

Improving Prosecutions for Archaeological Looting. Can we learn from the United States approach?

The problem

Archaeological sites in both the US and England have been subjected to criminal damage, illegal excavation and removal of objects ('looting'). In the US only publicly owned land has legal protection, but two thirds of sites on publicly owned land have been looted (NPS 1991). In some areas of the US looting ('pothunting') has a long history and is regarded as a socially acceptable practice (Shelbourn, 2014a; Goddard, 2009). In England the unlawful use of metal detectors on archaeological sites ('nighthawking') is a growing problem which can be exacerbated by widely publicised finds such as the 'Staffordshire Hoard' (Oxford Archaeology 2009). Some sites, such as Corbridge Roman site, have been subject to what has been called 'quasi-industrial' looting.

Looting damages the stratigraphy of the site and results in the loss of information which could have been gained through proper archaeological excavation. Even if a looted object is recovered by the police it will have been removed from its context.



Objects recovered in Four Corners prosecution (Shelbourn 2014a)



Corbridge



Damaged megalith



A BLM law-enforcement ranger examines a hole dug by illegal pot-hunters

Learning from the US experience

In England archaeologists have little involvement in the criminal justice system other than reporting the offence and consider that the police, prosecutors and the courts have little understanding of the full impact of looting on the historical heritage. The lack of understanding has resulted in reluctance to process the site as a crime scene, to prosecute, or to impose high sentences. (Shelbourn 2010, 2014b; 2014c).

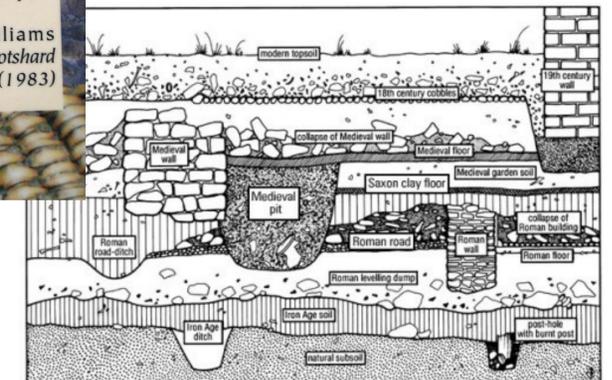
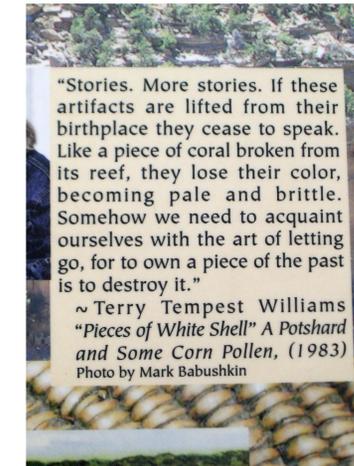
In the US the Archaeological Resources Protection Act 1979 requires an assessment of the 'damage to the archaeological value' to be made when a prosecution is brought. This involves professional costing of a full archaeological excavation of the parts of the site affected by the looting.

- As a result there is much greater involvement of archaeologists in the criminal justice process. Police and prosecutors have greater understanding of the impact of looting and archaeologists having greater understanding of the demands of the forensic process and are less critical of law enforcement agencies and prosecutors. (Shelbourn 2014c)
- Treatment of archaeological looting has improved by the courses on the law, the collection of evidence and the impact of looting run by the FBI, state police and some universities. These courses are taught jointly by law enforcement, legal and archaeological professionals.
- In the US Sentencing Guidelines have been developed which impose significantly higher sentences for any offence involving cultural property.
- Experience shows that prosecutions which are poorly managed can generate hostile publicity, have little deterrent value and do little to change the perception of heritage crime as a trivial matter even where they result in conviction of the offender. (Shelbourn 2014a; Shelbourn 2014b)

Improvements in English Practice

It is unlikely that English law will be changed to allow consideration of archaeological value to be required in criminal proceedings. However procedural changes can allow more involvement by archaeologists and better understanding of the impact of looting.

- Recently introduced 'heritage crime impact statements' (used at the sentencing stage) offer an opportunity for archeologists to explain the full impact of the offence. Analysis of cases where these have been used suggest that magistrates and judges find them useful and have made them willing to impose penalties more in keeping with the damage done by the offence (Shelbourn 2014c).
- English Heritage and the Magistrates Association are in the process of developing sentencing guidance for heritage crime generally. Shelbourn has been involved as part of the working groups developing this guidance. It is hoped that this will lead to greater understanding of the law, and the impact of heritage crime.



Publications

- 🇬🇧 Shelbourn (2014a), Operation 'Cerberus Action' and the 'Four Corners' Prosecution, *European Journal on Criminal Policy and Research: Volume 20, Issue 4* (2014), 475-486
- 🇺🇸 Shelbourn (2014b), A Tale of Two Prosecutions: Prosecuting Heritage Crime in England and the United States, a Cautionary Tale, [2014] *Art Antiquity and Law*, pp253-264
- 🇬🇧 Shelbourn (2014c), 'Improving the treatment of heritage crime in criminal proceedings: towards a better understanding of the impact of heritage offences, in *Heritage Crime: Progress, Prospects and Prevention*, Grove L. and Thomas S. (eds) , Palgrave Macmillan (2014)
- 🇺🇸 Shelbourn (2011 unpublished) Survey of involvement of archaeologists in the criminal justice process following looting or damage of archaeological sites.
- 🇬🇧 Shelbourn (2008) 'Time crime' - looting of archaeological resources and the criminal law in England and the United States, [2008] *Criminal Law Review* 3, 204-213
- 🇺🇸 Shelbourn (2007) Protecting Archaeological Resources In The United States: Some Lessons For Law And Practice In England? [2007] *Art Antiquity and Law*, 259-278

Carolyn Shelbourn

Email: C.Shelbourn@sheffield.ac.uk

School of Law, University of Sheffield