

## ARCHAEOLOGY AND THE LAW

Archaeology, like any field of endeavor, cannot and does not exist apart from the world around it. Nonetheless, most of us, much of the time, pretend that it can and does. We become tremendously upset because that world has impinged itself upon us by destroying or threatening to destroy our sites, but there has been too little evidence as yet that the society, or the profession as a whole, is inclined to take the necessary preventative action—for to do so involves getting out of our little world and into the world of “the public” and, worse, into the world of politics.

Like it or not, archaeology’s only salvation lies in the laws of the land and in public support for those laws. To obtain such legislation and the necessary public support, a greatly increased number of archaeologists, actively supported by this society, are going to have to take their heads out of their two-meter pits and become involved with the outside world.

If past experience is any guide, some of you now are thinking that what we need is more antiquities legislation, laws to protect sites from wanton destruction and prevent excavation by other than archaeologists, or at least laws to eliminate the pot hunter; an equally large number of you are commenting that antiquities legislation simply won’t work. In my view, both groups are dead wrong.

There is not one but three basic types of legislation affecting archaeology: enabling legislation which establishes archaeological research and preservation as a public policy and creates a mechanism for carrying out that policy; appropriation legislation which provides the funding necessary to carry out that policy; and antiquities legislation which provides elements of both positive and negative control. Of the three, the so-called antiquities law is most popular, but is easily the least important, though, *as part of a total program*, it too has a significant role to play.

On the federal level, only the Smithsonian Institution, the Department of the Interior, and, to a lesser degree, the Departments of Transportation and of Housing and Urban Development, currently are authorized to concern themselves with archaeology or the effect of their programs on the nation’s archaeological resources, though there is an effort at the present time to correct this imbalance. The Federal Antiquity Act of 1906, the Historic Sites Act of 1935, the Reservoir Salvage Act of 1960, and the Historic Preservation Act of 1935, the Reservoir Salvage Act of 1960, and the Historic Preservation Act of 1966 have provided legal cornerstones for federal activity and have served as models for various state programs. Nonetheless, actual federal funding for archaeological programs has decreased rather than increased in the recent past, despite increased federal activity in other areas which, however inadvertently, is accelerating the loss of the nation’s archaeological resources.

No more than 15 of the states have what could be termed effective enabling legislation, that is, legislation which goes beyond mere creation of a post of state archaeologist, and which at least envisions the establishment of a responsible state agency with the capacity for carrying out a realistic program of archaeological research and development. Even in these states, only a few have developed truly effective programs. Only one state without specific enabling legislation could be said to have anything approaching a developed archaeological program. The exact mechanisms vary from state to state and there is not space to go into them here. However, one salient fact should be pointed out: almost without exception, those states with reasonably funded programs are those which legislatively or administratively recognize in a clear-cut manner the separate existence and responsibility of an archaeological program.

In terms of the level of funding (and of administrative structure), only five states have what might be called developed programs, while another 16 have minimal basic programs. The remaining

states have programs which range from less than minimal to nothing whatever. Small wonder our archaeological resources are disappearing so rapidly!

Antiquities legislation, though almost totally ineffective alone, has long been popular (it is found in approximately 40 states) and frequently it is the only legislative approach attempted. Since the results of such legislation are consistently lacking or negative, why has it remained so popular? One answer seems readily apparent: it is the simple obvious approach and requires, before or after passage, the least personal involvement on the part of the archaeologist (or anyone else!). It supports the archaeologist's own moralistic beliefs, and generally is the responsibility of someone else (if anyone) to enforce. Antiquities protection laws are important and need strengthening, but other necessary action is seldom considered. Surely it should be apparent to archaeologists, as anthropologists, that laws reflect society and that only to the extent that laws are based upon public opinion will they be effective. Archaeology has attempted to accomplish by fiat what can be accomplished only by education. The present near total lack of success is hardly surprising.

The only approach which holds any hope for success in providing protection for and the recovery of our archaeological resources is not the negative approach of prohibiting action, but rather the development of appropriate programs which encourage and make possible positive action. Positive action becomes possible only through adequate funding of programs of archaeological research and development, programs which are carried out in accordance with professional standards, and draw generously upon the public for active assistance and support. The only adequate source of permanent funding for such programs is through state and federal appropriation legislation. State or federal legislation, in turn, is possible only through widespread public understanding and support of archaeology's place and needs. Archaeologists are not noticeably averse to hard work, but success in this particular area requires not just hard work, but hard work in the fields of public coordination and education (which is quite different from academic education), and in practical politics.

Given the typical archaeologist's lack of involvement with the public and with politics, it should come as no surprise that public support of archaeological research is grossly inadequate. Less than one-tenth of the states have minimally adequate programs. None appropriate sufficient funds for archaeological research. We in the profession must get out and fight the battles necessary to achieve appropriate legislation and adequate funding. This job must be viewed as part of our professional responsibility. The public, and the politicians who answer directly to that public, will not, on their own initiative, design the necessary programs and voluntarily provide sufficient funding.

We have long heard the professional battle cry of "publish or perish." I suggest that if this professional society and its members continue their near total emphasis on research and publication (and academic teaching), to the virtual exclusion of all else, then "publish *and* perish" will be more appropriate. What *will* happen is that our basic resource materials will disappear, and archaeology's final contribution to mankind will be to provide future generations with an excellent example of suicide by an entire profession.

CHARLES R. MCGIMSEY III  
Arkansas Archeological Survey  
University of Arkansas Museum

#### MEMOIR 24

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