

The Portable Antiquities Scheme and the Treasure Act: Protecting the Archaeology of England and Wales? Reply to Austin, Barford, Moshenska, Renfrew and Worrell

David W. J. Gill

Reader in Mediterranean Archaeology, Swansea University

The forum piece on PAS and the Treasure Act is timely. In November 2010 Lord Allan of Hallam asked a question about the future of the PAS during a debate in the House of Lords (Hansard, 11 November 2010). Baroness Rawlings commented, 'I am pleased to confirm that the scheme will continue. Discussions are taking place about the best way for it to be managed and funded.' Less than two weeks later, it was announced that PAS would face a 15 per cent reduction as part of the coalition government's comprehensive spending review; in addition, PAS will be funded directly by the British Museum. As anticipated in the forum piece, the (Westminster) government funding will no longer include Wales, although it is hoped that the devolved Welsh Assembly Government (WAG) will fund the scheme; the detail has yet to be released.

I would also like to extend my thanks to the five respondents for their thoughtful statements and, at times, frank views. I will try to address some of them in brief here. In the circumstances, it is disappointing that the response from PAS was confined to expanding my coverage of the Crosby Garrett helmet and it did not address some of the wider issues.

I have a long-standing research interest (with Christopher Chippindale) in the ethics surrounding the collecting of antiquities (e.g. Gill and Chippindale 1993; Gill and Chippindale 2002; Gill and Chippindale 2007), and this work has developed a rigorous methodology to analyse the 'surfacing' of finds in the market (Chippindale *et al.* 2001). It is hard to ignore that the issues faced for England and Wales are not far removed from those of wider classical antiquities. The present owner of (some of) the Icklingham bronzes has acquired (and returned) recently-surfaced antiquities from Greece and Italy (Gill 2009b; Gill 2009c: 88-90; Gill 2010). Indeed her name was linked to material returned to Italy from Boston (Gill and Chippindale 2006: 325, no. 9). At the same time, advocates of the PAS in Washington are the same as those who have stridently opposed the Memoranda of Understanding (MOU) about imports of cultural property of archaeological origin between the US and Cyprus, Italy, and Greece. I hope that my research background has allowed me to view the situation in England and Wales from a wider, international perspective.

The forum piece was not intended to be confrontational. In a setting where there are significant financial pressures on PAS (and on archaeology and the humanities in general), and where metal-detectorists feel that their cherished hobby is being questioned, there

are bound to be some issues which some will feel should have been left unsaid. I am grateful to the editorial team of *PIA* for inviting me to address this sensitive subject.

Protecting the Archaeology of England and Wales

The central thrust of the forum piece was to consider to what degree the PAS and the Treasure Act had served to protect the archaeological record in England and Wales. It seems that for too long the main aspects covered in the debate have been far primarily object-centred (questions such as ‘who owns antiquities?’) rather than taking a more holistic view of the effects of artefact hunting on archaeological sites in ‘archaeologically rich’ landscapes. My text was written against the background of the *Nighthawks & Nighthawking* report (Oxford Archaeology 2009), and headline-hitting finds in Staffordshire (Leahy and Bland 2009), Somerset (Moorhead *et al.* 2010) and Cumbria (Kennedy 2010). The annual statistics were also considered to see to what degree the voluntary scheme can be considered a full record of what archaeological material was being removed – largely (according to PAS figures) by metal-detectorists – from the fields of England and Wales.

What is the message that needs to be communicated? First, that large numbers of objects are being recorded by PAS, and that is something to be welcomed. Second, that the statistics would suggest that there is significant underreporting at least in some part of England and Wales. Third, that there is scope for improving the present systems. Fourth, that there is a continuing issue with illegal artefact hunting in England and Wales (‘nighthawking’), though its scale is a matter for debate.

Then there are more uncomfortable questions. Is there a need to turn a blind eye to some examples of bad practice in order to retain a positive working relationship with most metal-detectorists? Is the Treasure Act in its present form adequate for the purpose of providing protection for important archaeological finds whether made by accident or through the activities of artefact hunters? What are the intellectual consequences of allowing artefact hunters’ finds, perhaps with not entirely accurate information, to join the corpus of archaeological knowledge?

