

COIN COLLECTORS AND CULTURAL PROPERTY NATIONALISM

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CULTURE DEFINED

Tragically, the cultural property world has today become a complex arena of conflicting interests where intellectual gladiators compete for ideological supremacy. Although, within their own coterie, the adversaries often hold divergent personal views they can generally be divided into two groups: Cultural Property Nationalists and Cultural Property Internationalists. Even the definition of “Cultural Property” is a bone of contention. The United Nations Educational, Cultural and Scientific Organization (UNESCO) defines cultural property as: “...property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists, artists, and to events of national importance;
- (c) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) Elements of artistic or historical monuments or archaeological sites that have been dismembered;
- (e) Antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) Objects of ethnological interest;
- (g) Property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) Rare manuscripts and incunabula, old books, documents and publications of

¹ This paper is a joint effort of the Board of Directors, Ancient Coin Collectors Guild and ACCG associates including John Hooker, Tom Palmer, Bill Puetz, Wayne G. Sayles, David R. Sear, Peter K. Tompa, David Welsh and Kerry K. Wetterstrom.

- special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) Postage, revenue and similar stamps, singly or in collections;
 - (j) Archives, including sound, photographic and cinematographic archives;
 - (k) Articles of furniture more than one hundred years old and old musical instruments.²

Essentially, this definition includes all products of human endeavor. The UNESCO resolution goes on to outline a methodology to control the import, export and transfer of ownership of the above cultural property and defines as “illicit” any such action effected contrary to the provisions adopted in that resolution.

The Nationalist underpinnings of this resolution are revealed in Article 4, which defines cultural property as the cultural heritage of the “State”:

“The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

1. Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;
2. Cultural property found within the national territory;
3. Cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;
4. Cultural property which has been the subject of a freely agreed exchange;
5. Cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.”

Those who support the nationalist provisions of UNESCO 1970 could therefore be described as Cultural Property Nationalists or Cultural Nationalists.³ They would, primarily, include retentionist states, nationalist leaning archaeologists and ideologically inspired “preservationist” groups. In its constitution, UNESCO reveals a globalist perspective, stating “That the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfill in a spirit of mutual assistance and concern.” This philosophy is at the core of UNESCO’s World Heritage Center programs

² UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, Paris, 14 November 1970, Article 1.

³ Tompa, Peter K. “Ancient Coins as Cultural Property: A Cause for Concern?”, *Journal of International Legal Studies*, Vol. 4, Number 1, (Winter 1998), p. 75.

as described on the Center's web site: "World Heritage sites belong to all the peoples of the world, irrespective of the territory on which they are located."⁴ In stark contrast, the tenor of the 1970 UNESCO resolution is sharply nationalist. The prevention of theft, clandestine excavation and illicit export seems innocuous enough, until one places the concept within the framework of a nationalist state with retentionist laws where all cultural objects can be, and sometimes are, declared property of the State. Through the repression of personal property rights, any export without a state permit is thereby rendered illicit and any private possession of cultural objects without a state permit is considered theft. Export permits in these nationalist countries are typically difficult or impossible to acquire, even for common artifacts. The result is a cultural island where research is limited to friends of the State and culture is completely politicized. Professor John Henry Merryman refers to those who espouse this belief as Cultural Property Nationalists in contrast to Cultural Property Internationalists who are more global in perspective.⁵ James Cuno, president and director of the Art Institute of Chicago, sees "national culture" as a political phenomenon "used by the elite of the nation-state to substantiate claims of originality and authenticity for their 'culture' as the dominant and only legitimate culture of the polity over which they govern."⁶ The purpose of this paper is to highlight these divergent points of view and explore the political background that has brought adherents of those viewpoints to a sphere of open hostility.

Anthropologist Josep Martí sees one's culture as an individual creation of cultural frames (CFs):

"The life of any person can be culturally defined through the participation of such person in the different CFs. It is precisely because of this reality that, actually, all persons are culturally different. For reasons of birthplace, gender, age, profession, etc., we could hardly find two people with identical participation in their respective CFs. The idea of the existence of a national culture distorts reality because: (a) this culture will only be a small part of the total culture of the population and (b) people erroneously assign social relevance of this (representative) culture to the whole population that occupies a given territory. However, we now know very well that it is impossible to speak of a given culture as something concrete and well defined or of "one nation, one culture". The idea of a national culture always gives a unifying image hiding the real cultural heterogeneity of a social system. These ways of seeing reality are not the most appropriate—not in order to understand an ever more and more globalized world, nor in order to know the true nature of culture: which is always subjected to modifications as a continuous process of negotiation; which is not given by nature but constructed day by day by the individual."⁷

⁴ <http://whc.unesco.org/en/about/>

⁵ Merryman, John Henry. "Two ways of thinking about cultural property", *American Journal of International Law*, Vol. 80, 1986, p. 831ff.

⁶ Cuno, James. "The Promise of Museums", lecture 20 January 2010, George Washington University, Washington DC.

⁷ Martí, Josep. "The Cultural Frames Approach as an Alternative View to the Ethnocratic Idea of Culture", Spanish Council for Scientific Research (CSIC), Barcelona, 2005. Online at

This view is the antithesis of nationalist ideology. Since the individual cultural frame can exist anywhere, and follows the individual rather than geopolitical boundaries, those who see cultural issues through the eyes of Josep Martí are essentially Cultural Property Internationalists. They would, among others, include advocates of the encyclopedic museum, free market and private collecting.

CULTURAL INTERESTS

There are essentially five basic groups that intersect through an interest in cultural property. They are Nationalist States and Institutions, Public and Private Museums, Commercial Markets, Private Collectors and Independent Scholars. These groups have a long history of cooperative effort, but that scenario is gradually changing.

A. DEVELOPMENT AND GROWTH OF CULTURAL NATIONALISM

In 1464, Pope Pius II prohibited works of art from leaving the Papal States. This was the first recorded instance of a European patrimonial law protecting cultural goods. In 1835 Egypt imposed an export ban to stop transfers of antiquities resulting from European sponsored digs. Since 1939, Italy has required that all objects over fifty years of age receive a license for export. In the late 19th and early 20th centuries many “source” countries, Italy, Egypt, Turkey and Mexico for example, enacted sweeping heritage laws to prevent items of patrimony from being exported without explicit governmental permission. Such statutes typically vest title to newly discovered or unearthed artifacts in the state, effectively eliminating private ownership of antiquities not already in established collections. By 1989, at least 141 countries had instituted some form of legislative regulation for the export of antiquities. These laws are intended to control (and in most cases, effectively prevent) their export by requiring export permits. Enforcement is normally managed by a Ministry of Culture or equivalent bureau, acting through processes such as Customs inspection at points of entry and exit. Even states with a significant art import trade in cultural objects, the United States and United Kingdom for example, may have national patrimony laws controlling items originating within their own territory.

B. THE UNIVERSAL MUSEUM

During the Age of Enlightenment the *Encyclopédie*⁸, in 17 volumes of text and 11 volumes of plates, introduced a seminal exposition of cultural ideals, presenting a vast

<http://www.anthrolobe.info/docs/Cultural-Frames-as-Alternative-to-Ethnocratic-Idea-Culture.htm> (see also Hooker, John. “Deconstructing Cultural Property as it applies to Property, Ancient Coin Collectors Guild online at <http://www.accg.us/cultural-property-the-hooker-papers>)

⁸ Diderot, Denise and Jean le Rond d’Alembert. *Encyclopédie, ou Dictionnaire Raisonnn Des Sciences, Des Arts, et des Métier par une Société de Gens de Lettres*, Paris, 1751-1772.

compendium of human knowledge which it not only lucidly described but importantly also essayed to organize and systematize. The *Encyclopédie* inspired much liberal thought regarding public education, an aspect of which was establishment of encyclopedic or universal museums, whose purpose was to interest and educate the public. The British Museum (BM) became the first modern national museum, created by act of Parliament in 1753, and has since been emulated by many grand institutions such as the Bibliothèque Nationale and the Louvre in France, the Hermitage Museum in Russia, the Smithsonian Institution in the United States and too many others to mention. These universal museums created a demand for fine antiquities (and other art objects to be displayed therein) that led to the export of large numbers of such objects from their places of origin during the late eighteenth and nineteenth centuries. This early manifestation of cultural property internationalism coincided with the rise in cultural nationalism and one could argue that the current ideological rivalry actually began in the 18th century.

The universal museum today is an endangered cultural institution. Funding their operations is becoming increasingly difficult as large foundations and governments confront growing pressures to divert scarce resources for other purposes. Even the iconic British Museum has not been immune and, meanwhile, ever more strident demands are being voiced by cultural property nationalists for return of treasures such as the Rosetta Stone, the seal of Cyrus, and the bust of Nefertiti to their places of origin. Stripping the universal museums of their art and artifact holdings in that manner would in the eyes of a Cultural Property Internationalist be akin to cultural vandalism, no less barbaric perhaps than Gaiseric's sacking of Rome or the burning of the Library in Alexandria—nonviolent legal processes notwithstanding. To the Internationalist, these great cultural institutions serve and protect the cultural heritage of the entire world.

In numismatic science, large universal collections of antique coins—as typified by those of the British Museum, the Bibliothèque Nationale, the American Numismatic Society and the Danish National Museum—are essential for scholarly numismatic research. If these museum collections are dispersed (as is actually now happening to an important component of the ANS collection), continuance of numismatic research will become increasingly difficult. This is no doubt also true regarding collections of other types of small utilitarian artifacts.

C. THE LICIT MARKET

The licit market for portable antiquities is the most directly and aggressively challenged component of the varied cultural interests. John Hooker succinctly detailed the role of collectors and the market, as they see it, in preserving cultural heritage: "... the best way to preserve the cultures of the past is to distribute them far and wide among very different people who can inherit what is of value to them. That is what cultural heritage is really. This is why the collector has done more to advance numismatics than the academic world—there are more of them, they have a greater supply to draw upon (thanks to the dealers) and most important of all, they can bring their uniqueness to the subjects that they love. Not everyone will make important discoveries, but it takes a vast collector base for a few discoveries to emerge, so everyone serves an important role. Without the large

market, there would be fewer coins and fewer dealers and the raw material for inspiration would suffer thus.”⁹

Neil Brodie and Jennifer Doole have argued that no distinction should be made between licit and illicit antiquities.¹⁰ In other words, there should not be any market for antiquities at all, and their view is not singular. Ultimately, rational-legal authority and territorial jurisdiction determine the legitimacy of any human action. While the UNESCO Convention of 1970 seeks to invoke subject matter jurisdiction, it lacks the practical authority to do so. The law of nations, *jus gentium*, guides the most basic rules of international conduct, but falls considerably short of providing a universal common law. Consequently, national law and territorial jurisdiction or inter-national agreements, *jus inter gentes*, become the default measure in gauging the legality of any act. In the United States, a social system based on capitalism, the ownership of tangible personal property is restricted only in the most pressing cases of public welfare. In all but a few rare cases, age or cultural association does not condition the ownership and transfer of ownership of objects. The market itself for artifacts, antiquities or historical items is entirely licit and operates in full public view with virtually no trade-specific regulation. This environment is at odds with the UNESCO “anti-market bias” that Professor Merryman describes as dating back to its very inception.¹¹

Collectors who buy or sell within this licit market are not compelled by any law or tradition, written or unwritten, to seek proof of origin, a record of ownership, or any provenance information. This is understandably a source of consternation to those who support the unmodified provisions of UNESCO 1970 and the mantra that “unprovenanced = illicit”. Professor Ted Buttrey of Cambridge University offers a real-world example of why coins often lack provenance:

“In the 1980's a hoard of 5000 later-3rd-century antoninani, found locally in Cambridgeshire, was brought to this museum for examination and offered to us for sale. We cleaned it, and in return were allowed to pick out about 250 pieces for our trays. The rest we did not want -- we would have had to purchase a whole new set of cabinets (no money to buy them, no place to put them anyway) and spent God knows what in the way of man-hours accessioning this material -- and anyhow could not use: the 4750 remaining coins were the same old stuff which we already know of by the thousands. So we kept what we felt to be useful in filling gaps, in studying, and in teaching. The rest of the hoard was offered to the BM who turned it down. Finally the finder took it to a dealer who paid 50 pence

⁹ Hooker, John. Moneta-L Yahoo Group, online discussion group message # 91230, 20 January 2009.

¹⁰ Brodie, N. and J. Doole (2001). “Illicit Antiquities”, in N. Brodie, J. Doole and C. Renfrew (eds.), *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, pp. 1-6,. Cambridge: McDonald Institute for Archaeological Research.

¹¹ Merryman, John Henry. “A Licit International Trade in Cultural Objects”, *Who Owns the Past, Cultural Policy, Cultural Property and the Law*, Kate Fitzgibbon, ed. Rutgers University Press, 2005, p. 271.

per coin and sold them on for a pound. Be clear about this: the hoard was legally found, legally reported, legally offered to several museums (none of whom wanted it), legally returned to the finder, and legally disposed of by him. No one anywhere was going to take the time and the trouble (and the expense!) to provide each coin with a ticket (and photo?) guaranteeing its provenience. So there are 4750 perfectly OK coins from this hoard somewhere out there scattered about the market which [some] would condemn as "illicit".¹²

The United States and the United Kingdom are not the only nations where licit markets for antiquities exist. Licit markets for ancient coins are to be found in many countries, including such seemingly unlikely places as Italy and China. The International Association of Professional Numismatists (IAPN) lists dealer members in 24 countries, most of whom deal in ancient coins to some degree.¹³ The Numismatici Italiani Professioniste, a numismatic trade organization within Italy, lists on its web site more than 40 firms that advertise ancient and/or medieval coins for sale to the public.¹⁴ Ironically, Italy seeks U.S. import restrictions on the very coins sold in the legitimate public market by Italian dealers.

There are literally millions and millions of ancient coins circulating around the world today in private collections and residing in museums—all of which are potentially part of the licit market.¹⁵ There are about 30,000 different types of Chinese coins alone, spanning a period of 3,000 years. Oddly enough, one of the wealthiest capitalists in China has made a fortune selling ancient Chinese coins—not to collectors through the trade, but to tourists. According to a Forbes article, Wang Gang's business associate is the state run Bank of China.¹⁶ He reportedly owns some 500 tons of ancient coins, estimated at about 90 million pieces and representing about 70% of China's supply. It seems ludicrous that the Bank of China sells genuine ancient Chinese coins to tourists, and then asks that the U.S. government restrict the importation of these same coins. Worse yet, that U.S. Customs and Border Protection should seize these coins and return them to China—for resale to more tourists? If the Chinese government feels that the loss of ancient coins places their cultural patrimony in jeopardy, then why do they allow the wealthiest of Chinese citizens to amass huge quantities of them and sell them commercially for export—with state assistance? More to the point, why does the U.S. State Department (DOS) support such folly?

In addition to recirculation in the market of coins from old private collections, ancient coins are often deaccessioned by museums and sold to the general public. A few notable examples within the United States in recent years are the sale of numismatic assets from

¹² Buttrey, Theodore V. Honorary Keeper of Ancient Coins, Fitzwilliam Museum, Cambridge. Unidroit-L Yahoo Group online discussion list message 3220, Aug 27, 2008.

¹³ <http://www.iapn-coins.org/>

¹⁴ <http://www.numismatici-nip.it/>

¹⁵ Sayles, Wayne G. "How many coins survive?", *The Celator*, Vol. 17, no. 2, February 2003, p. 47.

¹⁶ Flannery, Russell. "Reverse Migration", *Forbes Magazine*, 22 December 2003.

the Metropolitan Museum of Art, the Chrysler Museum, the Santa Barbara Museum of Fine Art, the Phoenix Art Museum and the Boston Museum of Fine Arts, which recently sold 1,620 ancient coins at auction in New York City.¹⁷ Auction houses from Hong Kong to Paris carry on an active licit trade in ancient coins. There is, by any definition, a diverse international market for ancient coins that operates within the laws of its respective jurisdictions. To deny the legitimacy of this market is to deny the legitimacy of the laws under which it operates. Nationalist archaeologists who criticize the unregulated sale of uncleaned “junk” coins, mainly through internet venues, naively think that they see and understand the international market and its history that extends hundreds of years beyond recent internet transactions. If they are not so naïve as they appear, one can only conclude that they are feigning ignorance.

It is virtually impossible to determine where, or when, most of these coins were found. Just because a coin was originally made in China, for example, does not mean that it stayed there. From the earliest days of coin production, before 600 BC, long distance trade and cultural diffusion led to the large-scale distribution and redistribution of coins well beyond the geographic regions in which they were originally manufactured. As Dr. Michael Mitchiner points out, few places were economically or culturally isolated by the time coinage was introduced to the world.¹⁸ Through the evidence of coin migration, Dr. Michiner documents an extensive trade between East and West during the Viking - Samanid period of the 10th century. This resulted in "a massive flow of Samanid (Persian) silver dirhems to Sweden."¹⁹ Some of these trade coins became so commonplace in distant lands that local mints imitated them. The Yueh Chi in Western China, for example, imitated coins of Indo-Greek rulers in what is now Afghanistan. The Khwarezmians and Volga Bulgurs struck Samanid style dirhems in their own mints. Various Turkish tribes in southern Russia imitated these same coins. Silver coins of the 12th century Bulgarian King Ivan Alexander replicate contemporary Byzantine silver issues from Constantinople so closely that only an expert can distinguish one from the other. Local coins emulating the Byzantine style are also found in such diverse localities as Sicily, North Africa, Hungary, Mesopotamia and the Crusader states of the Levant. The Han Dynasty of China (206 BC - AD 220) maintained a strong military presence in Turkestan, where their coins are still found. Some 2,000 years later, a series of revolts in Turkestan led to the production of Chinese-style coins with Turkish inscriptions. Other coins of the 19th century from Chinese Turkestan copy the contemporary issues of the Khanates of Bukhara and Khokand in Russian Turkestan.²⁰ Distinguishing between these and ordinary Chinese coins is difficult enough without trying to determine if they came from China or Central Asia. Ancient Chinese coins even came to America with

¹⁷ Gemini, *Auction I*. January 11-12, 2005, Waldorf-Astoria Hotel, NY, NY.

¹⁸ Mitchiner, Michael. *Ancient Trade and Early Coinage*, 2 vols. Spink, London, 2004.

¹⁹ Mitchiner, Michael. *Oriental Coins and Their Values*, The World of Islam, Hawkins, London, 1977, p. 317.

²⁰ Cribb, Joe, Barry Cook and Ian Carradice. *The Coin Atlas*, Facts on File, NY, 1990, p. 204.

19th century immigrants and have been found in California among other places.²¹ Construction workers at Quy Nhon city in Viet Nam recently found about 30 kilograms of ancient Chinese coins and several hoards of ancient Chinese coins have been found in India.

