

The Fig and The Spade

Countering the deceptions of treasure hunters

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“I have learned to call wickedness by its own terms: A fig, a fig, and a spade a spade.”

John Knox (ca. 1510–1572),
misquoting Erasmus

His name was...well, I don't know what his name was, but he introduced himself as “Happy Jack” as he sauntered past the patio table where we sat in the shade of a tropical broad-leaf. It was summer in Santo Domingo and we had stopped at a small but popular bar next to the National Pantheon.

Work long enough in the Caribbean as an archaeologist and you see it all: sites “there” last year have now disappeared; sensibly minded government policies protecting cultural resources fly out the window overnight with a political regime change; sit at a local bar and someone—often an “expat”—tries to sell you artifacts.

What Happy was intent on showing us were items he had removed from sites on the northern coast of the Dominican Republic. His descriptions of where and how he found them left no doubt that both the artifacts and the caves in which they were recovered had, at one time, belonged to the Taíno, those peoples of the Bahamian Archipelago and Greater Antilles who greeted Columbus on his first westward voyage to Asia.

Now they were for sale...

A THIRST FOR “THINGS”

Looting in the Caribbean Basin, or anywhere else in the world for that matter, isn't the exclusive domain of expatriates; neither is it limited to terrestrial “excavations.” As inconsequential as his hi-jinks may seem, Happy Jack represents a very real threat to local, regional, national, and international cultural heritage. But so, too, does Jimmy Bingleaguer.

I met Jimmy in 1985, on my first trip to the island. His muscular, squat body and leathery skin were testimonies to a lifetime spent on the open sea. A fisherman by trade, his knowledge of sea life, weather, and shipwrecks here is encyclopedic. Jimmy may not be the most successful angler in the small coastal town of Monte Cristi, but he is certainly the best known. On any day he may be seen navigating the

shallow estuary channel that winds through the mangroves, his 18-foot *yola* filled to capacity with tourists intent on fishing “secret” spots and snorkeling “unknown” shipwrecks.

No one is more familiar with the coast than Bingleaguer. Over the past 20 years he has shown me in excess of 35 shipwrecks in a quarter as many miles. One wreck in particular has captured my attention and imagination, a seventeenth-century merchantman known simply as the “Pipe Wreck.” The story of this amazing little vessel, whose cargo comprises the largest single collection of clay tobacco smoking pipes in the archaeological record [1], is punctuated with fishermen, tourists, treasure hunters, and archaeologists. Like most wrecks in the area which are located in shallow coastal waters, this one has provided a small but steady source of illicit artifacts to tempt the tourist eye and pocketbook. As egregious as this illegal “mining” of cultural material is to both governments and archaeologists, it benefits local fishermen as it supplements a traditional income stream that is rapidly diminishing because of over-fishing and habitat destruction. Yet the impact that this activity has on the historical and archaeological records is devastating. Just as deforestation takes its toll one tree at a time, the destruction of archaeological sites occurs artifact by artifact.

Submerged sites—and more specifically shipwrecks—have, for centuries, supported several lucrative, if not illegal, industries. Shortly after Europeans arrived in the Caribbean at the close of the fifteenth century, salvors, “wrackers,” and looters added to the seasonal and often serial devastations brought on by inclement weather, navigational error, maritime warfare, and piracy.

It appears that little has changed at the onset of the twenty-first century, for those who lay waste to submerged archaeological sites are many and varied. With the advent of scuba gear in the early 1950s, the art of the heist “got wet.” Looting was no longer limited to caves and graves. Streams, rivers, embayments, and the entire seabed became new hunting grounds for the next mantelpiece ornament. And though local fisherman, expatriated pothunters, and souvenir-hungry travelers occupy adjoining levels in a multi-tiered threat to

heritage resources, the penthouse is reserved for the most familiar menace of them all: the treasure hunter.

A MAN WITH A (BUSINESS) PLAN

Generally speaking, this rascal is not your typical scuba-clad tourist carrying a “goodie” bag and a metal detector. Rather, the twenty-first-century American treasure hunter (and here, reader, take note: the non-American treasure hunter is on the rise) tends to fit a stereotype all *his* own. Most are Midwestern, middle-aged, male Caucasians from relatively modest backgrounds [2]; their politics generally lean to the conservative side; and although they may come from blue- and white-collar backgrounds, nearly all lack professional archaeological credentials, yet have sufficient business know-how to make a comfortable living—and, occasionally, a substantial profit—from the generosity and naivety of armchair adventurers turned investors. The majority has the gift of gab and a business plan predicated on limited partnerships or publicly traded corporations. These intrepid entrepreneurs also possess a penchant for anticipating and surviving an eventual financial downturn, yet nowhere in their corporate flow chart or profit-laden prospectus is there a contingency plan to ensure that the archaeological record and the public good will not take the same despairing plunge.

Even their own investors are not protected. Consider the recent saga of Mr. Tommy Thompson, founder of Recovery Limited Partnership and director of salvage operations for *Central America*, a paddlewheel steamship that sank off the South Carolina coast in 1857. [3] Shareholders and crewmembers of Thompson’s team who were promised part of the treasure filed lawsuits in 2005 and 2006, and Thompson has mysteriously disappeared. [4] The case of Premier Exhibitions, Inc. (formerly R.M.S. Titanic, Inc.), one of the more successful salvage ventures, is currently under investigation for exchange commission fraud [5], and the list goes on.

