthawking is still regarded as a problem in Northern Ireland (Hurl 2009: 102), and it has been speculated that an increase in punishments and enforcement of existing laws would do much to deter this illicit activity, as well as increasing education about the importance of protecting archaeological sites (Hurl, *pers. comm.*, 8th May 2007).

The UK Crown Dependencies – the Isle of Man and the Channel Islands – have different arrangements again, “*and are not part of the UK but are self-governing dependencies of the Crown*” (DCA 2006: 2). In the Channel Islands⁸, a system of treasure trove similar to what was used in England and Wales prior to 1997 still operates, which is described as “*outdated*” (Bland, *pers. comm.*, 8th November 2006). The Isle of Man also has a treasure trove system similar to that in England and Wales prior to 1997, with the role of the coroner taken on by the High Bailiff “*in his capacity as Coroner of Inquests*” (Kennaugh 1972). Unauthorised metal detecting is addressed in the *Manx Museum and National Trust Act 1959*, under Section 21A, added in 1979. This prohibits, among other things, metal detecting without written consent on protected areas, as well as the removal of objects discovered by a metal detector from protected sites.

There is currently little if any literature to be found regarding the relationships between archaeologists and metal-detector users in the UK Crown Dependencies, although a letter exists in the CBA archives responding to a survey regarding export of antiquities from the late 1950s (see Chapter 4) from the Manx Museum in Douglas (Cubbon to de Cardi, 6th August 1959). This letter implied that there were few problems experienced in the Isle of Man regarding the export of antiquities at that time, and also that treasure trove issues were to be included in a new Bill (to become the *Manx Museum and National Trust Act 1959*). It also indicated that even with the change in legislation, not much was likely to change beyond consolidation of existing laws.

⁸ The Channel Islands comprise of the Bailiwick of Jersey and the Bailiwick of Guernsey. The Bailiwick of Guernsey includes the islands of Guernsey, Alderney, and Sark (DCA 2006: 2).

3.7 Conclusions

The situations in other countries are in some ways comparable to that in England and Wales. For example, Perry commented on North American metal-detector users' aspirations to be better understood by archaeologists that he thought that, "*a good relationship is important without the other calling names etc. We can all work together and document historical places*" (Perry, *pers. comm.*, 22nd October 2007). This is a sentiment echoed in many conversations between the researcher and metal-detector users at metal detecting rallies visited in England for data collection.

However, the illicit side of metal detecting in the UK as a whole, while still a cause for concern, is not on the same scale as illicit excavations and sales of antiquities in so-called 'source' nations such as Peru and Mali, where economic factors are involved. Even in nations where treasure-hunting activities take place at more of a hobby level and there is at least some collaboration with archaeologists, PAS does not seem to be mirrored at present. This is despite suggestions that such a system would be useful in some circumstances (e.g. Saville, *pers. comm.*, 19th October 2006; Hicks, *pers. comm.*, 10th August 2006). It is probable that there are more active metal-detector users in England and Wales proportionally than in any other countries. This is perhaps because of the relatively liberal legal provisions concerning metal detecting in England and Wales as compared to other countries, as well as the relatively rich deposits of metal artefacts to be found in the archaeological record. Certainly the FMDAC inc. of North America numbers only around 600 members, both individual and club (Perry, *pers. comm.*, 22nd October), as compared to the numbers for the UK that were discussed in Chapter 1.

Some observers suggest that the legislative differences in other parts of the UK are preferable to those in England and Wales (e.g. Graham, *pers. comm.*, 29th July 2006), wishing to see greater legal control over artefacts discovered by metal-detector users and other members of the public. However, for historical reasons, as are explored in Chapter 5 in particular, there are strong political motivations for cooperating with metal-detector users due to the influence they have managed to accrue with decision-makers in England and Wales. Returning to the introduction of the concept of 'community archaeology' in Chapter 1, and the current agendas of national organisations such as the CBA for increased public inclusion (CBA 2006), there are, increasingly, ideological motivations to work with metal-detector users in a

collaborative, rather than prohibitive, way. This is coupled with a trend in theoretical archaeological debates to acknowledge other interpretations and ownerships of the past (e.g. Hollowell 2006a; Gosden 2001: 249-50; Ucko 1995). In light of the international scale of the trade in antiquities introduced earlier in this chapter, the next chapter begins to add historical context to the present situation in England and Wales by presenting the issues and activities that were pursued in attempts to safeguard heritage in the decades before metal detecting really emerged. This complements the international context presented here, in order to inform the development of the relationships between archaeologists and metal-detector users further in the subsequent chapters.