

## **To change the law: the story behind the Treasure Act 1996**

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On Wednesday 24 September 1997 one of the oldest laws in England and Wales – the law of treasure trove – was, for almost all purposes, laid to rest and replaced by the Treasure Act 1996. This archaeologically momentous event was the direct result of eight years' hard work by a small team from Surrey Archaeological Society, headed by the then President – Rosamond Hanworth – and came about as a direct result of the Society's experiences at the treasure trove site at Wanborough, near Guildford.

The site at Wanborough first came to light in 1969 when an agricultural worker, the late Mr C J Sage, who lived in Green Lane at Wanborough, reported to Guildford Museum that he had found Roman pottery and roof tile while ploughing a field adjacent to the lane. As a result the then curator of the museum, Felix Holling, and Rosamond Hanworth visited the site with Mr Sage. As well as the tile and pottery they noticed that what looked like the footings of a masonry wall were projecting through the mud at one point along the lane. A short note was published in the Society's *Bulletin* (Holling 1969) and there the matter rested for several years.

Eventually, in 1979, the County Archaeological Field Officers, Martin O'Connell and Rob Poulton, were able to carry out a trial excavation in Green Lane, uncovering part of a wall that seemed to be semi-circular at one end, which at the time was interpreted as forming part of an apse. The excavation was very small, however, but a geophysical survey amplified and confirmed what they had found and hinted at the presence of other buildings in the vicinity. Unfortunately it was not possible to expand the excavation into the adjacent field and the results of the trial excavation were published in the *Surrey Archaeological Collections* (O'Connell 1984). Meanwhile, in 1983, some metal detectorists contacted Guildford Museum to report that they had found gold and silver coins, of both Iron Age and Roman Republican date, in the lane very close to the site of the trial excavation. This find led to a coroner's inquest in 1985 to determine whether the coins were treasure trove.

Unfortunately, during the course of the proceedings, which had received widespread publicity, the then coroner made public the exact findspot – with disastrous results. Almost immediately, a new breed of treasure hunters descended on the site in large numbers and thus started one of the worst cases of systematic looting that has ever been recorded on an archaeological site in Britain.

Green Lane is owned by Surrey County Council while the field to the south was owned by the late Lord Taylor of Hadfield. The treasure hunters trampled all over the farmland digging large holes and destroying long sections of hedgeline in their search for coins. Indeed the situation became so bad that on one occasion the police found up to 30 looters present digging at night and surrounded by a ring of dealers buying the coins as they came out of the ground (Sgt Alan Bridgman, pers comm). It is now estimated that somewhere between 9000 and 20,000 coins were stolen from the site, many of which were smuggled abroad.

The police made a number of arrests and the perpetrators were successfully prosecuted at Kingston Crown Court. But, to the Society's dismay, in the worst single case (*Regina v Hancock* 1990), the Court of Appeal reversed the verdict on the legal technicality that, among other things, to be treasure trove and therefore property of the Crown, an item or items had to have been buried with the intention of recovery. For a criminal prosecution to succeed the court required proof 'beyond reasonable doubt' that the stolen items were actually treasure trove. Since it was impossible to be certain of the motives of the original depositors



Fig 1 John Gower, Joint Honorary Secretary of Surrey Archaeological Society, examines damage by treasure hunters at Wanborough in 1985. (Photograph by Marian Gower)

nearly 2000 years ago it was equally uncertain whether the coins were treasure trove and therefore Crown property. The prosecution case consequently failed.

This illustrated graphically the inadequacies of the law when it came to dealing with the effects of widespread looting by thieves, using metal detectors, and established that a decision of a coroner's inquest was not a tool that could be used to protect against the theft of antiquities.

Following this result, Rosamond Hanworth wrote to a number of eminent numismatists seeking support for a campaign to reform the law. Stewart Lyon, who also happened to be a member of the Society, responded positively and this led to the formation of a small team from the Society, the core of which included Andrew Ayres, the Society's Legal Adviser, Stewart Lyon, David Graham, then Joint Secretary joined, at a later stage, by Robert Hutley an experienced lawyer. The team was supported by a number of other people but in particular by Audrey Graham, who provided much of the administrative support. It rapidly became clear that there had been a number of previous attempts to change the law: the first in 1858 by Lord Talbot de Malahide, and more recently by the Council for British Archaeology (CBA), which had introduced a number of Bills into Parliament in the 1970s with the help of Lord Abinger. All however had failed in the face of Government indifference or even outright hostility and the general advice that the Society received, particularly from the CBA, was to the effect that the campaign was futile as it stood no chance of success. However, Rosamond Hanworth was and is not easily discouraged and the team decided to ignore the advice and to go ahead regardless. Before describing the campaign, it is necessary to look at the law of treasure trove as it existed at the time.