Further evidence of widespread international trade in antiquity is confirmed by a huge number of documented coin hoards. One such hoard, found in northern Afghanistan near the ancient Bactrian capital of Balkh, consisted of a large number of Greek coins from various cities. A sampling of 20 coins from the hoard reveals an extraordinary distribution. Specimens were recorded from such diverse polities as: Lete in Macedon; Uncertain Thraco-Macedonian Tribes; Athens; The island of Aegina; Cnidus in Caria; Phaselis in Lycia; Celenderis, Soli, and Tarsus in Cilicia; Citium and Salamis in Cyprus and Tyre in Phoenicia. Dr. Hyla Troxell notes that coined silver was "a major export of the Greek world in the late sixth and the fifth centuries [BC]".²² Howard L. Adelson, in his study of 6th and 7th century Byzantine gold coinage, found that "In the overwhelming majority of cases the find spot was clearly in an area removed from Roman control."²³ In other words, the coins were found in a geographical location populated by a culture other than the one that produced them. Although the coins being studied were originally struck in Constantinople, hoard find sites ranged from the Balkans and northern Italy to Russia, Frisia and Britain—predictably, along the trade routes. This study was confirmed by the subsequent work of Joan M. Fagerlie in 1967. Some 800 gold Roman and Byzantine coins were analyzed and the conclusion was that these finds represented a steady stream of trade between the Mediterranean and Scandinavian countries. Dr. Fagerlie mentions in her introduction that thousands of Roman silver denarii from the 2nd century have also been found in Sweden.²⁴ A review of the *Coin Hoards* series, published by The Royal Numismatic Society, reveals that hoards of Greek coins, for example, have been found in Egypt, Bahrain, Syria, Azerbaijan, Lebanon, Yugoslavia, Bulgaria, Romania, Ukraine, Russia, Tunisia, Serbia, Afghanistan, Israel, Yemen, Poland, Georgia, France, Austria, Czechoslovakia, England, Albania, Turkey, Italy, Spain, Iraq, Switzerland, Germany and of course Greece.²⁵ Roman, Byzantine and

²¹ Alcalá, Carlos. "Preserving our Past", *Sacramento BEE*, Sacramento, CA, April 26, 1999.

²² Troxell, Hyla A and William F. Spengler, "A Hoard of Early Greek Coins from Afghanistan", *Museum Notes* 15, American Numismatic Society, New York, 1969, pp. 14-15. Troxell's views are supported by E.S.G. Robinson in "A 'Silversmith's Hoard' from Mesopotamia", *Iraq* XII, p.50 and by D. Schlumberger, "L'Argent grec dans l'empire Achéménide" in *Trésors monétaires d'Afghanistan*, Paris, 1953, p. 35.

²³ Adelson, Howard L. "Light Weight Solidi and Byzantine Trade during the Sixth and Seventh Centuries", *Numismatic Notes and Monographs* 138, American Numismatic Society, New York, 1957, pp. 78-103.

²⁴ Fagerlie, Joan M. "Late Roman and Byzantine Solidi Found in Sweden and Denmark", *Numismatic Notes and Monographs* 157, American Numismatic Society, New York, 1967.

²⁵ Price, Martin Jessop et al. Editors. *Coin Hoards, 1975-1985, 7 vols.*, Royal Numismatic Society, London.

Islamic coins have been found in equally diverse locations. The Silk Road to China was one of the world's oldest and most important routes historically. Trade along this route led to the dispersal of coin in both directions. Coins of the Romans, Byzantines and Western Turks have been found in China, and coins of Western Chinese provinces and of the Mongols are often found in the West.²⁶ A recent exhibit at the Arthur M. Sackler Gallery of the Smithsonian's National Museum of Asian Art, "Iraq and China: Ceramics, Trade and Innovation" is testimony to the extent of this prosperous trade.

D. ANCIENT COIN COLLECTING

The one thread that binds all private collectors is the element of ownership. Collectors universally take great pride in the fact that they possess the objects of their admiration, whether postage stamps or rare Greek vases. Is that a human trait to be denigrated? It has been argued that the collecting of ancient coins dates back at least to the time of the Romans and perhaps earlier.²⁷ In some sense, this is probably true. There are recorded hoards that look very much like a collection and examples of contemporary ancient coins set in jewelry in a seemingly systematic way. There are even a few references in ancient texts that suggest the contemporary collecting of unusual coins. However, in the context that we perceive ancient coin collecting today, as the science of numismatics, there is no conclusive evidence for such an early date. Dr. Elvira Clain-Stefanelli, former executive director and curator of the Smithsonian Institution's National Numismatic Collection in Washington, DC, once wrote a survey on the history of numismatics as a science.²⁸ In the introduction to this work, Dr. Clain-Stefanelli wrote: "Seen as a reflection of past aspirations and accomplishments, coins are invaluable sources for scholarly research, but few people are aware of the tremendous amount of work done in this field by past generations." Of course, that work continues today. Within the text, she details the contributions from both public and private collections and of professional and independent scholars over the past seven centuries. We know from recent studies that one could extend that window of numismatic scholarship backward at least to the 12th century when Nestorian Christian artists serving Turkish emirs in the Jazira (Mesopotamia) designed an entire series of coins modeled on classical coin prototypes.²⁹ One historically consistent thread in the evolution of numismatics during the past millennium is the mutually beneficial interaction between professionals and amateurs. If private collecting is anathema, the world certainly has not answered the call of that bell.

²⁶ Yin, Lin. "Western Turks and Byzantine gold coins found in China", *Transoxiana*, 6 July 2003. Online at http://www.transoxiana.com.ar/0106/lin-ying_turks_solidus.html

²⁷ Sayles, Wayne G. "Coin Collecting", *Britannica Online*, www.britannica.com.

²⁸ Clain-Stefanelli, Elvira E. *Numismatics an ancient science*, U.S. Government Printing Office, 1965.

²⁹ Spengler, William F. and Wayne G. Sayles. *Turkoman Figural Bronze Coins and their Iconography*, Clio's Cabinet, Lodi, WI 1996, pp. xx-xxiii.

E. INDEPENDENT SCHOLARSHIP AND SYMBIOSIS

A list of luminaries in the field of numismatics would be interlaced with private collectors and professional scholars—the distinction being imperceptible. Early scholars in the field of ancient numismatics came mostly from educated and erudite (often noble) families of Europe, though some excelled without this springboard. Valentine Duval, for example, overcame abject poverty to attain the lofty position of Numismatist to Maria Theresa of Austria.³⁰ During the 17th and 18th centuries, scientific numismatic study benefited greatly from the interest and effort of a new professional class that included doctors, diplomats, clerics, bureaucrats, the occasional academic and other “middle class” professions. Very large collections were formed and dispersed during this period, some of them becoming the basis of national collections and others complementing private museums.

In the 19th century, numismatic scholarship improved not only within major public collections but within the amateur community as well. Friedrich Imhoof-Blumer, an amateur, was responsible for developing the concept of die linkage studies to develop numismatic chronologies.³¹ The distinguished private collector, Sir John Evans, emphasized the importance of find spots as early as 1864.³² Evans was a founder of prehistoric archaeology and his way of looking at things was inherited by D. F. Allen, and pretty well by all other British Celtic numismatists. They all had a very friendly relationship with other collectors, coin dealers, museum staff, archaeologists, finders of coins and land owners. A growing interest in classical history and culture led to neoclassicism in many forms of art and literature. This was reflected as well by a rise in popularity of ancient coin collecting among the educated working class. As the general public became more enthralled with the ancient past, coin collecting became a tactile bridge.

A growing cadre of collectors, and more private collections, mirrored a parallel demand for private and public museums and indeed helped to satisfy that demand through widespread philanthropy. Yannis Touratsoglou, who described the wide social spectrum of donors to the Numismatic Museum in Athens during the late 19th and early 20th centuries, amply illustrates this phenomenon. In addition to “men of financial stature”, he describes donations from doctors, students, teachers, priests, monks, merchants, ambassadors and consular officials.³³ At about the same time, academia awoke to the value of ancient coins as voices from the past. Coin collectors and professional scholars worked closely together on masterful treatises that are still, in many cases, cited today.

In 1961, D. F. Allen set to work with Sheppard Frere and started the Celtic Coin Index at Oxford, but Evans had sown the seeds about a hundred years earlier. One must also credit

³⁰ Manning, Anne. *Valentine Duval: an autobiography of the last century*, Richard Bentley, London, 1860.

³¹ Clain-Stefanelli, Op Cit. p. 42.

³² Evans, Sir John. *The Coins of the Ancient Britons*, B. Quaritch, London, 1890.

³³ Touratsoglou, Yannis. “From the Archive Material of the Numismatic Museum”, *The First Century of the Numismatic Museum*, Ministry of Culture, Numismatic Museum, Athens, 1988, p. 126.

the legal framework of the British Treasure Trove laws and the more recent Treasure Act for fostering this symbiotic relationship. Consequently, the number of unprovenanced coins in the Celtic Coin Index (38.8% over all) is significantly lower than that of coins from most source countries without such enlightened scholars, collectors and laws.³⁴

As communication improved worldwide in the 20th century, the interaction between private collectors and professional scholars continued to grow. The late Michael Grant, in his seminal study *From Imperium to Auctoritas* acknowledges this cooperation. "I want, too, to express my thanks to the following private collectors who have generously shown me their coins.... [he names nine]... I must also record the use of other private collections, past and present...[he names 50 others]. Reference to other collections has been possible through sale-catalogues and I am grateful to the dealers who produced these catalogues and who have given me a kind welcome."³⁵ Professor Grant's personal collection of about 700 ancient coins was donated to the Fitzwilliam Museum in Cambridge. Reverend Edward Allen Sydenham's classic study of coins of the Roman Republic is a prime example of the symbiosis that characterized the mid 20th century. Sydenham, a private collector, is lauded for his expertise and dedication in the forward written by Dr. C.H.V. Sutherland of the British Museum.³⁶ Throughout the history of numismatics, independent scholarship has been and remains a core component.

On 6th November 1991, Glendining's, London sold the "H. R. Mossop Collection, Celtic Coins of Britain and other English Hammered Coins". The sale was held on the third anniversary of Henry Mossop's death. Henry Richard Mossop is best known for his book *The Lincoln Mint: c. 890-1279*.³⁷ After its publication, Mossop devoted his attention to the collection and study of Celtic coins. He corresponded with the two most eminent Celtic numismatists of the day, Derek F. Allen and Commander R. P. Mack and entered into a long working relationship with the archaeologist Jeffrey May. May had been a student of the great Christopher Hawkes and it was Hawkes who had recommended May to Nottingham University. Jeffrey May became the Head of Archaeology at Nottingham, publishing *Prehistoric Lincolnshire*,³⁸ and the two volume Dragonby Report.³⁹ In a 20th March 1989 letter to the independent scholar John Hooker, Jeffrey May said "I have been working on the coins of the Corieltavi (formerly Coritani) for the last ten years or more, in collaboration with Mr. Henry Mossop, with a view to publishing an updated version of D. F. Allen's important book, *Coins of the Coritani*."⁴⁰ There has been an enormous

³⁴ This figure represents analysis of available records prior to 2001. The ratio since the CCI database was taken over by the PAS has apparently not been calculated.

³⁵ Grant, Michael. *From Imperius to Auctoritas*, Cambridge University, 1946 and 1969. p. xii.

³⁶ Sydenham, Edward Allen. *The Coinage of the Roman Republic*, Spink & Son, London, 1952.

³⁷ Mossop, Henry Richard. *The Lincoln Mint: c. 890-1279*, Corbitt & Hunter Ltd. Newcastle upon Tyne, 1970.

³⁸ May, Jeffery. *Prehistoric Loncolnshire*, History of Lincolnshire Committee, Lincoln, 1976.

³⁹ _____. *Dragonby: Report on Excavations at an Iron Age and Romano-British Settlement in North Lincolnshire*. Oxbow Monograph 61, Oxbow Books, Oxford, 1996.

⁴⁰ Allen, Derek F. *Coins of the Coritani*, British Academy, (1963).

increase in the number of coins recorded since 1963; the progress of the work has been inevitably slow, and complicated by the death of Henry Mossop. Publication is still some way off, but I will let you know when it appears." Sadly, Jeffrey May passed away on July 15, 2006, aged 69. The work remains unfinished and unpublished.

The increased numbers of Corieltavian coins is due both to the start of the Celtic Coin Index and to the popularity of metal detecting in England. Henry Mossop was one of England's first environmentalists – planting thousands of trees on the family farm and he was a pioneer in metal detecting, importing one of the first machines from the U.S. He instructed other metal detectorists to record find details and the vast majority of the coins in his collection had the find spot recorded on the ticket. Always willing to share his collection with others he had many numismatist and archaeologist visitors to his farm and being of such a generous nature, he always insisted on filling their cars with fuel from his storage tank, saying, "After all, you've driven so far to come to see me".⁴¹ Mossop and May, together with D. F. Allen and Commander Mack built upon and expanded the earlier research into British Celtic coins started by the 19th century collector Sir John Evans—who became president of the Society of Antiquaries, president of what became the Royal Numismatic Society, and a Trustee of the BM. Seventy-four coins from Henry Mossop's collection are now at the British Museum.

The excellent relationship between collectors and archaeologists in many parts of England can be expressed no better than to mention the late Tony Gregory whom Roger Bland cites as the inspiration for the Portable Antiquities Scheme that he heads.⁴² Tony Gregory was an archaeologist who not only encouraged the reporting of finds among detectorists, but also made many appearances on television to promote public involvement in archaeology. He went on to become a published Celtic numismatist and in the acknowledgements section of one of his last publications said "Finally, and most importantly, I must thank those collectors and detector-users, particularly in Norfolk, who have made their finds available for study, and whose conscientious recording of their discoveries is the basis of this study... Without them, we should be little further forward than we were in 1970."⁴³ John Hooker sums up this symbiosis: "Within the very specific cultural frame of Celtic numismatics, we do not find any hostility between collectors and archaeologists that have this as their specialty. Most of the animosity against collectors comes from archaeologists who have little knowledge of numismatics and a few archaeology students who are just beginning their interest in coins. This simple fact should speak volumes to any critical observer. I do not think it is an exaggeration to say

⁴¹ This and other biographical details on Henry Mossop come from the biography by R. D. Van Arsdell in the Glendining's Auction catalogue of 6 November 1991.

⁴² Bland, Roger. "A pragmatic approach to the problem of portable antiquities: the experience of England and Wales", *Antiquity*, June 2005. Online at http://findarticles.com/p/articles/mi_hb3284/is_304_79/ai_n29197763

⁴³ Gregory, Tony. "Snettisham and Bury: some new light on the earliest Icenian coinage", *Celtic Coinage: Britain and Beyond, The Eleventh Oxford Symposium on Coinage and Monetary History*. Ed. Melinda Mays, British Archaeological Reports, British Series 222, Oxford, 1992.

that Celtic numismatics has advanced further than any other subset of ancient numismatics in the last decades.”⁴⁴

Dr. Gareth Williams, Curator of Early Medieval Coinage at the BM, said recently:

“As a museum curator I work regularly with metal detectorists, or with objects which they have found. Detector-finds represent a large proportion of the material I see, and they have been fundamental in changing our understanding of the past. Finds as spectacular as the Staffordshire Hoard are rare, but the cumulative assemblages of single finds recorded through the Portable Antiquities Scheme (PAS) are massively important. Within my own department alone there are three PhD students whose research is largely based on detector finds.”⁴⁵

SYMBIOSIS IN JEOPARDY

The symbiotic relationship that ancient coin collectors and museum curators have historically enjoyed with academia is literally a tradition in and of itself. This tradition is however in jeopardy. Rather than trying to build on and improve this productive relationship, some nationalist leaning advocacy groups have tried to repress cooperation between their members and private collectors or the associated trade. The nature of this adversarial stance is summarized well by attorney William Pearlstein. “The cultural internationalist viewpoint is firmly rejected by many archaeologists, who believe first and foremost in the need to preserve and protect virgin stratigraphic context pending professional excavation. From this springs the mantra that “unprovenanced is illicit.” To paraphrase the archaeological view, the depredations of local looters are driven by the demands of unscrupulous dealers and collectors, who aid and abet site looting by purchasing unprovenanced objects. These archaeologists, led by the Archaeological Institute of America (AIA), insist that the US vigorously enforce foreign patrimony laws, the violation of which should be a serious crime under US law.”⁴⁶ It is impossible to determine whether this view is widespread among archaeologists or whether most archaeologists remain silent on the issue for fear of professional sanctions by nationalist industry leaders. A few archaeologists that are not actively employed in the field have expressed concerns. John Rieske, for example, wrote: “When I got my degree in archaeology, it was common practice for archaeologists in my field of study to work extensively with private collectors of artifacts to further the study of all artifacts found within my state to better understand the material, thereby gaining a better understanding

⁴⁴ Hooker, John. “Deconstructing Cultural Heritage as it applies to Property”, Ancient Coin Collectors Guild online at <http://www.accg.us/cultural-property-the-hooker-papers>

⁴⁵ Williams, Gareth. “It’s unfair to label metal detectorists as mere treasure hunters”, *The Guardian*, 8 October 2009, online at

<http://www.guardian.co.uk/commentisfree/2009/oct/08/response-metal-detectorists>

⁴⁶ Pearlstein, William G. “Cultural Property, Congress, The Courts, and Customs: The Decline and Fall of the Antiquities Market?”, *Who Owns the Past, Cultural Policy, Cultural Property and the Law*, Kate Fitzgibbon, ed. Rutgers University Press, 2005, p. 12.

of the cultures. The field flourished and knowledge expanded. Now with the antipathy developing between archaeologists and the collector community and land owners and with the rise of the importance of political correctness in the field, archaeological studies in my state have come to a virtual standstill. Universities, alas even mine, have dropped archaeology from their curriculum in many cases.”⁴⁷

Some groups and individuals have vilified private collectors and the associated trade as being a threat to preservation of the past. This view follows a line of reasoning that sees collectors as removing historical objects from the public pool from which professional researchers draw. This is an emotional charge, often wrapped in accusations of greed and self-serving motives. Professor Ricardo J. Elia, currently Chair of the Department of Archaeology at Boston University, said in a national art periodical article, “Looting, smuggling and fraud have always been the stock-in-trade of the antiquities market;to archaeologists, ‘reputable dealer’ is an oxymoron... [The antiquities market is] a secretive, selfish and immoral trade that erases history and corrupts the study of the past”.⁴⁸ Professor Jane Waldbaum, while serving as President of the AIA, was quoted as saying, “It’s a dirty business, the antiquities trade”.

One claim that vexes all private collectors is that “Collectors are the real looters”.⁴⁹ Through this dictum, Lord Renfrew set a whole community of young archaeologists astir and neither argument nor evidence to the contrary has been able to cool the anti-collecting zealotry of some. Ironically, Lord Renfrew has since voiced his support for the Portable Antiquities Scheme which works closely with collectors for the common good. Among the most vocal of these anti-collecting zealots are the internet bloggers. When the “looting” refrain failed to resonate in any measurable way among the general population in America, an even more politically charged dictum emerged: “Collectors of antiquities fund terrorism.” In the mind of many American collectors, this is perhaps the most inflammatory of all claims. It is often taken very personally, as it implies a lack of patriotism, and has led to bitter feelings and resentment that may not fade easily. This affront too has been promulgated among the archaeology bloggers, who are viewed by collectors as being outside the mainstream of archaeological thought. The claim was lent a false sense of legitimacy when a former New York City prosecutor serving in the U.S. Marine Corps Reserve used this sound bite to promote a sensationalized account of the Baghdad Museum “Looting” in a lucrative book and speaking tour deal. At a Continuing Legal Education (CLE) panel in New York in the Spring of 2008, Bogdanos referred to a slide with solid lines purporting to demonstrate that Iraq is connected with New York and other western trade capitals by a global antiquities smuggling network. When asked how much looted Iraqi material is entering New York, he answered “None, yet.”⁵⁰ The most aggravating aspect of these sorts of myths is that they die hard—the lack of truth notwithstanding. In any case, they are an unproductive diversion from the real issues.