Not that treasure hunters are alone in the wanton promotion of cultural destruction. Those who raise the capital necessary to mount salvage ventures have more than just shareholders clamoring to participate in their high-risk speculative ventures. Yellow-trimmed geographical publications, financial management magazines, and men’s adventure monthlies, are all seemingly spellbound by prospective “up-by-the-bootstraps” biographies of some of these characters. And the public, it seems, always enjoys a good rags-to-riches tale.

But what if, instead of a shipwreck, these wanton thrill seekers were to plunder the “primary cultural deposit” (also known as “the target” or “the motherlode”) within a Mycenaean tomb, an Arawak ceremonial court, or a Civil War prisoner camp? Would those popular periodicals condone and promote the digging and divvying up of artifacts among private investors in these instances? *Of course not.*

EIGHT DECEPTIONS

How have we been so skillfully deluded into thinking that underwater cultural resources are somehow less important than those on land? Why are archaeologists portrayed as introverted exclusionists, ivory tower intellectuals, academic elitists, and bumbling bureaucrats, but treasure hunters somehow represent the common good? What for-profit salvage groups and underwater treasure hunting corporations have succeeded in doing well is manipulating public opinion with several clever and closely woven deceptions regarding underwater cultural heritage (UCH).

DECEPTION 1. The laws of finds and salvage apply to shipwrecks.

The laws of finds [6] and salvage [7] are the cornerstones of the treasure hunter’s legal arguments, but their applications to wrecked vessels is highly debatable and, therefore, problematic. In short, the law of finds awards “finders” ownership of a vessel and its property if, among other things, they are able to convince the Court that said property was “abandoned.” The law of salvage, which has its legal origins in Byzantine sea regulations, was instituted to save and preserve property in peril from destruction, damage, or loss. Unlike the law of finds, it does not strip title from the owner.

With both laws, the onus is on the salvor to prove application. For the law of finds to pertain, the salvor must prove “abandonment” of the wreck by its previous owners; likewise, the court must be convinced that new ownership is warranted—in this case, by the salvor—because a discovery has been made and control of the resource has been demonstrated. *Interestingly, the law of finds does not derive from maritime law.* Rather, it comes from a common law concept dealing with terrestrial property that has been applied in some federal admiralty cases instead of the law of salvage, although courts generally prefer the application of the latter.

Under the law of salvage, the salvor must establish control or “possession” of the wreck site and prove that that vessel and cargo are in “marine peril.” In traditional cases, rescued commercial goods would be returned to their owner, who would then pay a reward to the salvor. Payment might also result from returning the salvaged goods to the stream of commerce, the sale proceeds of which would then be used to pay the salvor. One purpose in establishing an incentive or reward under the law of salvage was to prevent looting of recent marine casualties, but unfortunately and ironically, the law has, in many cases, resulted in what is tantamount to the private pillaging of artifacts from public lands. [8]

Fortunately, the privatization of public resources with regard to such laws is abating in light of the recognition of the possession or control of historic shipwrecks under federal and state laws. In fact, a number of legal instruments have or

will soon come into effect that will relegate these laws to the dustbin. These include the Sunken Military Craft Act [9]; the Abandoned Shipwreck Act [10]; and laws safeguarding historical and cultural resources in federal marine protected areas, such as national parks, national marine sanctuaries; and, most recently, the Proclamation of the Northwestern Hawaiian Islands National Monument. [11] At the international level, the framework for protecting underwater cultural resources and the regulation of activities directed against them is provided for in the Third United Nations Conference on the Law of the Sea (UNCLOS III). [12] But with technological developments facilitating the encroachment upon and exploitation of cultural resources in deep water, the need for regulation has resulted in the development of international instruments, including the International Agreement on RMS Titanic [13], and the United Nations Educational, Scientific, and Cultural Organization' (UNESCO) Convention on the Protection of the Underwater Cultural Heritage. [14]

DECEPTION 2. Preservation *in situ* harms artifacts.

In other words, doing nothing—leaving a site unexcavated and undisturbed—equals the destruction or loss of property and history. The Latin term, *in situ*, literally translates as “in place,” and refers to artifacts that, hopefully, have not been moved since deposition and certainly not since discovery. Under the law of salvage, a salvor may be granted exclusive rights to salvage a wreck site—and eventually claim an award—if they are able to establish, among other criteria, that the shipwreck and cargo are in “marine peril.” Therefore, it is in the salvor’s best interests to make convincing cases for perpetual threats of destruction. This they have done well, using a variety of arguments: the deterioration of property through the passage of time, subjection to the elements and inevitable loss from dredging, oil drilling, vandalism, piracy, and the increase of recreational diving, all of which have been used to counter the unprofitable notion that *in situ* preservation is the preferred method of preservation. [15]

If this is so—and comprehensive data are sorely lacking on both sides of the argument—then the logical solution is to “rescue” the resource before it perishes. Nestled within this inelegant diatribe is the subtext that only those sites containing commercially marketable cargoes are worth salvaging. In other words, take it and make a profit before it disappears. Although this reasoning is flawed—similarly one might argue that the Amazonian rain forest should be cut down for firewood before the ravages of storm, blight, or pestilence destroy it altogether—it clearly illuminates a need for increased scientific studies on the chemical equilibration of submerged archaeological sites under varying environmental conditions.