The law of treasure trove is Germanic in origin and was probably introduced into England by the Anglo-Saxons. It first became properly established in the 12th and 13th centuries and has remained largely unchanged since the account by Henry de Bracton (*De legibus et consuetudinibus Angliae*) written around AD 1250 and is, therefore, Common and not Statute Law.

The basic principle was that all treasure belonged to the Crown. To establish whether an item actually was treasure it had to pass three tests: there should be no known owner; the treasure should be made ‘substantially’ of gold or silver and it should have been buried with the intention of recovery. These ‘facts’ were established by a jury at a coroner’s inquest and, at least since 1886, the crown had paid an award to the finder in those cases where it wished to retain the item. In practice in recent years the level of this award (the market value) had been established by the Treasure Trove Reviewing Committee, which met in London, and the money had been paid by the museum wishing to acquire the object out of its normal revenues. To give an idea of the scale of the then problem, it was estimated by the CBA (Dobinson & Denison 1995) that about 400,000 antiquities were found each year in England and Wales, of which on average about 90 finds went before a coroner’s jury, 20–30 of which were ultimately declared to be treasure trove. Of course an individual trove could consist of a single or a great number of objects; for example there were 47,912 coins in the 3rd century hoard from Normanby in Lincolnshire, and a trove might vary in value from £25 for a small hoard of common coins to £1.75 million for the late Roman treasure from Hoxne in Suffolk.

The problems arising from the law of treasure trove were numerous, as it was never originally designed to protect antiquities. The requirement for an object to be of precious metal is effectively irrelevant to any historical value that it may have. Thus a small hoard of Roman silver-washed coins worth £25 was found to be treasure trove while the unique and valuable Viking helmet from Coppergate in York did not even come before a jury on the grounds that it contained no precious metal. Even where a hoard was found to be treasure trove it was not safe. Thus the great find of Iron Age torcs, bracelets and ingots from Snettisham, Norfolk, was divided up on the basis of metal content – the gold and silver items being declared treasure trove while the non-precious metal items received no protection whatever. Casual losses were another source of concern – the gold and sapphire Tudor pin from Farnham Park being a good example. Since it was likely to have been lost rather than buried with the intention of recovery, the jury found it not to be treasure trove and it fell to Waverley Borough Council to launch the legal action that finally led to the jewel being saved (briefly – it was subsequently stolen) for the people of Farnham. The contents of graves

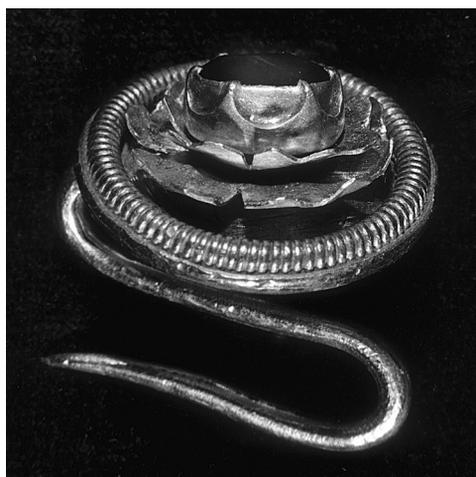


Fig 2 Gold and sapphire Tudor pin from Farnham Park, Surrey – found not to be treasure trove. Scale *c* 2:1. (Photograph by David Graham)

received no protection from the law, on the grounds that items deposited with the deceased were not intended to be recovered. Thus the Sutton Hoo treasure would not have been found to be treasure trove and is only in the British Museum because of the generosity of Mrs Pretty, the landowner.