⁴⁷ Rieske, John. Unidroit-L Yahoo Group online discussion list message 3221, Aug 27, 2008.

⁴⁸ Elia, Ricardo J. *The Art Newspaper*, No. 139, September 2003.

⁴⁹ Renfrew, Colin. *National Review*, Nov. 25, 2002.

⁵⁰ Pearlstein, William G. “Antiquities, Archeology and Cultural Diplomacy in the 21st Century”, Art Litigation and Dispute Resolution Institute, New York, November 21, 2008. p. 9f.

Though viewed by collectors as baseless, these sorts of statements evoke a predictably defensive reaction. Collectors counter that they take great pride in displaying and publishing their collections, and offer the extensive collector exhibits at American Numismatic Association conventions as one example. A perusal of the holdings of any major numismatic library would reveal scores of published private collections. Of equal concern to private collectors is the charge that they are not trained conservators and are therefore poor stewards of historical artifacts. This is a bewildering claim. A collector obtains coins through purchase—a direct and personal investment. The market value of a coin is directly proportionate to its state of preservation. Consequently, both dealers and collectors are very preservation conscious for both aesthetic and practical reasons. It seems unlikely that any single coin in an institutional collection could or would ever receive the sort of care and personal attachment that one in a private collection receives.

Finally, there is the claim by some prominent advocates of cultural property nationalism that every ancient coin is a “priceless treasure.” One archaeology graduate student even suggested that ancient coins are an endangered element of cultural heritage, comparing them allegorically to endangered species and likening private collecting ethically to the ivory trade. In a feature article for SAFE, Nathan Elkins writes, “Although ancient coin collecting has a long historical precedent, not all practices accepted in humanity’s past are still considered ‘ethical’ today. For example, the ivory trade, which also had millennia of precedence, once flourished until the African elephant became increasingly endangered; only after laws were passed to protect the elephants did it become widely accepted that the ivory trade was unethical. Like the African elephant, our common cultural heritage is an endangered species.”⁵¹

The facts tell a different story. Among the thousands upon thousands of unique ancient coin types struck between the 7th century BC and the fall of Constantinople, one single type issued by Marc Antony prior to the Battle of Actium is estimated to have numbered some 25,920,000 coins.⁵² These coins survive in very large numbers and are readily available at modest prices in the international numismatic market. There is certainly no shortage of specimens residing in museum collections around the world. Most Chinese coins are exceedingly common. For example, in 2003 a seven-ton column of corroded coins dating back to the Southern Song Dynasty (AD 1127 -1279) was found in the town of Suishui in southwestern China's Sichuan Province.⁵³ There are countless millions of ancient coins circulating around the world today in private collections and residing in museums. There are about 30,000 different *types* of Chinese coins, spanning a period of 3,000 years. The number of important new discoveries each year in the field of numismatics is a tiny percentage of the number of coins bought, sold and traded in the legitimate market. But the issue of coins being mislabeled “national treasures” does not stop with coins from antiquity. In August of 2009, the Superintendent of Police at

⁵¹ Elkins, Nathan T. “Why coins matter, Trafficking in undocumented and illegally exported ancient coins in the North American marketplace”, Saving Antiquities For Everyone, *SAFECORNER* online at http://www.savingantiquities.org/feature_coins.php

⁵² Casey, P.J. *Understanding Ancient Coins: An Introduction for Archaeologists and Historians*, University of Oklahoma Press, Norman, 1986, p. 119, and note 19.

⁵³ Xinhua News Agency. “Ancient Coins Found in SW China,” *China Internet Information Service*. July 4, 2003. <http://www.china.org.cn/english/culture/68965.htm>

Varanasi in India reported to the press that 7,500 “ancient silver coins” had been confiscated and three men arrested for trying to sell cultural property. The coins were further identified as dating as far back as 1861 and 1892, bearing images of Queen Victoria and King George.

PROTECTION, PRESERVATION AND REGULATION

The concept of cultural property as an endangered and manageable resource is a core issue among divergent ideologies that today often vie for either supremacy or autonomy rather than accord. The philosophical notion that the past is owned by everyone comes into direct confrontation with the philosophy of individual property rights when the subject of controls over tangible objects is brought to a debate.

A. OWNERSHIP OR STEWARDSHIP?

It seems hard to imagine that the idea of owning money should be challenged—that is, after all, the point of money. Yet, that is precisely the challenge that faces collectors today. Couched in altruistic sounding rhetoric, coins and other common utilitarian objects have been wrenched out of their archetypal role in society and redefined as endangered cultural property. This ideological perspective is based on the premise that:

- (1) The past (couched in the terms "Cultural Property" and Cultural Heritage") belongs to everyone and must be preserved and protected,
- (2) Only professional scholars have the training and competency necessary to provide that protection,
- (3) Governments of the world have a duty, for the common good, to restrict public access to Cultural Property and items of Cultural Heritage because private citizens are not acceptable "stewards".

Archaeologist Paula K. Lazrus framed the issue from a nationalist perspective: “The question for us today, is whether the concept of ownership (as opposed to stewardship) continues to be a sustainable or even moral position in our contemporary society, and if not, how can we engage the world’s citizens in the active preservations of our collective history and cultural heritage.”⁵⁴ That, to any collector is a sobering thought. To any citizen of a free world nation with constitutionally guaranteed property rights, it is a wakeup call. Is the aim of UNESCO 1970 to preserve culture or is it to justify the nationalist retention of historical objects as state chattel? Archaeologists Jon L. Gibson and Joe Sanders wrote in the *Society for American Archaeology Bulletin* "We suggest that just because sites happen to be on private property should not make them privately owned. We also maintain that archaeologists must challenge one of American's most precious rights—the right to do as you please to your own land—if we are going to have

⁵⁴ Lazrus, Paula Kay. “Supporting and Promoting the Idea of a Shared Cultural Patrimony”. *Collecting Material Heritage: Past and Present Orthodoxies, World Archaeological Conference 5*, Washington DC, June 21 to June 26, 2003.

any chance of preserving our diminishing heritage.... First, we must press for legislation that places an archaeological lien on private property with significant archaeological sites. Second, archaeologists must be the ones to choose which sites are to be protected. We cannot entrust this selection to a governmental board or legislated process, which would give landowners the final word on whether a site will be protected..... Archaeologists must be more than just stewards of the past. They must serve as the public conscience. They must act on society's behalf even when society is insensitive or objects."⁵⁵

On the “other side of the coin”, the eminent archaeologist and educator John Boardman expressed a somewhat different view at a 2004 Oxford symposium on the ethics and politics of collecting cultural artifacts. “To go to the other extreme and believe that the only material for human history that we should handle or regard must be from controlled excavation by professionals, or known before 1970, puts us all in the hands of archaeologists whose own agenda may sometimes be suspect. We cannot automatically assume that they are on the side of the angels, and my own observation of a profession to which I have belonged for over half a century, in the field, museum and classroom has not led me to any great admiration for some of its procedures and motivation.”⁵⁶

The notion that society owns certain tangible objects in common is not new. American citizens are theoretically owners in common of all public lands and buildings. And, yes, we have access to these common assets only at the discretion of the managers appointed for their protection. But, the right to use of these resources is very well established. In most cases, the government goes out of its way to foster public land and facility use. There is no prohibition against private ownership of similar lands or buildings. For example, at Fossil Butte, in Kemmerer, Wyoming, the National Park Service preserves one of the richest fossil locations in the world. Public access is limited to non-invasive activities and only “approved” parties conduct onsite research. Immediately adjacent to Fossil Butte are at least two commercially operated sites on private land where the public can legally search for and retrieve fossils. The government owns and operates museums that display virtually every imaginable item of our culture as well as those from other cultures of North America and distant lands. At the same time, however, private museums flourish from coast to coast. There is no law in the United States that prohibits the ownership of objects based on where they were found or how old they are. Americans hold dearly the concept of private ownership, which is a fundamental right reaching back to the very foundation of the country. Owners of private property would consider it a serious infringement of their constitutional rights if they were forbidden to search for Indian arrowheads or Civil War artifacts, for example, on their own land. Most Americans support the idea of public ownership as long as it does not infringe upon their rights of private ownership.

⁵⁵ Gibson, Jon L. and Joe Sanders. "The Death of the Sixth Ridge at Poverty Point: What Can We Do?", *Society for American Archaeology Bulletin* 11:5:7-9, 1993.

⁵⁶ Boardman, John. “Archaeologists, Collectors, and Museums”, *Who Owns Objects? The Ethics and Politics of Collecting Cultural Artefacts*, Eleanor Robson, Luke Treadwell and Chris Gosden eds., Oxbow Books, Oxford, 2006, pp. 33-46.

Even if an argument might be made for national retention of certain types, or exceptional examples, of certain artifacts, rarely can a case be made that utilitarian objects like coins are culturally significant objects. A claim of Archaeological significance is equally tenuous. In the field of archaeology, coins are useful mainly as a way of dating the strata in which they are found. However, even this is of tentative value since coins, like diamonds, arrowheads, and rocks in general (as any farmer knows) tend to migrate to the surface over time. Thus, the accuracy of dating a stratum by coin finds is only reliable when the coins are in some way part and parcel of a fixed object. This is seldom the case, since most coins found in archaeological excavations are scattered finds. Large hoards of coins were generally buried in more obscure locations. It is also well established that ancient coins circulated for extended periods of time, sometimes centuries, and the find of a coin does not necessarily date with any accuracy the strata in which it was found. Of course, archaeologists know this but some still cling to the idea that coins are critical pieces of the “archaeological record”. It’s a convenient argument that the general public can understand logically but cannot challenge technically. Greek archaeologist Yannis Hamilakis explains it somewhat differently: “... ‘the archaeological record’ does not exist as such: people in the past did not leave a record of their lives for us to discover, preserve (for future generations), and decipher; what was left from their lives are material fragments (in the broader sense of the word) and it is archaeology that produces the entity we call the archaeological record out of these material fragments of the past; in other words, archaeology as a discipline, as a set of principles, devices, methods, and practices, creates its object of study, out of existing and real, past material traces.”⁵⁷ One might ask, how many examples of a common utilitarian object are necessary to create that object of study? Every one ever produced?

Once an ancient coin is removed from the ground without a specific record, it is of little or no archaeological interest because it cannot be used to “create” that archaeological record that Hamilakis describes. That is partly the reason that some archaeologists oppose the PAS and other “third party” registration schemes. Consequently, archaeologists generally pay little attention to coins other than recording their context and do not study them to any great extent, nor do they go to any great trouble to preserve them. There are countless anecdotes of buckets full of ancient coins sitting in the dank basements of archaeological museums and storage sites, simply rotting from bronze disease. Yet, most archaeological museums refuse to sell the surplus to collectors (who would preserve them) even though it would raise funds for continued archaeological work or better facilities. Their stated logic is that doing so would merely enlarge the market and encourage even more site looting. Most collectors, on the other hand, would claim that this is faulty reasoning. Ironically, it is not uncommon that museum curators in third world countries sell minor antiquities from the museum collection to supplement their meager income. This, of course, serves neither the nation, the museum, archaeology, nor the sellers or buyers who do so under a cloud of iniquity and risk of often-severe criminal penalties.

Over the past 400 years, private collectors have produced, through their own effort and typically at their own expense, a huge body of reference works that are widely available

⁵⁷ Hamilakis, Yannis. *The Nation and its Ruins: Antiquity, Archaeology, and National Imagination in Greece*, Classical Presences, Oxford University Press, 2007, p. 14.

to and used by scholars of all disciplines and educational levels. They have preserved millions of coins through careful and loving attention and have led the world in numismatic research. The general public has very little understanding of how many antique artifacts exist and how many of these become redundant for scientific or cultural purposes once they have been removed from the ground. In many source countries, finders of ancient silver and gold coins (often poor peasants) convert the metal to bullion as a way of turning them into a liquid asset. This has actually been going on for centuries and continues today. Islamic coin specialist Stephen Album relates anecdotally an all too common experience that he had in this regard:

“When I lived in Iran in the 1960s I often purchased coins from silver melters and scrap metal dealers, coins were saved that would surely have been melters, perhaps for manufacturing of silver plates and kitchenware. In Tabriz I purchased several dozen coins from a late Jalayrid hoard of several thousand coins, but when I returned a few days later to purchase some more, I was told that what I had rejected had already been melted down as scrap. The same happened in Shiraz with a large hoard of 19th century Qajar silver. Fortunately, in Tehran the principal coin-melter agreed to telephone me before melting some coins, so that I could buy what I wanted at a 25-50% profit to him (above the bullion value). I would visit his shop about twice a week, thereby succeeding in salvaging several hundred coins from the melting pot.”⁵⁸

When any state takes custody of antiquities and other cultural artifacts, that involves accepting significant custodial responsibilities and also the costs associated with those responsibilities. Failing to properly address such responsibilities has consequences ultimately affecting not only artifacts and monuments, but also society as a whole. The concept that cultural assets “belong to everyone” implies that they will be properly cared for in public custody, so any failure to do so then becomes in some sense a “crime against everyone.” Yet when public custody of cultural assets in many source countries is critically examined, one finds that the care actually provided is generally poor and that no realistic approach is being taken toward evaluating and realistically meeting the costs required to improve it to an acceptable level. The task of dealing with storage of redundant artifacts in numbers so vast that in many cases they cannot even be properly inventoried, let alone catalogued, is a universal problem. Like monuments, even portable antiquities exposed through excavation have been taken from a state of equilibrium and are exposed to an environment in which they often become unstable. Artifacts made of organic materials are vulnerable to deterioration through biological processes such as rot and even to vermin infestation. Artifacts made of metals, stone or ceramic become vulnerable to deterioration through chemical processes.

Ancient bronze, brass and copper coins, since their surface area is large compared to their mass, are particularly vulnerable to “bronze disease” and it is often necessary to carry out protracted and time-consuming conservation processes to stabilize them. When these coins are first removed from interment, it is important for their future preservation that

⁵⁸ Album, Stephen. Santa Rosa, California, online discussion group posting 30 July 2004.

they immediately be treated to chemically stabilize their surfaces. This however is far from being normal practice in every museum. All too often, coins are simply placed in a box without any sort of conservation treatment – in a storeroom without climate controls. If the humidity is high, they may deteriorate rapidly. Ironically, the recent trend toward retaining archaeological excavation material in museums close to the find spot has aggravated this problem since provincial museums in Third World countries are notoriously ill prepared to deal properly with the deposits that they inherit.

There are so many redundant artifacts that museums cannot possibly house them in their storerooms, one little-known aspect of their public custody being existence of large warehouses in which vast numbers of redundant artifacts are stored. These warehouses are even less likely than museum storerooms to have well-controlled environments, and security becomes a serious concern since they may become targets for thieves and even vandals. One shocking instance of vandalism was an arson fire at the Beit She'an antiquities warehouse in 2004, that destroyed “thousands upon thousands” of individual artifacts, involving loss of all physical evidence for discoveries made during decades of archaeological research.⁵⁹

Even Italy, a developed nation with a robust economy, has its problems with stewardship. Pompeii (considered to be one of the crown jewels of archaeology) has decayed at an alarming rate. Professor Andrew Wallace-Hadrill was quoted in an interview for Australian television as saying, “Man is wreaking a damage far greater than Vesuvius. The moment of Pompeii's destruction was also the moment of its preservation. The public needs to understand that unless constant efforts are taken to arrest the decay, the site will, within decades crumble to nothing.”⁶⁰ Many thousands of coins recovered from the excavation of Pompeii and stored in the basement of the Archaeological Museum in Naples have literally turned to dust from rampant bronze disease.

Archaeological careers are built upon new discoveries, not on the arduous, painstaking and unspectacular work involved in maintaining what has already been discovered. There are many challenges to be met in improving the standard of conservation for archaeological sites and excavation materials. One solution that is feasible for portable antiquities is to distribute the burden of preservation and protection to a much wider base of “stewards” through private ownership and voluntary recording systems like PAS.

B. CULTURAL PROPERTY CONTROLS

World War I disrupted the political and social framework of Europe and the Middle East, halting antiquarian work in these areas. Destruction of culturally significant material during the war, and unrestrained trade in such material during its aftermath, led to the

⁵⁹ Rudge, David. “Fire destroys antiquities warehouse in Beit Shean”, *The Jerusalem Post*, March 12, 2004.

⁶⁰ Hurley, T., P. Medcalf (et al.), *Antiquity 3*, Oxford University Press, Melbourne Victoria, 2005, p. 65

first international efforts to regulate cultural materials. In 1933 the League of Nations drafted a *Convention on the Repatriation of Objects of Artistic, Historical or Scientific Interest, Which Have Been Lost, Stolen or Unlawfully Alienated or Exported* - which was rejected by Great Britain, the Netherlands, and the United States.⁶¹ A subsequent *Convention for the Protection of National Historic or Artistic Treasures* (1936) was also rejected.⁶² To nationalists, this rejection marked the ascendancy of a “free trade” agenda. These early attempts at regulation ended with the outbreak of World War II.

The founding of the United Nations in 1945 created a successor to the League of Nations' International Commission on Intellectual Cooperation – the United Nations Educational, Scientific and Cultural Organization (UNESCO).⁶³ The Soviet Union virtually boycotted UNESCO during its first nine years, but in 1954 decided to join. Thereafter the organization evolved from an intellectual, non-political, focus into an ideological forum where liberal democratic concepts championed by the United States and its allies were increasingly confronted by nationalist political perspectives championed by the Soviet bloc and supported by many newly independent post-colonial states. Although protection of cultural property was one objective of the Hague Convention of 1954,⁶⁴ the “Cultural Property Debate” as we know it today emanated from the UNESCO convention of 1970.⁶⁵ Ancient coins were among the objects of least concern at the time and became merely one of a very long list of object categories that were classified within the convention resolution as cultural property. Professor Boardman asks a rhetorical but apropos question regarding this overreach, “Could anything be more inane than legislation that seeks to cover everything from Egyptian statues to Victorian postage stamps?”⁶⁶

Following the failed attempts at regulation of the antiquities trade failed at the Hague, the topic reappeared on the international agenda in the 1960s as that trade increased with the growing number of collectors. During the 1950s and 1960s wealthy art collectors began to take an increasing interest in major antiquities. J. Paul Getty and Norton Simon, among others, acquired significant collections that were eventually put on display in their private museums. Other wealthy collectors donated, or funded acquisition of, valuable objects to institutions like the Metropolitan Museum of Art, the Boston Museum of Fine Arts, the Cleveland Museum of Art, the Houston Museum of Fine Arts, the Minneapolis Institute of Arts and others. This burgeoning interest led nationalists to question dealer and

⁶¹ Prott, Lyndel V. “Cultural Rights as Peoples’ Rights in International Law”, *The Rights of Peoples*, James Crawford, ed. Oxford University Press, 1988, p. 105.

⁶² Vrdoljak, Ana Filipa. *International law, museums and the return of cultural objects*, Cambridge University Press, 2006, p. 113.

⁶³ Pearson, Christopher, E.M. *Designing UNESCO: Art, Architecture and International Politics at Mid-Century*, Ashgate, 2010.