Statistics

Quantitative data provide the foundation for any discussion of the working of the PAS and the effectiveness of the Treasure Act. Much of this information is derived from the series of tables presented in the Annual Reports for PAS; the most recent relates to 2007 (Portable Antiquities Scheme 2007; and see Department of Culture Media and Sport 2010). One issue to emerge from the forum piece was the apparent under-reporting of finds, and Austin raises concerns in this area. I drew the conclusion from two case studies of the north-east of England and of Wales that ‘These figures suggest that either there are many detectorists who find nothing, or that there is substantial under-reporting.’ I drew attention to the ‘Artefact Erosion Counter’ – with a note of caution (‘The methodological approach of the Counter is open to debate’) – that is abruptly dismissed by Austin. He does, however, accept that not all finds ‘are recorded with

the PAS' and he suggests some reasons. I was particularly struck by his comment that some metal-detectorists persuade 'some landowners that detector finds should not be disclosed to any recording body.' Austin suggests that there is under-reporting due to financial restraints within PAS, but this does not explain the differences between the different regions of England and Wales. Barford draws attention to a case study that suggests that material from battlefield sites is under-represented on the PAS database, yet is present on online auction sites (Pollard 2009). While it may be difficult for PAS to record every single find made, Renfrew acknowledges implicitly that more needs to be done.

Moshenska raises the issue of PAS as a voluntary scheme (a role stated explicitly at the start of the forum piece). The point is that while two-thirds of metal-detectorists appear to report some of their finds, one-third do not report anything at all. What are they finding? What sort of locations are being explored? What happens to the finds? Do the rising numbers of Treasure finds listed by Austin represent the rising pace of their removal from archaeological deposits? There is genuine concern in parts of the archaeological community, reflected in the Nighthawking Report commissioned by English Heritage (Oxford Archaeology 2009), that there are some cases of deliberate damage to archaeological sites. One wonders to what degree a 'road to reconciliation and respectful cooperation,' as Moshenska suggests, is able to deal with this problem.

'Bridging the gap'

In my forum piece I suggested that PAS attempts to bridge the gap between archaeologists and the metal-detecting community. The tone of Austin's response to my contribution reveals something of the nature of the gulf. Indeed at times I felt he was not addressing the points raised by the forum piece but rather issues formulated by unnamed third parties who had become associated in his mind with me. Moshenska suggests that there is rather a need to 'mend the divide.' It is perhaps unhelpful for him to suggest that there is 'elitism and class snobbery' in the debate, and ascribe 'grotesque' motives to a 'small faction of anti-metal-detector zealots' who question the effects of current policies on the finite archaeological record and the public perception of archaeology. I cannot accept Moshenska's point that this debate is in some way 'staggeringly unimportant.' My public concern about the use of metal-detectors on archaeological sites can be traced back to the late 1980s (see Butcher and Gill 1990). Moshenska suggests however that I am unaware of 'the mechanics of metal detecting' as most finds come from 'ploughed fields' and 'the upper half metre of topsoil.' However he also accepts that 'some' finds may come from undisturbed archaeological levels. Barford reminds us that finds discovered by metal-detectorists are not just derived from the ploughsoil (and cites specific examples), but indeed may be derived from deeper levels. It should be noted that one metal-detector (Minelab GPX 5000) claims to find deeply buried objects giving its users the 'depth advantage' of being able to penetrate deeper into artefact-rich deposits than others and remove artefacts left behind by those artefact hunters equipped with older machines.

Barford understands the nuanced position when he draws a distinction between ‘chance finds’ and those objects obtained ‘from the deliberate exploitation of the archaeological record.’ Perhaps it is Moshenska who has yet to grasp the *réalité* of the situation.