Until such research is conducted and made available, the argument that *in situ* preservation is tantamount to destruction is fatuous, at best.

There is, in fact, evidence that some shipwrecks reach a state of equilibrium over time and that little to no deterioration occurs. Furthermore, some courts have held that marine peril is not a substantive claim for marine salvage in particular cases. Several federal admiralty court judges have agreed with the government and historic preservationists that certain shipwrecks are not in marine peril and that it is in the public interest to preserve them undisturbed on the sea floor. In some instances, the prevailing legal notion has been that greater damage has been done by salvors who do not employ proper excavation and preservation techniques than by the passage of time and exposure to the elements.

National Oceanographic and Atmospheric Administration (NOAA) attorney Ole Varmer, in his article titled “The Case Against the ‘Salvage’ of the Cultural Heritage,” [16] notes that the problem with the law of salvage is that most courts fail to require scientific evidence that a shipwreck is better off being salvaged than left alone. In such cases, the assumption is that wrecks deteriorate rapidly and are, therefore, in marine peril simply because they are underwater. Varmer suggests an alternative: why not reverse the supposition? Let the courts presume, instead, that wrecks are better off left *in situ*; then, let salvors introduce the scientific evidence necessary to persuade them that recovery is, indeed, the best option. If this were to happen, the maritime law of salvage would align itself more closely with historic preservation law and sound archaeological principles, not to mention emerging international laws and policies.

DECEPTION 3. Treasure hunters should have access to underwater cultural heritage.

The claim is made that treasure hunters should have access to underwater sites because they have the money, technology, and expertise with which to carry out their work. Furthermore, because they are willing to take the inherent operational risks, they are entitled to the spoils.

Academic institutions, private nonprofit archaeological organizations, and nongovernmental organizations (NGOs) rely on sporadic and decreasing corporate and government funding, while the for-profit private sector has little difficulty in raising the capital necessary to carry out sustained and costly ventures, especially those in deep-water where daily operations’ costs are extravagant. Yet even these resources are finite, and many “successful” treasure-hunting corporations appear unwilling to invest the time or money necessary to see the archaeological process properly implemented and sustained to completion. Why? Simply put, in a business where profit governs both the philosophical and managerial objectives, each minute spent employing the exacting techniques that comprise a portion of archaeology is a minute squandering limited operational finances. Who benefits from such cost cutting? Project leaders and limited partners, certainly. The

archaeological record and public trust? *Absolutely not.*

That is not to suggest that only government archaeologists and NGOs should have public access to underwater cultural heritage. Neither is it to imply that private commercial entities should be barred from access. The UNESCO Convention addressed this issue in a number of its provisions: although commercial exploitation of UCH is banned—as is the general application of the law of finds and salvage—private commercial entities may be permitted access by the authorizing nation if they adhere to the Convention, including the scientific Annexed Rules for research and recovery. In sum, no one should have access to UCH for the private commercial exploitation of an important public resource. However, access to UCH should be granted to those who agree to adhere to international standards and requirements to ensure that research and recovery are, indeed, in the public interest.

DECEPTION 4. Treasure hunters are “doing archaeology.”

This may seem true at first, but it is predicated on a limited and, in fact, incomplete definition of archaeology. The singular objective of archaeology is to “tell the story,” a mandate replete with requirements and obligations not only to excavate with exacting precision, but to archive, manage, and disseminate information. In the field, archaeological standards require that professionally trained archaeologists with experience in the specific research area supervise all procedures, as stated in the Annexed Rules to the UNESCO Convention. [17]

Archaeology is an inherently destructive process fraught with opportunities for conflicts of interest. Therefore, and by necessity, it comprises more than a mere series of data collection techniques; rather, it embraces a strongly principled philosophy of, among other things, artifact disposition and public accessibility. Without the latter, there is no archaeology, an indispensable point that treasure hunters either fail to comprehend or refuse to admit. This exacting sub-disciplinary branch of anthropology may not be minimized to a recipe of field procedures that excludes a code of ethical behavior.

So, are treasure hunters “doing archaeology?”

No. Not unless they follow the scientific method and have a professionally trained and sufficiently experienced principal investigator to oversee the project. Moreover, “telling the story” of an archaeological site requires careful, disinterested scrutiny and subsequent public dissemination through scholarly and popular articles, not to mention public access to artifact assemblages. And all of this information must be preserved for future generations.

Nonetheless, many treasure hunters claim they practice archaeology, and they generally offer several arguments:

often they operate with the permission of and in cooperation with government agencies; they frequently employ certified archaeologists to supervise the field portion of the project; and, many times, they have an impressive array of technology at their disposal.

In an age when our obsession with gadgetry is seemingly unsurpassed, it is important to remember that electronic machinery merely assists in the detection and excavation of cultural resources. *In the end, archaeology is enhanced with but not defined by technology.* Just as a successful cardiac bypass does not end when the final stitch is in place and the patient is wheeled from the operating room, neither is archaeology complete when the last grid-square is removed and the gear rinsed and stored. If archaeology comprised *only* excavation, then treasure hunters might have a convincing argument, since many of them do a thorough if not superior job of site mapping and artifact registration, often under the direction of a qualified archaeologist. Archaeology, however, goes well beyond fieldwork and data collection. George Bass, professor emeritus at Texas A&M University and co-founder of the Institute of Nautical Archaeology, has calculated that for every month spent excavating underwater, an archaeologist invests two years in the library and laboratory studying their finds. And these steps are just the beginning: cataloguing, archiving, and managing intact collections that will be accessible for public education and research takes decades of careful planning.