⁶⁴ United Nations Educational, Scientific and Cultural Organization. “Convention for the Protection of Cultural Property in the Event of Armed Conflict”, The Hague, Netherlands, 14 May 1954.

⁶⁵ United Nations Educational, Scientific and Cultural Organization. “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970,” Paris, 14 November 1970.

⁶⁶ Boardman, Op. cit. p. 45.

museum ethics and alleged involvement with illicit art. The concurrent end of colonialism empowered new national governments and the creation of new and increasingly draconian retentionist laws. Membership in international organizations gave these post-colonial states an opportunity to express their concerns over illicit trade in culturally significant materials and to promote international action against it.

Efforts to impose international controls were first initiated by Mexico and Peru, which had experienced significant looting of pre-Columbian antiquities. They called their concerns to the attention of the 11th UNESCO General Conference in 1960. In response to this appeal, the General Conference authorized the Director General to prepare “a report on appropriate means of prohibiting the illicit export, import and sale of cultural property, including the possibility of preparing an international instrument on this subject.” Nine years of meetings and discussion eventually culminated in a Secretariat Draft Convention (8 August 1969). Western nations with significant antiquities markets, including Britain, Switzerland, Sweden, Germany, and the United States, followed these developments with serious concern and skepticism, assailing the proposed convention as impractical and likely to destroy legitimate commerce. It was pointed out that the draft Convention amounted to an attempt by antiquities source nations to export the onus of antiquities law enforcement to other nations, without any corresponding benefit to these nations or reciprocal obligations. Britain and Switzerland, adopting an uncompromising anti-regulation view, rejected the Draft and refused to attend the meeting of the Special Committee of Governmental Experts convened in Paris in April 1970, which negotiated the final text of the Convention. Other European nations with significant antiquities market interests attended that meeting, but also objected to and decided not to ratify the Convention.

The United States was similarly skeptical about the prospects of controlling illicit traffic in cultural property by regulating international trade, maintaining that it was the responsibility of source countries to suppress illicit exports. A historical commitment to free trade and a desire to maintain a reasonable interchange of art objects and archaeological materials between nations also fueled an aversion to trade regulations. U.S. President Lyndon Johnson and Mexican President Gustavo Diaz Ordaz discussed the antiquities trade during a 1967 meeting in which they agreed to explore methods to control illicit movement of antiquities between their nations. Specific action began with a 1969 Mexican note requesting U.S. assistance in protecting Mexican archaeological heritage and ultimately led to negotiation of a bilateral 1970 Treaty Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties.⁶⁷ Despite its narrow scope, this treaty paved the way for more comprehensive regulation and launched a U.S. domestic debate over antiquities regulation. It foreshadowed the much more intense struggle over the UNESCO Convention and the political battle between the archaeological community and the art trade, with the State Department in the middle, advocating regulation but recognizing the need to secure the trade’s support. The Mexican request introduced Mark Feldman, assistant legal adviser for inter-American affairs at DOS, to the subject of antiquities looting and began his long-term involvement

⁶⁷ DeOnis, Juan. “Art Treasure Treaty Signed”, *NY Times* syndicated article in *The Day*, New London, CT, July 20, 1979, p. 26.

with the issue. Feldman was to play a key role in bringing the U.S. to support and implement the UNESCO Convention.

In 1969 (at the request of the U.S. State Department) the American Society of International Law (ASIL) convened a consultative Panel on the International Movement of National Art Treasures, including representatives from the trade, the museum community, the archaeological community and DOS as well as international law experts. Through the ASIL panel, the State Department sought to reach consensus among all relevant stakeholders and, in particular, obtain the trade's support for the introduction of regulatory measures. The trade recognized that mounting concern about archaeological looting could result in far-reaching regulation, adopted a cooperative posture and agreed to a specific measure limited to protecting vulnerable pre-Columbian monuments. These U.S. government sponsored deliberations led to the 1972 *Act on Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals*.⁶⁸ This act prohibited unauthorized importation of relatively accessible sculpture and architecture, and reduced trade in these materials, also drawing further attention to the problem of looting just at the time when implementation of the UNESCO Convention came up on the agenda.

The U.S. position at the 1970 negotiations had embraced limiting State obligations and avoiding "blank check" controls. Desiring to find a way to curb archaeological looting without closing down the U.S. art market, the United States sought to narrow the scope of the Convention as much as possible, limiting import restrictions to carefully-designated situations where a link between the American market and looting could be demonstrated. American museums were concerned about a possible threat to their existing collections, which made no retroactivity important. While the primary goal of the Convention was to gain the cooperation of market countries, the United States wanted source countries to reciprocate by strengthening their own efforts to protect cultural heritage and liberalizing antiquities export policy. The State Department proposed three substantive measures:

1. Provisions prohibiting importation into one country of cultural property stolen from a museum or a similar institution in another country, and providing for the recovery and return of such cultural property.
2. Provisions prohibiting acquisition of illegally exported cultural property "of great importance" by museums whose acquisition policies are under governmental control of a state party to the Convention.
3. Provisions to identify specific pillage crisis situations and provide for future action, including selective import controls, to address them.

The U. S. delegation discovered (to its surprise) that UNESCO rules prevented introduction of its comprehensive alternative draft, thus the seriously flawed Secretariat Draft was the basis for the 1970 negotiations in Paris. Alternatives had to be introduced piecemeal as amendments to specific provisions. Source countries such as Ghana and Iraq, joined by the Soviet bloc, favored tight international controls and resisted attempts to dilute the Secretariat Draft. Others, notably Mexico, supported the Secretariat Draft but

⁶⁸ Online at: <http://dosfan.lib.uic.edu/usia/E-USIA/education/culprop/92-587.html>

realized the need to reach a compromise document that the United States would accept. A Convention rejected by the United States would be of little practical value.

Working with other delegations, the United States obtained major modifications to the Secretariat Draft, the most important of which were:

1. Deletion of the provision requiring states to prohibit the import of any item of cultural property not accompanied by an export certificate.
2. Modification of various provisions through language allowing each state to determine what measures are appropriate for it or limiting obligations to measures consistent with states' existing legislation.
3. Unlike the Secretariat Draft, the final Convention allowed for reservations.

The final text of the 1970 UNESCO Convention was a compromise document with several flaws and inconsistencies, significantly diluting what the source countries had envisioned. Although some still say that the heart of the convention was gutted through U.S. intervention, a majority of UNESCO adopted this moderate compromise approach, rejecting the position of the Soviet bloc and many third-world countries - which (if implemented) would effectively have ended international trade in cultural objects. The 16th UNESCO General Conference adopted the Convention on November 14, 1970. The Convention was rapidly accepted by many antiquities and ethnic artifact source nations, joined by Soviet Bloc countries and their political allies. But it was not until 1983, when the United States became the fiftieth nation to accede to the Convention, that a nation with a significant art market accepted it. France followed fourteen years later in 1997 as its eighty-fifth State Party, after which the United Kingdom and Japan (2002), Sweden, Denmark and Switzerland (2003), Germany (2007) and the Netherlands (2009) successively joined. Thus the 1970 UNESCO Convention was slow to take effect in a really meaningful way.⁶⁹

Declarations and Reservations made by other Nations

A complete list of Declarations and Reservations follows the text of the Convention, posted online by UNESCO.⁷⁰ Those of particular interest for their reservations are:

Australia

'The Government of Australia declares that Australia is not at present in a position to

⁶⁹ See the UNESCO handbook, *Preventing the illicit traffic in cultural property: a resource handbook for the implementation of the 1970 UNESCO Convention*, available online (in four languages) at http://portal.unesco.org/culture/en/ev.php-URL_ID=18266&URL_DO=DO_TOPIC&URL_SECTION=201.html

See also: "List of Agreements, Emergency Actions and Federal Register Notices" on the U.S. State Department web site at:

<http://dosfan.lib.uic.edu/usia/E-USIA/education/culprop/list.html>

⁷⁰ http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject. Australia therefore accepts the Convention subject to a reservation as to Article 10, to the extent that it is unable to comply with the obligations imposed by that Article.’

Belgium

“Belgium interprets the term “cultural property” as confined to those objects listed in the Annex to Council Regulation (EEC) No 3911/92 of 9 December 1992, as amended, on the export of cultural goods and in the Annex to Council Directive 93/7/EEC of 15 March 1993, as amended, on the return of cultural objects unlawfully removed from the territory of a Member State.”

Denmark

“Coins and medals are the only cultural objects explicitly exempted from the regulations of the Act.”

Sweden

“The property designated as ‘of importance for archaeology, prehistory, history, literature, art or science’, in accordance with Article 1 of the Convention, are the following properties: ... (d) Swedish items of pottery, glass, porphyry, gold, silver or bronze, with exception of coins and medals... (f) foreign furniture, mirrors, boxes, long-case clocks, wall clocks and brackets clocks, musical instruments, firearms, edged weapons and defensive weapons, items of pottery, glass, ivory, gold, silver or bronze, with exception of coins and medals, chandeliers and woven tapestries, which are worth more than SEK 50,000.”

United Kingdom of Great Britain and Northern Ireland

(a) The United Kingdom interprets the term “cultural property” as confined to those objects listed in the Annex to Council Regulation (EEC) N° 3911/1992 of 9 December 1992, as amended, on the export of cultural goods and in the Annex to Council Directive 1993 / EEC of 15 March 1993, as amended, on the return of cultural objects unlawfully removed from the territory of a Member State;

(b) As between EC member states, the United Kingdom shall apply the relevant EC legislation to the extent that that legislation covers matters to which the Convention applies; and

(c) The United Kingdom interprets Article 7(b)(ii) to the effect that it may continue to apply its existing rules on limitation to claims made under this Article for the recovery and return of cultural objects.

Implementation within European nations

European Economic Community Directives N° 3911/1992 of 9 December 1992 on the export of cultural goods, and 1993 / EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, provide a legal framework for the Convention’s implementation within the EEC. This still required

additional legislation in certain countries.⁷¹ Some European nations with art markets implemented the Convention through legislation to adjust their domestic laws to conform to its provisions. Some important examples are:

Switzerland

A comprehensive study of international and internal law⁷² was conducted prior to implementing legislation. The ***Federal Act on the International Transfer of Cultural Property*** (which came into effect in June 2005) implements the UNESCO Convention under Swiss domestic law by establishing a mechanism for imposing Article 9 import controls in a manner very similar to that of the CPIA in the United States.⁷³

United Kingdom

The United Kingdom implemented the UNESCO Convention through creation of a new offense - criminalizing knowingly dealing in “tainted cultural objects,” defined as objects whose “removal or excavation constitutes an offence.” That includes objects unlawfully removed from “a building or structure of historical, architectural or archaeological interest” or from an excavation (regardless of whether this occurred in the United Kingdom or in a foreign country) after December 2003.⁷⁴

US Instrument of Ratification

The United States deposited an Instrument of Ratification containing the following limiting provisions:

“The United States reserves the right to determine whether or not to impose export controls over cultural property.

The United States understands the provisions of the Convention to be neither self-executing nor retroactive.

The United States understands Article 3 not to modify property interests in cultural property under the laws of the States parties.

The United States understands Article 7 (a) to apply to institutions whose acquisition policy is subject to national control under existing domestic legislation and not to require the enactment of new legislation to establish national control over other institutions.

⁷¹ EEC Directive N° 3911/1992 online at http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!celexnumdoc&lg=en&numdoc=31992r3911&model=guichett

⁷² ***International Transfer of Cultural Objects: UNESCO Convention of 1970 and Unidroit Convention of 1995*** (paper publication by the Swiss Federal Office of Culture). Can be found listed as ***Internationaler Kulturgütertransfer*** (PDF) at <http://www.bak.admin.ch/themen/kulturguetertransfer/00896>

⁷³ http://www.kultur-schweiz.admin.ch/arkgt/kgt/e/e_kgt.htm

⁷⁴ The ***Dealing in Cultural Objects (Offences) Act 2003***, 2003 Ch. 27, Sections 1 and 2(2), is available online at <http://www.uk-legislation.hmso.gov.uk/acts/acts2003/20030027.htm>

The United States understands that Article 7(b) is without prejudice to other remedies, civil or penal, available under the laws of the States parties for the recovery of stolen cultural property to the rightful owner without payment of compensation.

The United States is further prepared to take the additional steps contemplated by Article 7(b) (ii) for the return of covered stolen cultural property without payment of compensation, except to the extent required by the Constitution of the United States, for those states parties that agree to do the same for the United States institutions.

The United States understands the words “as appropriate for each country” in Article 10 (a) as permitting each state party to determine the extent of regulation, if any, of antique dealers and declares that in the United States that determination would be made by the appropriate authorities of state and municipal governments.

The United States understands Article 13(d) as applying to objects removed from the country of origin after the entry into force of this Convention for the states concerned, and, as stated by the Chairman of the Special Committee of Governmental Experts that prepared the text, and reported in paragraph 28 of the Report of that Committee, the means of recovery of cultural property under subparagraph (d) are the judicial actions referred to in subparagraph (c) of Article 13, and that such actions are controlled by the law of the requested State, the requesting State having to submit necessary proofs.”

C. AMERICAN LAWS REGARDING CULTURAL PROPERTY

Federal Preservation Laws that apply to cultural property of U.S. origin include the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act and the Abandoned Shipwreck Act.⁷⁵ Present U.S. law governing importation and internal possession of antiquities and other culturally related items (originating outside the United States) is a confusing amalgamation of statutes and case law based on prohibition of smuggling, the National Stolen Property Act, other Acts addressing specific situations where antiquities are perceived as being endangered, and finally the Convention on Cultural Property Implementation Act.

Prohibition of Smuggling

18 U.S.C. § 545 prohibits bringing merchandise into the United States without proper Customs declaration or otherwise contrary to law, or involvement in subsequent transportation, concealment, or sale of such merchandise after importation.

National Stolen Property Act

⁷⁵ U.S. State Department Bureau of Educational and Cultural Affairs, “International Cultural Property Protection”, online at <http://exchanges.state.gov/culprop/uslaws.html>

18 U.S.C. §2314 prohibits transportation in interstate or foreign commerce of stolen goods, securities, money, fraudulent tax stamps, or articles used in counterfeiting, or conspiring in such transportation. 18 U.S.C. § 2315 prohibits sale or receipt of stolen goods, securities, money, or fraudulent tax stamps transported in interstate or foreign commerce.

The Pre-Columbian Monumental and Architectural Sculpture and Murals Statute (Public Law 92-587, 1973) restricts imports of these materials into the U.S. without authorization from the country of origin.

The Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (Miscellaneous Trade and Technical Corrections Act of 2004, SEC. 3002) authorized the President to prohibit importation of any archaeological or ethnological material of Iraq. The provisions of this act expired in 2009.

Convention on Cultural Property Implementaion Act (CPIA)

The UNESCO Convention is an international agreement, rather than a law that directly affects individual persons or organizations. It defines what nations are obligated to do as member states, and does not address the specific details of how their obligations are to be enforced within each nation—that becomes the responsibility of each individual State Party to the Convention. In the case of the United States, the Convention’s provisions were only partially accepted, subject to significant reservations and understandings. The United States obtained a convention suited to its preference for limited regulation, which fell short of the ambitions of source countries. But U.S. support for even modest regulation was groundbreaking and revolutionary. For the first time, a country with major antiquities markets country accepted partial responsibility for archaeological looting and undertook to aid in addressing this problem.

In its report accompanying transmittal of the UNESCO Convention for ratification in early 1972, the State Department identified the Convention’s main operative provisions, according to the American understanding: Article 7(b) and Article 9:

- Article 7(b)(i) requires States to prohibit the import of cultural property *stolen from a museum, public monument or similar institution* in a State Party to the Convention, provided that such property is documented in the inventory of that institution. Rather than requiring market countries to prohibit the import of all illegally exported objects, this Article limits the import prohibition to a small subset of objects – those stolen from an institution where they were inventoried. It excludes the vast majority of looted antiquities since illegally excavated and smuggled items do not appear in any inventory. In cases covered by Article 7(b)(i), Article 7(b)(ii) requires States Parties to take steps to recover and return the stolen object, at the request of the source country.
- Article 9 addresses situations in which a State Party finds its cultural heritage “in jeopardy from pillage.” In those circumstances, other States Parties are required to participate in a concerted international effort and to carry out necessary concrete measures, including export and import control.

Upon favorable recommendation of the Foreign Relations Committee, the Senate gave its advice and consent to the ratification of the UNESCO Convention by a vote of 79 to 0 on August 11, 1972, subject to one reservation and six understandings, significantly limiting application of the Convention in the United States. This allowed the United States to join the Convention formally, but it was decided not to deposit the instrument of ratification until after passage of legislation implementing the Convention. Debate over the Convention's implementation was prolonged, and the United States did not officially join the Convention until 1983.

Although DOS had secured support for the Convention from the ASIL Panel, what had seemed to be strong consensus evaporated as the trade began to voice serious concerns and skepticism over the draft legislation. In their eyes, the proposed legislation far exceeded what the ASIL Panel originally foresaw and would tend to remove the United States from the flourishing international art market. This opposition managed to delay action by Congress, which practically ignored the implementing legislation proposed in 1973. Consequently, the State Department had to revise its original proposal. The revised version was introduced as H.R. 14171 in June 1976. The ensuing political struggle was hard-fought and prolonged.

The strongest advocacy for this legislation came from the archaeological community led by the AIA, which in December 1970 expressed wholehearted support for the Convention and urged speedy ratification. During the implementation debate from 1976 onwards, archaeologists expressed great concern about what they perceived as attempts to weaken the legislation and delay its passage. They argued that American dealers and collectors supported and sponsored looting and destruction of archaeological sites in poor countries all over the world, and that action against antiquities looting was in the interest of mankind, since antiquities are a vanishing resource which is a part of the *world's* cultural heritage. They maintained that implementation of the Convention was in the interest of knowledge, as it would curb the loss of context and historical information resulting from illegal excavation and removal of antiquities. Archaeologists called upon the United States to provide leadership on the antiquities problem and encourage the Europeans to follow suit.

Opposition focused on implementation of the Convention's Article 9 by authorizing import restrictions on archaeological material through bilateral agreements between the United States and source countries. It was argued that the legislation would award DOS a "blank check" that could be used to embargo importation into the United States of almost all antiquities. The trade maintained that giving the State Department such broad authority, was not required either by the spirit or the letter of the UNESCO Convention and expressed concerns that DOS, for diplomatic expediency, would use its powers to the benefit of foreign countries and detriment of the US art market. The proposed legislation required the Executive Branch, as a precondition for the conclusion of bilateral agreements with source countries, to reach certain findings through consultation with a panel of experts, but the trade was concerned that arriving at these findings would be ritualistic and pro forma. Since requirements for such findings were vague and could not be appealed to a court or overruled by Congress, they would not constitute any effective check on the State Department's broad discretion. In essence, neither side of the debate trusted the other.

Collectors opposed the implementing legislation, but did not organize to lobby Congress as a single voice and thus lacked an independent presence in the debate. They were represented by surrogates: museums, who acquire most of their antiquities as gifts or bequests from collectors; and the trade, from whom collectors purchase. Some individual collectors did send letters to Congress protesting the implementing legislation.

Although Article 9 of the Convention called for a “concerted international effort” in response to archaeological pillage, the implementing legislation contained no references to multilateral cooperation and dealt with action by the United States alone. At the time of the implementation debate in Congress, no major market country other than the United States had acceded to the Convention. The trade argued that by acting alone in imposing import restrictions, the United States would not make any meaningful contribution to the preservation of archaeology and would not significantly assist in curbing plunder in foreign countries. Instead, unilateral import restrictions would divert antiquities from the United States to other market countries.