The whole principle of paying rewards to finders was also fraught with difficulty. While intended to encourage the reporting of finds, the rigidity of the system produced anomalies. At Donhead St Mary, a metal detector user found a hoard of Iron Age coins on a Scheduled Ancient Monument. This was, of course, illegal and he was fined £100 under the 1979 Ancient Monuments and Archaeological Areas Act, but at the same time he received a treasure trove reward of £2000 – leaving him £1900 better off for disturbing an ancient monument! Equally the system could give rise to, at best, bad feelings and at worst, expensive litigation, between landowners and finders. At Burton Overy a hoard of 282 silver coins of the 17th century was found by an electrician working in the loft of an old house. He reported them and eventually was named as the finder and received a reward of £9675 – much to the annoyance of the owner of the house, who still had to pay the electrician's bill.

Just to add to the confusion, a surprisingly large number of organizations and individuals held franchises to treasure trove within particular boundaries. Thus, for example, the Church of England, the Duchy of Cornwall and the City of Bristol, to mention but a few, were entitled to claim treasure trove as were a number of individual landowners – in some cases as a result of gifts by Henry VIII to their ancestors – allegedly in compensation for his affairs with assorted wives and daughters.

Indeed the whole treasure trove system seemed almost designed to cause uncertainty, expense, delay and dispute while, in the large majority of cases, failing to provide any protection for the nation's heritage. The idiosyncrasies of treasure trove and the inconsistent way in which it was applied might have continued to be a source of mild amusement laced with irritation, but for the dramatic increase in finds of antiquities as a result of the spread of the hobby of metal detecting. The only merit in the old system of treasure trove was that at least it did not apply in Scotland and Northern Ireland, where the laws were different and provided comprehensive protection for antiquities.

It was against this background that the 'Surrey' team started a lengthy and comprehensive consultation process, which lasted for almost eight years. Nearly every interested organization in the country was contacted, ranging from the Country Landowners' Association to the Association of Chief Police Officers, and not forgetting the National Council for Metal Detecting (who were initially opposed to any reform). As a result of this exhaustive effort the team drafted a Bill to reform the law and approached the Government. Various civil servants explained at length why it was impossible and indeed unnecessary to introduce new legislation, that there was no Government time available and indeed that the Bill was poorly drafted. The latter seemed to be a standard ploy to discourage the introduction of Private Bills, frequently used by people who had not even read the Bill in the first place.

Despite these setbacks some progress was made. In particular the Society was fortunate enough, after several difficult meetings, to secure the backing of the British Museum, who were heavily involved in running the treasure trove system and were well aware of its drawbacks. With the full approval of Sir Robert Anderson, the Director, and the Trustees of the British Museum, Dr Andrew Burnett, Keeper of Coins & Medals, Dr Ian Longworth, then Keeper of Roman Antiquities, and later Dr Roger Bland joined forces with the Surrey team to promote the Bill. Professor Norman Palmer from University College London, a barrister and academic lawyer with a particular interest in the law relating to antiquities, also joined the group and provided an additional source of valuable legal expertise.

At a very early stage in the campaign Rosamond Hanworth had also written to the Earl of Perth asking for his support. Lord Perth, who at the time was campaigning in the House of Lords on the subject of the export of antiquities, in particular over the case of the 'Three Graces', was a distinguished ex-Cabinet minister whose dedicated support was to prove invaluable to the success of the Bill. He gave the measure his wholehearted backing and