Nowhere is such thorough research better exemplified than at Parks Canada, where archaeologists began excavating the remains of the Basque whaling ship at Red Bay, Labrador, in 1977. Their report chronicling the investigation of the *galeón San Juan*, its support craft, and associated try works was completed in 2002, replete with 3,000 pages and 1,500 illustrations. It is the most thorough analysis and publication of an Iberian Peninsula vessel in the annals of archaeology, a declaration to the meticulousness and care with which archaeologists regard both cultural resources and the public trust.

And dissemination of information through publication, public lectures, and museum display are the archaeologist’s responses to that trust. Professional and scientific accountability are critical components of archaeology. Ethical codes govern all aspects of the discipline, and sloppy work or non-compliance bear serious consequences, ranging from censure to banishment.

In a best-case scenario, treasure hunters and their constituents make money displaying selected artifacts from their salvage collections; more commonly, however, these collections are divided up and sold to private individuals. Public access for future research, education, and appreciation is denied, and there usually follows no final report or publication.

DECEPTION 5. One does not need to be an archaeologist to practice archaeology.

Despite resumes that may be fairly muscular in corporate matters, the professed “expertise” of most treasure hunters is, at its best, questionable. Few, if any, have the requisite training to manage archaeological projects, and until recently, none possessed the qualifications necessary to call themselves archaeologists, opting instead to hire students fresh out of graduate programs to comply with the necessary governmental standards.

The most recent and dangerous iteration of the treasure hunter, however, is a Trojan horse wheeled into the gates of archaeology. This imposter is one who has earned a Ph.D. from an accredited university program. Additionally, they have taken several steps, at least superficially, to legitimize their operations. Among these gestures are the incorporation of a nonprofit institute; the operation of field schools, often with accompanying certificates; the maintenance of a website displaying numerous and frequently simultaneous projects; and the presentation of papers at recognized, international congresses. But after the embrace of these seemingly legitimate operations comes the Judas kiss: the permit or license under which they operate has been granted to a separate, for-profit treasure hunting corporation that remains hidden to the public eye, and the arrangement for the distribution of recovered cultural materials and the final disposition of these artifacts is never revealed. The archaeologist gets her or his publications, the salvage companies get their artifacts, investors get their share of cultural materials and a misguided sense of adventure, and the scientific community and the public get hoodwinked.

The legality of their practices is shifting, too. With the aforementioned UNESCO Convention on the Protection of Underwater Cultural Heritage and its ratification by a growing number of countries, what qualifies as “archaeology” and who, precisely, meets the criteria of an “archaeologist” are coming under more careful scrutiny.

Moreover, archaeologists—those accountable to ethical standards and who represent public interests—subscribe to a higher standard than the legal paradigm.

There is a processual elegance to archaeology, one that unfolds in discovery, excavation, conservation, display, curation, and, ultimately, publication. All are deeply rooted in an ethical commitment to treat artifacts, information, and the cultural environs from which they are extracted with reverential respect, standards that are inherent in codified rules of behavior.

DECEPTION 6. It is legal, therefore it is ethical.

This assumption resonates strongly with discriminating

minds and is certainly not limited to a discussion of UCH. Eminent domain, overdevelopment, labor outsourcing, tobacco industry advertising, and price gouging at the fuel pumps are daily reminders that government and industry continually attempt to blur the line between legal and ethical behaviors. The two do not necessarily overlap. They are not, in every case, the same. For many years slavery was a protected practice under U.S. law, despite being considered unethical by many. In his recent tome, *Failed States* [18], noted linguist and political activist, Noam Chomsky, cites de Tocqueville’s cogent observation that the U.S. was able “to exterminate the Indian race...without violating a single great principle of morality in the eyes of the world.” [19] Eventually, public opinion shifts and, in due course, laws change; lamentably, it’s often later than sooner. And though it is legal to buy and sell commercial goods in our free enterprise system, many draw the line at the exploitation of cultural heritage. Resultantly, laws have changed to reflect this ethical stance: the Antiquities Act of 1906 [20]; UNESCO’s Convention on Illicit Trafficking [21]; and the Archaeological Resources Protection Act of 1979 [22] provide just a few examples of regulatory devices implemented to protect and preserve cultural heritage.

The notion that European and American treasure hunters deal legally with governments of developing nations using cultural heritage as negotiable currency should be seen for what it is: at the very least, third-world colonialism and cultural arrogance; more realistically, overt and shameless racism.

DECEPTION 7. Archaeologists are “ivory tower intellectuals” who seek to prohibit public access to UCH.

Nothing could be farther from truthful. Certainly, there are phases in the archaeological process when, for various reasons (site security, personal liability, project logistics), public access must be restricted or denied. In some instances, protecting UCH necessitates limiting (but not denying) public access. These, however, by no means constitute the rule. Public access to UCH is generally provided for in national parks, sanctuaries, and other federal marine protected areas. There are regulations, however. These are put in place to prevent activities that are destructive or harmful to UCH. To the contrary, access to UCH for research, education, and other public uses is encouraged.