Although the proposed legislation permitted importation of controlled antiquities with certain documentation, the trade regarded these requirements as being rigid and unrealistic, especially considering that failure to meet them would result in seizure by customs. It was felt that onerous documentation requirements and the draconian threat of seizure would completely shut down legitimate trade.

The trade viewed source countries as being responsible for destruction of their own cultural heritage by disregarding archaeology in favor of economic development. The UNESCO Convention would result in shifting responsibility and the onus of enforcement for protecting their heritage to the US, without cost to the source countries. This would be both unfair and ineffective, since only local policing could prevent looting. The trade also objected to hoarding of antiquities by source countries which refused to allow export even of repetitive material, although their museums were overflowing with poorly preserved objects in danger of being defaced or destroyed.

The American Association of Dealers in Ancient, Oriental and Primitive Art - hired DC law firm Arnold & Porter to represent them in the implementation debate and lobby on their behalf. James Fitzpatrick represented them from 1975 through the enactment of CPIA in 1983. The goal of this lobbying was to minimize interference with traditional free trade in the art market. The trade’s main objectives were: involving experts in making decisions on foreign countries’ requests for import restrictions, to give voice to the art community and to US cultural interests; insulating the decision making process from political considerations and, specifically, DOS influence; and making US action part of a multinational response to archaeological looting rather than a unilateral effort.

The trade additionally sought to toughen requirements for imposition of import restrictions, advocating language that would portray an embargo as an exceptional measure designed to meet exceptional circumstances. Any such action should require a specific finding that the looting is of an extraordinary and critical nature and that the source country had taken measures to protect its own cultural heritage. The trade also wanted powers of the Executive Branch to enter into bilateral agreements on import restrictions to expire after five year and for the agreements themselves to be limited in time. They sought as well to overturn the McClain decision, pointing out that enforcing

all-encompassing foreign ownership laws, as the McClain decision did, would undermine the legislation's purpose. The trade recommended that the NSPA be amended to exclude theft where ownership is based solely upon a declaration of national ownership of antiquities.

By characterizing implementation of the Convention as a moral issue in which archaeologists sought to save the cultural heritage of the world from the rapacity of greedy dealers and collectors, the archaeological community opened a serious breach in its relations with the trade and the collecting community. The trade pursued its goals via statements and letters to Congress from members of the American Association of Dealers in Ancient, Oriental and Primitive Art, the National Antique & Art Dealers Association of America and from individual dealers. The importance to museums of free trade in antiquities was emphasized. Senator Patrick Moynihan (D-NY), who served on the Senate Finance Committee and its Subcommittee on International Trade, became their main ally in the legislative process, as he was committed to the free flow of cultural property and had learned much about the issue as US ambassador to India. With Moynihan holding veto power over legislation detrimental to his constituency, the legislative process suffered repeated delays and ended only when the bill was revised to the trade's satisfaction. Senator Moynihan was, in fact, the chief architect of the final draft of the legislation.

The [Convention on Cultural Property Implementation Act](#) (19 U.S.C. § 2601 et seq. and Public Law 97-446) was enacted in 1983 and revised in 1987. It implements US response to the 1970 UNESCO Convention. Intended by Congress to subsequently define US cultural property importation policy, its operative provisions are:

Definitions

Objects of archaeological interest must be of cultural significance, at least two hundred and fifty years old, normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration. Objects of ethnological interest must be products of a tribal or nonindustrial society, whose characteristics, rarity, or contribution to knowledge of origins, development, or history are important to a people's cultural heritage.

Stolen Property

Article 7(b) was implemented by declaring that cultural property stolen from a party to the Convention may not be imported, if documented in the inventory of a foreign museum, religious or secular public monument, or similar institution.

Grounds for Article 9 Requests

Requests made to the US under article 9 must be accompanied by a written statement of known facts relating to matters about which qualifying determinations must be made.

Requirements for Executive Action

Action to implement Article 9 of the Convention requires that (after the President receives a request from another nation) he first determine that the cultural patrimony of that nation is in jeopardy from pillage of its archaeological or

ethnological materials; that the requestor has taken appropriate measures to protect cultural patrimony; that import restrictions would (if accompanied by restrictions by other nations) be of substantial benefit in deterring a serious situation of pillage; that less drastic remedies are not available; and that import restrictions are consistent with international interests in the interchange of cultural property for scientific, cultural, and educational purposes.

Authorization for Executive Action

The President (after these requirements are satisfied) is authorized to enter into a bilateral agreement for import restrictions with the requestor, or a multilateral agreement including other nations applying similar restrictions. He should strive to obtain commitment of the requesting nation to allow exchange of archaeological and ethnological materials under circumstances not jeopardizing its cultural patrimony. Import restrictions agreements may not last more than five years after their effective date, and may be extended for an additional period of not more than five years if the President determines that factors justifying the agreement still pertain, and no cause for suspension exists.

Restrictions on entering into agreements

The President may not enter into an import restriction agreement unless restrictions will be applied in concert with similar restrictions by other nations having significant import trade in such material. He may, however, enter into an agreement after determining that a nation having significant import trade in such material is not implementing (nor is likely to implement) similar restrictions, provided that those restrictions would not be essential to deter a serious situation of pillage, and that US import restrictions (in concert with similar restrictions by other nations having a significant import trade in such material) would be of substantial benefit in deterring a serious situation of pillage.

Suspension of import restrictions

If the President determines that several parties to the agreement having significant import trade in the material described have not enacted similar restrictions, or do not implement their restrictions to substantially deter a serious situation of pillage, the President shall suspend import restrictions until these nations take appropriate corrective action.

Cultural Property Advisory Committee (CPAC)

An advisory Committee is established, in which two members represent interests of museums; three are expert in archaeology, anthropology, ethnology, or related fields; three are experts in international sale of archaeological, ethnological, and other cultural property; and three represent interests of the general public. Appointments shall insure fair representation of public and private sector interests in international exchange of archaeological and ethnological materials, and interests of regional and local institutions and museums. Phased initial

appointments of one, two and three year terms are specified, after which appointments will be for three-year terms and members may be reappointed.

The CPAC is charged with investigating and reviewing Article 9 requests, reporting findings as to nations with significant import trade in relevant material, and stating recommendations whether requested restrictions should be granted. If a request declares an emergency, the CPAC must report whether emergency action should be implemented, or state its reasons for not agreeing that an emergency exists. The CPAC is also charged with reviewing and reporting on requests to extend an existing agreement, and continuing review of agreements and emergency actions. If the CPAC finds cause for suspending restrictions, that action taken does not achieve its purpose, or changes are required to fully implement US obligations under the Convention, it may recommend suspending restrictions or taking measures to improve effectiveness. Copies of each report shall be sent to Congress and the President. A disagreeing member may append reasons for disagreement, to be considered part of the report.

Import Restrictions

Archaeological or ethnological material exported after being designated as restricted may not be imported, unless the nation of origin issues a certificate or other documentation that such exportation did not violate its laws.

Procedures

When an Article 9 request is received, or when the President proposes to extend an agreement, he shall publish notification in the Federal Register and submit appropriate information (including information about implementation of emergency action) to the CPAC and in acting on the matter, shall consider views and recommendations contained in any CPAC report received within 150 days from his submission. Customs procedures for impounding and confiscating stolen cultural property and designated restricted items without required documentation are defined. Restricted items may be seized if required documentation is not submitted within 90 days. Disposition of confiscated material to the nation involved is ordered and expenses for return and just compensation (should valid title to stolen property or its bona fide acquisition without knowledge of the theft be established by the claimant) are provided for.

Exemptions

Foreign cultural property (otherwise subject to seizure) is exempt:

- if imported for temporary exhibition or display (when immune under previous law);
- if held in the US for three consecutive years by a museum, monument or similar institution after acquisition in good faith without notice of unlawful import, under one of these conditions:
 - its acquisition was publicly reported by the institution, by a newspaper or regular periodical, or a special publication or catalog primarily describing such items;

it was exhibited to the public for at least one year during this period;
it was listed in a publicly available catalog for two years during this period;
it was within the US for at least ten consecutive years and publicly exhibited for at least five years;

-- if it was privately held within the US for at least ten consecutive years during which the nation concerned received (or should have received) fair notice of its presence within the US, or was within the US for at least twenty consecutive years and its possessor can prove acquisition without knowledge or reason to believe that it was imported in violation of law.

Administration of CPIA

The President's authority under the CPIA has been delegated to the State and Homeland Security departments by Executive Order. The Cultural Heritage Center, a DOS office that supports foreign affairs functions relating to protection and preservation of cultural heritage, administers U.S. responsibilities under: the 1970 UNESCO Convention; the Ambassadors Fund for Cultural Preservation; the Iraq Cultural Heritage Initiative and special cultural heritage programs. Through the International Cultural Property Protection program, the Center implements the Cultural Property Implementation Act. Homeland Security, which includes Customs and Border Protection, is tasked with enforcement of import restrictions imposed by DOS.

D. STEALTH UNIDROIT

The 1995 UNIDROIT Convention on the Return of Stolen or Illegally Exported Cultural Objects attempted to address perceived weaknesses in the 1970 UNESCO Convention through provisions requiring national courts to enforce foreign export control laws, which (contrary to longstanding U.S. legal practice) would have followed in the United States had the U.S. ratified and implemented the UNIDROIT convention. However, in response to opposition from the U.S. museum, collector, and dealer community, the initiative to pursue ratification of the 1995 UNIDROIT Convention was effectively abandoned. This Convention received little support in nations having a significant trade in art objects and other cultural artifacts, and is today widely regarded as a failure. Its failure did not, however, result in objectives of the UNIDROIT Convention being abandoned.

In 1998 James F. Fitzpatrick pointed out that although the UNIDROIT Convention's effort to overtly require national courts to enforce foreign export control laws had not succeeded, that goal was still being pursued by other means available under the CPIA implementing the 1970 UNESCO Convention.⁷⁶ Fitzpatrick alleged in this incisive article that the United States Information Agency (USIA) was (as an *administrative*

⁷⁶ Fitzpatrick, James. "Stealth UNIDROIT: is USIA the villain? ", *International Law and Politics*, 1998, Vol. 31, p.47f.

matter under the CPIA) now attempting to effectively change U.S. law to enforce foreign export control laws, without ratification of the UNIDROIT Convention and in violation of the controlling U.S. law. He reviewed the history of the CPIA, observing that during the first fifteen years of its existence the statutory process had worked reasonably well.

A handful of nations presented requests for U.S. assistance during this period in order to respond to specific and documented instances of pillage. Emergency import restrictions were then imposed in response to specific instances of looting in El Salvador, Bolivia, Peru, Guatemala, and Mali. These USIA actions leading to bilateral agreements with source countries were widely accepted. However, this changed after two 1997 USIA decisions, regarding Canada and Peru's petitions for relief, seemed to breach every fundamental principle and provision of the CPIA. Fitzpatrick wrote a comprehensive, detailed analysis stating reasons for belief that these two administrative decisions blatantly contravened statutory requirements of the CPIA. Following are some clips from his conclusion, which should be read in its entirety:

“The above analysis demonstrates that the carefully calibrated process developed under the CPIA to justify embargoes on the basis of evidence of specific looting, as part of a concerted international response, has been completely compromised. The question remains—how did the system fall apart?

“One factor is the one-sidedness of the Advisory Committee proceedings. ... the attitude of the Advisory Committee staff has supported increasing restrictions on U.S. imports. It is ... documented that the Canadian request was prompted by the USIA approaching Canadian officials and urging them to request U.S. action in closing U.S. borders to Canadian cultural objects. The Committee received substantially a one-sided set of views. ... seven of the eight experts called ... in Peru's petition were anthropologists. No dealer's views were heard. In the Canadian proceeding, a group of dealers was able to make a presentation ... in the dark because the Committee released no information regarding which goods were covered by the Canadian request ... and the purported evidence of looting ... there is an unmistakable indication that the State Department is wielding its authority to force embargoes on political, rather than cultural property, grounds.

“There is a strong suggestion that politics spurred the adoption of the Canadian agreement. ... in 1997, USIA officials extended the U.S. embargo to three categories of objects where the Advisory Committee in 1988 found there was no evidence of looting. There is evidence to suggest that the USIA resisted pressure from the State Department to go even further ... USIA, in its eagerness to respond to foreign interests rather than U.S. interests which are supposed to be central under the CPIA, has simply disregarded the obligation to find evidence of pillage and looting before imposing an embargo ... USIA actions suggest that historical evidence is enough; that a desire to enforce a foreign nation's export control laws is enough; that any instance of looting in one site is leveraged into a nationwide ban; and that a “multinational response” is somehow materialized, when, in fact, no one has joined the U.S. embargo.

“The CPIA is gradually, but distinctly, coming apart at the seams. The Canadian and Peruvian agreements reflect that the CPIA has become an instrument to

enforce foreign export control laws. ... that was the goal of UNIDROIT which was so overwhelmingly and vigorously rejected by the entire U.S. museum, dealer, and collector community ... that the Government ... abandoned its efforts to seek the Treaty's Congressional ratification. Now, by disregarding the commands of the CPIA, the USIA is instituting stealth UNIDROIT and fundamentally changing U.S. policy. It is time for Congress or the courts to step in to hold the USIA to the terms of the CPIA if the USIA fails to return to the letter of the law voluntarily."⁷⁷

Ironically, ancient coin collectors make the same claims today and have brought these issues before a Federal Court.⁷⁸ A transfer of the Cultural Heritage Center and the Cultural Property Advisory Committee from USIA to the State Department's Bureau of Educational and Cultural Affairs did nothing to diminish the controversial bureaucratic activities that many in the cultural property arena had complained about. Investigative journalist Steven Vincent followed up on the "stealth" theme raised by Fitzpatrick. Inspired by what he saw as the secret, unobtrusive nature of bureaucratic behind-the-scenes activities, Vincent's highly critical exposé compared the far-reaching influence of Cultural Heritage Center administrators upon U.S. cultural property policy to that of the stealthy F-117 Nighthawk Fighter.⁷⁹ New York columnist Nina Teicholz was equally critical of CPAC, claiming that the committee's long time executive director "is a fierce advocate of the prevailing archaeologist position that any private market for antiquities is unconscionable. According to this view, all such objects should be publicly owned."⁸⁰

E. AMERICAN CASE LAW

U.S. vs. McClain (1979)

This appellate court decision affirmed confiscation of freshly excavated pre-Columbian artifacts and prosecution of several individuals for engaging in a scheme to smuggle the plundered objects into the U.S. for resale. The Court held that knowing importation of cultural property subject to a clear declaration of national ownership by a source country, in this case Mexico, was sufficient basis for criminal prosecution under the National Stolen Property Act. ***McClain*** however did emphasize a need for strict establishment of ***scienter***, the legal doctrine of demonstrating deliberate or knowing violation of the law, and the high burden of proof this imposes on the prosecution. ***McClain*** was widely criticized as a radical departure from U.S. common law, accepting previously unrecognized interpretations of international law. It has been charged that ***McClain*** has in effect delegated decisions on banning importation of certain art objects into the U.S. to

⁷⁷ *ibid.* p.75

⁷⁸ Ancient Coin Collectors Guild vs. U.S. Customs and Border Protection et al., United States District Court for the District of Maryland, 2010, Case 1:10-cv-00322-CCB.

⁷⁹ Vincent, Steven. "Stealth Fighter - The Secret War of Maria Kouroupas", *Art and Auction*, March 2002, p. 63

⁸⁰ Teicholz, Nina. "You Can't Bring Those Antiquities in Here", *Washington Post*, Outlook, December 24, 2000.

foreign governments, which need only declare national ownership of such objects to establish their illicit export as constituting theft under U.S. law.

During the lengthy legislative process resulting in enactment of the CPIA and ratification of the 1970 UNESCO Convention, both the State Department and Congress refused to accept the Secretariat draft's requirement that a mere legislative declaration of ownership would oblige signatories to return cultural property. The CPIA instead imposed specific requirements (as described above) to justify U.S. imposition of import restrictions, and a very restricted definition of "stolen" cultural property, which sharply conflicts with the interpretation reached in *McClain*. These limitations were judged essential to ensure that the U.S. would continue to exercise independent judgment about the need for, and scope of, import controls and that U.S. action would not automatically be dictated by sweeping declarations of national ownership and scientific, historical or cultural value made by other nations. While the CPIA included the UNESCO Convention's very far-ranging definitions of "cultural property," it added a key requirement that the U.S. may only impose restrictions concerning archaeologically significant or culturally important objects. Its language and legislative history make it clear that the intent of the CPIA was to extend U.S. cooperation only in a relatively few, narrowly defined circumstances that would preserve the widest possible international interchange of cultural property consistent with protecting important sites and retention of significant cultural heritage, whose pillage would jeopardize cultural patrimony.

The CPIA's definition of "stolen" cultural property extends only to those objects documented as stolen from the inventory of a museum, archaeological site or other cultural institution, which are accordingly made subject to forfeiture and return. Although the National Stolen Property Act does not define the term "stolen," *McClain* interprets that to include cultural property subject to a national declaration of ownership, whether or not it is possible to document actual loss of possession by a specific owner. This creates a means by which a foreign nation can claim that objects lacking documented provenance are "stolen," thereby evading the onus of applying for and securing import restrictions under the CPIA covering the specific type of objects involved. A careful, prudent and measured evaluation of requests for Article 9 restrictions became the essence of the compromise solution that CPIA reached to resolve the conflicting concerns of museums, collectors, the art trade, archaeologists and others concerned with preservation of cultural heritage into one comprehensive measure that could be enacted by Congress. It created a "safe harbor" within which cultural property imported by a museum or other cultural institution is not threatened by involuntary repatriation unless it can be shown to have been imported in violation of the CPIA, providing that it was published, cataloged or exhibited for specified periods. This "safe harbor" is only limited by exceptions in the cases of objects documented as stolen from inventory, or by membership in a class of designated materials subject to import restrictions, at the time they were brought into the U.S. in violation of those restrictions.

The irreconcilable conflict between *McClain* and the CPIA could not be resolved when the latter was enacted because the Senate Finance Committee, to which the CPIA was reported, lacked jurisdiction to amend a criminal statute. To address this omission, S. 605 was introduced shortly thereafter as a companion bill and necessary complement to the CPIA, to amend the National Stolen Property Act by deleting *McClain* as a cause of

action. Both Professor Bator, principal academic proponent of the CPIA, and Senator Daniel Moynihan, who had led the drafting of that legislation, testified before the Senate Judiciary Committee that passage of S. 605 was part of the understanding reached in 1983 by all concerned parties including the Departments of State and Justice, to speed passage of the CPIA. After S. 605 was introduced the State and Justice Departments however reneged on what Moynihan believed to have been their 1983 commitments, opposing the bill in order to retain the possibility of instituting *McClain* doctrine prosecutions in a limited number of flagrant cases. They testified that the strict *scienter* requirement of *McClain* would prevent abuse of governmental discretion and destruction of the regulatory structure created by the CPIA. S. 605 accordingly failed to pass.

