



NEW ZEALAND  
ARCHAEOLOGICAL  
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**NEW ZEALAND ARCHAEOLOGICAL ASSOCIATION NEWSLETTER**



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NOTES ON THE PROTECTION OF ARCHAEOLOGICAL SITES AND  
HISTORIC MATERIALS

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Abstract

This paper considers some principles that are basic to any legislation regarding historical material, particularly portable artefacts and archaeological sites. Some practical aspects are discussed and suggestions made regarding the implementation of more adequate legislation than exists at present. It is proposed that a Department of Antiquities be formed; its concerns would include the establishment of registers of sites and artefacts, the control of trafficking in artefacts and destruction of sites, and the broadening of public appreciation.

INTRODUCTION

There has recently been renewed discussion concerning the inadequacy of legislation regarding artefacts and archaeological sites in New Zealand. While fully cognizant of the brevity and outline nature of the following statement, it is the considered opinion of each of the present writers that a number of basic tenets should underlie any discussion leading to modification of the present laws concerning the antiquities of this country. These are presented below, with a brief discussion of some of their implications, in the hope that further discussion will be promoted. This paper initially derives from a discussion in December 1971 which resulted in recommendations being made to N.Z.A.A. Council. Acknowledgment is made here of subsequent discussion with various other persons. Some of the issues briefly considered here have been dealt with at length by McKinlay (n.d.) for New Zealand and McGimsey (1972) in North America.

## PRINCIPLES

It is considered

1. that the cultural heritage of a country belongs to science and to the community at large. Hence it is of concern to the state, and the interests of the state should override all others.
2. that the increasing trafficking in cultural material and destruction of sites containing material of scientific and historical importance should be of utmost concern to the community.
3. that all trafficking in such cultural material be proscribed, including both internal trade and exportation.
4. that as landholders have rights of usufruct in the land but no rights over such things as geological deposits in the land, so all surface features and subsurface material, be they mineralogical or archaeological, are the absolute property of the state.
5. that irresponsible interference with archaeological evidence leads to irreparable loss to science and the community; consequently that unnecessary destruction of archaeological sites be avoided and knowing destruction be strictly controlled and lessened whenever possible.
6. that rigorous enforcement of legislation is necessary in order to ensure effective protection of a country's heritage.

## APPLICATION

We think that the above propositions should not be considered merely Utopian but that legislation explicitly embodying these principles is both desirable and attainable.

While these suggestions could be seen to be applicable to all cultural items of scientific, historical and aesthetic importance, our concern here is with archaeological material, prehistoric, protohistoric and historic. Such material may be subsumed under the class 'artefacts', broadly defined as material modified by man.

Since every artefact possesses potential information of value to the scientist and historical significance as well as aesthetic worth to

the wider community, some means must be found of retaining, preserving and making it available for study and display. Consequently private ownership should be replaced by public ownership and deposition of an item in a public institution. Since it may not be possible immediately to introduce a total ban on trafficking in artefacts it is imperative that legislation regarding the sale of artefacts be introduced and that relating to their export be made more stringent.

In order to ensure the safety of this material it is necessary to establish a National Register of Artefacts; to closely supervise the licensing of artefact dealers and collectors; to prevent the exportation of artefacts, and preserve archaeological sites.

#### THE NATIONAL REGISTER OF ARTEFACTS

It is proposed

1. that all artefacts be registered as being held by individuals or as residing in a public institution
2. that all material not so registered within a specific date for whatever reason shall become the property of the state on its recovery
3. that it be mandatory to report discovery of artefactual material to the Registrar of Artefacts
4. that such a register be available for study.

#### LICENSING OF DEALERS AND COLLECTORS

It is recognised that some artefactual material is presently in private hands and that until such time as it is deposited in public custody stringent controls on the traffic of this material are temporarily necessary. Therefore it will be mandatory for dealers in artefacts to obtain permits in order to hold material.

It is envisaged

1. that the licensee be required to ensure that all artefacts dealt with by him be registered artefacts
2. that restrictions on the export of artefacts be displayed prominently on the premises and each buyer be fully acquainted with the provisions

3. that the licensee require the buyer to sign a declaration that he will not export the artefact and that he will notify the National Registrar of its place of deposition and if any subsequent changes in ownership occurs such requirements to be binding upon future owners
4. that the Registrar of Artefacts be notified of the details of any such transaction by the vendor
5. that buyers and collectors be not permitted to take possession of their purchase without first obtaining and producing a collector's permit as is required in the case of medals and firearms
6. that such a permit require that the artefacts in the possession of that collector be recorded in the National Register and be disposed of to any other individuals only with similar provisions binding those subsequent collectors
7. that such provisions made in the previous clauses be temporary and that on a specified date all licences to trade and collect be revoked, trafficking in artefacts be proscribed and all artefacts remaining in private collections become the property of the state upon the death of the current owner.