Numerous undertakings, among them the aforementioned “Pipe Wreck” Project, successfully incorporate students, volunteers, and archaeologists into every stage, from excavation through publication, thereby making transparency, inclusion, and accessibility integral parts of the archaeological process. It is important to note that the product of archaeology—information realized in complete collections, displays, and publications—is available to the public in perpetuity and without restriction.

Can treasure hunters make these same claims? Are they accountable to the public trust? Do they adhere to a professional, enforceable code of ethics? Does site destruction follow strict archaeological principles that represent best practices? Are mechanisms implemented, apart from refusal to invest, to enforce controls over destructive practices? Are their investigations free from conflicts of interest? Is there operational transparency through display and publication? Does the public retain access to all of the cultural material? *No*.

Treasure hunting generally results in the privatization of public resources which, more often than not, prevents public access for research, education, and other public purposes.

DECEPTION 8. Treasure hunters represent the public good.

These arguments are generally linked to the aforementioned law of salvage, particularly with regard to their unceasingly valiant efforts to return commercial goods to the stream of commerce, all, of course, in the public interest. Although admirable in the context of salvaging commercial goods from a recent marine casualty, it is misplaced when applied to artifacts whose values to society are as historical and cultural resources. And the well-packaged notion that these artifacts must be rescued from marine peril and returned to the terrestrial environment—again, in the public interest—is a false presumption: salvage is more likely to put the artifacts in peril more so than if they were left *in situ*, particularly if the site has reached a state of equilibrium with its environment.

Salvors also argue that folks will have greater access to cultural heritage if it is salvaged rather than left *in situ*. Such an argument assumes, however, that artifacts will be available to the public in a museum. Quite simply, most treasure hunters don't display their finds in museums; fewer still publish their results for anyone other than their investors. Salvaged cultural heritage, it seems, is more often sold to the highest bidder, thereby denying public access for the purposes of research and education.

Salvors serve a privileged few, those who see themselves as entitled to and can afford to acquire what rightfully belongs to us all. In a culture where private ownership is the cornerstone of collective and individual freedoms, where a free enterprise system touts that those daring enough to raise the capital are entitled to the spoils, there is strong appeal in the “finders/keepers” mentality. The fact that artifacts are bought and sold—in essence, taken out of the stream of public access and placed into private ownership—negates the argument that the public good is being served.

WHAT MAY BE DONE?

Archaeologists clearly have deep, legitimate grievances with

the treasure hunting community. It appears that both sides in this longstanding argument are at a stalemate, with little hope for future cooperation. To move toward reconciliation would require one group to abandon ideals of private ownership of cultural material, adhere to prescribed and widely accepted ethical standards, reveal the disposition of recovered artifacts, adopt policies of procedural transparency, and make conceptual adjustments regarding personal profit and community fairness. The other side would have to forsake the public trust.

With this in mind, consider the following: archaeologists and those who support archaeology must

- **acknowledge the grave threat posed by the destruction of all cultural heritage**, whether by treasure hunters, incompetent archaeologists, pothunters, local fishermen, or souvenir-seeking tourists.
- **admit that, to date, archaeologists have lost the public relations war**, mostly through failure to reach out and educate the public with a simple, consistent, and socio-economically meaningful message. The salvage community has inarguably made better use of a variety of media to convey their adventurous, flag-waving, “rags-to-riches” stories. This by no means signals defeat, rather a temporary setback.

Still, the road ahead is long and challenging. A coherent educational outreach campaign that aggressively underscores certain values is necessary. It must begin with emphasizing the importance of UCH to the public and their vital role in protecting it. Furthermore, several salient points should be made: salvage is not “saving history,” especially if a public resource is privatized, commoditized, and no longer available for research and education; cultural heritage should not be subject to corporate or commercial ethics where salvors have an obligation to make a profit for their shareholders; and artifacts need to be protected and managed as public resources according to principles of historic preservation and archaeological ethics.

- **ensure adherence to strict ethical principles and best practices** by those entrusted with interpreting humankind's collective past.
- **redress the deceptive prattle of treasure hunters within the popular media**: *in situ* preservation does not equal destruction; archaeology comprises not only techniques, but ethics and public accountability; archaeologists are not “ivory tower intellectuals” who prohibit public access to submerged cultural resources.
- **dispel falsehoods that material self-interest, market**

shares, and the profit-oriented economic rights of a few trump public fairness and collective social good.

Treasure hunters are neither the *vox humana* nor champions of free enterprise, as they have long and successfully promoted themselves. In the end, archaeology is as much about ethical decision-making as it is about procedural accuracy.

The environmental movement has been moderately successful in promoting its ethics, such that their message has become part of societal fabric, both domestically and internationally. Archaeologists, historians, and others need to help the public understand that we are all intimately affiliated with culture and history, and should, therefore, take leading roles in protecting cultural heritage. Preservation of artifacts is, in a sense, "self preservation."

- **countermand financial assistance for any medium that betrays the public trust** through the promotion of privatization of cultural heritage, including electronic and printed publications, academic institutions, public lectures, and museums. Simply put, privatization equals exclusion of public resources from public use.