Nighthawking

Moshenska is of the opinion that Britain is not one of the places where looting poses a serious threat to the archaeological heritage and therefore our ability to interpret the past. The situation may not be so simple. Despite Austin’s lack of apparent concern, the case of the ‘Icklingham Bronzes’ is important. It highlights the issue of ‘Nighthawking,’ the continued searching of the fields round Icklingham (Oxford Archaeology 2009: 57-58), the acquisition of the Bronzes by a major New York collector (e.g. Mattusch 1996: 262-63, no. 31), and the defence of collecting by James Cuno (Cuno 2008a: 21-22). It is a matter of regret that these Roman bronzes do not (yet) reside in an archaeological collection within the United Kingdom. Yet Austin attacks the landowner at Icklingham for following ‘a particular agenda’ (but see Browning 1995), and appears to place the blame for such ‘nighthawking’ at the feet of English Heritage.

Moshenska suggests that a discussion of PAS should be removed from consideration of nighthawking as the organisation is just a voluntary recording scheme. Yet when the Nighthawking Report (Oxford Archaeology 2009) was published, Roger Bland was quick to comment: ‘The number of scheduled monuments that have been attacked and the number of archaeological units that have been reported where excavations have been attacked by nighthawking has declined, and we’re keen to get that message across’ (Moss 2009). Bland had moved PAS’s position from being a reporting agency, to one that dismissed, perhaps even denied, that nighthawking was taking place on a scale that still is a cause for concern in the archaeological community. It is therefore appropriate—and not unjust—to raise PAS’s possibly ineffective role in discouraging the targeting of archaeological sites. If PAS was unconcerned by detectorists illegally selling antiquities, why did they start to monitor internet auctions? Barford draws attention to the ‘freshly dug-up’ British finds that are regularly on offer on internet auction sites. (As I write this response in mid-December I note the appearance of 40 uncleaned Roman bronze coins ‘all found in East Anglia,’ and a Roman bronze knife handle in the shape of a panther ‘found in Norfolk’; the seller for both is based in Diss, Norfolk and neither ‘lot’ seems to appear in the PAS database.) Barford also makes the important point that if such activity was taking place other than in the fields of England (and Wales) then it would be described as ‘looting.’ No doubt such a view is controversial, but it is one that needs to be addressed by those in the front-line of public archaeology.

The Crosby Garrett Helmet

One of the most notable ‘finds’ in 2010 is the Roman helmet allegedly found at Crosby Garrett in Cumbria. Worrell has chosen to concentrate on the finding of the helmet in May 2010 and reminds us that the lack of formal excavation has denied information about the reason for deposition. In my terms there are intellectual consequences

of removing the helmet by this method of discovery, apparently from an otherwise undisturbed archaeological context. Perhaps it would have been helpful for her to have reflected on why a FLO (Finds Liaison Officer) was not shown the find-spot in May but rather had to wait more than three months to be shown a hole in the ground (that may, or may not, be the helmet's last resting place). This sounds more like grudging reporting on the part of the finder(s) and may have more to do with concerns over the possibility of using public money to 'save' the helmet for the nation.

Austin rightly accepts that 'the discovery and later recording' of the helmet 'could have been handled better, and many metal detector users will agree that the find belongs in a museum and not hidden away in some private collection.' But he should, I feel, accept that showing a PAS FLO the alleged find-spot of the helmet a quarter of a year after the suggested date of discovery is far from prompt.

It is interesting to learn of the lobbying for the Tullie House Museum to be allowed to acquire the helmet. Lord Redesdale raised a question about the restoration of the helmet in the House of Lords (Hansard, 11 November 2010): 'My Lords, are moves afoot to look at the practices of the auction houses, given that this helmet was found in many pieces and an enormous amount of archaeological information was lost when conservators put the pieces back together without consulting archaeologists? Is that a practice that auction houses should undertake, given that loss of information on a very rare artefact?' The flaw in his question was that we now know that archaeological conservators did not handle the piece.

Since completing the initial forum piece I am grateful to Georgiana Aitken of Christie's for letting me read the 'Restoration Report' for the Crosby Garrett helmet prepared by Darren Bradbury Limited of London (dated 16 September 2010). It would be inappropriate to comment on the report, but it would be fair to say the document that I read lacked the precision normally found in a report prepared by an archaeological conservator (see Tubb 2007).