#### EXPORT OF ARTEFACTS

It is strongly advocated

1. that exportation of artefacts be completely banned. New Zealand's heritage should be preserved in New Zealand for New Zealanders. (Some provision to be made for temporary exchange between public institutions)
2. that New Zealand should arrange for extradition treaties with other countries for the repatriation of artefacts illegally removed, whether detected upon entry to that country or subsequently.

#### SITE PRESERVATION

The destruction of archaeological sites in New Zealand is growing at an increasing rate largely as a result of development, but often for private gain by dishonest and unscrupulous persons.

It is advocated

1. that accidental damage by private and public developmental works should be predicted and avoided whenever possible
2. in the case of unavoidable damage, that adequate provision for satisfactory archaeological investigation should be made available by the private or public body concerned. Any legislation should make operative an arrangement similar to the Hawaiian State example whereby a proportion of the overall cost of the development is allocated for archaeological investigation (Green 1969: 1-5; McGimsey 1972: 140-143)
3. that, in order to facilitate the prediction of danger to sites, a National Register of archaeological sites be established
4. that no archaeological site so designated should be knowingly disturbed either by development works or by archaeological excavation without express permission
5. further, that it be mandatory to report immediately all newly discovered sites
6. that suitable penalties be devised for knowing destruction and looting of sites
7. that important sites be set aside as National Monuments; adequate compensation to be made to landholders where such sites are taken over by the state.

#### DEPARTMENT OF ANTIQUITIES

At present no administrative body exists which is capable of implementing any such legislation. Hence it is proposed

1. that a Department of Antiquities be established, preferably as a full government department, but possibly as a division of another department. It is a strange circumstance that a number of countries to which New Zealand gives aid have such departments, yet this country does not. Recognition of the need for a Department of Antiquities has occurred in the past, and its establishment is long overdue
2. that the Department of Antiquities administer the registering of artefacts, the licensing of dealers and collectors, the control of exports, the registration and acquisition of sites, and permit where appropriate the systematic investigation of archaeological sites including salvage work by competent trained personnel

3. that the Department employ professional personnel on both permanent and temporary bases
4. that the operations of the Department be overseen by a panel of professional archaeologists and others

#### DISCUSSION

There has been discussion as to which is more important, for the case of the portable 'artefact' or the archaeological site; that, for example, legislation concerning the former treats only the surface of the problem and that the root must be tackled with the protection of sites. It should be realised, however, that all these aspects are closely inter-related and that tightening the protection of one will increase the protection of the other. No doubt, however, some problems with draughting any comprehensively protective legislation will arise. The existence of Maori heirlooms, for example, will have to be taken into account. Any compromises considered, however, must not incur loopholes which permit abuse by persons who are increasingly involved in the destruction of sites and exportation of their contents.

The registers of artefacts and sites must be national and not regional. Local organisation as, for example, under the auspices of provincial museums would not avoid parochial influences. Registers should, however, be compiled with the co-operation of regional institutions and copies be housed in them for the benefit of local scholars and interested persons. The current N.Z.A.A. Site Recording Scheme provides an example which could well be used as the basis of the site register.

Eventually all artefactual material will be housed in public institutions and be available for study and instructive display and educational purposes. In order to encourage such deposition, publicity should be given to the fact that any artefact given or bequeathed to a suitable public institution (or the Minister of Internal Affairs) is exempt from gift duty and death duty. Another, and more positive, sanction which could be applied immediately would be to allow tax exemptions on any gifts of artefacts or sites to public institutions. The value of these exemptions should be made sufficient to ensure that owners are strongly motivated to pass in artefacts in their possession, and to gift sites to the nation.

It cannot be too strongly stressed that a primary concern of any new legislation must be the abolition of exportation of all cultural material.

We consider that adequate site protection will be ultimately the basis of any successful conservation policy. There is growing appreciation of the idea that in order to survive as a species man must seek better to co-exist with his natural environment; the same point can be made for preservation of his past cultural environment.