In his article on the legal, professional, and cultural issues surrounding salvaging historical shipwrecks, Christopher Bryant notes that *in situ* preservation, the "central theme" of the aforementioned UNESCO accord, prohibits selling artifacts from historic shipwrecks. [23] His conclusion is that it appears the principal aim of this treaty is to "destroy the economic incentives underlying salvage." Unfortunately, Bryant fails to grasp the primary objective of the UNESCO document: the protection of submerged cultural resources. However, his oversight illumines an essential point: the ethical campaign of archaeology threatens the economic platform of salvage.

- **seize the teachable moment.** University programs, as a whole, do reasonably well teaching archaeological theory and technique. But it is imperative that graduate students are better informed regarding the legal and ethical issues surrounding the protection of cultural heritage. The groundwork must be laid for aggressive challenges to the for-profit sector, with students as active participants in protection.

The historic preservation ethic should become part of the educational fabric, in much the same way that issues of diversity and inclusion have entered into the liberal studies curricula.

Moreover, academic institutions need to encourage their scholars to write for popular publications. Many in the Academy, already stretched to the limit with research, pub-

lication, and teaching responsibilities, refuse to invest their limited time in developing ideas and expressing opinions that merit little toward tenure evaluations and advancement. Popular publications offer wonderful opportunities to bring issues to the public forefront. As communal centers that encourage and support rigorous and sustained public discourse in social, political, and economic theories, universities may be vital and transformational forces in the protection of cultural heritage. They must encourage their best thinkers to extend their pedagogical discussions beyond the academic community.

- **be a dominating visible and vocal presence** at local, regional, national, and international legislative hearings where issues of cultural heritage are discussed.
- **persuade the United States Congress to adopt legislation prohibiting looting and unwanted salvage.** Congress has ignored most international conventions, including the Law of the Sea (which has been strongly supported by all presidents of the last two decades, the Department of State (DOS), the Department of Defense (DOD), and private commercial interests) and the international agreement to protect RMS *Titanic*. Moreover, the Convention itself means relatively little without implementing legislation. How then, might this be accomplished? Congress needs to hear that folks are interested in protecting cultural heritage through enacting legislation that prohibits looting and unwanted salvage on all underwater cultural heritage that U.S. nationals and vessels have the ability to loot and salvage in the U.S. Exclusive Economic Zone (EEZ), the high seas, as well as the waters of other nations. This is best done in a manner consistent with international law, and instruments—such as the UNESCO Convention on the Protection of Submerged Cultural Resources and the Annexed Rules—are already in place. [24] Communication of these ideas is vital!

Furthermore, *citizens of non-signatory nations need to convince their governments to ratify the UNESCO Convention.* At the time of this writing only six more states or territories must deposit their instruments before the document comes into force. This legal article holds great potential, but the true measurable test of its effectiveness will be enforcement once it is ratified.

- **support organizations that promote archaeology.** It isn't enough to withhold finances from those corporations who selfishly and exclusively exploit cultural heritage. Rather, it is essential to engage positively in protecting and preserving our collective histories. There is no shortage of institutions in need of financial assistance, including the International Congress for Caribbean Archaeology, the Institute of Nautical Archaeology, the Society for Ameri-

can Archaeology, the Society of Historical Archaeology, the World Archaeological Congress, and, of course, the Archaeological Institute of America.

- **call “a spade a spade.”** This phrase, the product of several mistranslations over two millennia, comes to the English language via the Protestant reformer John Knox (ca. 1510–1572). “*I have learned to call wickedness by its owns terms: A fig, a fig, and a spade a spade.*” It is a simple truth; would that we could be so discriminating. Archaeologists are not treasure hunters and treasure hunters are not archaeologists. In reality, those who barter in cultural heritage promote yet one more form of conspicuous consumption, one disguised in daring adventure and economic entitlement. They serve private interests, not public good. Let’s afford them the same regard we would any group that depletes natural resources for personal gain while excluding others.

Failure to grasp a few key concepts in the protection of submerged cultural resources may have devastating results for generations to come. Treasure hunting isn’t a long-range management strategy; it’s a short term approach that is wrong in policy and implementation. This is not about who has the funding, technology, and the willingness to take the risks, as the for-profit sector with their prosaic arguments would have us believe. Nor is it about private ownership or the rights of entitlement under a free enterprise system, the notion of maximum profit at the expense of public fairness. It is about the common good, not the bottom line. This is about how we regard ourselves and those things which, either by divine obligation or by scientific accountability, we chose to protect. This is about planetary custodianship.