The DOS role in defeating S. 605 has also tended to destroy trust. Through that reneging, and through biased management of CPIA enforcement, the collecting community and art trade have been given reason to believe they have been “double-crossed” by the State Department bureaucracy, and that fears voiced at the time that CPIA was enacted - that DOS could not be trusted to fairly administer U.S. implementation of the UNESCO Convention - are perhaps being realized.

The failure of S. 605 and continued survival of *McClain* cannot be taken to represent definitive Congressional intent, but should instead be attributed to the legal accident of the Senate Finance Committee’s lack of jurisdiction to amend the NSPA. Professor Bator passed away in 1989 and Senator Moynihan declined to seek reelection in 2000, passing away in 2003. The CPIA is now orphaned, lacking an influential academic or legislative champion who would have interest in promoting legislation to resolve its fatal flaw: the irreconcilable, unresolved conflict between it and *McClain*.

U.S. vs. Antique Platter of Gold [Steinhardt], (1997)⁸¹

Michael Steinhardt attempted to import the Phiale, a purportedly antique gold platter, which was seized and ordered to be forfeited on grounds that it was Italian cultural patrimony and therefore subject to the NSPA under *McClain*. Customs Directive 5230-15 (1991) titled “Detention and Seizure of Cultural Property” summarizes Customs Service policies and procedures regarding cultural property. *Inter alia* it advises agents that they have authority to detain and seize cultural property under both the CPIA and the NSPA as interpreted by *McClain*. This was the basis for the *Steinhardt* appellate decision holding that a misstatement in the “country of origin” box on a Customs form filed when the objects were imported was material to integrity of the Customs process. The District Court held that false statements on customs entry forms regarding the value (Steinhardt paid more than \$1,000,000 but declared a value of \$250,000) and its country of origin (declared to be Switzerland rather than Italy), taken with the Phiale’s status as stolen property under Italian law, rendered its importation illegal. The Court of Appeals held that false statements on Customs forms were material, affirming the decision. While this did not address the NSPA holding of the District Court, it implicates *McClain* in a manner that may have lasting adverse consequences for licit markets for cultural property. *Steinhardt* implies that Customs has license to seize cultural property imported

⁸¹ <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=2nd&navby=docket&no=976319>

without an export permit from any nation with a cultural patrimony law, even if the country of origin is correctly stated, because the country of origin will always have a claim based upon *McClain*. Broadly construed, this may constitute a “blank check” to enforce foreign patrimony laws through Customs decisions.

Leading museum associations filed an *amicus curiae* brief opposing the *McClain*-based NSPA claim made in *Steinhardt*. This brief argued that *McClain* contravenes U.S. common law and public policy as enacted in the CPIA, emphasized the long-standing U.S. public interest in promoting international exchange of cultural property, and denounced harm to the public interest caused by the effect of *McClain* upon the licit market. It also objected to *Steinhardt* applying a civil forfeiture law in connection with the NSPA as a dangerous relaxation of the *scienter* requirement in *McClain*. This poses a dangerous threat to antiquities collectors and exhibitors, by establishing a Customs doctrine of *McClain* without any restriction of *scienter*, potentially allowing individual customs agents authority to reject importation of items otherwise lawful under the CPIA.

U.S. vs. Schultz (2003)⁸²

In 2001, Frederick Schultz was indicted and convicted for conspiring to deal in smuggled Egyptian antiquities under the doctrine of *McClain*, and the U.S. Court of Appeals subsequently affirmed his conviction. Both the trial and appellate courts cited language in the Senate Report to the effect that the CPIA does not preempt other rights or remedies available to a foreign government under Federal or state law. Taken out of its historical and legislative context, this “no-preemption” language was taken by the courts to imply that Congress had intended *McClain* to survive after passage of the CPIA, despite the far more logical explanation that Congress had intended that the NSPA would only continue to apply in cases brought under Article 7 of the Convention, where property had been stolen from actual possession. Schultz was not convicted for dealing in objects thus stolen from known archaeological sites or institutional inventory, but for conspiring to deal in objects for which Egypt had claimed non-possessory title by its 1983 patrimony law.

Schultz has serious implications for legitimate owners and importers of antiquities and other cultural property, and by affirming *McClain* in direct conflict with congressional policy, constituted an unqualified victory for opponents of private collecting of antiquities and other cultural objects. There are now two irreconcilably conflicting and antithetical approaches to control of the importation of cultural objects – that intended by Congress, and that which the courts have decided despite the fact that their interpretation criminalizes action Congress expressly intended to permit. *Schultz* has cast a cloud over title to every cultural object otherwise lawfully imported, and this classic example of judicial nullification now awaits legislative challenge by an organized constituency.

NATIONALIST CULTURAL PROPERTY LAWS

⁸² Gerstenblith, Patty. “United States v. Schultz”, online at <http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue10/gerstenblith.htm>

The laws pertaining to cultural property in nationalist nations are typically designed to assure universal state ownership and control. Two cases in point, which generally reflect the laws in other nationalist countries will be presented here.

Greece

The Greek Antiquities Law of 1932 and 1950 declares that all antiquities on land and sea are the property of the State, which has the right to investigate and preserve them. Antiquities are broadly defined as "all works, without exception, of architecture, sculpture, graphic art and any art in general and all other works and equipment in whatever material, including precious stones and coins." The state antiquities service is the Greek Archaeological Service.⁸³ There is also a non-governmental Archaeological Society. Anyone finding antiquities or discovering them fortuitously must report the discovery to the authority; there are penalties for not doing so.

Antiquities may be freely imported (but must be declared); export can only be made after a decision of the Antiquities Council, and illegal export is punishable by a fine and up to five years imprisonment. Effectively, there is no export of antiquities. Private collections of antiquities are allowed, but a permit is required from the Ministry of Education. Collectors must keep a detailed inventory and grant access to the Ministry for study, photography, etc.

All excavations of archaeological sites must be authorized by permit. Foreign schools are permitted three annual excavation permits. Otherwise the State may carry out excavations on national, municipal, religious, and private property, but must pay fair compensation to owners. Illegal excavations (including looting) may bring a prison term of up to two years as well as a monetary fine. Intentional destruction or damage to antiquities carries a penalty of up to five years in prison and a fine.

Sales of antiquities are strictly regulated. A permit is required for dealers, who are under the authority of the archaeological authorities. Dealers must submit a monthly list of antiquities acquired by them and offered for sale. The State has the right of preemption in any sale of antiquities in the country. The Ministry must approve sales from private collections. Despite its long tradition of legal protection and professional archaeology, dating back to the founding of the Greek Republic, the country is plagued by looting and smuggling of antiquities, and sites are regularly threatened by development and agriculture.

Egypt

Egypt has recently adopted a draconian new antiquities amending the 1983 antiquities law to introduce stiffer punishments for theft and smuggling of relics while ending partage and granting patent rights to Egypt's antiquities council.⁸⁴ The new regime requires Egyptians who have antiquities to report their possessions to the Supreme

⁸³ http://www.indiana.edu/~arch/saa/matrix/ael/ael_mod09.htm

⁸⁴ El-Aref, Nevine. "Antiquities law: Egypt tightens penalties", *Egyptology News*, February 5, 2010, <http://egyptology.blogspot.com/2010/02/antiquities-law-egypt-tightens.html> <http://egyptology.blogspot.com/2010/02/antiquities-law-egypt-tightens.html>

Council of Antiquities in six months. Sale of antiquities is still banned. These relics can in the future only be given as a gift with the council's authorization. They may also be passed on as part of an inheritance. The new law precludes sale of antiques and heirlooms, increases prison sentences for smuggling artifacts out of Egypt to 15 years imprisonment and a £1 million fine. The penalty for stealing artifacts has been doubled to 10 years. The new law also increases punishment for tampering with antiquity sites to five years in jail and a new provision gives patent rights to the antiquities council on precise replicas of antiquities certified by the council. The amendments were passed following a stormy debate in Parliament, after it was proposed that the sale of some artifacts be allowed in Egypt, following the examples of Italy and France. The Culture Minister and head of the Antiquities Council both threatened to resign if Parliament accepted that proposal.

Like Greece, Egypt is plagued by the looting and smuggling of antiquities and pervasive official corruption is a very serious obstacle to reform. There have been many instances of "insider theft" and other misconduct such as involvement in smuggling, by those responsible for care of Egyptian antiquities and cultural treasures. The increased severity of punishments specified in the new law reflects growing public and official outrage at such abuses. Nothing in this new law however, could conceivably match either the celerity or severity of punishments inflicted upon malefactors caught looting monuments and portable antiquities in ancient times. Punishment alone did not suffice to prevent looting then and it seems unlikely that stiffening this repressive approach will succeed now.

Failure of Nationalist Laws to reach the "Man in the Street"

Nationalists often describe the compulsory transfer of antiquities and other cultural artifacts to State and institutional custody in glowing terms, suggesting that these cultural assets thereby "belong to everyone". What actually happens, in most cases, is that these objects become inaccessible to the public and to many, if not most, of those who would be interested in studying them. They are placed under the exclusive management of specialists who rigorously control access and have been known to intentionally prevent other scholars from being able to study them. A well-known example of scholarly exclusion was that of the Dead Sea Scrolls, discovered in the Qumran caves east of Jerusalem in 1947. For more than 40 years a small coterie of scholars established a stranglehold on access to these scrolls, which provide important evidence of contemporary connections between early Christianity, the Essene Qumran community and the Zealot defenders of the fortress of Masada.

Archaeologists have traditionally had to compete for grants and other forms of funding for fieldwork, which has encouraged the practice of keeping new discoveries secret until (like treasure hunters) their discoverers could arrange the resources necessary to carry out a full investigation. This is quite natural (although self-interested) but hardly in the best interests of science, and contrasts sharply with practice in physical sciences where new discoveries are usually announced as soon as possible—often summarized in brief letters before publication *in extenso*—so that they may first be examined and perhaps confirmed or refuted by other scholars.

Control of information is also exercised by suppressing publication, a serious issue since many archaeologists fail to publish results of their investigations in a timely manner and all too often, they are never published at all. One example of an important discovery delayed in this manner is that of Cretan Linear B, a script for which primary physical evidence resides on tablets discovered by Sir Arthur Evans at Knossos in 1900. Although Evans began publication of this discovery, only a very incomplete preliminary discussion of symbols was provided in volume I of *Scripta Minoa* (1909). The tablets themselves were not published, being kept at the museum at Irakleion (from which many eventually disappeared). After Evans died the remaining tablets were studied by others, eventually being deciphered by gifted amateur scholar Michael Ventris - who discovered in 1952 that Linear B was the written form of Mycenaean Greek – just before their long-delayed publication in *Scripta Minoa II*. The consequence of repressing access to research data is that it is not available to the public for broad general educational purposes, or to independent scholars who are at some institutions viewed with scorn or suspicion. In these quarters, access is restricted to a meritocracy of those who have “professional” qualifications, such as curators, archaeologists and academics. Public displays are by their nature selective and tend to harmonize with themes the institution wishes to emphasize. It is inescapable that they will represent only a small fraction of the portable antiquities within the collection.

Portable antiquities incarcerated out of public view in museums become *incommunicado*. They cannot speak. They have no way to tell the “man in the street” or his family about the past, or spark their interest in learning more about the past. On the other hand, a common portable antiquity such as an ancient coin actually held in one’s hand has a very powerful voice and is able to communicate a desire to learn more about its origins, how it was used and what it meant to those who used it. That is why seriously collecting ancient coins is utterly unlike collecting modern coins, for it becomes the beginning of a lifelong learning experience in the course of which one is very likely to take an interest in ancient history, ancient languages and perhaps even in archaeology.

Destruction or Intentional Concealment of Antiquities

A significant problem in many source countries is intentional destruction or concealment of antiquities and archaeological discoveries by their finders, who fear consequences that would follow from reporting such discoveries as required by law. All too often, such concerns appear to be well founded. It is (for example) sometimes possible that a discoverer may unwittingly become liable for criminal penalties without having ever intended any violation of the law. More commonly, inconvenience and even economic hardship result when a discovery is made that involves carrying out an archaeological investigation or an excavation. The site of such a discovery is generally secured and made inaccessible for normal use for an extended period (often for years), and may eventually be declared to be an archaeological site, resulting in its expropriation or in significant restrictions on its use. Even when no permanent restriction on land use is involved, significant delays are likely, which may have serious consequences when something ancient is discovered during a construction project.

In many nations with an ancient past, it is almost impossible to do anything of importance in agriculture or construction without somehow “disturbing the archaeological record,” as a purist might put it. The adverse effects of the plough upon archaeology are well documented, many archaeological sites and artifacts having suffered significant damage from tilling of fields. When land not previously tilled is brought into agricultural use, as when irrigation becomes available in an area formerly too arid for cultivation, damage can result from buried objects and elements of structures being subjected to moisture and chemical changes, in addition to mechanical disturbance during cultivation.

Digging wells and excavations for cellars and other types of foundations has always been a common source of antiquities discoveries. In 1709 a well dug in the Vesuvian residence of the Prince d’Elboeuf led to discovery of the theatre of Herculaneum. Workmen digging foundations of a summer palace for Charles of Bourbon, King of Naples, discovered the ruins of Pompeii in 1738. Considering that no less a personality than Italy’s Prime Minister Silvio Berlusconi has allegedly failed to report discovery of 30 ancient Phoenician tombs (at his Sardinian villa) as required by law,⁸⁵ it should hardly be surprising if the average Italian citizen pays less scrupulous attention to antiquities laws than archaeologists would desire, particularly when unwelcome discovery of a possible ancient site or artifact might adversely affect personal interests.

THE ANCIENT COIN COLLECTORS GUILD

The Ancient Coin Collectors Guild, a non-profit organization chartered in the State of Missouri, USA, was formed in 2004 to promote the free and independent collecting of coins from antiquity.⁸⁶ The guild is comprised of collectors and numismatic professionals who care passionately about preserving, studying and displaying ancient coins from all cultures. Its primary aim is to provide a voice for ancient coin collectors on issues that threaten the hobby. This is accomplished through education, political action and consumer protection. The ACCG is governed by a seven member Board of Directors, nominated and elected by the general membership, and has no paid employees. As its name and bylaws imply, the guild is a collector organization, not a trade lobby. There are no full-time dealers in coins serving on the Board, though several of the members are associated in some way with publishing or professional services to the hobby and members of the trade. More than 80% of the general membership of the guild consists of private collectors. The Affiliate Members of the guild number 21 independent organizations and constitute an extended membership of more than 5,000 collectors. The founding of this organization was a grass roots response to the perceived threat from anti-collecting advocates that emerged in America over the past two decades and to the

⁸⁵ Hooper, John. “Berlusconi digs himself a bigger hole and claims he found Phoenician tombs”, Guardian News and Media Ltd., online at:

<http://www.guardian.co.uk/world/2009/jul/24/silvio-berlusconi-tapes-archaeological-tombs>

⁸⁶ <http://accg.us>

measurable threat of adverse legislation and administrative government actions during that period. Philosophically, the guild is global in perspective, yet respects the right of every nation to impose and enforce cultural property laws within their limits of jurisdiction. The guild has adopted a code of ethics that includes the following points:

1. Coin Collectors and Sellers will not knowingly purchase coins illegally removed from scheduled archaeological sites or stolen from museum or personal collections, and will comply with all cultural property laws of their own country.
2. Coin Collectors and Sellers will protect, preserve and share knowledge about coins in their collections.
3. Coin Sellers will not knowingly sell modern forgeries of ancient coins, and all ancient counterfeits or Renaissance type copies will be clearly identified as such.
4. Coin Sellers will disclose all known defects, including tooling, re-engraving or reconstruction of coins they sell.
5. Coin Sellers will not misrepresent the value of coins they buy or sell.

Legislative Lobbying

The ACCG has responded to legislative initiatives in both the U.S. Senate and the House of Representatives. This response has come in the form of direct contact with elected officials and grass roots lobbying through member letter writing campaigns. In one case, an ACCG sponsored resolution calling for protection of collector rights and opposition to import restrictions was endorsed by the state convention of a major political party. Since the founding of ACCG, several attempts at legislation have failed in committee and one temporary emergency measure that was passed into law has since expired. There is no legislation related to controls over ancient coins pending before the U.S. legislature at this time.

Bureaucratic Oversight

American government is divided into three independent and theoretically equal branches that are designed to serve as a check and balance system to assure justice and proper government under the U.S. Constitution. The Legislative Branch creates the laws that govern both the American people and the governmental agencies that serve the people. The Administrative Branch enforces these laws and creates mechanisms for their proper administration. The Judicial Branch determines whether these laws are Constitutional and whether they have been violated either in their compliance or their administration. When a citizen of the United States perceives that government has not acted in accordance with the letter or intent of a law that citizen can present a complaint to the proper court for hearing and deliberation. The ACCG has done precisely that in a lawsuit charging that DOS failed to comply with provisions of the Freedom of Information Act by not acting on numerous requests for information formally submitted by the ACCG and its co-plaintiffs the International Association of Professional Numismatists and the Professional Numismatists Guild. This lawsuit is currently before U.S. Appellate Court

for the District of Columbia. In a recently filed case, the ACCG has initiated a complaint against the U.S. Customs and Border Protection Agency and the U.S. State Department charging that the decision to impose import restrictions on ancient coins from Cyprus and China was arbitrary and capricious and therefore invalid. The basis for these legal challenges is a belief among cultural property internationalists, specifically ancient coin collectors, that the Cultural Heritage Center is biased toward the ideology of cultural property nationalists. This would, of course, be viewed as improper in a democratic form of government. In 2009, the ACCG imported—for the purpose of seizure—ancient coins from Cyprus and China which had been restricted from importation by U.S. State Department mandate. This launched a test case, which will challenge the underlying premise of the restrictions. The case is presently before the U.S. District Court in Baltimore, Maryland.

Educational Initiatives

The ACCG supports youth educational programs through Ancient Coins for Education (ACE) one of its Affiliate Members. ACE promotes creative activities such as Ancient Coin Museums and Archaeological Simulation projects, encouraging students' interest in ancient history. Its motto is: "Pone historiam in manus discipulorum tuorum" - Put History into the hands of your students. A member of the ACE Board of Directors serves on the ACCG Education and Youth Programs Task Force and the ACCG funds an annual grant for professionally designed educational programs that incorporate genuine ancient coins into classroom activities. Based on the recognition that learning styles vary from person to person, kinesthetic or haptic learning is widely acknowledged as an effective complement to visual and auditory learning. This process, which involves a physical activity, has been shown to be effective in classroom environments⁸⁷, museums⁸⁸ and in independent learning scenarios. One study shows that learning through *moving, touching and doing* constitutes 37% of learning in general. By comparison, visual learning constitutes 29% and auditory learning 34%.⁸⁹ The 2010 – 2011 academic year will be ACE's 10th consecutive year of operation. In that time, ACE programs have reached well over 20,000 students directly and many more of the public through their families and friends, school exhibits, etc. There are students, teachers, professors, and homeschoolers in the ACE community—college level to elementary level—all using coins in their classrooms and sharing them with their schools and communities. ACE collaborates with Universities like William and Mary who run several coin programs each year for children. They have presented and exhibited at state educational venues like the Coins4Kids program in Pennsylvania and a similar new program in Virginia. They have presented teacher workshops in bookstores to promote coins as educational tools. In 2009, ACE collaborated with state, local, and national Classics groups for a presentation

⁸⁷ Dunn, R, & Dunn, K (1978). *Teaching students through their individual learning styles: A practical approach*. Reston, VA: Reston Publishing Company.