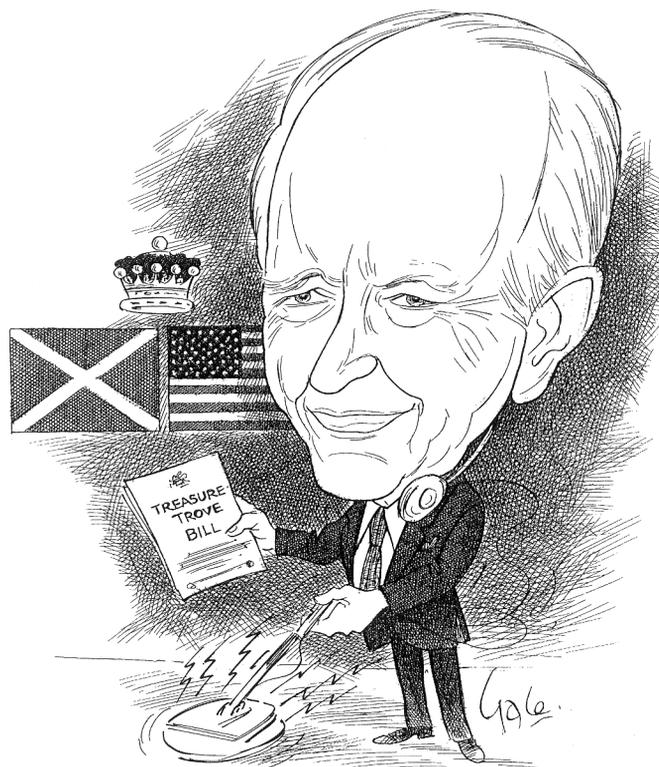


Fig 3 The Earl of Perth from *The House Magazine* (the parliamentary weekly, 11 March 1996, vol 21, no 709, 6; reproduced by kind permission)

undertook to introduce it into the House of Lords. In this he was given much help by Lord Renfrew of Kaimsthorpe, the distinguished archaeologist, and by Lords Templeman and Renton, both of whom were Law Lords. With such powerful backing it became possible to speak directly to ministers and, following a highly successful national press campaign, it became much harder for civil servants to ignore the problem. A great many organizations and individuals, ranging from the Association of County Councils to small local archaeological societies, wrote to the Government in support. The team was also able to obtain the active backing of the Opposition parties. The formation of the Department of National Heritage (DNH – now the Department for Culture, Media and Sport) in 1992 was also a considerable help in that for the first time all matters relating to treasure trove came under one controlling body. Mr Peter Brook and latterly Surrey MP, Mrs Virginia Bottomley, headed the Department and were broadly sympathetic to the aims of the measure. By this time, however, it had become clear that the Society's original aim of a drastic reform of the law, to put it on a similar footing to the law of *bona vacantia* in Scotland, was unlikely to succeed, since the Government was reluctant to support any measure that would lead to an increase in public expenditure. As a result, the Bill was redrafted in an attempt to provide a balance between saving significant finds for the nation while not overwhelming the coroners' courts and British Museum with a flood of minor antiquities. The redrafted Bill was therefore more of an evolution than a revolution in antiquities legislation, but nevertheless offered a considerable improvement over the existing situation.

Inevitably there was opposition to the Bill and this came from three main sources. The first, as already mentioned, was the National Council for Metal Detecting whose opposition

was not so much because the Bill contained anything harmful to their interests, but more in the apparent belief that it represented the thin end of a wedge and because they seemed to feel that anything backed by archaeologists must be hostile to detectorists. This attitude was the result of a period of deep distrust between the two groups. In the event their concerns were overcome after a number of meetings with officials at the Department of National Heritage and when Lord Inglewood, the Under Secretary of State confirmed that the Government had no intention of banning responsible metal detecting. Nevertheless a number of individual detectorists remained unconvinced and continued to lobby their MPs against the measure and, at the same time, wrote letters of varying degrees of virulence to the hobby's magazines.

The second group to express their concern were certain elements in the antiquities trade who felt that an expanded definition of treasure and the creation of a new associated criminal offence might endanger their commercial interests.

Thirdly, and rather more surprisingly, there was opposition from some archaeologists who felt that the measure did not go far enough. Indeed a resolution to this effect was passed at the Museums Association conference in 1994. However after further discussions at the DNH the Museums Association reversed its position and decided to support the Bill. Other archaeologists and in particular the editor of *Current Archaeology* felt that giving protection to additional categories of objects was tantamount to nationalizing them and was thus an attack on private property by the State. This view gained support from a small number of MPs but was not widely held by most archaeologists.

Once again Lord Perth came to the rescue, chairing a number of meetings with a skill that defused potentially tense situations and which, while perhaps not persuading everyone, at least clarified concerns and allowed for sensible discussion.

Following all this, Lord Perth introduced the revised Bill into the House of Lords in 1994, where it passed without any opposition and with the Government, in the person of Lady Trumpington, expressing support. Sir Patrick Cormack MP took it into the Commons where, as a Private Member's Bill, no time for debate was available and any single MP could shout 'Object' and kill the measure. This happened repeatedly, with the objections of Ulster MPs being based on whether it should or should not apply in Northern Ireland – depending on whether the MP in question was Loyalist or Nationalist. The situation was very frustrating as the Bill was on occasion failing not for any intrinsic defect, but for external political reasons.