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FOOTNOTES

1. Eight seasons of archaeological excavation have produced more than 10,000 clay tobacco pipes. Conservative estimates based on anecdotal evidence and assorted collections from the site viewed by the author suggest that the original cargo may have exceeded 50,000 pipes.
2. There is wide representation in the business sector: among others, former dive shop operators, celebrity public relations managers, and engineers; neither are former public servants exempt, as law enforcement officers, gym teachers, and life-guards also apparently make rather successful salvors.
3. The nearly 300-foot-long *Central America* was traveling from Panama to New York via Havana, Cuba, when it sank on 12 September 1857, 160 miles off the coast of Charleston, South Carolina. The vessel carried 578 passengers and 21 tons of gold bars, ingots, dust, and Double Eagle coins valued between \$100 and \$400 million.
4. M. Tatge and M. Gottfried wrote this electronic article, entitled “Ship of Fools,” which appeared 19 June 2006, on the website Forbes.com, (<http://www.forbes.com/archive/forbes/2006/0619>).
5. See “SEC Files Civil Injunctive Action against Current and Former RMS Titanic, Inc. Officers and Civil Penalty Action Against Other Individuals in Connection with their 1999 Takeover of the Company,” U.S. Securities & Exchange Commission, 26 October 2004; and “Titanic Company’s President, Shareholders Fined In Takeover,” *Virginian-Pilot*, 27 October 2004. The Commission’s complaint centered on activities that transpired between May and November 1999. During this time, insurgent shareholders...made “materially false and misleading statements in Schedule 13D filings, failed to file and timely amend Schedule 13D filings, and failed to comply with certain proxy rules under the Securities Exchange Act of 1934 in an effort to acquire control of RMS and remove certain members of its then current management” (U.S. Securities & Exchange Commission, 26 October 2004).
6. The law of finds has been previously seen as apposite for property with no prior owner, such as natural resources harvested from the sea.
7. Salvage is “service voluntarily rendered in relieving property from an impending peril at sea or other navigable waters by those under no legal obligation to do so,” as cited by M. J. Norris, 1991, Benedict on Admiralty: The Law of Salvage § 2, at 1–4 (7th ed.), in M. Wilder, 2000. *Application of Salvage Law and the Law of Finds to Sunken Shipwreck Discoveries*. *Defense Council Journal*, volume 67, pages 92–105.
8. Some treasure salvors have even argued that their looting is under the admiralty law of salvage when they haven’t even bothered to file an *in rem* case and get an award in an admiralty court! *In rem* translates from Latin as “against a thing.” The term involves or determines the status of a thing, and the rights of persons generally with respect to that thing (see B.A. Garner, ed., 2004, *Black’s Law Dictionary*, 8th edition, Thomson West, St. Paul, Minnesota). “An action in rem is one in which the judgment of the court determines the title to

property and the rights of the parties, not merely as between themselves, but also as against all persons at any time dealing with them or with the property upon which the court had adjudicated" (R. H. Graveson, 1974, *Conflict of Laws* 98, 7th edition), as cited in *Black's Law Dictionary*.

9. The Sunken Military Craft Act comprises Division A, Title XIV of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. The Property Clause of the United States Constitution supports continuous and indefinite ownership of U.S. military craft, sunken or otherwise. This Act extends case law across Circuit Courts other than the Fourth and Eleventh, where this proposition is predominantly limited.

The statute provides for, *inter alia*, the protection of sunken U.S. military ships and aircraft, regardless of location; graves of lost military personnel, and archaeological artifacts and historical information. It does not affect the salvage of commercial merchant shipwrecks, recreational diving, commercial fishing, the routine operation of ships, or the laying of submarine cables.

10. The Abandoned Shipwreck Act of 1987 was an attempt by the United States Congress to assert ownership over abandoned shipwrecks on state submerged lands. Furthermore, it sought to transfer ownership to the states. Its intent was also to prevent further application of the laws of salvage and finds. Though it has effectively precluded further awards of ownership to private individuals under the law of finds, it has not been entirely successful in thwarting the application of the law of salvage to historic shipwrecks that the court determines have not been abandoned.

11. President G.W. Bush exercised his authority under the Antiquities Act of 1906 to establish the Northwestern Hawaiian Islands Marine National Monument on 15 June 2006, known as Proclamation 8031. This action created the greatest single conservation area in the history of the United States—some 140,000 square miles—and the largest protected marine area in the world. Although the primary purpose of the National Monument is to protect coral, it also safeguards heritage resources, including historic shipwrecks within the monuments boundary, including those beyond the 12 nautical mile (nm) territorial sea and 24 nm contiguous zone.

The monument prohibits unauthorized passage of ships, unauthorized recreational or commercial activity, resource extraction, waste dumping, and phases out commercial fishing within its boundaries over a five-year period. On 2 March 2007, Proclamation 8031 was amended to read "Papahānaumokuākea Marine National Monument," which now remains its official name. Under the amendment, "any living monument resource harvested from the monument will be consumed or utilized in the monument" (2 March 2007,

White House Press Release, Office of the Press Secretary).

12. This conference, in which 160 states participated, lasted from 1973 to 1982 and came into force on 14 November 1994, one year after ratification by the sixtieth state. UNCLOS III addressed issues brought up at the UNCLOS I (24 February to 29 April 1958) and UNCLOS II (17 March to 26 April 1960) conferences and addressed issues pertaining to the definition of maritime zones, marine environmental protection, ship passage, utilization of resources, and freedom of scientific research.

13. The International Agreement on RMS *Titanic* was signed by the U.S. on 18 June 2004. Along with the United Kingdom, France, and Canada, the U.S. entered into negotiations in 1997 in an attempt to put an end to unregulated activities deemed harmful to the site. The agreement designates *Titanic* as an international maritime memorial, and signatories agree to protect the scientific, cultural, and historical aspects of the wreck by regulating—within their jurisdictions—activities relating to the hull, cargo and other artifacts at the site. Though specified that the agreement would enter into force when two or more nations ratify or accept it, this has not yet happened, even though the United Kingdom became a signatory nation in 2003. The reason for this non-enforcement is because the U.S. DOS stipulated upon signing that it could not consent to be bound to the agreement unless and until Congress enacted legislation implementing it and providing federal agencies the necessary authority to enforce it. Once the agreement comes into force, however, it will apply to each signatory nation upon ratification, acceptance, or accession.