⁸⁸ Borun, Minda (2002). "Object-based learning and family groups", in Scott G. Paris (ed.), *Perspectives on Object-Centered Learning in Museums*, pp. 245-250. Mahwah, NJ: Lawrence Erlbaum Associates.

⁸⁹ Data compiled by Specific Diagnostic Studies, Rockville, MD published at <http://www.thelearningweb.net/chapter03/page130.html>

at the Carnegie Museum of Art in Pittsburgh, PA as part of a teacher workshop to show connections across the curriculum. One teacher in California has been awarded a grant to produce an ancient coin related exhibit titled “Adventures of the Mind” at a local Art Museum. Teachers across the country are enthusiastic and excited by the results that ACE programs have produced. One award-winning third grade teacher in Pittsburgh, Pennsylvania, Zee Ann Poerio, serves as a member of the ACE Board of Directors, the ACCG Youth and Education Programs Task Force and is chair of the Excellence Through Classics standing committee of the American Classical League. In support of these programs, ACCG also enlists volunteer mentors who visit schools or donate coins and funding for special contests and promotions. Collectors are, by their very nature, tactile creatures and a natural fit for “hands on” classroom activities. While teachers rave about the results of this program, ACE and its supporters have drawn sharp criticism from some archaeologists who unfortunately see the program as a usurpation of their academic prerogative to educate and a proselytizing of children for commercial interests.⁹⁰ That these critics *do not* educate the general public, and certainly would not interact with an ACE mentor, is disappointing.

Unlike the participating ACE schools, American institutions of higher learning virtually ignore numismatics. There are no university programs in the United States leading to a degree in ancient numismatics, and very few course offerings in the field of numismatics at any level. The few notable exceptions stem from the initiatives of private collectors, often teaching in another discipline, who develop a side course in some numismatic area or volunteer their time to introduce numismatics into the classroom in the form of guest lectures.⁹¹ Many private collectors have given of their time and expertise to enrich university programs by showing the importance of ancient numismatics in the study of Social Sciences. For example, Mr. David Kellogg, from Fayetteville, NY, has created a series of guest presentations for classes at Colgate University. Dr. Scott Rottinghaus, an award winning Young Numismatist and now a successful M.D., has delivered several lectures about ancient coins to Latin and Greek classes, as well as to Honors Seminars, at Kansas State University. Rev. Gary Waddingham, of Billings, Montana, has given lectures at a local Community College. Wayne G. Sayles has lectured about ancient coins at Classics and Art History seminars at the University of Wisconsin-Madison. Similar lectures by private collectors have been delivered at Transylvania University in Lexington, KY; Clark University, Worcester, MA; Marshall University in Huntington, WV; Troy State University in Troy, AL; St. Joseph's University in Philadelphia, PA; University of Buffalo in Buffalo, NY; Villanova University in Villanova, PA; Ashland

⁹⁰ University of Missouri PhD candidate Nathan Elkins charged that, “...the [ACE] program’s practices directly sponsor criminal activities in source countries such as Bulgaria, and the destruction of archaeological and cultural heritage.” (Elkins, Nathan T. “Treasure Hunting 101 in America’s Classrooms”, *Journal of Field Archaeological* 34, 2009, p. 487.

⁹¹ At the University of Texas - Austin, in an innovative program to reduce the intimidation of a large campus, Professor David T. Allen teaches a freshman seminar titled Introductory Coin Collecting. Dr. Allen normally teaches Chemical Engineering, but he is a private collector of ancient coins and shares his love of the past with students having a variety of interests.

University in Ashland, OH; Southern Utah University at Cedar City, UT and many others.

The nationalist approach to incarcerating cultural property isolates nearly everyone from history and makes it difficult for private individuals to communicate hands-on knowledge of history to others, especially young people. A Turkish collector described this sort of condition in a 2004 letter intended for the U.S. Cultural Property Advisory Committee:

“In my country, collecting ancients is a privilege because the right to own them is restricted. I am fortunate to have a license but the number of collectors is very limited. As a result nobody knows anything about ancient coins including archaeologist[s] because it is forbidden to touch them without license. They are not known and therefore they are not appreciated, that is why the sites are looted and everything found [is] smuggled. Even though the country provides a very considerable amount of material to the archaeologists and numismatists all around the world, the number of Turkish publications is very few.

This proves that limitations and prohibitions don't help solve the problems all the time. I have always envied my collector friends in the U.S. because they can freely buy, sell and carry around their coins. They do a lot of research and the information-knowledge spreads, which enhances ... public education ... something, I think, any administration-government would appreciate but not restrict.

For years, I have owned coins with a license but I always have to keep them in a safe in my house. I don't have the right to take even one coin from my collection to a presentation. I give lectures on ancient coins in schools and other places where I always have to take slides and photographs and I can surely say that slides and photographs don't take the place of real coins.

My only request is that you don't restrict ... freedom of private ownership of ancient coins because of this or that reason, which will restrict your society in return, as it has been doing in my country.”

The best chance that society has to preserve cultural heritage and to increase our understanding of the past is to engage as many people as possible in the process. Repressive laws that deny private ownership and personal rights may serve nationalist political objectives, but they are counterproductive in terms of preserving the very objects that they purport to protect. The cloistering of history and its remnants is essentially a reversion to feudal thinking where knowledge was considered a weapon. Public participation in study of the past and preservation of its artifacts is essential not only to the well being of society but to the success of scholarship on a broad range of topics as well. Preservationist efforts must be inclusive of differing perspectives and programs should be results based rather than ideology based. Preservation of the past is too important to be driven by parochial interests.

A VIABLE MODEL: TREASURE ACT AND PAS⁹²

The Law of Treasure Trove

The concept of treasure trove in English law dates back to the time of Edward the Confessor (c. 1003/1004 – 1066). Under common law, treasure trove was defined as gold or silver in any form, whether coin, plate (gold or silver vessels or utensils) or bullion (a lump of gold or silver), which had been hidden and rediscovered, and which no person could prove he or she owned. To be treasure trove, an object had to be substantially – that is, more than 50% – gold or silver. This treatment derives from Roman law in which if a *thesaurus*, defined by Paulus as “an ancient deposit of money, of which no memory exists, so that it has no [known] present owner” was found on a person's own land or on sacred or religious land, the finder was entitled to keep it. In practice, the Roman legal definition of a *thesaurus* also included precious metal objects other than coin. However, if the treasure was found fortuitously (not by deliberate search) on another person's land, half went to the finder and half to the owner of the land - the emperor, the public treasury, the city, or some other proprietor. In medieval Europe the prince or king was ultimate owner of all lands, and his right to possess treasure trove became a common and quasi-international law in England, Germany, France, Spain and Denmark.

Under English common law, treasure trove had to be hidden with an intention to recover it later. If an object was simply lost or abandoned (for instance, scattered on the surface of the earth or in the sea), it either belonged to the first person that found it or the landowner according to legal principles concerning the finding of objects. For this reason, the objects found in 1939 at Sutton Hoo were determined not to be treasure trove – as the objects were part of a ship burial, there had been no intention to recover the buried objects subsequently. The Crown had a prerogative right to treasure trove, and if the circumstances under which an object was found raised a *prima facie* presumption that it had been hidden, it belonged to the Crown unless someone else could show a better title to it. The Crown could grant its right to treasure trove to any person in the form of a franchise.

It was the duty of the finder, and indeed of anyone who had acquired knowledge of the matter, to report the finding of a potential treasure trove to the coroner of the district. Concealing a find was a misdemeanor punishable with a fine and/or imprisonment. The coroner was required to hold an inquest with a jury to determine who were the finders or the persons suspected to be the finders. Where there had been an apparent concealment of treasure trove, the coroner's jury could investigate the title of the treasure to discover if it had been concealed from the supposed owner—but any such finding was not conclusive as the coroner generally had no jurisdiction to inquire into questions of title to the treasure between the Crown and any other claimant. If a person wished to assert title to the treasure, he or she had to bring separate court proceedings.

In the early 20th century, it became the practice of the Lords Commissioners of the Treasury to pay finders who fully and promptly reported discoveries of treasure troves (and handed them over to the proper authorities) the full antiquarian value of objects

⁹² <http://www.worcestercitymuseums.org.uk/archaeo/pant/tact.htm>

retained for national or other institutions such as museums. Objects not retained were returned to the finders.

Under the common law of Scotland, the law of treasure trove was (and remains) a specialized application of the rule governing lost, forgotten or abandoned objects: "that which belongs to nobody becomes our Lord the King's". The Crown in Scotland has a prerogative right to treasure trove as one of the "minor things of the King", i.e. property rights which the Crown may exercise as it pleases and may transfer to another party.

Throughout the ages, farmers, archaeologists and amateur treasure hunters have unearthed important treasures of immense historical, scientific and financial value. However, the strictness of the common law rules meant that such items were sometimes not treasure trove. The items risked being sold abroad, or were only saved for the nation by being purchased at a high price. Mention has already been made of the objects comprising the Sutton Hoo ship burial, which were not treasure trove as they had been interred without any intention to retrieve them. Their owner, Edith May Pretty, in a 1942 bequest, later presented the objects to the nation. In March 1973, a hoard of about 7,811 Roman coins was found buried in a field at Coleby in Lincolnshire. It was made up of *antoniniani* believed to have been minted between 253 and 281 A.D. The Court of Appeal of England and Wales held in the 1981 case of *Attorney-General of the Duchy of Lancaster v. G.E. Overton (Farms) Ltd.* that the hoard was not treasure trove as the coins did not have a substantial silver content. Thus, it belonged to the owner of the field and could not be retained by the BM.

Before the Treasure Act came into force only about 25 finds were declared Treasure Trove each year. The common law of treasure trove was not by any means a sufficient solution to disposition of all antique buried objects, and in practice it led to numerous problems. The small numbers of gold and silver objects reported and declared to be Treasure Trove indicated that many isolated finds were not being reported. There was an unresolved issue in cases of important buried treasures such as votive deposits, ship burials (e.g. *Sutton Hoo*) and the like, and (since only gold and silver objects qualified as Treasure Trove) discoveries such as coin hoards were often divided into two groups of objects receiving different dispositions.

Difficulties with the common law of treasure trove were recognized as long ago as 1858, when Lord Talbot de Malahide introduced an unsuccessful Private Member's Bill to reform the law. The main concern was that there was then very little financial incentive to report treasure discoveries, which were valued only as bullion rather than antiquarian objects. This was remedied in 1886 by a Treasury circular establishing ex gratia rewards, whereby the government began offering finds claimed as Treasure Trove to museums, and paying rewards to their finders.

During the 1970s, the introduction of metal detectors inexpensive enough for private individuals to acquire led to a large increase in finds of buried objects, making a better means of governing disposition of antique buried objects a matter of immediate urgency. In 1977 a Treasure Trove Reviewing Committee was established. The 1985 looting of a site at Wanborough in Surrey resulted in a large number of holes being dug by illicit detectorists who had found indications of buried coins. The police recovered about a thousand coins in all from the site, but it is believed that as many as nine thousand might

have been discovered. Prosecution of the individual found in possession of the largest group of coins failed, because the prosecution could not prove beyond reasonable doubt that the coins had been buried with the intention of recovery and were thus treasure trove. As a result, the Surrey Archaeological Society started a campaign for legal reform.

*The Treasure Act 1996*⁹³

After several years of discussions with stakeholders and especially with the Government, Lord Perth, a champion of Treasure reform, introduced his Bill into Parliament at the beginning of 1994 and announced it with a press conference at the BM. Initially the Government did not support this but after the first debate—in which all 11 speakers, representing the main parties, spoke in favour of it—the Government changed its position and agreed to back the bill. The Bill was a very modest reform, introduced against a background of close scrutiny, not to say opposition, from three very different interest groups.

One was metal detectorists, some 8,000 of whom are thought to be active in the UK. Although in most European countries, metal detecting is only allowed with a licence (usually only granted if part of an archaeological investigation) it is licit in the UK provided that one has permission from the landowner and carefully avoids scheduled archaeological sites.

Landowners concerned about extension of state ownership of their property were another focus of intense scrutiny. An earlier attempt at Treasure reform, the 1981 Abinger Bill, foundered after being rejected on grounds that it would make a fundamental change in the laws of property and in citizens' rights of ownership. Landowning organizations however supported the Treasure Bill because for the first time it gave landowners an interest in the Treasure reward, and also a right to be informed of finds.

Some archaeologists were critical because they felt the Bill did not go far enough. Holding that all finds of buried treasure should belong to the State, they argued for comprehensive portable antiquities legislation.

The Treasure Bill eventually passed through Parliament in 1996 when it was piloted through by a Member of Parliament, Sir Anthony Grant—a former Government Minister. It came into effect on 24 September 1997 following the passage of a second document, a Code of Practice, which set out the details of how it would work. It was extended in 2003 to include prehistoric base-metal deposits.

To remedy faults of the old treasure trove common law regime, the Treasure Act 1996 introduced a new scheme. Any treasure found on or after its effective date - regardless of circumstances in which it was deposited, even if it was lost or left with no intention of recovery - belongs to the Crown, subject to any prior interests or rights held by any franchisee of the Crown. The Secretary of State for Culture, Media and Sport may direct that any such treasure be transferred or disposed of, or that the Crown's title in it be disclaimed.

⁹³ http://www.opsi.gov.uk/Acts/acts1996/ukpga_19960024_en_1

The Act uses the term *treasure* instead of *treasure trove*; the latter term now being confined to objects found before the Act came into force. Objects falling within the following definition are "treasure" under the Act.⁹⁴

1. If the object is not a coin, it must be at least 300 years old and at least 10% precious metal (that is, gold or silver) by weight.
2. If the object is a coin, it must either be:
 - one of at least two coins in the same find which are at least 300 years old at that time and are at least 10% precious metal by weight; or
 - one of at least ten coins in the same find that are at least 300 years old at that time.
3. Any object at least 200 years old when found which belongs to a class of objects of outstanding historical, archaeological or cultural importance that has been designated as treasure by the Secretary of State. As of 2006, the following classes of objects had been so designated:
 - Any object, other than a coin, any part of which is base metal (that is, not gold or silver), which when found is one of at least two base metal objects in the same find which are of prehistoric date.
 - Any object, other than a coin, which is of prehistoric date, and any part of which is gold or silver.
4. Any object which would have been treasure trove if found before 24 September 1997.
5. Any object which, when found, is part of the same find as:
 - an object within head (1), (2), (3) or (4) above found at the same time or earlier; or
 - an object found earlier which would be within head (1), (2) or (3) above if it had been found at the same time.

Treasure does not include unworked natural objects, or minerals extracted from a natural deposit, or objects that have been designated not to be treasure by the Secretary of State. Objects falling within the definition of wreck are also not treasure.

Coroners continue to have jurisdiction to inquire into any treasure found in their districts, and into who are or are suspected to be its finders. Anyone finding an object he or she believes or has reasonable grounds to believe is treasure must notify the coroner for the district in which the object is found within 14 days starting from the day after the find or, if later, the day on which the finder first believes or has reason to believe the object is treasure. Not doing so is an offence, the maximum penalty for which is 3 months imprisonment, a £5,000 fine (or both); there has not yet been a prosecution under this Act.

Inquests are held without a jury unless the coroner decides otherwise. The coroner must notify the BM if his or her district is in England, the Department of the Environment if it is in Northern Ireland, or the National Museum Wales if it is in Wales. The coroner must also take reasonable steps to notify any person who it appears may have found the

⁹⁴ Extracted from http://en.wikipedia.org/wiki/Treasure_trove

treasure; any person who, at the time it was found, occupied land which it appears may be where the treasure was found; and any other possibly interested persons, including persons involved in the find or having an interest in the land where the treasure was found at that time or since. However, coroners still have no power to make any legal determination as to whether the finder, landowner or occupier of the land has title to the treasure. The courts have to resolve that issue, and may also review coroners' decisions in relation to treasure.

When treasure has vested in the Crown and is to be transferred to a museum, the Secretary of State is required to determine whether a reward should be paid by the museum before the transfer to the finder or any other person involved in the finding of the treasure, the occupier of the land at the time of the find, or any person who had an interest in the land at the time of the find or has had such an interest at any time since then. If the Secretary of State determines that a reward should be paid, he or she must also determine the market value of the treasure, the amount of the reward (which cannot exceed the market value), to whom the reward should be paid and, if more than one person should be paid, how much each person should receive.

The system of valuing finds that museums wish to acquire is very important. Treasure finds are valued by a Treasure Valuation Committee of respected independent experts, presently chaired by Professor Norman Palmer, which includes representatives from the trade, museums and the NCMD. Interested parties can however still commission their own independent valuations. Archaeologists are not eligible for rewards, and provision is made for abatement of reward if there is evidence of wrongdoing by the discoverer. Giving finders the confidence that if they do the right thing and report their finds they will be fairly rewarded is crucial to the success of the Treasure Act. Once a valuation has been agreed upon, interested museums have 4 months to raise the money for acquisition.

The Treasure Act 1996 does not apply in Scotland, where all ownerless objects remain Crown property under common law.⁹⁵ In practice the Crown only claims those of archaeological interest, and this is not limited to precious-metal objects. Such objects are offered to museums and the finder receives a reward, determined by an independent committee. In 2005 there were 260 Scottish Treasure Trove cases.

One of the most useful results of the Treasure Act has been significant publicity that the Government has accorded to the issue of antiquities discovery and disposition as a result of the passage of the Act through Parliament. This is important, because public education and raising public awareness of these issues is viewed as the key to success. The Treasure Act Code of Practice sets out detailed guidance for the public on how the Act works and their responsibilities;⁹⁶ there is also a leaflet for finders and other interested parties (presently in its third version) and an annual report giving details of each year's Treasure finds, which has by now become a large volume of more than 300 pages.

⁹⁵ The Queen and Lord Treasurer's Remembrancer website:

<http://www.treasuretrovescotland.co.uk/>

⁹⁶ Available as PDF download at

<http://www.culture.gov.uk/images/publications/TreasureAct1996CodeofPractice2ndRevision.pdf>

In 1994 it was predicted that the number of Treasure Act cases would be between one and two hundred a year, but in fact the increase from the old Treasure Trove law incidence of about 25 yearly has been much greater. During 1998 (the first full year in which the Treasure Act was implemented) 201 treasure discoveries were reported. Discoveries remained at that level for the next three years, then in 2002 rose to 300 - and in each subsequent year have risen by about a hundred cases, so that by 2007 reported discoveries had reached 749. This is believed to be largely due to the establishment of a national network of FLOs in 2003.

Perhaps the most iconic individual prehistoric Treasure Act find is the mid-Bronze Age gold cup found by Cliff Bradshaw with a metal detector at Ringlemere in Kent in 2001. The cup is only paralleled in Britain by a smaller one found at Rillaton in Cornwall in the early 19th century, and it is an object of outstanding importance. It appears that it had been struck by the plough in the previous year and, in the opinion of the archaeologist who excavated the site, if it had not been recovered when it was, would have been in several pieces after the next ploughing. The discovery prompted a programme of archaeological work on the site: it was found that the cup was buried in a Bronze Age barrow, overlaid by an Anglo-Saxon cemetery. This cup was acquired by the BM at a valuation, set by the Committee, of £270,000.⁹⁷

In 2003 the Treasure Act was extended to include hoards of prehistoric base-metal objects. A good example of such is the hoard of Bronze Age axes from Hollingbourne in Kent, discovered by a detector just after this new provision came into force. The finder, Mr. Button, reported the find to the local Finds Liaison Officer (FLO) who organised an archaeological investigation of the findspot. The objects had been dispersed in plough soil and the aim was to see if further objects could be located and whether any traces of the burial context could be uncovered. The investigation revealed a second deposit, buried about twenty metres away from the first and containing a further twenty objects. Under the rules for the payment of rewards, Mr Button received payment for both deposits, not only the one that he dug up, and thus he shared a valuation of £2500 with the landowner. The find was acquired by Maidstone Museum.