Once again Lord Perth rose to the occasion and after a number of meetings the Government finally agreed to persuade an MP who had won a place in the annual Private Members' ballot, to sponsor the Bill. This ballot allows twenty MPs to introduce the Bill of their choice with some guarantee of debating time and with a majority vote usually deciding the issue. Again the team was lucky in that Sir Anthony Grant, a Conservative MP who had won a place in the ballot, agreed to take on the Bill which by then had been reworded by Parliamentary draughtsmen at the Government's expense. This no doubt resulted in greater technical competence, but perhaps in less clarity for the layman.

After a number of crises, including last minute concerns about the rights of landowners and the holders of franchises (many of whose rights dated to the reign of Henry VIII), the Bill was finally passed by both the Commons and the Lords and received Royal Assent on 4 July 1996. Subsequently much work went into preparing the Code of Practice that accompanies the Act and into ensuring the smooth introduction of the new rules. This involved providing training for nearly every coroner and museum curator in the country and issuing thousands of explanatory leaflets to interested parties – mainly metal detecting clubs. The Act came into force on 24 September 1997 and since then finds of Treasure (as treasure trove is now known) are dealt with under rules which were originally written as a result of the Surrey Archaeological Society's experiences at the site at Wanborough. Very briefly these new rules are that:

- All objects other than coins will be Treasure, provided they contain at least 10% by weight of gold or silver and are at least 300 years old when found.

- All coins which are more than 300 years old and that are found in hoards will be Treasure. If the coins contain a precious metal content of more than 10% then a minimum of two coins will be eligible; if their precious metal content is less than 10% then a minimum of ten coins is required. Single coins will not be Treasure.
- It will not matter whether the objects have been buried with the intention of recovery or not. Provided they qualify under the points above, all such objects will be Treasure.
- In addition all objects found in clear association with an object of Treasure will also be Treasure, whatever they are made of.
- The Secretary of State may, with the approval of Parliament, designate additional classes of objects as Treasure.
- All finds that are likely to be Treasure must be reported to a coroner within two weeks. The maximum penalty for failing to comply with this requirement is a fine of £5000 and/or 3 months imprisonment.
- Rewards may be payable to both landowners and finders and will be reduced or removed entirely in the case of bad behaviour.
- Coroners need only summon a jury in controversial cases, thus speeding up the process considerably and must make reasonable efforts to inform landowners of finds made on their property.

This is a summary of the main points of the Act and anyone wishing to know the full details can obtain a leaflet from the Department for Culture, Media and Sport, 2–4 Cockspur Street, London SW1Y 5DH. The Code of Practice provides guidance to finders of Treasure with additional advice on practical matters such as the recording of findspots, the addresses of coroners to whom Treasure should be reported, how to handle delicate objects and so on.

Since 1997 there have been a number of significant developments arising directly and indirectly from the Act. The number of finds declared to be Treasure has risen from about 30 per annum before 1997 to over 400 in 2000. Perhaps just as importantly, the Government has set up a voluntary Portable Antiquities Reporting Scheme to cover the hundreds of thousands of objects that are found each year which are not covered by the provisions of the Treasure Act. This scheme now covers the whole of England and Wales and employs a number of Finds Liaison Officers whose job it is to record finds made by members of the public – be they metal detectorists or otherwise. This has led to greatly improved relations being established with responsible detectorists. The scheme is headed, at the time of writing, by Dr Roger Bland who is also responsible for the workings of the Treasure Valuation Committee at the British Museum, which is currently chaired by Professor Palmer. At the same time, under the provisions of the Act the workings of the system has been reviewed and the definition of Treasure has been expanded slightly to include finds of prehistoric metalwork, regardless of metal content. Finally the higher profile that the Act has generated for archaeology and antiquities has led to the formation of the All Party Parliamentary Archaeology Group, which with cross-party support, lobbies Government on archaeological matters. This has contributed towards persuading the Government to sign a number of international conventions designed to control the illegal import and export of antiquities.

While problems remain – Wanborough is still being attacked by treasure hunters – the Society can be proud of everything that has grown from the small seed that was sown when Mr Sage first reported his finds to Guildford Museum. As a final point, it is just worth noting that the 1996 Act did not actually abolish the law of treasure trove, which still lives on and covers objects of precious metal that are less than 300 years old.

## ACKNOWLEDGEMENTS

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