14. The convention produced a document on 2 November 2001. As of 8 February 2007, 15 state parties have completed all necessary steps for ratification. These include Panama (20 May 2003), Bulgaria (6 October 2003), Croatia (1 December 2004), Spain (6 June 2005), Libyan Arab Jamahiriyah (23 June 2005), Nigeria (21 October 2005), Lithuania (12 June 2006), Mexico (5 July 2006), Paraguay (7 September 2006), Portugal (21 September 2006), Ecuador (1 December 2006), Ukraine (27 December 2006), Lebanon (8 January 2007), Saint Lucia (1 February 2007), and Rumania (1 August) 2007). In accordance with Article 27, the Convention "shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, or accession, but solely with respect to the twenty states or territories that have so deposited their instrument. It shall enter into force for each other state or territory three months after the date on which that state or territory has deposited its instrument."

15. Grenier, R., Nutley, D., and I. Cochran. 2006. *Underwater Cultural Heritage at Risk: Managing Natural and Human Impacts*. *Heritage at Risk*, Special Edition: ICOMOS.

16. Varmer, O. 1999. "The Case Against the 'Salvage' of the Cultural Heritage." *Journal of Maritime Law and Commerce*, volume 30, pages 279–293.

17. Rule 22 (Section VII) of the Annexed Rules Concerning Activities Directed At Underwater Cultural Heritage states that "activities directed at underwater cultural heritage shall only be undertaken under the direction and control of, and in the regular presence of, a qualified underwater archaeologists with scientific competence appropriate to the project." Furthermore, Rule 23 (Section VII) notes "all persons on the project team shall be qualified and have demonstrated competence appropriate to their roles in the project."

18. Chomsky, N. 2006. *Failed States: the Abuse of Power and the Assault on Democracy*, Metropolitan Books, Henry Holt and Company, New York.

19. de Tocqueville, A. 1994. *Democracy in America*. Everyman's Library, volume 2, page 355.

20. The Antiquities Act of 1906 was enacted by the U.S. Congress on 8 June 1906, and prescribed fines and imprisonment for persons "who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruins or monument, or any object of antiquity, situated on lands owned or controlled by the government of the United States, without the permission of the Secretary of the Department of the Government..." Furthermore, the Act was divided into four sections, which, among other things, authorized the President to declare historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest as national monuments. Provisions were made for the Secretaries of the Interior, Agriculture, and War to grant excavation permits; and those entities such as museums, educational institutions, and recognized scientific organizations who were granted said permits were obligated to make their findings public, through display and publication. The Act has been interpreted to apply in the marine environment most recently in the President's Proclamation of a National Monument extending out 50 nautical miles from the coast of the Northwestern Hawaiian Islands (see note 11).

21. The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property comprises 26 Articles and

entered into force on 24 April 1972. In 1999, UNESCO established The Fund of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation. This fund was established to help support Member States pursue the return or restitution of cultural property. For more information see: http://portal.unesco.org/culture/en/ev.phpURL_ID=2633&URL_DO=DO_TOPIC&URL_SECTION=201.html.

22. The Archaeological Resources Protection Act (ARPA) of 1979 became law on 31 October 1979 (Public Law 96-95; 16 U.S.C. 470aa-mm). The document, divided into 14 sections, has been amended four times.

23. Bryant, C. 2001. "The Archaeological Duty of Care: The Legal, Professional, and Cultural Struggle Over Salvaging Historic Shipwrecks." *Albany Law Review*, volume 65, pages 97–145.

24. Although the Annexed Rules—the general principles including the ban on looting and unwanted salvage—have been supported by the U.S. Delegation to the UNESCO Meetings, the U.S. DOS and other agencies do not support the UNESCO UCH Convention as a whole. This is for several reasons, but mainly because of problems with "creeping jurisdiction" of coastal States in the EEZ and continental shelf beyond the 24 nautical miles contiguous zone, and the lack of a consent requirement of the foreign flagged nations for coastal State permits to recover or disturb foreign sunken military craft in their territorial sea and internal waters. For an explanation of the U.S. position on UNESCO, see B. Blumberg's article at <http://www.state.gov/> and, specifically, <http://www.state.gov/g/oes/rls/rm/51256.htm>; see too O. Varmer's article, "The Perspective from Across the Atlantic," at <http://www.unesco.org.uk/downloads/Underwater.html>.

25. See Hendrickson, R. 1997. *Encyclopedia of Word and Phrase Origins*. Facts on File, New York. Knox's mistaken result is based on the work of Erasmus (1466?–1536) who also, apparently, mistranslated Lucian's *History*. Erasmus borrowed the phrase "to call a fig a fig and a boat a boat," but because *scaphē*, the word for a light boat or skiff, is similar to *scaphēion*, an instrument resembling a spade, a translational error was made. It was later compounded by Knox. The Greek proverb reads "to call the spade/skiff a spade/skiff."