Worrell could have used the response to expand on how this situation might have been avoided and what changes to the present systems are needed. Her silence is, perhaps, significant.

Strengthening the Treasure Act

The Crosby Garrett helmet affair has added momentum to enhancing the Treasure Act. Several contributors responding to the forum piece discuss its inadequacy. Renfrew noted the need 'to expand the definition of Treasure to include groups of two or more objects of base metal of the Roman or Anglo-Saxon periods.' Austin also accepts that the Act is 'overdue for review.' Moshenska acknowledges that a 'revision' to the Treasure Act would be an appropriate response to what he terms 'the frustrating losses and damage to heritage' that the original forum piece highlights.

Renfrew has raised the issue of the Treasure Act in the House of Lords and placed the following question (House of Lords, Hansard, 11 November 2010): “To ask Her Majesty’s Government whether they will review the definition of ‘treasure’ in the Treasure Act 1996 in the light of the sale at auction of the Roman parade helmet recently found in Cumbria for £2 million.” Baroness Rawlings responded by announcing that there would be a ‘review’ of the Treasure Act and ‘the opportunity to consider whether it would be appropriate to extend the definition of treasure to include items such as the Roman parade helmet found.’ Renfrew responded by commenting, ‘It is strange that a national treasure can be sold at public auction by an anonymous vendor to an anonymous buyer.’

We should be grateful to Renfrew for pointing to another gap in the present legislation, namely the discovery of stone sculpture. He reminds us that Roman marble or limestone portrait sculpture, for example of the type that were found at Lullingstone in Kent, would not be protected, and this needs to be addressed.

Intellectual Consequences

In my mind I return to a post-lunch conversation in the rooms of the then reviews editor for *Antiquity*. Three of us were looking at a glossy catalogue of a London dealer showing Gandharan antiquities photographed in one of the London parks. We realised that it was not enough to be outraged or upset by looting (what we define as ‘material consequences’), but to explore the impact of the *intellectual* consequences of recently-surfaced antiquities (and even modern creations posing as genuine pieces) entering the corpus of knowledge (Gill and Chippindale 1993; see also Gill forthcoming). Barford was the only respondent who raised a note of caution about using PAS recorded information ‘for archaeological purposes.’ A study of the reliability of the information linked to the finds is needed to make the dataset more robust.

Owning Antiquities

As mentioned above, the ‘cultural property debate’ has in recent years circulated on the ownership of objects. This is characterised by the position taken by James Cuno (Cuno 2008a; see also Gill 2009a) and a seminar series in Oxford (Robson *et al.* 2006; see also Ede 2006). Bland has been critical of Cuno’s approach: ‘Cuno makes no attempt to deal with the issue that most concerns archaeologists: the loss of information caused by the unscientific removal of objects from their native contexts. As an art historian, Cuno cannot see beyond the physical beauty of the artefacts that appear for sale, often with no information about their provenance’ (Bland 2008), thus stressing the significance of archaeological contexts. Cuno responded: “Bland calls my arguments ‘US cultural imperialism at its worst.’ On the contrary, my book is an argument against the nationalism of culture (on the part of the US and all other governments) in favour of encyclopedic museums like the British Museum (Bland’s employer)” (Cuno 2008b).

Yet it is this very issue that emerges in the present debate over PAS and metal-detecting. Archaeologists would argue for the stewardship of the archaeological record and the importance of context, whereas (some) metal-detectorists are perhaps only interested

in retrieving objects that can be owned either by themselves or sold on to others. In this sense Barford is right to stress: ‘Artefact hunters ... treat [archaeological sites] as sources of things to collect.’

In summary, I raised the issue (in my title) of protecting the archaeological record of England and Wales. Archaeological sites are under threat, and as Moshenska reminds us, not just from human agencies. Recording portable antiquities is not the same as preventing damage done to archaeological sites by artefact hunting. And knowledge that high value objects can be found in the fields of England and Wales may encourage more people to go and look for them in a less than scientific manner.

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