The Department of Antiquities would employ professional field and laboratory staff to record artefact collections and promote their deposition in public institutions, to conduct site surveys, to advise land developers of their obligations to surface and sub-surface features, to co-ordinate survey and salvage projects, to analyse and publish the results of such research and to foster public interest in these projects. The Department would work in conjunction with land-holders, including the Crown, for the preservation of sites but would have powers of compulsory acquisition or declaration of a reserve where necessary. It should be recalled that where cultural material is concerned the interests of the community are of greater importance than those of the individual. The advisory panel of the Department of Antiquities would meet regularly and have a degree of involvement and authority such as that of a trust board. Membership of the panel would be drawn from professionally trained archaeologists and others, and be able to co-opt representatives from other departments and ministries, and representatives from interested groups in the community.

It may not be entirely possible to predict all the effects of any proposed legislation: however, where changes incorporating the principles outlined above are implemented the overall outcome must be some improvement on the present situation. An answer to the criticism that trafficking will be driven underground by more comprehensive legislation is provided in the short term by tightened application of the regulations and in the long term in increased public education and interest in the results of research into cultural material.

This paper has been overly concerned with matters of regulation which, of necessity, have a negative tone. However, the strict enforcement of laws and regulations can only be a partial solution to the problems facing us. A greater public awareness of the amount of information about past societies lost through ignorant destruction and fossicking of sites must be achieved. Moreover, people must be persuaded that the saving of some knowledge of the past is to their benefit and that of future generations. Just as an appreciation by New Zealanders of their natural environment has been brought to the surface in an active awareness of a series of ecological crises in this country and abroad, so can publicity and organisation bring a greater awareness of the importance of prehistory and the archaeological crisis.

Some archaeologists in the past have worked at public co-operation and appreciation of their research and its contribution to the life of the present community: others have ignored any aspect of public relations. While no amateur or professional worker can now afford to neglect an educational role, it is possible that the job of encouraging public appreciation and awareness is a full-time one. Consideration should be given to making it an important concern of archaeologists working with the Department of Antiquities. Certainly, a far wider and more adult audience needs to be included than that reached by university teaching.

More archaeologists must move from academic concerns to the public arenas of communication and politics, but while involvement in politics and more knowledgeable discussion and writing about archaeology is important (and New Zealand archaeologists have been slow to develop syntheses of their prehistory), it is even more important that the public become actively and intelligently involved in contributing to research and discussion. We see the job of encouraging and organising this practical and informed involvement (for example, by training and leading survey and salvage groups) as a primary concern of the professionally trained archaeologists working with the Department of Antiquities.

In this area of practical problems further answers can be provided by practical approaches. One suggestion, for example, which has potential for wide application is the production of quality replicas of artefacts for sale to tourists and others. If, as has been claimed, much blame resides with tourists and other buyers for high prices of artefacts and consequent looting and despoliation of sites, the wide availability of well-made replicas would satisfy this market, suitably devalue genuine artefacts and assist site preservation, as well as providing income for the Department of Antiquities. Avenues such as these are open for exploration by the Department.

#### CONCLUSIONS

In summary, inadequacies of the present legislation regarding historic articles have led to abuse of its provisions. There is substantial evidence in the press and elsewhere that trafficking, particularly for export, of artefacts had led to theft from collections and more importantly to the increasing incidence of looting of sites of prehistoric occupation and burial. Some basic tenets concerning the 'ownership' of a country's cultural heritage are here proposed as the basis for any change in the legislation concerning both artefacts and archaeological sites; that the rights of the community take precedence over those of the individual in

relation to material of scientific, historical, and aesthetic importance and that intervention by the state is required to remedy the present situation.

Further, it is proposed that these principles be applied for the conservation of this country's heritage by the establishment of a Department of Antiquities to control trafficking in artefacts and destruction of archaeological sites. It is proposed that this Department would have powers to establish a National Register of sites and artefacts, be responsible for supervision of activities of dealers and collectors, to prevent exportation of artefacts and to control preservation and investigation of archaeological sites. The Department would be advised by a panel of professional archaeologists and other interested persons; it would employ clerical and field staff, including trained archaeologists. It is hoped that the conscientious application of legislation embodying the basic principles outlined here would promote a greater degree of appreciation by New Zealanders of their cultural heritage and the benefits of its preservation for science and the wider community. It is emphasized, however, that the legislation embodies largely negative aspects of control and that the present writers are fully aware that it must be considered merely complementary to an active concern for education. Legislation must not supplant the development of an intelligent appreciation and the active organisation of community involvement in conservation and investigation.

In conclusion, the present writers believe that this concern for conservation of our past cultural environment should be as widely expressed as for our present natural environment. We hope that this paper will lead to further discussion of the basic principles and active consideration of the practical suggestions outlined here.

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