One of the most important Treasure finds from the Roman period is the temple treasure discovered at Ashwell in Hertfordshire. It was found by detectorist Alan Meek in September 2002 and comprises 27 gold and silver objects, including gold jewellery, a silver figurine and votive plaques of silver alloy and gold. Meek immediately contacted Gil Burleigh, a local archaeologist, who arrived at the site shortly after the removal of the last pieces of the hoard. As a result it was possible to establish and record the precise circumstances of the find. A programme of fieldwork shed valuable light on the context of the find. Most importantly, five of the 19 silver and gold plaques contained the name Senuna (there is one further plaque inscribed with the name of Minerva), a previously unknown Romano-British goddess. It is likely that the silver figurine is a representation of her. Two complete inscriptions record the same vow: *Servandus Hispani willingly fulfilled his vow to the goddess Se(nuna)*. The hoard can be dated to the later 3rd or 4th

⁹⁷http://www.britishmuseum.org/explore/highlights/highlight_objects/pe_prb/t/the_ringlemere_gold_cup.aspx

century AD and it must have been connected to a temple or shrine of the goddess Senuna. This find was acquired by the BM for £35,000.

On 5 July 2009 Terry Herbert discovered in Staffordshire, England the largest single Anglo-Saxon hoard as of that date—consisting of over 1,500 gold and precious metal pieces, helmets and sword decorations tentatively dated to around 600–800 A.D.⁹⁸ Herbert reported the find to his local Portable Antiquities Scheme officer, and on 24 September 2009 it was declared to be treasure by the South Staffordshire coroner.

A number of very significant coin finds have also been reported as discovered treasure. One of the most curious hoards of recent years was a group of 32 Iron Age gold staters found concealed in a cow bone, discovered in 2002 by a detectorist working for the Sedgeford Historical and Archaeological Project in Norfolk, who obtained a signal with his machine and uncovered the cow bone which was unnaturally heavy. The presence of the coins was identified through an x-ray taken at the local hospital. This is only the second recorded example of a group of Iron Age coins found concealed in a cow bone.

One of the most spectacular coin hoards found recently is a find of 127 gold aurei from the 1st century AD down to the end of Vespasian's reign, from Shillington in Bedfordshire, acquired by the Luton Museum for £200,000. This site has since produced a very fine Iron Age bronze mirror and silver brooch that has also been declared treasure and nearby the same finders discovered a small group of 18 Roman denarii. Archaeologists will further investigate the site.

Perhaps the most historically important individual Roman coin to be reported as Treasure is a coin of Domitianus II, who seems to have been a short-lived usurper in the Gallic Empire probably in power between the reigns of Victorinus and Tetricus in 271 AD. It was found in a hoard of 3500 late 3rd century radiates from Chalgrove in Oxfordshire.⁹⁹ What made discovery of this coin so important is the fact that the only other known coin of Domitianus II, recorded in a hoard from Cleons in France in 1901, had effectively been lost to scholarship for the next 95 years as it sat unstudied in a French provincial museum. As a result, many scholars doubted its authenticity. When this discovery of a second specimen from the same dies came to light with an unimpeachable provenance in the Chalgrove hoard, it proved beyond all reasonable doubt the authenticity of the French specimen, which in the mean time had been relocated and was being studied in the Bibliotheque Nationale. The Chalgrove hoard was acquired by the Ashmolean Museum in Oxford for £40,000.

Arguably the most famous Roman hoard from Britain found in recent years was the Hoxne Treasure, discovered by a detectorist in Suffolk in 1992. It comprises 15,000 late

⁹⁸ http://news.bbc.co.uk/2/hi/uk_news/england/staffordshire/8272058.stm

⁹⁹ <http://www.archaeology.org/online/features/coin/index.html>

Roman gold and silver coins and some 200 items of gold jewellery and silver tableware, and was acquired by the BM for £1,750,000.¹⁰⁰

Another hoard, from Patching in West Sussex, is perhaps historically the most important of all recent coin hoards. Found by two detector users in 1997, it consists of 23 gold solidi, 27 silver coins, two gold rings and 54 pieces of silver scrap. The evidence provided by this hoard pushes the date of the latest known hoard of Roman coins from Britain forward by some forty years, from ca. 420 AD – the date of the latest previously known hoard – to the 460s AD, because this find contained a coin of Libius Severus (461-5), besides some twenty other coins that are all later than 410. This one discovery, the details of which were very slow in being released to the public, has completely changed the previously held dogma that Roman coins had ceased to enter Britain after the reign of Constantine III. The Patching Hoard was acquired by the Worthing Museum for £30,000.¹⁰¹

Since 1997, on average 602 coin hoards have been reported as Treasure (or 66 per year as compared to less than 25 per year before 1997). In the three years ending in 2006, there were 170 cases reported, amounting to 28,250 coins. 93 of these hoards were acquired by museums and 77 disclaimed. The total valuation for the coin finds acquired by museums in these years was £218K (about \$430K).

The Portable Antiquities Scheme

The British government recognized that, although the Treasure Act would remove the major anomalies of the old law, the great majority of archaeological finds would remain outside its scope. It therefore concurrently developed a cooperative, voluntary scheme to record archaeological objects to complement the Treasure Act, with a network of archaeologists around the country available to record them.

This concept resulted in the discussion paper “*Portable Antiquities*” published in 1996, which drew a distinction between public acquisition of finds (which the Treasure Act addressed) and recording of finds, which it sought to deal with. *Portable Antiquities* noted that only a small percentage of objects found by the public are recorded by museums, and remarked that the failure to record finds made by the public ‘represents a considerable loss to the nation's heritage. Once an object has left the ground and lost its provenance, a large part of its archaeological value is lost. The result is a loss of information about the past which is irreplaceable’.

¹⁰⁰ Bland, Roger and Catherine Johns. *The Hoxne Treasure: An Illustrated Introduction*, London, The British Museum Press, 1993. Described online at http://www.britishmuseum.org/explore/highlights/highlight_objects/pe_prb/t/the_hoxne_hoard.aspx

¹⁰¹ White, Sally and John Manley, Richard Jones, John Orna-Ornstein, Catherine Johns and Leslie Webster, “A Mid-Fifth Century Hoard of Roman and Pseudo-Roman Material from Patching, West Sussex”, Society for the Promotion of Roman Studies, *Britannia* 30, pp. 301-315. See Also: <http://www.treasurerealm.com/coinpapers/hoards/Patching.html>, especially the hyperlinks therein.

All responding to proposals in this document agreed that recording of all archaeological finds was important, and that there was a need to improve the then current arrangements. They stressed that this could not be done without additional resources. For the first time there was a consensus among both archaeologists and detector users that a voluntary scheme offered the best way forward. In England and Wales, finders of buried objects, that are not treasure or treasure trove, are encouraged to voluntarily report them under the Portable Antiquities Scheme to FLOs at county councils and local museums. Under this scheme, the officers examine finds and provide finders with information on them. They also record the finds, their functions, dates, materials and locations, and place this information into a database that can be analyzed. The information on the find spots may be used to organize further research on the areas. Non-treasure finds remain property of their finders or landowners, who are free to dispose of them as they wish.

The Government agreed to fund six pilot schemes and the first six posts were established in 1997 in Kent, Norfolk, North Lincolnshire, the North West, Yorkshire and the West Midlands. A further six posts started in 1999 with funding from the lottery and these were in Dorset and Somerset, Hampshire, Northamptonshire, Suffolk and Wales. In 2003, thanks to further funding from the lottery, it was possible to extend the Scheme across the whole of England and Wales and there is now a network of 36 FLOs, six Finds Advisers, and five other support posts. It is very much a partnership project and there are 32 main partners under the leadership of the Government umbrella body for museums, MLA and the BM, which runs the project on behalf of MLA. The goals of the PAS are to advance knowledge of the history and archaeology of England and Wales by recording finds, to raise awareness of the educational value of archaeological finds and facilitate research, to increase opportunities for active public involvement in archaeology, and to encourage finders to report their finds and promote best practice.

Achievements by the PAS during the 2006-2007 period included:¹⁰²

- 57,000 archaeological objects recorded
- 5,585 finders offered finds for recording (3,439 detector users)
- 360 talks, attended by 13,390 people; 468 finds days, attended by 14,123 people
- New archaeological sites were discovered, including England's first Viking-Age inhumation cemetery at Cumwhitton, Cumbria
- 90% of finds came from cultivated land, where they are vulnerable to damage.

PAS staff record these finds not by sitting in museums waiting for people to come to them, but by proactively going out and encouraging finders to report their finds. Another key role for FLOs is to educate detector users on good practice, for example by showing detector users how to use a GPS machine to enable them to log their find spots accurately.

¹⁰² Bland, Dr. Roger. "Recording and Preserving the Past: Ten Years of the Treasure Act and Portable Antiquities Scheme in England and Wales", public presentation hosted by the Ancient Coin Collectors Guild and the American Numismatic Society at the U.S. Capitol Building, Washington DC, June 26, 2007.

The essence of the project is to record every archaeological object find into an online database. Roman and medieval finds predominate. Of the different types of objects that are recorded, metal objects account for about 33%, coins for 36%, lithics for 10% and pottery for 19%. Of 88,500 single coin finds recorded by PAS, Roman coins are by far the most common. Detector users discover Two thirds of finds recorded, 25% are found by amateur field walkers and 5% are chance finds.

PAS also records what type of land finds are made on, and 90% of recorded find spots are on cultivated land. This means that the great majority of objects reported by finders come from the disturbed layer of the plough soil, where they have already been removed from their original archaeological context by the plough and are lying in the upper soil layer, where they are vulnerable to further damage by ploughing (cf. the Ringlemere gold cup), or by corrosive chemicals farmers put on fields. The majority of objects recorded by PAS have been broken and many are just fragments. Thus there is a strong argument that, provided all finds are properly recorded with detailed find spots, metal detecting can be viewed as a form of rescue excavation. In Norfolk 18 out of 20 Anglo-Saxon cemeteries discovered since 1973 have come to light through recording of detectorist finds.

Perhaps one of the most important archaeological discoveries brought to light by the Portable Antiquities Scheme is the Viking Age burial site from Cumwhitton in Cumbria.¹⁰³ The site believed to date from the early tenth century, was unearthed following the discovery by local metal detectorist Peter Adams of two Viking Age copper brooches. Mr. Adams reported the finds to the local FLO who secured funding from English Heritage for investigation of the site, which Oxford Archaeology North excavated. The body of a Viking woman was found beneath the brooches, buried with a wooden chest holding weaving equipment at her feet. Further excavation led to discovery of the graves of another woman and four men. The sandy soil of the area means that while the bodies have decomposed, their equipment had survived.

The small patera known as the Staffordshire Moorlands bowl was found by detectorists Kevin Blackburn and Julian Lee from a site without known archaeological significance and reported via the PAS in 2004.¹⁰⁴ Dated to the second century AD, this vessel's decorative design consists of 'Celtic-style' motifs inlaid with coloured enamel. Only two other similar bowls are known to inscribe names of forts on Hadrian's Wall: the 'Rudge Cup', discovered in Wiltshire in 1725, and the 'Amiens patera', found in Amiens in 1949. The most important feature of the patera is the inscription that reads MAIS COGGABATA VXELODVNVM CAMMOGLANNA RIGORE VALI AELI DRACONIS. The first four words refer to forts at the western end of Hadrian's Wall. The rest of the inscription is more enigmatic. RIGORE VALI probably means 'along the line of the Wall'. The last two words, AELI DRACONIS can be interpreted in two different ways. They could be the names of the owner for who the bowl was made, Aelius Draco, but another, fascinating interpretation is that Aeli should be read with Vali and taken as a reference to Hadrian's Wall – Hadrian's full name was Titus Aelius Hadrianus. If that

¹⁰³ <http://www.finds.org.uk/news/story.php?newsID=124>

¹⁰⁴ <http://www.finds.org.uk/news/story.php?newsID=159>

were correct then this would be the earliest contemporary documentary evidence for associating the Wall with Hadrian.

Two of the more unusual finds recorded by PAS were two copper alloy manillas from the Isles of Scilly. Manillas are armbands were made in Birmingham in the 18th and 19th centuries as currency items for trade in West Africa, originally for the slave trade. The first one was found about three feet down by an islander while laying drains on St. Agnes in December 2003 and was taken by him to the local museum who in turn sought the advice of Anna Tyacke, Finds Liaison Officer in Cornwall. Eighteen months later Anna was holding a Finds Day in Cornwall and a second manilla was brought in which turned out to have been found in 1945 very close to the first one. Both objects are very similar to an example in the Royal Cornwall Museum, also from St Agnes, which is believed to have come from the shipwreck of the 'Duoro' that was en route to Africa with a cargo of manillas on board when it was lost with all hands off Crebawethan, Western Rocks, Isles of Scilly on 27 January, 1843.

A long-held goal of the Scheme was to secure agreement on a metal detecting code of practice that would be endorsed by all the key bodies, and that was realised in May 2006 when the Code of Practice on Responsible Metal Detecting was published. The thinking behind the Code is that education and self-regulation offer the best prospect of progress. The Code aims to minimize damage to the historic environment and ensure that finds are reported. Although it may not go as far as some archaeologists would like, it does go a great deal further than any of the existing metal detecting codes. The Code will also stand as a statement of good practice that can be used by archaeological and government bodies in developing policies that affect metal detecting.¹⁰⁵

In 2007 the annual cost of the PAS project was £1.4 million, compared with £45 million that the BM received from Government, £485 million that the Government provided to all national museums, £135 million to English Heritage (the agency for archaeology), and £1776 million total expenditure by the Department for Culture, Media and Sport. The real significance of the Portable Antiquities Scheme is the unique way in which it adds to British collective knowledge of the past through a project founded on public involvement and participation, rather than through research conceived and executed by professionals. There is probably no parallel to this initiative elsewhere in Europe, and there is increasing interest in it from other countries. The PAS can measure in a demonstrable way that it is helping to foster growing public interest in the past. It has established a mechanism to harness that interest through the recording of finds made by the public and then publishes the results for all to see.

Conclusion

¹⁰⁵ <http://www.finds.org.uk/news/story.php?newsID=167>

The evolution of public attitudes toward cultural heritage has followed the evolution of society since antiquity. Until recently, those who dwelt among relics of past civilizations thought of them only in terms of immediate usefulness. Towns needed walls for defense – old buildings were there aplenty, waiting to be taken down to reuse their masonry. When churches were needed for the faithful, antique public buildings such as temples, basilicas and baths were converted and remodeled. Statues that could be adapted to religious use were, those thought to be inappropriate were generally defaced and used for building material. Even mausoleums, for example those of Augustus and Hadrian, became grim fortifications. Construction materials were scarce and expensive, transporting them was difficult and it was natural to reuse whatever was conveniently at hand. This attitude toward antiquity endured throughout most of the medieval era, and it was not until the Italian Renaissance that works of the past began to be valued for their artistic and historical significance. During this period interest in medallic arts and in collecting art objects blossomed and it was here that the beginnings of modern numismatics can be said to have originated.

During the later 18th and early 19th centuries antiquarian collecting became a fashionable avocation for the aristocracy, and great collections of antique art objects were amassed by many members of the nobility. These collections became the foundation of many of today's most important museum collections of antiquities, including ancient coins. After the Napoleonic Wars development of the science of archaeology was paralleled by the rise of nationalism in many antiquities source countries. Export prohibitions on artifacts became common at the turn of the twentieth century, and today all significant antiquities source countries control antiquities export in some manner. The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects awakened collectors of antiquities, including ancient coins, to the fact that their antiquarian collecting interests (in the past always viewed as socially responsible and culturally desirable) were now being characterized by cultural property nationalists, especially radical archaeologists, as morally wrong and "illicit". A growing confrontation gradually revealed that what the art trade and collecting community in had thought to be a reasonable, fair compromise was instead viewed by the archaeology lobby as only an initial step toward a long term goal that would greatly restrict, perhaps even abolish, all private collecting of antiquities. At that point interested collectors (and dealers who supplied them) began to monitor what was happening, and to react to the manner in which the U.S. State Department administered the CPIA. As this monitoring soon revealed, the State Department was by no means a fair or neutral body capable of evenly balancing the interests of U.S. collectors and the trade with those of the archaeology lobby and foreign governments. The worst fears of collectors and the trade voiced in the debate leading to passage of the CPIA were instead realized – the U.S. State Department effectively became an ally of the archaeology lobby and foreign governments interested in suppressing international trade in antiquities.

When it became evident that the archaeology lobby, the U.S. State Department and foreign governments would, in concert, pursue restrictions affecting the collecting of ancient coins, the Ancient Coin Collectors Guild was formed to lobby and advocate for collector rights. The objective of the ACCG is straightforward. The guild seeks to

preserve the current rights of collectors and advocates a sensible, cooperative approach toward portable antiquities management in which the interests of collectors, archaeology and source nations are fairly and reasonably balanced. By their nature ancient coins embody so much of the total spectrum of human culture that it is difficult to imagine a more effective vehicle for connecting to the past on a personal level. Depriving the average citizen of the opportunity to make that personal connection involves a very significant cultural loss. The collectors rights movement does not seek a confrontation, it seeks a solution.

A model upon which to build in that endeavor does exist. Amateur and professional archaeologists, detectorists, collectors and local history enthusiasts of the United Kingdom have created a framework that equitably preserves important public interests, whilst still allowing everyone to have access to their heritage, participate in its discovery, and collect and treasure artifacts not so significant as to be preserved in the public trust. The Treasure Act and Portable Antiquities Scheme form a proven, well working system that have encouraged a personal sense of ownership in cultural heritage and its conservation. This model offers promise for a better future not only to threatened coin collectors of the United States, but to all the world. What has worked so well in Britain can work just as effectively elsewhere. It remains for us to communicate this internationally, and to demonstrate how much more effective the UK approach is than the existing failed repressive policies.

In spite of the divisive characterizations and events described in this paper, a vast network of information sharing between amateurs and professionals still exists today and with the advent of the internet is growing exponentially. Prestigious organizations like the Royal Numismatic Society, the International Numismatic Commission, the Hellenic Numismatic Society, The Turkish Numismatic Society, the Oriental Numismatic Society and scores of others enjoy the support of members both from the professional world of academic archaeology and the amateur world of coin collecting. Within the walls of these organizations, and on the pages of their respective journals, there are no barriers to cooperation. The Archaeological Computing Laboratory at University of Sydney (Australia) has extended the use of its mapping products free of charge to the collector oriented Ancients.info website and scores of similar acts of good will offer the hope of better times. Traditions are every bit as much aspects of culture as objects are and the tradition of cooperation between the varied groups with an interest in cultural property is an endangered element of that cultural world that deserves preservation.